

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MARCH 9, 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 Larry Bazer, First Baptist Church of Melbourne, 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 |
| | 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

Mayor Buckley presented the March 2004 “Irish American Heritage Month” proclamation to Ed Reilly, Vice President, Ancient Order of Hibernians in America.

StudioPlus, 1700 Evans Road, was the recipient of the Beautification Award.

5. Approval of Minutes – February 24, 2004 regular meeting

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

6. City Manager’s Report

Council Member Ed Palmer referenced “Purchases and Change Orders Approved by the City Manager.” He said that the report indicates an increase of \$7,874 for liquid chlorine; however, it does not list the total cost. City Manager Jack Schluckebier said he would provide an answer.

Mayor Buckley referenced the memorandum requesting a resolution be added to the agenda.

Moved by Contreras/Walker to add Item 11 “k” to the agenda. Motion carried unanimously.

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7. Public Comments

Shirley Gregory, 999 Collins Street, reported that there is a young man in her neighborhood that has been shooting windows, lights and birds with his BB gun. She noted that she has received conflicting information from the Police Department about enforcement. Ms. Gregory asked that the City adopt an ordinance prohibiting the use of this type of gun in the City.

Mayor Buckley said that staff would look into the issue.

8. ORDINANCE NO. 2004-13 (AR-2004-148) PARKWAY DRIVE ANNEXATION – AREA A: (Second 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. (First Reading - 2/24/04)

City Attorney Paul Gougelman read Ordinance No. 2004-13 by title. Mayor Buckley opened the public hearing. There were no comments. The Mayor said that, if approved by referendum, the effective date of the annexation would be June 22, 2004.

Moved by Poole/Walker for approval of Ordinance No. 2004-13. The roll call vote was:

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

Nay: C. Palmer

Motion carried.

9. 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)

a. Ordinance No. 2004-14/CPA-2003-15AD: (Second Reading/Public Hearing) An ordinance changing the land use from Commercial/High Density Residential to Recreation. (First Reading - 2/24/04)

b. Ordinance No. 2004-15/Z-2003-973AD: (Second Reading/Public Hearing) An ordinance changing the zoning from C-3 (Central Business District) to I-1 (Institutional). (First Reading - 2/24/04)

City Attorney Gougelman read both ordinances by title. Mr. Palmer disclosed that he talked to someone at the Waterfronts Florida kickoff ceremony held on this property who indicated he was in favor of this change. Mayor Buckley opened the public hearing. There were no comments from the audience.

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Moved by Contreras/C. Palmer for approval of Ordinance No. 2004-14. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2004-15. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2004-16: (First Reading) An ordinance amending the City Code, Appendix B, as it relates to the Olde Eau Gallie Overlay District, by deleting the setback requirements in "Area D." (Revised and Approved by Council 2/24/2004)

From the agenda report: At the February 24 meeting, Council considered this ordinance, which previously provided for the repeal of the Olde Eau Gallie Overlay District. Following the public hearing and discussion, Council unanimously voted to retain the overlay language and eliminate the setback requirements for "Area D." The ordinance is returning on first reading because of the material change.

The City Attorney read Ordinance No. 2004-16 by title. There were no disclosures by Council and no comments from the public.

Mrs. Poole asked about setback requirements in the Melbourne Harbor area. A brief discussion followed.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2004-16. Motion carried unanimously.

NEW BUSINESS

11. CONSENT AGENDA:

Attorney Gougelman briefed Council on Item "k", which was added to the agenda.

Moved by Hand/E. Palmer to approve the consent agenda, Items "a – k."

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Council briefly discussed Item “b”; however, the item was not removed from the agenda. The City Manager confirmed for Council that the City does not anticipate adding additional staff when we begin handling the storm water utility billing. Additionally, staff will also inspect storm water systems; to a large extent, City staff has been performing the inspections.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Supplement No. 182 to the continuing consultant contract for Turtle Mound Road South waterline extension, Frazier Engineering, Inc. – an amount not to exceed \$43,500 and a budget transfer of \$53,500 from the Harlock Road watermain extension project.
- b. Contract award to provide consulting service to create a City-managed program for calculating storm water utility fees to be billed on the County Tax Collector’s annual tax notice, Ennead LLC, Tarpon Springs, FL - \$21,400.
- c. Radio system maintenance for Police Department usage of the 800Mhz radio system backbone, Brevard County Sheriff’s Office, Titusville, FL - \$18,826.80.
- d. Purchase of a John Deere 4210 tractor and 60-inch mid-mount mower deck, John Deere Company, Cary, NC - \$16,086.
- e. Minolta DI650 digital copier lease, 60 months, Copytronics Information Systems, Rockledge, FL - \$31,314 (estimated five-year total).
- f. Extension of HOME Tenant Based Rental Assistance Benefits for Luz Maldonado.
- g. Lien Rescission CE-02-007: Request for rescission of Code Enforcement lien from \$13,806 to \$3,000 to be paid within six months (Felton Faniel - 3207 Monroe Street).
- h. Lien Cancellations CE-01-017/CE-97-004: Request for cancellation of Code Enforcement liens subsequent to payments of \$3,650 (Johnny Burr - 906 Horne Street) and \$1,950 (Johnny Burr - 1201 Line Street).
- i. Resolution No. 1867: A resolution to adopt new purchase price limits for 2001-2004 State Housing Initiatives Partnership (SHIP) and authorization to submit revised SHIP Housing Goals Delivery Charts for 2002-2003 and 2003-2004 to the Florida Housing Finance Corporation.

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- j. Resolution No. 1868: A resolution nominating the City of Melbourne for the Florida League of Cities City of Excellence Award; communicating the nomination to the Florida League of Cities.

Added to the agenda:

- k. Resolution No. 1869: A resolution authorizing the City Manager to execute a termination of declaration of restrictive covenant with Oceanside Village, Inc.

12. PRELIMINARY PLAT APPROVAL (SD-2004-02) ELLIS ROAD INDUSTRIAL PARK SUBDIVISION: (Public Hearing) Preliminary plat approval on a 50.72-acre parcel, zoned M-1 (Light Industrial) and M-2 (General Industrial) with a future land use of Industrial, located north of Ellis Road, between Wickham Road and John Rodes Boulevard at Gemaire Drive. (Owner/Applicant - Ellis Road Industrial Park, LLC) (Representative - Luke Miorelli, P.E.) (P&Z Board - 2/19/04)

Planning and Economic Development Director Cindy Dittmer briefed Council. The Planning and Zoning Board and staff unanimously recommended approval of SD-2004-02, preliminary plat for Ellis Road Industrial Park, consisting of a two-sheet plan prepared by M.E. Construction, West Melbourne, Florida 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.
- b. The connection of Sun Boulevard to Ellis Road and the determination of the requirement for acceleration/deceleration lanes must be approved by Brevard County Traffic Engineering.
- c. The applicant shall revise the plat notes to clarify ownership and maintenance responsibilities of the roadway related common storm water management tracts by the property owners' association per City Code. The plat shall also be revised to provide the minimum 25 feet of road frontage for each lot and a drainage easement shall be provided across the required road frontage.

The recommendation also includes approval of the requested variances for a block length in excess of 1,500 feet and the elimination of the construction of sidewalks.

At this point, there were no disclosures by Council. After the motion was made, Council Member Loretta Hand made a disclosure (see below).

Council Member Pat Poole asked about the tree survey. Mrs. Dittmer explained that one was included with the environmental study. She added that this is different from a residential subdivision – as each lot applies for a site plan, the trees will be reviewed.

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Mrs. Poole expressed concern that there will not be a master storm water system. Also, she expressed concern with lack of green area and the variance request for 1,500' block length. Mrs. Dittmer said that the block length variance relates to the City's definition of a block length (property located within intersecting streets). In an industrial subdivision, there will only be a couple of lots; therefore, a cross street would be inefficient to construct to meet the definition.

Continuing, Mrs. Dittmer reported that each lot will have its own storm water management system. And, the development will have to meet the landscaping requirements.

Mrs. Poole said that we should not be flexible; developers should have to abide by our rules.

Mr. Palmer said that each of the 15 lots will be treated as a separate entity. Mrs. Dittmer agreed and noted that each will have its own site plan. The property owners' association will maintain the common portions of the subdivision. There will be common landscaping areas and a common retention area that will serve the roadway.

Council Member Grace Walker said that she feels there needs to be a master plan for storm water rather than a lot by lot plan. Mrs. Dittmer explained that each lot will provide a storm water facility. In a residential subdivision, all lots drain to one common facility. In this case, each lot will handle its own storm water on site with the exception of the roadway retention.

Luke Miorelli, President, M. E. Construction, estimated that the green area will be 80' wide. He said that all the ordinances will be followed and noted that his family trust owns one of the lots. He elaborated on the storm water system and how it will function. He noted that each system will be designed to St. Johns and City requirements.

Continuing, Mr. Miorelli said that the development is for industrial use. If there is a chemical spill, it would be contained in a single system rather than entering the public drainage area.

Mayor Buckley asked Mr. Miorelli if he agreed with the conditions. Mr. Miorelli replied yes.

Mr. Palmer asked if this plan will save trees. Mr. Miorelli said where they aren't able to save trees they will plant trees. He added that they plan to coordinate the landscaping on all the sites so the development will have a consistent look. A large number of trees will be saved on the perimeter.

Moved by E. Palmer/Hand for approval of the preliminary plat, subject to the conditions, and approval of the two variances relating to block length and sidewalks.

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Mrs. Hand disclosed that prior to the meeting she spoke to Mr. and Mrs. Brandon and Tom Davis about this development.

The question was called. Motion carried unanimously.

Mrs. Poole said she voted aye based on the applicant's presentation and the fact that he has a lot in the development.

13. ORDINANCE NO. 2004-17 (CU-2004-01) BUZZARD'S HIDEAWAY: (First Reading/ Public Hearing) An ordinance granting a conditional use to allow the consumption of alcoholic on the premises on a 0.61-acre parcel, zoned C-2 (General Commercial), located on the south side of Sarno Road, west of Apollo Boulevard. (Owner - Kitty Donovan) (Applicant/Representative - Noney Grier) (P&Z Board - 2/19/04)

Attorney Gougelman read Ordinance No. 2004-17 by title. Mrs. Hand disclosed that she drove by the site and noticed how close it is to Greentree Park Subdivision.

Mrs. Dittmer reviewed the agenda report. A business has operated at this location for a number of years as a restaurant. City Code requires the gross sales of food to exceed 51% to be considered a restaurant. The request for the conditional use is to allow the business to operate as a bar, as opposed to a restaurant. The business will continue serving food, but it will not meet the 51% requirement.

The Planning and Zoning Board unanimously recommended approval of this request, subject to the following condition:

- a. The business must maintain a six-foot opaque fence along the west and south property lines that abut residential properties.

Mrs. Palmer asked how far this property is from the nearest residential property. Mrs. Dittmer located the property on the map and said a minimum of 40'.

Mrs. Hand said she has a problem with this business backing up to Greentree Park, which is a nice residential area. She added that she does not believe she can support the request.

Mrs. Poole agreed that having residential property on the south and west sides of this business is a problem. She added that she has difficulty with the finding that this will "promote the public health, safety, welfare..." Mrs. Walker agreed.

Mrs. Palmer asked the difference in the City Code for closing time for a bar versus a restaurant. Mrs. Dittmer replied that the time alcoholic beverages must stop being served is consistent with a bar or a restaurant.

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A brief discussion followed regarding hours of operation and percentage of food sales required for a restaurant. Mrs. Poole asked about the requirement for a permit since this business has already been operating. Mrs. Dittmer said the applicant came in for a change in occupational license from a restaurant to a bar. That is when staff informed the applicant about the need for a conditional use to operate as a bar. Mayor Buckley said they have been serving alcohol for the last 10 years. Mrs. Dittmer added that to the City's knowledge, they have been meeting the definition of a restaurant.

Noney and Robert Grier, applicants, were present. Mr. Grier said that the previous owner was licensed as a restaurant but was operating as a bar. He said that their goal is to go by the guidelines. They are not restaurant owners and serve mostly sandwiches. If they had to operate as a restaurant (with the required food sales) they would not be able to keep their doors open.

In response to Council's questions, the Griers provided the following information: their hours are 11:00 a.m. until midnight on weekdays and until 2:00 a.m. on Friday and Saturday; they offer karaoke; they have not received any complaints and have not had any trouble with the police; their regular customers attended the Planning and Zoning Board meeting with the public hearing notice in hand; the business is in a strip mall and the parking lot accommodates approximately 25 vehicles; the police reports for the past six months indicate four responses for alarms; they sell beer and wine only; and they would like the option of expanding to liquor, although they don't have plans at this time.

Mr. Contreras asked how many neighbors attended the Planning and Zoning Board meeting. Ms. Grier said seven. Mrs. Palmer asked if the person who owns the home directly behind the establishment supports the conditional use. Ms. Grier said that person did not attend the meeting.

Mrs. Palmer referenced the correspondence Council received from John McKenzie, which indicates that the pub has caused problems in the past with loud noise, parties in the parking lot, etc. She added that is why she is trying to establish the difference in hours of a bar versus a restaurant.

Attorney Gougelman recommended Council consider three points. The first is that the conditional use would be for "alcohol", which means at a future time could be expanded to liquor. The City doesn't regulate who owns the facility, but rather how the facility is used. The second issue is hours of operation. Sometimes these types of ordinances can be approved with conditions on hours. The applicant would have to agree with a limitation in hours. The last issue relates to ownership. The current owners seem to be responsible; however, they may eventually sell. The conditional use runs with the land and does not expire when ownership changes.

Mayor Buckley asked if Council could limit the permit to beer and wine. Attorney Gougelman asked the applicants if that condition is acceptable. Following a brief discussion, Mr. Grier said fine.

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Mrs. Poole said she has a problem with granting a conditional use to a business to operate in an area where it was not meant to be. This could start a chain reaction in the neighborhood. She understands a restaurant operating at this location, but a bar usually has different clientele. Regarding hard liquor or beer/wine, she said that a person can get just as loaded on either.

Mrs. Palmer said that a restaurant typically has less noise and there are less problems with people who have had too much to drink. Additionally, this operation is located 40' from a bedroom window with karaoke until 2:00 a.m. She added that she can't imagine purchasing a business without knowledge or understanding of zoning and license issues.

Mr. Grier said that this establishment has always been licensed to sell beer and wine. The difference is that as a restaurant, 51% of its sales must come from food. Ms. Grier clarified that the karaoke ends at 11:00 p.m.

Mrs. Palmer said she can't support this request. The conditional use will stay with the property, which is located 40' from a home. She commented that Council is not placing a hardship on the applicants because they will retain what they had.

Ms. Grier said that they would lose their clientele; they would lose the smokers. She stressed that they have never had 51% in sales from food.

A brief discussion followed. There were no other comments from the public.

Moved by Hand/Poole for denial of Ordinance No. 2004-17.

Mr. Contreras referenced the letter Council received versus the testimony from the applicants about people in support who attended the Planning and Zoning Board meeting. He said that this is an interesting quandary and perhaps the missing piece relates to neighbors being present to speak for/against the request.

Moved by Contreras/Walker to postpone this item until the next Council meeting.

Mrs. Walker said that this will give time for the neighbors to be notified. Mrs. Poole clarified that they were notified.

The question was called. Motion carried. Poole, Hand and Buckley voted nay.

A brief discussion followed. Council agreed that staff should send another notice to those within 500' of the property along with a detailed description of the request.

14. ORDINANCE NO. 2004-18: (First Reading) An ordinance amending Sections 8.5-2 and 8.5-7, Cemeteries, by adding a definition for columbarium and columbarium niche

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and amending definition of space; providing a fee for a columbarium niche and increasing fees for both full and garden cremains spaces.

Attorney Gougelman read the ordinance by title. Leisure Services Director Mary Ann Kise briefed Council.

Mrs. Hand asked if Melbourne will ever get out of the cemetery business. Mrs. Kise said that is really a question for Council. Council discussed expansion in 1996. Selling the cemeteries won't be profitable to someone because there won't be any more spaces available.

Mrs. Hand asked about maintenance. Ms. Kise said the cemeteries require two full time people plus equipment. She added that it is not a cheap business to be in. Mayor Buckley said that this would be a good discussion item for the April 20 workshop meeting.

Moved by Walker/Hand for approval of Ordinance No. 2004-18.

Mrs. Poole said that the cemeteries should not be privatized; they are part of the life of our City. She added that opening a new cemetery is a completely different situation.

The question was called. Motion carried unanimously.

Recessed: 8:08 p.m.
Reconvened: 8:19 p.m.

15. COUNCIL DISCUSSION RE: Eber Road Fire Station – presentation by Fire Chief Walt Chamberlin.

From the agenda report: Staff presentation about the need to move forward with design and construction of the eighth fire station to be located on Eber Road. The \$800,000 project is currently scheduled for 2006-2007 on the five-year capital improvement schedule. With the rapid growth in south Melbourne, the Fire Chief believes it would be prudent to advance the design of the new fire station to the current fiscal year and advance the construction to next fiscal year. The estimated cost of design is \$75,000 and cost of construction is \$725,000. No Council action is requested at this time, but if Council concurs with the concept of accelerating the schedule for building this new fire station, staff will provide a funding recommendation at the second quarter budget review.

Fire Chief Walt Chamberlin distributed a map of the response area and an outline showing number of calls per station. In the next five – eight years, over 6,000 new units will be constructed from Florida Avenue south to Palm Bay Road. Conservatively, this means 12,000 additional people. The response map shows that if the station were built today, there would be almost 1,500 calls in that one area.

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Mayor Buckley referenced the response numbers for Station 74 – 3,278 – and asked what we plan to do to address this. Chief Chamberlin said that currently Station 74 covers for Station 75 when it is in the south end of the City. Having the eighth station will help reduce the number of calls to Station 74.

Mr. Palmer pointed out that the percentages for medical care are much higher than the fire calls. Chief Chamberlin said that about 75% of the calls last year related to medical calls.

Moved by Hand/E. Palmer to advance the fire station project from FY 2006 to FY 2005 on the five year capital improvement schedule and that engineering/design funds of \$75,000 be funded at the second quarter budget review.

Council Member Richard Contreras recommended that Council discuss a medical substation as opposed to a full fire station at the April 20 workshop meeting.

The question was called. Motion carried unanimously.

16. COUNCIL ACTION RE: Employee health and other insurance benefits.

Recommendation from the agenda report: Approval of the employee insurance benefits package effective April 1, 2004:

| | City Cost | Employee Cost | Total Cost |
|-----------------------|-------------|---------------|-------------|
| Flex Plan Admin. | \$3,900 | | \$3,900 |
| Basic Life | 81,905 | \$10,997* | 92,902 |
| Supplement Life | | 93,139 | 93,139 |
| Dependent Life | | 18,286 | 18,286 |
| Short Term Disability | | 87,061 | 87,061 |
| Long Term Disability | | 85,839 | 85,839 |
| Dental | | 209,759 | 209,759 |
| Medical Insurance | 4,241,946 | 1,008,360** | 5,250,306 |
| TOTAL Cost | \$4,327,751 | \$1,513,441 | \$5,841,192 |

* Retiree cost

**Includes – Retiree cost of \$330,213

Risk Manager Ken Gray briefed Council and responded to general questions about the insurance benefits.

Mayor Buckley commended the health insurance advisory committee members for making difficult decisions to reduce costs.

Mr. Contreras recommended that the City investigate preventive programs like health and fitness programs, gyms, etc. He said that with 900 plus employees, we should be able to negotiate rates. A brief discussion followed.

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Mrs. Hand declared a conflict of interest because she is employed as a nurse by Health First Corporate Partners. (Health First will provide the Medicare HMO plan.)

Moved by E. Palmer/Contreras for approval of the employee insurance benefits package effective April 1, 2004. Motion carried unanimously (six votes). Mrs. Hand abstained from voting.

17. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Buckley noted that Satellite Beach City Manager Mike Crotty has been nominated as Florida League of Cities city manager of the year. By consensus, the City Council agreed that Mayor Buckley should send a letter on behalf of Council supporting Mr. Crotty's nomination.

Mayor Buckley reported that "Base Relocation and Closure" was discussed at the last Space Coast League of Cities meeting. All bases will be scrutinized and the community will work towards keeping Patrick Air Force Base open.

Mrs. Poole said that the fountain at Wells Park is no longer lit.

Mr. Contreras referenced the material that he asked the City Manager to distribute to Council last week about the "Fiscal Impact Analysis Modeling Project" by Dr. Fishkind. He recommended that Dr. Fishkind present this item at the April 20 workshop meeting. The presentation is less than 30 minutes and may contain information that Council could consider using in the future.

Following a brief discussion, moved by E. Palmer/Contreras to invite Dr. Fishkind to make a presentation at the April 20 workshop meeting. Motion carried unanimously.

At the request of Mr. Contreras, Chief Chamberlin updated Council on the recent fire at Station 72. He noted that the community has been very supportive. Additionally, he said staff is investigating the cost of retrofitting all fire station kitchens with an emergency cut off system

Vice Mayor Palmer briefed Council on the Wickham Park storm water project. She noted that the gopher tortoises have been relocated within the park. The ponds are finished and the system is operational now. The berm around the park will be replaced and they plan to select native plants. She added that she has a list of plants if any members are interested. Mrs. Poole recommended that Code Enforcement Administrator Dan Porsi be provided with a list of the proposed plants.

Mrs. Palmer concluded by saying this has been a great project with the County and it will benefit the City.

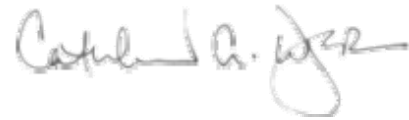
The City Manager updated Council on annexation legislation, which looks like it will pass this year.

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18. ADJOURNMENT

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

The meeting adjourned at 9:04 p.m.



City Clerk – 3/16/2004

Approved by Council: 3/23/2004

Attachment to official minutes: Memorandum of voting conflict form for Council Member Hand (reference Item #16).