

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
FEBRUARY 24, 2004



A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 6:30 p.m. by Mayor John A. Buckley.

1. Pastor Richard S. Phelps, Hope Ministries, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Vice-Mayor, District 5
	Loretta Isenberg-Hand	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney (arrived 7:34 p.m.)
	Suzanne Novak	Assistant City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes – February 10, 2004 Regular Meeting

Moved by Hand/E. Palmer for approval. Motion carried unanimously.

6. City Manager's Report

City Manager Jack Schluckebier confirmed that the opening ceremony for the Eau Gallie/Melbourne Little League is scheduled for Saturday, February 28, 9:00 a.m., Crane Community Center.

Council Member Ed Palmer referenced the activity report and asked if the properties associated with the 29 outside City residential water connections made during the last reporting period are scheduled for annexation. Mr. Schluckebier noted that we do service areas located outside the City; however, he said he would review the information and provide an answer.

Mr. Palmer asked for a report outlining the total number of full- and part-time employees in the City.

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Mayor Buckley referenced the memoranda distributed from staff regarding the addition of two items to the agenda. Item 22 “b” relates to an appointment to the Citizens’ Advisory Committee of the Brevard Metropolitan Planning Organization and Item 22.1 relates to a discussion about the Sign Code and murals.

Regarding proposed Item 22.1, Council Member Pat Poole stated that a particular case is scheduled to be heard by the Code Enforcement Board on February 25. She recommended Council place this on the next Council agenda, rather than this agenda, to allow time for the Code Board to consider this item.

Following a brief discussion, Council Member Richard Contreras said he would like to discuss the Sign Code – not a particular case.

Moved by Hand/Walker to add Item 22.1 to the agenda. The roll call vote was:

Aye: Contreras, E. Palmer, Walker, Hand and C. Palmer

Nay: Poole and Buckley

Motion carried.

Moved by Hand/Contreras to add Item 22 “b” to the agenda. Motion carried unanimously.

7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-10 (A&V NO. 271): (Second Reading/Public Hearing) An ordinance to abandon and vacate a 5-foot wide public utility and drainage easement located at 2505 Fenton Street. (First Reading – 2/10/04)

Assistant City Attorney Suzanne Novak read the ordinance by title. There were no disclosures by Council and no comments from the public.

Moved by Walker/C. Palmer for approval of Ordinance No. 2004-10. The roll call vote was:

Aye: Contreras, E. Palmer, Poole, Walker, Hand, C. Palmer and Buckley

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2004-11 (Z-2003-971) THE RICHMAN GROUP: (Second Reading/Public Hearing) An ordinance changing the zoning from R-A (Residential

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Holding) to R-2 (One- Two-, and Multiple-Family Residential) on 14.73 acres, located on the southeast corner of Wickham Road and Parkway Drive. (Owner – Steven Schiff, Melbourne Plaza) (Applicant/Representative – Philip F. Nohrr) (First Reading – 2/10/04)

Attorney Novak read the ordinance by title. Mr. Contreras disclosed that on February 13, 2004 he discussed this item with Jim Swank, Weston Village Homeowners' Association. On February 14, 2004 he sent an e-mail to the Weston Village Homeowners' Association membership about this item. The discussion and e-mail related to access to the site, proposed amenities and building rendition.

Mayor Buckley opened the public hearing. There were no comments.

Moved by E. Palmer/Contreras for approval of the ordinance. The roll call vote was:

Aye: Contreras, E. Palmer, Walker, Hand, C. Palmer and Buckley

Nay: Poole

Motion carried.

10. ORDINANCE NO. 2004-12 (CU-2003-20) PALMER PROPERTY: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow an automotive service/repair station on two lots totaling 0.16 acres in a C-2 (General Commercial) zoning district, located on the southwest corner of U.S. 1 and Aurora Road. (Owner – Ora Lee Palmer) (Applicant/Representative – G. Ed Palmer) (First Reading – 2/10/04)

Attorney Novak read the ordinance by title. There were no disclosures by Council. Mr. Palmer declared a conflict of interest and stated that the property is in his wife's name.

There were no comments from the audience.

Moved by Poole/Hand for approval of Ordinance No. 2004-12. The roll call vote was:

Aye: Contreras, Poole, Walker, Hand, C. Palmer and Buckley

Nay: None

Motion carried unanimously (six votes.) Mr. Palmer abstained from voting.

NEW BUSINESS

11. COUNCIL ACTION RE: Contract award for Old Eau Gallie water main replacements, Phase I, Segment III, Project No. C03308, J.A.M. Construction Services, Inc., Titusville, FL - \$347,409.74.

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City Engineer Howard Ralls reviewed the agenda report. The recommendation is for approval of the waterline construction contract with J.A.M. Construction Services, Inc. in the amount of \$347,409.74.

Moved by Walker/E. Palmer for approval of the recommendation. Motion carried unanimously.

12. ORDINANCE NO. 2004-13 (AR-2004-148) PARKWAY DRIVE ANNEXATION – AREA A: (First Reading/Public Hearing) An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation area, located north and south of Parkway Drive and east and west of Turtle Mound Road.

Attorney Novak read Ordinance No. 2004-13 by title. Planning and Economic Development Director Cindy Dittmer reviewed the agenda report.

Mayor Buckley opened the public hearing. There were no comments from the audience.

Ms. Novak reported that the ordinance has been revised in several places to reflect an effective date of June 22, 2004 (as opposed to July 1, 2004). The change in timing will allow the property to be included on the tax rolls after the annexation has been approved.

Vice Mayor Cheryl Palmer referenced the agenda material and said that there are approximately 43 parcels involved with this annexation. She asked how many property owners attended meetings with the City. Mrs. Dittmer said two meetings were conducted, and 20 – 25 people attended each meeting. She confirmed for Mrs. Palmer that approval of the annexation will require the majority of registered voters who reside on those 43 parcels. City Manager Schluckebier clarified that approval will require a majority among those who actually vote rather than a majority of voters in the area.

Mrs. Palmer asked if all residents were notified about the meetings conducted with the City. Mrs. Dittmer replied yes and added that they were also notified about this Council meeting and the next (second reading) Council meeting. She agreed with Mrs. Palmer that the residents have had ample opportunity for input.

Mr. Contreras added that County Commissioner Sue Carlson previously indicated that she would not be opposed as long as the residents in this area are taken care of.

Council Member Grace Walker asked if any opposition was expressed. Mrs. Dittmer said that one person was concerned about the zoning. City staff assured her that we would replicate the County zoning in this area. Mrs. Palmer asked if we are forthcoming with the zoning change. Mrs. Dittmer said staff is working on the ordinance and it should be finished by the end of March.

Mayor Buckley said that the recommendation is for approval of the ordinance with a change in the effective date to June 22, 2004.

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Moved by Hand/Contreras for approval with that change. Motion carried unanimously.

In response to Mr. Palmer, Mrs. Dittmer briefed Council on the next annexation area (extending south to Lake Washington Road, including Melissa Court to the west). An ordinance is tentatively scheduled for the March 23 agenda.

13. CONSENT AGENDA:

Moved by Contreras/Hand for approval of the consent agenda, Items “a – h.”

With regard to Item “c”, Mrs. Poole asked that particular attention be given to the new retention area at NASA/Evans. Mrs. Palmer asked if this is a new company and pointed out that the quality of work in the drainage areas throughout the City has declined. Mr. Palmer asked for a cost comparison on contracting the work out versus the work being done in-house. Mr. Schluckebier said he would return with the requested information.

Mrs. Poole discussed Item “h” as it relates to Airport expenses. She expressed concern about what is being spent at the Airport, including the payment of back taxes to the Tax Collector accrued by previous tenants of the Airport. The item was not removed from the consent agenda.

The question was called. Motion carried. Mrs. Poole voted nay because of the Airport budget.

The consent agenda was approved as follows:

- a. Interlocal agreement between Brevard County, Brevard County School District, and the City of Melbourne for land transfer and construction of a driveway and cul-de-sac at Croton Elementary School and Orange Creek Subdivision on Lime Drive, located on Croton Road, north of Eau Gallie Boulevard, Project No. E99613.
- b. Purchase of five mowers and one sprayer for the golf courses and Parks Maintenance, Wesco Turf Supply, Inc., Lake Mary, FL - \$181,778.02.
- c. Contract award for aquatic weed control, All American Aquatics Co., Dania Beach, FL – at unit prices bid, estimated annual cost of \$25,598.
- d. Purchase of two “Easy Locator” ground penetrating radar (GPR) systems, MALÂ GeoScience, USA, Inc., Charleston, SC - \$17,954.
- e. Agreement between the City of Melbourne and Eau Gallie Little League for construction of a concession/restroom building at Crane Park - \$104,000.
- f. Authorization to place the District 2 seat on the November 2004 ballot.

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- g. Lien Rescission CE-03-076: Request for rescission of Code Enforcement lien (Jack Burnell Barthoff Trustee – 1555 North Harbor City Boulevard) from \$3,500 to \$0.
- h. Resolution No. 1866: A resolution to implement FY 2003-2004 First Quarter Budget Review recommendations.

14. COUNCIL ACTION RE: Amendments to the 2002-2003 and 2003-2004 CDBG Action Plans and authorization for the City Manager to submit the amendments to the U.S. Department of Housing and Urban Development and Brevard County for inclusion in the Brevard County HOME Consortium Consolidated Action Plan for 2002-2003 and 2003-2004.

Housing and Community Development Administrator Melinda Thomas reviewed the agenda report and responded to general questions.

The Citizens' Advisory Board voted unanimously on December 8, 2003 to approve the change in location of the Technological Research and Development Authority's Business Incubator facility from University Boulevard to NASA Boulevard. The Board also approved the cancellation of the \$10,000 CDBG award to Boys and Girls Club on October 6, 2003 and approved reallocation of the \$10,000 to the Vietnam Veterans of Brevard on December 8, 2003.

The recommendation is for approval of the proposed amendments to the 2002-2003 and 2003-2004 CDBG Action Plans as described and authorization for the City Manager to submit the amendments to the U. S. Department of Housing and Urban Development, with a copy to Brevard County for inclusion in the Brevard County HOME Consortium Consolidated Action Plan for 2002-2003 and 2003-2004, respectively.

Moved by Hand/Walker for approval of the recommendation. Motion carried unanimously.

15. COUNCIL ACTION RE: Preliminary funding recommendations for projects to be included in the 2004-2005 CDBG Action Plan.

Mrs. Thomas briefed Council. After the agenda package was prepared, the City received notice of the final allocations for the CDBG Program from the U. S. Department of Housing and Urban Development. Based on the grant amount, \$677,000 plus program income of \$20,196, the recommendation for funding is as follows:

PUBLIC SERVICES

Child Care Association – Subsidized child care for children from low income households	\$ 22,000
City of Melbourne Housing & Community Development Department – BTW youth initiative	19,000

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City of Melbourne Leisure Services – Scholarships for low-income youth to attend City summer camp	12,000
Club Esteem – After school program	11,000
Coalition for the Hungry and Homeless of Brevard, Inc. WIN Program – Transitional housing operations	9,000
Holmes Regional Medical Center H.O.P.E. Clinical Services – Prescription assistance for homeless patients	14,000
PREVENT! of Brevard/Sally’s House – Transitional housing and supportive services for women recovering from substance abuse	14,550
<i>Subtotal Public Services:</i>	<i>\$101,550</i>

PUBLIC FACILITIES & IMPROVEMENTS

Booker T. Washington Neighborhood Revitalization Project – Set-aside funding for Phase IV	\$156,731
Grant Street Community Center – Building expansion design and engineering	61,531
Lipscomb Park Community Center	
Fountain for lake water quality improvement	35,000
Kid Builders Play Structure	4,208
Carver Park	
Roof replacement	13,000
Replacement of basketball court and swing set	13,185
Brothers Park – Replacement of basketball court, swing set and benches	13,350
Cleave Frink Park – Climbing slide	11,241
South Brevard Senior Center – Construction of new senior center on Melbourne Avenue	50,000
<i>Subtotal Public Facilities &amp; Improvements:</i>	<i>\$358,246</i>

ADMINISTRATION

Program Administration – General program administration	\$132,900
Fair Housing Outreach & Education – Fair housing outreach and education program	2,500
<i>Subtotal Administration:</i>	<i>135,400</i>

OTHER

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Code Enforcement – Comprehensive proactive code enforcement in North and South CDBG Target Areas	\$72,000
Housing Services – Activity delivery for HOME-funded TBRA Program	15,000
Space Coast Center for Independent Living – Handicap accessibility program (single and multi-family housing units)	15,000
	<i>Subtotal Other:</i> \$102,000
GRAND TOTAL:	\$697,196

The recommendation is for preliminary Council approval of the proposed list of projects and activities for inclusion in the 2004-2005 proposed CDBG Action Plan and authorization to advertise the Action Plan for public comment upon completion.

Mrs. Thomas confirmed for the Mayor that the Vietnam Veterans of Brevard did not apply for funding for next year.

Mayor Buckley read the recommendation, which includes the revised numbers (listed above). Mrs. Poole said “so moved.”

At this point, Mayor Buckley opened public hearing.

Jasper Trigg, South Brevard Senior Association, Inc., said that he is available to answer questions or provide clarification.

Mrs. Palmer asked if the association has found an interim meeting place. Mr. Trigg replied that the County is negotiating for lease of the buildings on the Port ‘O Call site.

Donna Taylor, Space Coast Center for Independent Living, thanked Council for its consideration. She said that the funding will allow them to modify homes so that they are more accessible. She noted that five families were served last year and they hope to be able to continue their work in the City of Melbourne.

Barbara Moore, Child Care Association, expressed appreciation for the City’s continued support. She said that the funding enables children to participate in a high quality, comprehensive program while their parents are working. Eventually, the parents no longer need the association’s support.

Ginger Ferguson, Executive Director, Coalition for the Hungry and Homeless, thanked Council for its past support. She elaborated on the number of individuals served and the success they have had.

City Attorney Gougelman arrived at 7:34 p.m. and Attorney Novak left the meeting.

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Kay Heimmer, PREVENT! of Brevard, said that she represents Sally's House, formerly Robin's Nest. Ms. Heimmer asked Council to continue funding their program. She provided an update on their services and introduced the following: a resident of the home and her newborn son; a graduate of the program, who is a former client of Robin's Nest, now on staff with PREVENT!; and the grants manager from PREVENT!.

Lisa Gerri, HOPE, said that Holmes Regional Medical Center, the County, and volunteer physicians participate in HOPE. Funding allows them to purchase pharmaceuticals for homeless patients. She thanked Council for its ongoing support.

Terry Ables, Booker T. Washington Neighborhood Association, thanked Council for its funding. She reported that past funding enabled them to serve 90 youth with activities like softball, basketball and cheerleading. She noted that crime has decreased in the area and she attributes that to planned activities for the young people in the area.

That concluded comments from the public. At this point, Mrs. Walker indicated that she was part of the motion for approval. Moved by Poole/Walker for approval of the recommendation, which includes the revised numbers. Motion carried unanimously.

16. COUNCIL ACTION RE: Preliminary funding recommendations for FY 2004-2005 HOME Investment Partnership (HOME) Program.

Mrs. Thomas reviewed the agenda report. Prior to the meeting, a revised recommendation was distributed to Council, which reflects the final allocations for the HOME program from the U. S. Department of Housing and Urban Development.

The recommendation for funding is:

Owner-occupied Housing Rehabilitation Program	\$153,317
Tenant Based Rental Assistance Program	10,000
Rental Housing	50,000
CHDO Set-Aside (15%)*	42,663
Administration (10%)*	<u>28,442</u>
TOTAL:	\$284,422

\*Prescribed by statute.

The recommendation is for preliminary approval of the proposed activities for federal FY 2004 HOME funds and authorization for their inclusion in the Brevard County HOME Consortium Action Plan for 2004-2005.

Nicole Tenpenny, Executive Director, Community Housing Initiative, stated that they administer the purchase assistance program and the homebuyer in-fill program. She said that they would like to continue with these programs and noted that they have identified six sites for the homebuyer in-fill program.

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Moved by Contreras/E. Palmer for approval of the recommendation, which includes the revised figures. Motion carried unanimously.

Recessed: 7:51 p.m.  
Reconvened: 8:03 p.m.

Moved by Hand/Poole to convene as the Downtown Melbourne Community Redevelopment Agency for the next item. Motion carried unanimously.

17. COUNCIL ACTION RE: Request by the Downtown Melbourne Association/Melbourne Main Street for the City to co-sponsor the 2004 Friday Fest events conducted monthly in Downtown Melbourne.

Ms. Betsy Vosburgh, on behalf of the Downtown Melbourne Association/Main Street, asked Council to support the Friday Fest events by providing barricades and electrical connection for each event with redevelopment funds.

Mayor Buckley read the recommendation, which is to approve co-sponsorship of the 2004 Friday Fest events in Downtown Melbourne, with funding not to exceed \$2,640, from the Downtown Redevelopment Fund.

Moved by E. Palmer/Poole for approval of the recommendation. Motion carried unanimously.

Moved by Poole/Contreras to reconvene as the City Council for the remainder of the agenda items. Motion carried unanimously.

18. PRELIMINARY PLAT APPROVAL (SD-2003-14) LAKE POINTE SUBDIVISION: (Public Hearing) Preliminary plat approval on a 135.947-acre parcel, zoned R-A (Residential Holding), located west of Interstate 95, between Lake Washington Road and Aurora Road. (Owner – J.W. Woodson) (Applicant – Lake Pointe Development L.L.C) (Representative – Lee Engineering, Inc.) (P&Z Board – 2/05/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of SD-2003-14, preliminary plat for Lake Pointe Subdivision (File Number 102-2 master), consisting of a one-sheet plan prepared by Lee Engineering, with a stamped and sealed date of January 28, 2004, with the findings outlined in the agenda package and the following conditions:

- a. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board and City Council. A substantial change includes, but is not limited to: 1) Any additional entrances into the subdivision; 2) a

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decrease of 10% or more of the proposed conservation and open space; or 3) an increase of more than four lots.

- b. Permits for wetlands and endangered species mitigation shall be obtained by the developer prior to the commencement of construction.
- c. Prior to the issuance of a certification of completion for any development activities, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly identify the flood zone designation/elevation of the property as a result of the improvements. Copies of Special Flood Hazard Area alterations approved by FEMA shall be provided to the City of Melbourne Planning and Economic Development, Building (Code Compliance) and Engineering Departments and Brevard County Planning.
- d. The proposed private roadway connection to Buena Vista Avenue must be approved by Brevard County Land Development.
- e. The applicant shall convey to the City a conservation easement of no less than 25 acres from the wetlands portion of the property at the time of final platting of the subdivision.
- f. The roadway access to the Jones Road extension shall be constructed by the developer during construction.

Mayor Buckley called for disclosures. Mr. Contreras said that he attended the February 5 Planning and Zoning Board meeting when this item was discussed; however, he did not make comments at that meeting.

Mrs. Poole recalled the litigation the City was involved in with Judge Woodson, which resulted in septic tanks being allowed west of Interstate 95. She noted that there are numerous environmental concerns related to the use of septic tanks.

Robert Lee, Lee Engineering, representing the Woodsons, agreed with the conditions. In response to Mrs. Poole, he stated that the septic tanks will be designed according to the new County regulations.

There were no additional comments from the public.

Moved by Contreras/E. Palmer for approval subject to the conditions. Motion carried.  
Council Members Poole and Walker voted nay.

- 19. FINAL PLAT APPROVAL (SD-2001-04D) PINE CREEK, PHASE 4 SUBDIVISION: (Public Hearing) Preliminary plat approval on a proposed 51-lot subdivision, zoned R-1B (Single-Family Residential) with a Future Land Use of Low Density Residential, located on the north side of Eber Road, approximately midway between Dairy Road and Babcock

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Street. (Owner/Applicant – 127<sup>th</sup> Avenue Associates, Ltd.) (Representative – BSE Consultants, Hassan Kamal, P.E.) (P&Z Board – 2/05/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously approved SD-2001-04D, final plat for Pine Creek, Phase 4 Subdivision on 9.84 acres, consisting of a two-sheet plan prepared by BSE Consultants, dated December 17, 2003, file name of 92141306.dwg, with the findings outlined in the agenda package and the following conditions:

- a. Any change to the final plat will require its re-evaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to, an increase of more than five lots.

- b. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City or a suitable improvement guarantee is provided to the City to ensure the completion of the improvements.
- c. The 2.5-foot wide pedestrian easement located along the eastern boundary of Lot 40 shall be clearly designated in a manner substantially similar to the adjacent lot included in the Pine Creek, Phase 2 plat.
- d. Provide the additional required documents prior to plat recordation, including the following:
- Joinders in dedication from any mortgagor for any public dedications.
  - A copy of the articles of incorporation.
  - Dedications of any offsite easements or dedications.
  - A performance bond or suitable improvement guarantee in the amount of 110% of any outstanding construction at the time of plat recording.
  - A St. Johns River Water Management District letter acknowledging the homeowners' association documents.
  - An approval letter from Brevard County 911.

Mr. Contreras disclosed that he attended the Planning and Zoning Board meeting on February 5 when this item was discussed; however, he did not participate in the discussion.

The applicant was not present. There were no comments from the public.

Mrs. Poole moved to postpone this item because she would like to ask the applicant questions. There was no second to her motion.

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Moved by Hand/C. Palmer for approval subject to the conditions.

Mrs. Poole stated that this development has devastated the area; wetlands have been filled and it looks like a barren wasteland. Also, the development will contribute to the overcrowding of schools.

Mrs. Palmer pointed out that we are approving a development that is within our Code. She added that attorneys get wealthy off of lawsuits when the City Council denies allowable development.

The question was called. Motion carried. Mrs. Poole voted nay.

20. ORDINANCE NO. 2004-14 (CPA-2003-15AD) AND ORDINANCE NO. 2004-15 (Z-2003-973AD) EAU GALLIE SQUARE: Ordinances providing for a Comprehensive Plan Amendment and rezoning on a 0.56-acre parcel, located on the northeast corner of Eau Gallie Boulevard and Highland Avenue. (Owner/Applicant/Representative – Olde Eau Gallie Riverfront Community Redevelopment Agency) (P&Z Board – 2/05/04)
- a. Ordinance No. 2004-14 (CPA-2003-15AD): (First Reading/Public Hearing) An ordinance changing the land use from Commercial/High Density Residential to Recreation.
  - b. Ordinance No. 2004-15 (Z-2003-973AD): (First Reading/Public Hearing) An ordinance changing the zoning from C-3 (Central Business District) to I-1 (Institutional).

Attorney Gougelman read Ordinance Nos. 2004-14 and 2004-15 by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval.

Mayor Buckley called for disclosures. Mr. Contreras said he attended the February 5 Planning and Zoning Board meeting on this item; however, he did not participate in the discussion.

There were no comments from the public.

Moved by Hand/Contreras for approval of Ordinance No. 2004-14. Motion carried unanimously.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2004-15. Motion carried unanimously.

21. ORDINANCE NO. 2004-16, REPEAL OF ZONING CODE/LAND DEVELOPMENT CODE, AND FINDING OF CONSISTENCY (Z-2004-974AD/LDR-2004-01AD/FOC-2004-01AD) DOWNTOWN EAU GALLIE OVERLAY DISTRICT: (First Reading/Public Hearing)

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An ordinance providing for repeal of City Code, Appendix B, Article XVIII, Supplementary District Regulations (8), Olde Eau Gallie Overlay District. (P&Z Board – 2/05/04)

The City Attorney read the ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended denial.

Mayor Buckley called for disclosures. Mr. Contreras said he attended the February 5 Planning and Zoning Board meeting on this item; however, he did not speak. On February 23, he spoke with Dude Braselton, the current developer of the Pineapple House. They discussed the overlay districted, vested rights, pending litigation and the setback issue.

Mr. Palmer said he spoke with Marshall Nix, St. Paul's United Methodist Church board member, who is in favor of leaving the ordinance as it is. He spoke to George Alexander, Chairman of the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee, and he has looked at the property many times. He added that Dude Braselton called him; however, they did not speak. And, he spoke with one person today who is in favor of retaining the ordinance.

Mrs. Poole said she attended the Planning and Zoning Board meeting on this item and did speak. She noted that her comments are in the Board's minutes.

Mrs. Walker said she received a call from Mr. Braselton; however, she did not discuss this with him.

Council Member Loretta Hand said she had a conversation with Shirley Baccus who asked that Council not allow 80' buildings near the waterfront. Also, she spoke with Mr. Braselton today about the Pineapple House.

Mrs. Palmer said she spoke with Mr. Braselton about the vested rights issue.

Mayor Buckley said approximately two months ago he spoke to Shirley Baccus and she recommended that we not allow high buildings near the area of the library. Mr. Braselton called and expressed concern about the Pineapple House property.

Additionally, Council received the following correspondence on this item: To Jack Schluckebier from Thomas Urquhart, Chairman, Melbourne Library Board, indicating that the Library Board voted to advise the Council that it views the proposal to repeal the existing height restrictions as a serious negative impact. To Richard Contreras from Rick and Nancy Dillen, 1403 Pineapple Avenue, dated February 23, asking that the current ordinance remain in place and that the overlay district not be repealed. To Pat Poole from Heather Elko, 550 Thomas Barbour Drive, dated February 24, expressing concern for the river breeze and river views and asking for limits on growth and development. To Mayor and Council from Mike Errington dated February 24, asking Council to retain the overlay district regulations.

Mayor Buckley opened the public hearing.

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Bob Raynes, Bunster, Yoakley & Stewart, P.A., attorney representing Fred Ayers, owner of Conchy Joe's, stated that Mr. Ayers bought a bundle of rights along with his real property. The overlay district has eroded those rights. The underlying C-3 zoning allows a maximum height of 80'; however, the maximum height of Mr. Ayers' property is restricted to 35' with the overlay. This is a substantial decrease in development of the property. He pointed out that Council has set itself up for potential Bert Harris Act claims, which could potentially cost the City millions. Mr. Raynes concluded by saying that, although Mr. Ayers has no intention to expand at this time, he has requested that the overlay district be repealed.

Glenda Busick, 2890 Pineapple Avenue, said if Conchy Joe's sues the City of Melbourne, she won't step in that place again. She said that this is a quaint, livable community and it doesn't need high-rises like Ft. Lauderdale. She asked that Council not give preferential treatment to builders and developers.

Richard Hester, 617 Eau Gallie Boulevard, asked Council to keep the overlay district. He stated that everyone worked for months on the overlay district in the Eau Gallie area and they would like to keep it in place. The issue of repeal has been reviewed by the Olde Eau Gallie Advisory Committee and the Planning and Zoning Board. Both boards have recommended leaving the ordinance in place.

Mr. Hester distributed a series of pictures, which show the Eau Gallie area today and what the area could possibly look like if developed with high-rise buildings.

Robert Leichtenberg, 882 Wood Creek Drive, stated that he is a real estate appraiser. He commented that the lawsuits will cost the City five or six million dollars. The ordinance providing for the 80' height has been in place since 1972. If people want a view of the river, they should have bought it. Continuing, he said that when the lawsuits hit, everyone in Melbourne pays. This is not fair to the people who bought their property in good faith.

In response to Mrs. Poole, Mr. Leichtenberg confirmed that he prepared the appraisal for the Pineapple House; however, he is not being paid to be at this meeting nor did anyone ask him to attend this meeting.

Jeffrey Tomlinson, 120 East Avenue A, said that in general he supports the overlay district. The City brought in a consultant for the report that was prepared, which recommended the overlay district. Mr. Tomlinson pointed out that there is a right way and wrong way to construct a building. It has to do with design and how it fits the site. That is why we have architectural review boards.

Clifton McClelland, attorney representing the Pineapple House, reported that the Pineapple House made its application prior to the overlay district being adopted. He added that they have a pending vested rights application. He concluded by saying they would support any alternative that would provide them relief in terms of the overlay district.

Gene Davis, 851 Peregrine Drive, member of the Olde Eau Gallie Advisory Committee,

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reported that the vision of the area is a “unique riverfront environment, economically viable marketplace ... while preserving cultural and historic areas.” The committee considered this vision when deciding to support the overlay. The area has been recognized for its goals and projects and if the core area reverts to an 80’ height, it would counter the effort of the past few years. Mr. Davis recommended Council address the setback issue versus the height issue.

That concluded comments from the public.

Mayor Buckley said that Council made a mistake when it voted to repeal the overlay district. He said that it is good for that side of Eau Gallie Boulevard and it is based on the recommendation of the consultant hired by the City. He stated that he would be opposed to repealing the overlay.

Mrs. Poole read past minutes from Council meetings and advisory board meetings and said they show that Mr. Palmer has made conflicting statements about the overlay district and whether St. Paul’s United Methodist Church has a vested right or an approval for an 80’ tall building. She stressed that the intent of the original overlay was to protect the area from out of scale development. The City hired a consultant to develop a master plan for the Eau Gallie riverfront area. Throughout the planning process, the consultant discussed the importance of keeping the buildings to scale to maintain the historical character and river view for all to enjoy. The overlay is the first step in long-term controlled growth; therefore, she cannot support repeal of the overlay district.

Mr. Palmer referenced the four areas covered by the overlay district and the setback requirements. He described the setback requirements and said that they result in an hourglass shaped building. Regarding the church, Mr. Palmer said that they made plans 10 years ago (to construct an 80’ tall building); however, that issue died on the vine when they could not obtain the funding they were seeking.

Continuing, Mr. Palmer said he is in favor of the tiered development; buildings should not block the view of the river. The issue that needs to be addressed at this point is the setbacks for the building authorized on the causeway.

Mayor Buckley asked Attorney Gougelman to comment.

Attorney Gougelman discussed the history of the Bert Harris Act. It provides that when local government inordinately burdens the use of property or right to use property, a taking has been committed. Essentially, if you have an existing use on your property or a vested right to a future use, you will have a right to damages from local government if government passes a regulation that restricts you from having that right.

Attorney Gougelman commented on the two claims mentioned at this meeting. He said he believes that the Pineapple House has a claim for damages. However, Conchy Joe’s claim is much more tenuous because they are saying they may want to make use of the property for an 80’ tall building.

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Continuing, he noted that there is a problem with the setbacks and Council may wish to consider an amendment, repeal or direction to study. If a building were constructed under the current setback requirements, it would look like a barbell standing on its end. He noted that the height issue is a policy decision; however, clearly in Area D, there is a problem with the setbacks.

Moved by Buckley/E. Palmer to deny Ordinance No. 2004-16 and request that staff propose a change that would remove the setbacks on the property located south of Eau Gallie Boulevard. (See substitute motion below.)

Mrs. Palmer asked for clarification. Mayor Buckley said his preference is to remove the setbacks from all the areas that have 80' heights.

A brief discussion followed.

Attorney Gougelman clarified that Council is trying to get rid of the barbell. He said what Council could do is bring the ordinance back for first reading again at the next meeting, strip out the sections that should remain and just deal with the barbell issue as far as repealing (the setbacks).

The maker/seconded accepted Attorney Gougelman's clarification as a substitute motion. Motion carried unanimously.

22. COUNCIL ACTION RE: Appointment of one regular member to the Melbourne Downtown Community Redevelopment Agency Advisory Committee.

Moved by Hand/E. Palmer to reappoint Jack Ryals. Motion carried unanimously. (2/23/2004 – 2/22/2007, three-year term)

Added to the Agenda:

- 22b. COUNCIL ACTION RE: Appointment of member to the Citizens' Advisory Committee - Brevard Metropolitan Planning Organization.

Moved by Poole/C. Palmer to appoint Karen Garavaglia. Motion carried unanimously.

- 22.1 COUNCIL DISCUSSION RE: Sign Code as it relates to murals.

Mr. Contreras distributed information to Council and stated that the word "mural" is absent from the City Code. It is inferred or implied. He said that the Sign Code needs to be amended to define the word "mural." He referenced the information and said that the Town of Indialantic has provided a definition for "mural." Along with establishing a definition, the City should also review appropriate standards including quantity, size, maintenance, enforcement, location, etc.

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Mr. Contreras said if Council agrees to have staff review Chapter 25 relative to signs/murals, it would stay any further action pending relative to this issue. He noted that because the current Code is based on interpretation, it would be good to have solid footing if Code Enforcement action continues.

Mrs. Poole referenced the amount of time and effort spent in revising the City's Sign Code. She asked Code Compliance Director Al Beyer and Code Enforcement Administrator Dan Porsi to comment.

Mr. Contreras referenced our Code and asked staff to confirm if the word "mural" is in the Sign Code.

Mr. Porsi said it is not in the Sign Code; however, it is in the Architectural Review Board guidelines. Mr. Contreras said guidelines can be challenged; a person does not have to abide by guidelines. Mr. Porsi said that a mural is included in the definition of sign. Although he has said it is an interpretation, it is an actual application of the definition of the word sign.

Mr. Contreras asked if staff feels the Code is sufficient in addressing murals. Mr. Porsi said yes and Mr. Beyer agreed.

Mr. Contreras asked the City Attorney if guidelines can "be taken to the bank." Mr. Gougelman replied likely not. Mr. Contreras said he wants to close any possible opening in the City's Code.

Mrs. Palmer said she has received a lot of comments on the issue of patriotic expression. The City is being accused of not being patriotic. She noted that she was not here when most of the Sign Ordinance was crafted; however, she knows that a lot of work and discussion went into it.

Moved by C. Palmer/Buckley to have City staff provide Council background on our present Sign Code and perhaps options for leniency for political expression in the form of murals, flags and banners.

A brief discussion followed.

The question was called. Motion carried unanimously.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Jeffrey Tomlinson, 120 East Avenue A, encouraged Council to consider projects that would remove the Brazilian pepper trees from both harbors. He said that this would enhance the view of both harbors and noted that the area north of Sarno Road is one of the overgrown areas.

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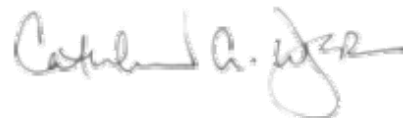
The City Manager updated Council on his attendance at the recent Florida League of Cities Legislative Issues Forum. He noted that the League is concentrating on three priorities: 1) prosecution of local ordinances; 2) water conservation requirements; and 3) annexation. Additionally, the police and fire unions are continuing their work on the concept of "extra benefits."

Additionally, the City Manager noted that the Army Corps of Engineers' budget has been cut and funding for the restoration of Lakes Sawgrass and Hell 'n Blazes has been delayed or eliminated. Staff will work towards getting the funding restored.

24. ADJOURNMENT

Moved by C. Palmer/Walker to adjourn. Motion carried unanimously.

The meeting adjourned at 10:12 p.m.



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City Clerk – 3/4/2004

Approved by Council 3/9/2004

Attachment to official minutes: Memorandum of Voting Conflict Form for Ed Palmer (reference Item #10)