

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MARCH 23, 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 Pete Inman, Lighthouse Assembly of God, 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
	Suzanne Novak	Assistant City Attorney
	Cathy L. Baker	Assistant City Clerk
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

Mayor Buckley presented the “National Telecommunicators’ Week,” April 11-17, 2004 to Police Chief Don Carey, Communications Supervisors Cary Sargent and Mike Switzer, and Communications Officer Anne Opalewski.

5. Approval of Minutes – March 2, 2004 Town Hall Meeting and March 9, 2004 Regular Meeting

Moved by Hand/Walker for approval of the March 2, 2004 and March 9, 2004 minutes. Motion carried unanimously.

6. City Manager’s Report

No additions to the written report/no discussion.

Following Item #8, Mayor Buckley referenced the memoranda from the City Manager regarding the addition of two items to the agenda.

Moved by Contreras/E. Palmer to add Items 13 ‘i’ and ‘j’ to the agenda. Motion carried unanimously.

7. Public Comments

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None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-16: (Second Reading/Public Hearing) 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.” (First Reading - 3/09/04)

Assistant City Attorney Suzanne Novak read Ordinance No. 2004-16 by title. There were no comments from the audience and no disclosures by Council.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-16.

Responding to Council Member Richard Contreras’s question about impact to the Pineapple House, Ms. Novak stated that she is not aware of any. She said that she would ask Attorney Gougelman if there had been any discussion with the Pineapple House legal counsel regarding this issue.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2004-17 (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) (Postponed by Council - 3/09/04)

Attorney Novak read the ordinance by title and Council made the following disclosures:

Council Member Contreras: Visited the property on March 10 and spoke with Rob and Noney Grier regarding the hours of operation, smoking in the establishment, proximity of neighbors and any complaints; March 13 received email from Ira Runion in support; March 19 voice mail message from Clara Boevingloh opposed; and prior to this meeting, he spoke with Dorothy Gaunce who is opposed to granting the conditional use.

Council Member Ed Palmer: Visited the property and also spoke with Dorothy Gaunce who is opposed to the change from a restaurant to a bar.

Council Member Pat Poole: Received two phone calls; however, she directed them to call the City Clerk’s office to get their objection on record.

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Council Member Hand: Received a phone call from Noney Grier and spoke with Mr. Grier today about whether he had an opportunity to meet with the neighbors to see how they felt. Mr. Grier advised her there was no opposition. She spoke with Mr. Croft and Dorothy Gaunce who are opposed.

Vice Mayor Cheryl Palmer: Visited the property at night to observe the operation; however, she did not speak to the owners. She spoke with a gentleman who asked that she not give his name who said that the activity that goes on now has been occurring for some time without any complaints.

Mayor Buckley: Visited by Mr. and Mrs. Grier to discuss obtaining approval. He advised them it was dependent upon the comments by neighbors within 500'. He received a phone call from Clara Boevingloh who is opposed because there is a bar in the shopping center across the street and another in the former K-Mart plaza.

Planning and Economic Development Director Cindy Dittmer briefed Council and reviewed the agenda report. At the direction of Council, the Planning Department re-notified property owners within 500' to ensure that they are aware of the request. At the last meeting, the applicant agreed to restrict the operation to beer and wine only. Council action would be required to amend the ordinance.

The following motion (made prior to the motion for postponement) from the March 9 meeting remains on the floor: Moved by Hand/Poole for denial of the ordinance.

Mayor Buckley asked about comments from those within 500'. Mrs. Dittmer advised that staff received no comments following the first or second notification. She noted that the second letter included the agenda write-up along with a map showing the proposed location. This is a more thorough explanation than typically provided with a public hearing notice.

Mrs. Hand asked if the ordinance provides that only beer and wine will be allowed. Mrs. Dittmer explained that the request is for the consumption of alcohol on the premises. The differentiation between beer/wine and alcohol sales is a State licensing procedure. If granted, the conditional use does not limit the sale to beer and wine only unless specified by Council.

Kitty Donovan, 1601 Spruce Road, representing the building owner, stated at one time the establishment was a restaurant; however, over five years ago it was converted to a bar. She said that she has not had any problems with any of the clients or personnel. It is a neighborhood bar and she knows many people from the GreenTree and Ixora Park area walk to the bar. She noted that she supports the request.

Steven Rudolph, 677 Walnut Drive, stated that he lives just south of the property and he supports the conditional use request.

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Raymond M. Annicchiarico, 752 Walnut Drive, stated he has been going here for five years and just found out tonight it is a restaurant. People walk to the bar and there is no fear of any trouble. The owners are respectful and have made numerous improvements to the bar.

Brian Trost, 1513 Birch Street, said he has been a patron for six years. He gave a history of the bar and noted that the new owners are respectable. There has been a rise in business; there is no trouble at the bar; and it would be detrimental to the area not to grant the request.

Anthony Pieri, Jr., 2844 Tropic Road, said he has been a patron for about two months and has become friends with the owners. Mr. Grier is a former Marine and many of the patrons are former servicemen. He noted that the bar never has problems; it is a friendly, group gathering place.

Peter Bittner, 621 Ironwood Drive, stated he has lived in the area since 1997. He reported that he was there when the bar first opened and noted that it has never been a problem. The Griers purchased the business with the understanding it was a bar. He discussed the improvements they have made and concluded by stating it would be an injustice to the Griers and the neighborhood to deny the request.

William White, 1012 Spinnaker Way, stated he has been here about six months. He said that the Griers are very good people. He is a veteran and likes the fact that many veterans are patrons.

Gia Jenkins, 1384 Croftwood Drive, stated she is a single mother, and as such, sometimes needs a place to go where she feels welcomed and enveloped by friendship without fear of being hit on. She commented that Rob and Noney Grier care about their customers.

Jack Daniels, 783 Ixora Drive, said he lives two streets from the bar and he supports the request. He noted that he has never heard of any complaints and added that this is a good place.

That concluded comments from the public.

Mrs. Palmer stated she was the main voice of opposition at the last meeting. However, after visiting and observing the site – the noise level, ambience, patrons, size of the establishment, etc. – she can support the conditional use with a condition that would restrict the sale of alcohol to beer and wine.

Mrs. Hand said she is opposed. She referenced a similar situation with a bar in North Eau Gallie. She pointed out that the current owners seem honorable; however, if the place is sold we have no guarantee about the new owners.

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Mr. Palmer said that he is having difficulty with the request because a conditional use stays with the property. He added that his “no” vote is nothing against the current owners.

Mrs. Walker asked if the ordinance could provide that the conditional use would not stay with the property if it were sold. Ms. Novak said no and noted that a conditional use changes the zoning designation. A change in zoning does not go away with transfer of ownership.

Mr. Contreras referenced the first and second notices sent to the neighborhood and the fact that there have been no objections. Council has received only positive testimony from neighbors living to the south, east and west. He stated he visited Buzzard’s Hideaway and was surprised at what he found. It is a nice establishment that he likened to “Cheers”. Patrons go there to have a good time. County complex personnel, including elected officials, frequent the place. The owners have come forward and tried to do the right thing. Based on no opposition from neighbors he will support this with a provision that the alcohol be restricted to beer and wine only.

Mrs. Poole said that the owners put their life savings into something before checking it out. The establishment operated illegally (as a restaurant) and Council needs to stay with the ordinances; they serve a purpose. She stressed that bars do not belong in neighborhoods and she cannot support the request.

A brief discussion continued.

The question was called on the motion for denial. The roll call vote was:

Aye: E. Palmer, Poole, and Hand

Nay: Contreras, Walker, C. Palmer, and Buckley.

Motion failed.

Moved by C. Palmer/Walker for approval of Ordinance No. 2004-17 with the condition that only beer and wine will be sold. The roll call vote was:

Aye: Contreras, Walker, C. Palmer and Buckley

Nay: E. Palmer, Poole and Hand

Motion carried.

10. ORDINANCE NO. 2004-18: (Second Reading/Public Hearing) An ordinance amending Sections 8.5-2 and 8.5-7, Cemeteries, by adding a definition for columbarium and columbarium niche and amending definition of space; providing a

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fee for a columbarium niche and increasing fees for both full and garden cremains spaces. (First Reading – 3/09/04)

Attorney Novak read Ordinance No. 2004-18 by title. There were no comments from the audience.

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

Mrs. Hand suggested the City look into acquiring land for more cemetery space. Mrs. Poole agreed. Mayor Buckley commented that this should be discussed at the April 20 workshop meeting.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL ACTION RE: Contract award for Houston Street Seawall, Project No. 01103, Santa Cruz Construction, Inc., Merritt Island, FL - \$71,706.80 and transfer of \$40,000 from FY02 Street Resurfacing into this project budget.

City Engineer Howard Ralls briefed Council and responded to general questions.

Moved by Hand/Contreras for approval of the construction contract with Santa Cruz Construction, Inc. in the amount of \$71,706.80 and transfer of \$40,000 in savings from the FY02 Street Resurfacing project to this project's budget. Motion carried unanimously.

12. PRESENTATION TO COUNCIL: A presentation by Brevard County Housing and Human Services Department of the 2005-2010 HOME Consortium Consolidated Plan.

Denise Carter, Housing & Community Development, introduced Mr. J.B. Kenna, Assistant Director for Brevard County Housing and Human Services Department.

Mr. Kenna stated a consolidated plan is a requirement of the U.S. Department of Housing and Urban Development. It is developed by local governments to receive funding under the Community Development Block Grant, Home Investment Partnerships and Emergency Shelter Grant programs. In the past, local jurisdictions applied for these funding programs using separate, distinct planning procedures. In 1994 HUD combined the planning application and reporting requirements of these programs into a single consolidated plan for Housing & Community Development. The Brevard County Home Consortium's first consolidated plan covered the period 1995-

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2000 and is currently operating under the 2000-2005 plan. Over the next five years it is anticipated that Brevard County will receive about \$30 million in CDBG and HOME dollars to be spent in low-income neighborhoods and special needs populations. The City of Melbourne should see about \$980,000, or about \$4.8 million over the five years.

Continuing, Mr. Kenna reviewed the purpose of the consolidated plan and how each city gathers information about the needs of the low-income neighborhoods. He noted that he looks forward to continued partnership with each of the cities. Last year the County and the participating cities hired a consulting group to do the plan; this year the County has a strategic planning team and along with cities staff will work across the County to identify those needs.

13. CONSENT AGENDA:

City Manager Jack Schluckebier asked that Item “c” be withdrawn at this time to allow a final review by the City Attorney’s Office.

Council briefly discussed Item “h.” Mr. Ralls confirmed that the difference in the contract award and the account balance is to allow a 5% contingency.

Council also discussed Item “e” and agreed to remove it from the consent agenda to allow a separate vote.

Moved by Hand/C. Palmer for approval of Items “a, b, d and f through j” as recommended. Motion carried unanimously.

Police Chief Don Carey (reference Item “e”) explained that the soft hull dive boat rides low in the water and moves without a propeller so it does not get caught in seaweed. The sides are low, which allows divers to roll back into the water. The marine boat is scheduled in the water seven days a week, eight hours a day and operates longer hours during daylight saving time.

Mrs. Palmer asked how often this specific boat is actually needed. Chief Carey responded about 12-15 times per year. He noted that it is mostly called out for body retrieval; however, it is used in many other ways. It has been used to locate a leak in the City’s underwater water line and for training purposes. The Police professional dive team must train once a month to maintain certification. He concluded by advising that the current boat is eight – nine years old.

Mrs. Palmer said that many times items come to Council for replacement after only a short time. However, she noted that she will support this based on the age of the current boat.

Moved by Contreras/Walker for approval of Item “e.” Motion carried unanimously.

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- a. Contract award to provide three years of relay wireless service to the Melbourne Police Department, Verizon Select Services, Inc., Irving, TX - \$20,743.92.
- b. Purchase of Toro equipment and service to upgrade the Osmac satellite irrigation system at the Melbourne Golf Course, Wesco Turf Supply, Inc., Orlando, FL - \$22,818.70.
- c. Professional services agreement to perform a water and wastewater revenue sufficiency analysis and financial forecast, Public Resources Management Group, Inc., Maitland, FL - \$26,410. (Note: this item was withdrawn.)
- d. Reallocation of \$10,000 CDBG award from the Greater Melbourne Police Athletic League (PAL) to the Child Care Association of Brevard County, Inc. to provide financial support for child care services to children ages 9-12 who are not TANF (Temporary Assistance to Needy Families) eligible or under the jurisdiction of Protective Services.
- e. Resolution No. 1870: A resolution authorizing the City Manager to submit a grant application to the Florida Inland Navigation District for the replacement of the soft-hull, jet-drive dive boat for the Police Department. The total cost of the boat is \$12,000. The grant will provide \$6,000 and the City must provide the matching funds of \$6,000.
- f. Resolution No. 1871: A resolution authorizing the City Manager to execute lien cancellations for those liens that have been satisfied by payment in full without additional action from the City Council.
- g. Purchase of a Tennant Model 6650XP diesel power sweeper, Tennant, Minneapolis, MN - \$29,632.38.
- h. 1. Contract award for construction of Olde Eau Gallie Redevelopment Area crosswalks, Project No. 02119, Santa Cruz Construction, Inc., Merritt Island, FL - \$37,321 and transfer of \$7,357 from the Olde Eau Gallie Redevelopment Area Reserve account into this project budget.

Moved by Contreras/E. Palmer to convene as the Olde Eau Gallie Riverfront Community Redevelopment Agency for the next item. Motion carried unanimously.

2. Contract award for construction of Olde Eau Gallie Redevelopment Area crosswalks, Project No. 02119, Santa Cruz Construction, Inc., Merritt Island, FL - \$37,321 and transfer of \$7,357 from the Olde Eau Gallie Redevelopment Area Reserve account into this project budget.

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

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Moved by Hand/C. Palmer to reconvene for the remaining agenda items. Motion carried unanimously.

Added to the agenda:

- i. Resolution No. 1872: A resolution authorizing the City Manager to submit an application to the United States Department of Homeland Security/Federal Emergency Management Agency for the Assistance to Firefighters Grant Program to upgrade the fire Department's self-contained breathing apparatus equipment to meet NFPA Standard 1891.
 - j. Request of Thomas Putnam, 2403 Mashie Court, for rescission of Code Enforcement lien CE-01-112 from \$73,500 to \$3,668.94 to be paid within ninety days.
14. COUNCIL ACTION RE: Request by the Melbourne Art Festival for the City to co-sponsor the Melbourne Art Festival scheduled for April 24-25, 2004 in Downtown Melbourne.

From the agenda report: Lori Emly, President of the Melbourne Art Festival, has submitted a request for the City to co-sponsor the spring Art Festival by providing police services. The Melbourne Art Festival is scheduled for April 24-25, 2004 in Downtown Melbourne. The estimated cost for police services is \$16,540.

The Melbourne Downtown Community Redevelopment Agency Advisory Committee denied the request and recommended the applicant approach City Council for consideration from the General Fund at its March 5, 2004 meeting.

Council already selected the non-profit organizations to receive General Fund money in the 2003-2004 budget. Money is not available in the General Fund for this request.

Lori Emly, President, Melbourne Art Festival, said that this is the festival's 20th year. She noted that the Art Festival is a non-profit corporation with approximately 100 volunteers who coordinate the event and over 600 volunteers who work the actual event. The Melbourne Art Festival is ranked 62nd in the nation for fine arts and craft shows, which is an honor. The Tourist Development Council ranks the festival as the number one event in Brevard County.

Ms. Emly stated the Art Festival has never asked for financial help from the City; however, one of its big costs is the police coverage. For the upcoming year, the estimated cost of police services is \$16,500.

Mr. Contreras stated 20 years is significant. He asked whether the organization had applied for/received grants from the City. Ms. Emly noted that the President changes frequently so the Art Festival doesn't have continuity. She added that last year, the Art

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Festival received \$5,000 from the City as a one time use grant; however, they were told it would not happen again.

Mr. Contreras suggested other sources of funding such as the Tourist Development Council grants committee. He added that within the City's available dollars, there are short falls and other priorities. The citizens look at funding and use of their tax dollars.

Ms. Emly stated that she understands; however, having the Art Festival is a coup for Melbourne. An impact of \$500,000 for two days, which doesn't include sales tax, is nothing to scoff at. The restaurants in Downtown Melbourne have affected the festival's beer sales; they are not making money like they were in the past. Ms. Emly said the festival is asking the City to get on board and help the festival. She commented that she is surprised that there has not been financial support from the City.

Mrs. Palmer countered that the City has been supportive. She agreed that the economic impact to the City is good. It puts Melbourne on the map in a lot of ways. She is surprised that at this point the Art Festival is in need of this much support. She asked why the Art Festival did not receive enough from the artists to cover event costs. She thought it was quite expensive for the artists to participate.

Ms. Emly replied that the cost is \$250 per artist and there are 250 artist. The Art Festival draws from all over the country and over 750 artists applied this year.

Mrs. Poole said that at one time the City received a percentage from the Art Festival. She noted that the City has always participated; the Art Festival should not feel like it has been shut out.

Mr. Palmer asked how the \$16,500 estimate for police services was established. Ms. Emly responded the estimate came from City staff and is based on the number of officers required for the event. Mr. Palmer asked if they could get by with less. Mr. Schluckebier referenced the special activity permitting process and said that cost estimates are compiled by staff based on information submitted by the applicant. Mr. Palmer agreed that the Art Festival does a great job each year; however, the amount requested for support is causing him heartburn.

Mayor Buckley stated he appreciates what the Art Festival does for the City. However, at this point, all he can do is recommend that the Melbourne Art Festival apply as quickly as possible when the City takes requests for grants.

Mrs. Walker commented that the City has no surplus. Ms. Emly said she would like the record to reflect that the Art Festival is asking for help; they can't afford to keep putting on this event. She added that big shows in other cities have the support of those cities.

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Mrs. Walker asked whether the Art Festival had approached financial institutions for donations. Ms. Emly stated that Washington Mutual is their largest sponsor at \$9,000. They also receive funding from Harris, SCCU, Osler Medical, etc. They do have a list of sponsors that contribute financially.

Mr. Contreras suggested that the Melbourne Art Festival get on board with the City's process for granting funds.

Mrs. Poole pointed out the difficulty of giving to one festival but not to another. She said that the City's budget does not allow this type of donation.

Mrs. Palmer stated she is very supportive; however, the money the City has comes from the citizens and businesses of this City. Because the Melbourne Art Festival is so popular, she believes it could get more support from private citizens and businesses. She encouraged Ms. Emly to come back when the other non-profit organizations come in to request funding.

Moved by Buckley/Poole for denial of the request for co-sponsorship regarding the Art Festival. Motion carried unanimously.

Recessed: 8:11 p.m.

Reconvened: 8:23 p.m.

15. FINAL PLAT APPROVAL (SD-2003-04) EAGLE HARBOR: (Public Hearing) A request for final plat approval on 29.6 acres, zoned R-2 (6) (One-, Two-, and Multiple-Family Dwelling with a cap of 6 units per acre) and C-P (Commercial Parkway), located on the north side of Eau Gallie Boulevard, east of Trent House Drive, and west of Wickham Road. (Owner/Applicant – Florida Conference Association of Seventh Day Adventist) (Representative – Mike Evans) (P&Z Board – 3/4/04)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of SD-2003-04, final plat for Eagle Harbor Subdivision, consisting of a four-sheet plan prepared by William Mott Land Surveying, Inc., of Melbourne, Florida, with the following conditions:

- a. Provide a warranty deed for the east 25 feet of the parcel overlaying the FDOT drainage easement for additional right-of-way for the proposed Turtle Mound Road extension prior to final plat recordation.
- b. The owner/developer shall execute an agreement prior to final plat recordation, meeting the requirements of condition e. of the preliminary plat and rezoning approval for the subdivision.
- c. The owner/developer shall provide all required final documents as outlined in City Code, Chapter 29, including a performance bond, which shall be submitted and approved by the City Engineer.

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- d. The owner/developer must obtain construction plan approval from the Engineering Department prior to recording of the final plat.

Mrs. Dittmer reported that following the Planning and Zoning Board meeting, the applicant revised the final plat to address the requirement that the plat be modified prior to recording to break Tract D into two tracts with maintenance responsibility of the FDOT drainage canal belonging to FDOT and not the homeowners' association.

The applicant agreed with the stipulations and the agreement.

Mrs. Poole asked who is developing the project. Mrs. Dittmer responded that Mike Evans is the applicant for the project. The Seventh Day Adventist Church owns the land. Mrs. Poole asked if there are no ad valorem taxes because the church owns the property and whether it is on the tax roll. Mrs. Dittmer stated if the property is developed as single-family residential, even if the Seventh Day Adventist Church retained ownership, there would be no way for the church to receive a tax exemption because the property is not utilized for a church purpose.

There were no disclosures or public comments.

Hugh Evans, 1688 W. Hibiscus Boulevard, applicant's representative, informed Council that the property is being purchased from the Seventh Day Adventist Church. A subdivision with private streets, gated entrance and commercial development on the front is being proposed and they will return to Council in the future once the plans have been developed.

Mrs. Poole commented that Mike Evans gave a tremendous presentation to the Planning and Zoning Board. He worked hard to work everything out and she likes the size of the proposed lots; however, she can't vote for the project due to the density. She is upset with the number of units and the lack of schools; this is a terrible situation and we keep building. Impact fees are needed. She would hate to see a moratorium; however, it may come to that if something is not done.

Mrs. Palmer stated Mr. Evans has done some really nice developments in Melbourne. She asked about the general plan for the commercial area. Mr. Evans responded similar to what was done at Bay Meadows, like Atlanta Bread and the various storefronts. More of an office/retail location weighted a little more to office. It should be something that the City will be proud of with significant landscaping. Responding to Mrs. Poole, Mr. Evans stated that they plan to plant some Magnolia Trees.

Moved by E. Palmer/Walker for approval of SD-2003-04, subject to the proposed conditions. Motion carried. (Mrs. Poole voted nay.)

16. SITE PLAN APPROVAL (SP-2004-01) EXPLORER MIDDLE SCHOOL: (Public Hearing) A request for site plan approval to construct modular elementary and middle

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school classrooms on a 4.2-acre parcel zoned C-P (Commercial Parkway), located north of Eau Gallie Boulevard and east of John Rodes Boulevard. (Owner – Beacon Technical Industries, Inc.) (Applicant – Explorer Middle School) (P&Z Board - 3/04/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of SP-2004-01, site plan for Explorer Elementary Middle School, consisting of a four-page plan prepared by Larry B. Schnaper, P.E., of Maitland, Florida, with Drawing Number 0204, dated December 22, 2003, with the findings contained in the package and the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) any change in the number or use of access points shown on the site plan; or 2) an increase in building size or height.

- b. The applicant must obtain a SJRWMD stormwater permit, an FDOT driveway permit, and City of Melbourne tree removal permits prior to the start of construction.
- c. The applicant must provide a stabilized 16-foot wide surface along the proposed track for emergency vehicle accessibility.

The Planning and Economic Development Department recommended adding the following condition:

- d. The School will adhere to the requirements of the School Board for fencing of wet retention ponds.

Mrs. Poole referenced the density of the property and asked whether any trees would be saved. Mrs. Dittmer stated anything saved would be around the perimeter of the property. She is not sure whether they have determined the amount of fill and the elevation required to meet the storm water requirements.

Mrs. Poole referenced gopher tortoises and asked who conducted the survey. Mrs. Dittmer responded that no gopher tortoises were found on the site. She is not sure who did the Environmental Impact Assessment (EIA) study. She advised Council that she would include information about who conducted the EIA in future write-ups.

Mrs. Walker stated this is an unusually small school and asked if it is a County school. Mrs. Dittmer responded it is a charter school. A charter school is a public school that is overseen by the School Board. It must meet all State requirements and receives

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public funding from the State. There is a separate board of directors that determines the curriculum.

Mr. Palmer asked about the ballfield and the retention pond.

Larry Schnaper, project engineer, stated that the ballfield and the retention pond are being used together. The wet retention pond will handle normal storm water. In the event of a 25-year flood event, the ballfield would be used for storm water overflow for the following 72-hour period. This is a trade-off to make the most use of the property.

Mr. Schnaper said that the system is designed so that surrounding the ballfield is a swale and a berm. Normally 24 out of 25 years it will be dry; however, the system is designed for the possibility of a 25-year storm event.

Mr. Palmer asked about fencing requirements. Mr. Schnaper stated that normally there is no fencing requirement because the system was originally designed with a five to one slope on the ponds. However, a Planning and Zoning Board member requested that the wet portion of the pond be fenced. Mr. Schnaper agreed with the stipulations.

Mrs. Palmer asked if there would be bus service and the schools hours. She is concerned about the school speed zone in this area.

Ruben Roserio, Principal, Explorer Middle School, stated they have two buses that bus approximately 130 students. School starts at 8:15 a.m. and ends at 3:30 p.m. He does not know the school zone times. This is a public school, so the speed zones would be the same as for any other public school.

In response to Mrs. Walker, Mr. Roserio elaborated on the school's funding and confirmed that the teachers are State certified and receive full benefits.

Moved by E. Palmer/Hand for approval of SP-2004-01 site plan for Explorer Elementary Middle School subject to the proposed conditions.

Mrs. Poole stated she was reluctant to support the request based on the destruction of trees; however, because schools are needed so badly she will vote for it. Mrs. Palmer stated that even though she is concerned about traffic, she is happy they have stepped up to help take care of the need for middle school classrooms.

The question was called. Motion carried unanimously.

17. ORDINANCE NO. 2004-19 (AR-2004-150) PARKWAY DRIVE/TURTLE MOUND ROAD ANNEXATION – AREA B: (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 south of Parkway Drive, north of Lake Washington Road, and east and west of Turtle Mound Road.

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Ms. Novak read Ordinance No. 2004-19 by title. Mrs. Dittmer briefed Council and reviewed the agenda report.

Mrs. Hand asked about sewer service. Mrs. Dittmer explained that there is no proposal for sewer service at this time and there is no plan in the near future to extend sewer service unless desired by the residents in the area.

Mrs. Dittmer confirmed for Mr. Palmer that the mail ballot referendum election for both annexation ordinances (Ordinance No. 2004-13 and Ordinance No. 2004-19) would be held concurrently in June.

Thomas Allen, 2682 Turtle Mound Road, stated that he bought 10 acres in this area in 1956. He commented that he already has City water and does not feel the quality is such that he needs it. He does not believe that annexing into the City is best for the people in this area; otherwise they would not have moved to the County. He believes this has been done underhandedly.

Edward Richard, Sr., 3945 Lake Breeze Boulevard, 44-year resident of the County, stated he purchased two acres when he first moved to Melbourne. He agreed that this was done underhandedly and said he received information but others did not. He added that he is concerned about the type of zoning that will be established and asked that it be established prior to the vote.

Mayor Buckley advised that the new zoning designation will be ready by that time.

Mr. Richard said that he would not mind being a resident of Melbourne under the right rules and regulations. He added that he will decide based on what he sees with the zoning.

Joe Tyler, 2800 Turtle Mound Road, stated that he supposes he is the “underhanded” guy. He reported that he tried to contact everyone in the area. Seventy percent of the total residents in the area support annexation. The water that some of his neighbors have deteriorates appliances. He said he believes this is a win/win situation. The area will receive good water and police protection in return for tax dollars.

Erica Allen, 2680 Turtle Mound Road, noted she has lived there for 32 years. Her concern is that the person who owns 17 acres will only have one vote – the same as the person who owns one acre. She asked why it is determined by registered voters.

Mr. Schluckebier advised that a lot of governments and people who work with boundary adjustments have been totally frustrated by Florida’s annexation law since the law was created in 1973. There is a move afoot to make it more equitable; to provide more equity to property owners based on configuration of ownership. However, the legislature has been reluctant to change the rules. And, unfortunately,

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the rules for this kind of election are the same for any Florida election. Only registered electors may vote.

Ms. Allen stated that she is also concerned about the future zoning. They have been promised that things will stay similar to what they are and that they will be able to continue keeping horses; however, she would like this in writing before voting.

Mr. Schluckebier stated Council gave staff specific instructions to accommodate the existing use and staff will comply. Before the mail-out ballot occurs, Council will have completed consideration of the zoning and land use issues. The zoning will be as close to the existing zoning as possible.

Ms. Allen stated that the current zoning allows only one house per acre and she does not want this changed.

Mr. Schluckebier stated that the land use and zoning consider density and there is no effort by the City to modify that land use arrangement whatsoever.

Robert Goldsmith, 2600 Melissa Court, stated he has lived in Melbourne his entire life. He knows the importance of City water. Last year he spent \$4,000 to repair his three-year old pool due to the poor quality of his water. He concluded by saying this is a win/win situation for everyone.

That concluded comments from the public.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2004-19.

Mrs. Palmer stated that the zoning ordinance needs to be in place. The staff time that went into the annexation ordinances could have been spent drafting a zoning ordinance. There are people who live in the County for the rural lifestyle and want to keep it. They need to have it in writing that they will be able to continue this use of their property. Mrs. Palmer said she will not support this because she would like to see the zoning ordinance. She pointed out that a simple majority can change these people's lives and the use of their property.

Mrs. Poole agreed that the zoning ordinance should be in place first.

Mr. Palmer said Council's word better be as good as the written word. People who have horses will be allowed to keep horses and this is how the ordinance will be written.

A brief discussion followed regarding the zoning ordinance. Mr. Schluckebier stated that the Planning and Economic Development Department has been short staffed. The senior planner returned the beginning of March and we expect to have this ordinance within the next two meetings. Mrs. Dittmer confirmed that the zoning ordinance would appear on the April 15 Planning and Zoning Board agenda.

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Mrs. Palmer stated she does not understand why we are rushing through these annexations. If staff has time to work on annexations staff should have time to develop a zoning ordinance, especially if it is going to be so similar to what they have now.

The question was called. Motion carried. (Mrs. Palmer voted nay.)

18. ORDINANCE NO. 2004-20 (AR-2004-147), ORDINANCE NO. 2004-21 (CPA-2004-02), AND ORDINANCE NO. 2004-22 (Z-2004-977) MORDEHAY LANIADO: Ordinances providing for annexation, a Comprehensive Plan Amendment, and rezoning on a 0.96-acre parcel, located on the west side of Highway A1A, immediately south of Harris Boulevard and north of Paradise Boulevard. (Owner/Applicant – Mordehay Laniado) (P&Z Board - 3/04/04)
- a. Ordinance No. 2004-20/AR-2004-147: (First Reading/Public Hearing) An ordinance providing for the annexation of a 0.96-acre parcel.
 - b. Ordinance No. 2004-21/CPA-2004-02: (First Reading/Public Hearing) An ordinance establishing a Commercial land use for a shopping center.
 - c. Ordinance No. 2004-22/Z-2004-977: (First Reading/Public Hearing) An ordinance establishing a zoning designation of C-1 (Neighborhood Commercial).

Attorney Novak read each ordinance by title. There were no public comments or Council disclosures.

Mrs. Dittmer reviewed the agenda report. The applicant is an out of state applicant and is not present. The Planning and Zoning Board unanimously recommended approval of the request.

Moved by C. Palmer/Hand for approval of Ordinance No. 2004-20. Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2004-21. Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-22. Motion carried unanimously.

19. ORDINANCE NO. 2004-23: (First Reading) An ordinance amending Chapter 2 of the City Code, entitled "Administration"; amending Section 2-16 as it relates to the salaries of the Mayor and City Council; providing for increases to become effective November 9, 2004.

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Attorney Novak read Ordinance No. 2004-23 by title.

From the agenda report: This ordinance implements adjustments to the Mayor and Council salaries in accordance the motion approved at the February 10, 2004 meeting. It establishes the Mayor's salary at \$9,945 and each Council Member's salary at \$7,183 effective November 9, 2004. It further provides that these salaries will automatically be adjusted every two years based on the same cost of living adjustment afforded the general employees for the previous two fiscal years; however, in accordance with the City Charter, the effective date of these future increases will be the day after the regular election.

Moved by Hand/Walker for approval of Ordinance No. 2004-23.

Mrs. Poole stated Council members are elected officials, not City employees. This is not a full time job to support families like City employees. She referenced the number of meetings Council attends and said that inflation does not affect Council salaries. She added that she does not believe the method used to address salaries was appropriate. The current Code provides that the Mayor/Council annual salary shall be established after determining the average salaries of at least 10 cities within the State of Florida with similar populations and forms of governments. She does not believe a survey of 10 cities was properly conducted and calculated. The higher populations/salaries used in the survey affected the average totals.

Continuing, Mrs. Poole stated that the last salary increase was November 2000. At that time, it was stated that salaries would not be addressed for five years. She said she supports the incoming Mayor and Council establishing the salaries. Additionally, she referenced the increase in utilities, etc., which creates a hardship for young families and the elderly.

Mr. Contreras asked whether Council members are City employees. Ms. Novak responded, technically no, but Council does receive benefits. Mr. Contreras stated that those members so strongly opposed to a raise should not receive any benefits that City employees receive.

Mayor Buckley stated the fact that Council members are not City employees is obvious by the salaries received. This is the best way to see that salaries are adjusted so that Council is reimbursed for a portion of the cost of living increases.

Mrs. Poole asked that her concerns about the survey be addressed. Mr. Schluckebier responded that the survey was done to answer Mrs. Poole's question about what cities formed the basis of the City's previously reported average of Mayor (\$19,000) and Council (\$17,000) salaries for cities the size of Melbourne.

Mrs. Poole noted that of the 10 cities chosen, none are in Brevard. Melbourne Council has the highest salaries of any in Brevard. She noted that Palm Bay has a similar

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population and salary and their salary increases are done through referendum every four years. She commented that if Melbourne had a referendum it would be defeated.

Mayor Buckley commented that during the Code review process, one of the Committees recommended that Council salaries be increased.

Mrs. Palmer asked about the impact of the increase on the budget. Mr. Schluckebier responded he is not exactly sure; however, it is less than \$1,000 for the Mayor and each of the Council members. He believes it is somewhere in the \$4,000 range.

Mrs. Palmer pointed out that the person that cares so much for the widows and everyone else voted for every single tax increase.

Motion carried. (Contreras, E. Palmer and Poole voted nay.)

20. COUNCIL ACTION RE: Brevard County Circuit Court decision regarding denial of the site plan approval for Prairie Trace Apartments.

From the agenda report: At the March 25, 2003 meeting, Council denied BreFrank's application for site plan approval to develop a 344-unit apartment complex known as Prairie Trace. The Court issued its opinion overturning the Council's denial of the project. Details are provided in the agenda package.

A decision on whether to appeal must be made by March 23, 2004 to allow sufficient time for the City Attorney to file the appeal. In the event Council does not wish to appeal, a subsequent action by Council would remain necessary to effect a final site plan consideration.

Ms. Novak briefed Council. The ruling issued by the Circuit Court was that there was no evidence to support the City's denial of the site plan. As Mr. Gougelman outlined in his memorandum, that is not exactly true. Testimony by three individual property owners questioned the access points for the proposed subdivision and whether traffic problems would occur on Stewart and Lake Washington Roads. The Court's statement that there was no evidence by itself would provide the City with a basis for appeal to the 5th District Court of Appeal. However, Mr. Gougelman advised that the likelihood of success is not good.

Ms. Novak commented that her experience with the 5th District Court of Appeal is that they use a "tipsy coachman rule." This is an old common law type of provision that says you've got the right result for the wrong reason. She believes the 5th District Court will affirm the 18th Judicial Circuit decision. She also commented that the decision of the 18th Judicial Circuit was very resounding and unanimous.

Mrs. Poole discussed the project. She commented that things have changed since 1986; time, roads and traffic change. This is not compatible with the single-family

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subdivisions in that area. She commented that developers have all the rights and the people that have been there for years have no say.

Ms. Novak stated that the decision of the 18th Judicial Circuit was that the City of Melbourne entered into an agreement with this developer, who changed his position based on that agreement. The rationale is that the developer faithfully performed his responsibilities and duties pursuant to the agreement and the City must do its part.

Mrs. Poole said that Council needs to think about the people in that neighborhood who have been paying taxes for years. She questioned whether Council has to roll over and say yes to everything.

Mr. Contreras stated that reading the finding and the City Attorney's comments, the City made a deal, and Council Members were part of that deal. He stated for lack of a better term the City reneged and was caught. The plaintiff sought remedy through the courts and the courts have spoken. Certainly we can provide more dollars for an appeal, but reading the material from Attorney Gougelman, we have a 25% chance of winning. An appeal would not be money well spent.

Responding to Mr. Contreras, Ms. Novak reported that the City has spent \$5,549.77 for litigation in this case. Mr. Contreras said it was not a very wise move for the City to go into this litigation, especially after a deal was made years ago that we did not fulfill.

Mayor Buckley stated it is debatable whether the decision was good or not. Council did say that Prairie Trace Apartments could not be built on that property as it was proposed. The applicant took it to court and we had to defend our decision. He believes that is justified. He does not support going forward with an appeal.

Mrs. Poole stressed that the people in the area plead with Council to save their single-family neighborhood. She noted that the developer didn't tell the truth about the buildings.

Moved by Buckley/Contreras not to appeal the decision of the 18th-Judicial Circuit. Motion carried. (Mrs. Poole voted nay.)

21. COUNCIL ACTION RE: Appointment of one regular member to the Planning & Zoning Board.

Mrs. Poole nominated Noel Droor and Mrs. Hand nominated Mr. Genco.

Moved by C. Palmer/Contreras to close nominations. Motion carried unanimously.

The roll call vote was:

Droor: Contreras, E. Palmer, Poole, C. Palmer and Buckley

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Genco: Walker and Hand

Appointed: Noel Droor (3/23/2004 – 12/12/2007, unexpired term plus full three-year term)

Mayor Buckley called for nominations for the alternate member seat (due to Mr. Droor being appointed as a regular member). Mrs. Hand nominated Mr. Genco.

Moved by Walker/Poole close the nominations. Motion carried unanimously.

Moved by Hand/Walker to appoint Gregory E. Genco as the first alternate member. Motion carried unanimously. (3/23/2004 – 1/24/2006, unexpired three year term)

Moved by Contreras/Poole to convene as the Babcock Street Community Redevelopment Agency for the next item. Motion carried unanimously.

22. COUNCIL ACTION RE: Approval of a conceptual contract for the sale of the Palms 8 Theatre property.

Ms. Novak advised that the Chairman of the Babcock Street Community Redevelopment Agency Advisory Committee is present and can provide additional information about the committee's deliberations of the two proposals. Todd Deratany and Coy Clark both prepared proposals as outlined in Mr. Gougelman's memorandum to Council dated March 19, 2004.

Todd Deratany discussed his negotiations with the City. He noted that his contract has only one contingency and that is the ability to build condominiums or townhouses on the rear seven acres of the property and retain the current C-2 zoning on the front 2.8 acres. He tendered an offer of \$800,000 and is prepared to pay through a cashier's check. He is willing to close before the City's July 1 deadline regarding its debt service, if he can work through the permitting process.

Mr. Deratany discussed his family's history in Melbourne, the various commercial properties they have purchased and redeveloped, and the residential developments they have built. They have a strong commitment to the highest quality development.

Mr. Deratany advised that his contract does not have a requirement that the road be constructed; whether the road is built now or five years from now, his family wants to purchase the property as quickly as possible.

He discussed their plans for the property. They plan to create a residential buffer. He does not think that a massive shopping center will work in the area. The residents don't realize the long-term impact that a commercial development would have on the neighborhood; big trucks in the middle of the night, increased traffic, etc. The development should be commercial, a buffer wall, then multi-family and into the single-

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family residential. He commented that it would be done with the absolute highest standards and building quality.

Responding to Mrs. Poole, Mr. Deratany stated he plans to develop one-story condominiums. Whatever is built would definitely be under the City's height limits and aesthetically pleasing to the residents in the area. The condominiums would be approximately 2,000 s.f., starting at \$200,000. R-2 zoning allows 15 units per acre; however, he would develop no more than eight units per acre to maintain the integrity of the area and the construction quality. He won't consider commercial retail on the entire parcel because he doesn't think it is a viable option.

Mr. Deratany said he would request R-2 on the rear seven acres and retain the current C-2 on the front portion. The commercial use would be more boutique use, basic retail and professional offices.

Mrs. Walker stated the residents have indicated a need for a food store. Mr. Deratany said he is not interested in a grocery store based on the impact it would have on the neighborhood.

Mr. Deratany reported that if Council accepts his offer he could have plans drawn up within two weeks. He is willing to let Council say whether they think the plan works for the City.

Mrs. Hand stated she likes the condominiums. She has concerns with commercial development in the District where there are empty shopping centers/strip malls. The Marketplace is coming around; however, it was dead for a long time. She hates to see this happen in this area. Mr. Deratany agreed. He discussed his property management style. He guaranteed that any retail/commercial development would be filled within 12 months. Rents will be below the average rental rate.

Mr. Contreras asked about Mr. Deratany's offer to pay \$900,000. Mr. Deratany said he was asked by the CRA Advisory Committee whether he would be willing to pay \$900,000. If Mr. Clark agrees to the same type of contract, contingent only on zoning, not construction of the road, he would pay \$900,000; dealing apples to apples – the same provisions. Even at \$850,000 his contract is better because it closes before July 1 and doesn't wait for the road construction.

Mr. Contreras commented that Mr. Deratany can't change Mr. Clark's proposal. Mr. Deratany stated that is not his intent.

There was discussion about the City Attorney's comment that the contract may not close for five – seven months conditioned on zoning. Mr. Deratany stated his discussion with Mr. Gougelman was that the process could take as much as five – seven months.

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Coy Clark, discussed his experience. Most of Council knows him, certainly by reputation. He discussed his accomplishments in the City and Brevard County. It is important that the developer's experience and qualifications be put forth in the development of this property. It will be at the front door of the City. He retains and maintains the properties he develops and has received the City's beautification award for many of his developments.

Mr. Clark discussed his role in the development of the Rialto site, commenting that it is located in the redevelopment district. His business also includes development of a couple dozen residential communities. He will soon begin development of Four Winds, a six-unit condominium project approved by Council, located near the Chart House. Three of those units have already sold, two for \$1.4 million, and one for \$1.3 million, setting a new standard for the City of Melbourne.

Mr. Clark stated he is intimately qualified, has the interest and if given the opportunity would do a great job in developing the North Babcock property. He advised that because he does not have experience in food and drug stores, he has partnered with developer Bill Joyner for this project. Mr. Joyner developed and owns Post Commons and has developed 33 major shopping centers. Mr. Clark informed Council they have had communication with a major food store and drug store and there is interest from both parties.

Mr. Clark's first plan includes a food store, drug store and approximately 1,700 s.f. retail space. The plan is conceptual; however, meets all City codes. This would be compatible with the neighborhood. The second plan includes a condominium with a drug store on the corner. The density for the condominiums would be eight units per acre, and would be no taller than two stories. The third plan is for condominiums only. His plans are presented in his order of preference.

Mr. Clark stated his contract is \$900,000 and it is unfair to negotiate price at an open hearing. There are differences in the contracts. His contract is contingent on approval of their plans and the roads in place or substantially in place before closing.

Mrs. Walker asked the type of food store, a small market or a place like Publix. Mr. Clark responded it would have to be a place like Publix.

Mr. Contreras asked about construction of the road realignment. Mr. Schluckebier noted that Council approved and budgeted the road construction project. The bids came in high and staff believes a different market check at a later time may achieve some savings. The City and the CRA Advisory Committee remain committed to the project. Mr. Schluckebier stated staff anticipates the project to be re-bid in 30-60 days. Mr. Contreras suggested the City bite the bullet and make it happen.

Mr. Schluckebier responded that the primary reason for purchase of the property was to straighten the road and resolve storm water issues. The note holder will refinance for up to a year at the City's discretion. For two years there was no interest in the

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property and suddenly there is a lot of interest. In the past 10-12 weeks as many as eight or nine parties, some we've negotiated with at length, expressed an interest. Given that we don't know what will happen in the market three – six months from now, we should move forward. The CRA Advisory Committee was not in position to make a recommendation on the proposals at this time.

Mr. Palmer asked if there was a recent appraisal on the property. Mr. Schluckebier responded no, the appraisal was done before the City purchased the property. Mr. Palmer referenced the current interest and stated we should obtain a current appraisal.

Mrs. Poole commented that a great deal of time and effort has gone into this. The interest is because development has gone wild. Another appraisal is not needed.

Mrs. Palmer stated there is a \$100,000 difference in the offers. She asked about the cost to the City to delay closing until road widening begins.

Mr. Schluckebier stated that the question is what it takes to finance \$800,000 for a year. The debt cost has been \$20,000 per year. Mrs. Palmer asked about refinancing costs. Ms. Elliott responded that she understands that the current bank will refinance for a nominal fee, plus there could be some legal fees. The cost would be small, less than \$1,000. It would not come anywhere near the \$100,000 price difference.

Sam Pak, Appliance Direct, 397 N. Babcock Street, stated he is losing Babcock frontage due to the road realignment. The sales for Appliance Direct at this location are \$9 million per year. He collects \$500,000 in sales tax. He said he has been forced to become a player. He asked for an opportunity to meet with Mr. Gougelman and staff to go over his plans. His property is located on Babcock Street east to U.S. 1. He would like the opportunity to relocate Appliance Direct to the west side of the street and become the anchor for a retail site. Low-rise condominiums could be built on his current site to give a better view of the river. He asked for an opportunity to meet with staff. Responding to Mrs. Poole, Mr. Pak stated that the condominium height would be five - eight stories maximum.

Richard Ennis, Chairman, CRA Advisory Committee, advised Council that the Committee met on March 19. There were some negotiations in January and February. These two proposals fell into a time crunch. Mr. Deratany came to them with no plan and Mr. Clark came with two totally different plans. From the Committee's perspective they were rushed to bring something to the CRA Advisory Committee to forward to Council. The Committee has spent a lot of time trying to determine what to do with the road and how to develop the parcel. The committee is not as concerned with selling the property as completing the road realignment.

Continuing, Mr. Ennis stated to be fair, both bidders should have an opportunity to return to the Committee to show something definite – either negotiations with a drug or grocery store, or a condominium or retail store.

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Mrs. Poole asked if both proposals came in at the same time. Ms. Novak responded that Mr. Deratany submitted first.

Mr. Schluckebier responded that Mr. Deratany began negotiating with the City about two months ago. He spent his time developing a contract with contingencies for purchase and working through the legalities of having a purchase proposal in contract form. It was near the end of that process that Mr. Clark's firm got an interest. Mr. Clark does not have a contract, his time was spent on his proposals.

Mr. Deratany commented that he did not know until the day before the March 19 CRA Advisory Committee meeting that he was to present plans. If he had known, he would have taken the time to do that. He is not interested in building a shopping center on the entire site. He asked for guidance from Council; there is no sense in his moving forward if Council does not want condominiums on the property. He will drop out if Council only wants a shopping center developed.

Mrs. Walker responded that based on feedback from the residents, a food store is what they want.

Mayor Buckley favors allowing 30 days to refine the proposals. Mrs. Palmer agreed. Mrs. Walker commented that is too fast for her. Mr. Palmer stated there is no need to rush into anything.

Mr. Schluckebier responded that the CRA Advisory Committee asked that the developers return in 30 days with more detailed plans. The Committee is trying to give every consideration to what the neighborhood might think as far as aesthetics, timing, etc. Council needs to come to terms with a number of issues. One is a business issue, two proposals for a certain price.

Mayor Buckley confirmed that Council has agreed to talk with only Mr. Deratany and Mr. Clark and both have agreed to return to the CRA Advisory Committee in 30 days with proposals. Council will not consider any other offers at this time.

Discussion followed regarding obtaining a current appraisal. Mayor Buckley commented that he does not believe the City will seek another appraisal. Mr. Schluckebier confirmed Council had not given that direction.

Responding to Mrs. Walker, Mr. Ennis stated the Committee's next meeting is April 28.

Mr. Contreras asked the value of a review by the CRA Advisory Committee. Mr. Ennis said the Committee felt the two developers were rushed. If it is just a matter of buying/selling a piece of property, then it doesn't matter. He commented the Committee has a vision for the north entrance to the Babcock District, something respectable and impressive; whatever form it might be. This process has been too

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rushed to even get a feel for what might be there. There are two issues; the money offered and whether we like the proposed development.

Mr. Clark stated there is little he can do different except focus on just one plan. To go to the next level of architectural design could cost \$25,000 - \$50,000 and he would like some assurance that he has a deal before he spends that much money. He encouraged Council to select a developer and then negotiate a plan. Council has the right to cease negotiations and go to the other developer if they don't like the plan.

Mrs. Poole commented that both gentlemen should have been told what to bring to this meeting. We have all the detail and plans for one and nothing for the other.

Mr. Ennis stated the gentlemen met with the City Manager and City Attorney and the Committee was not privy to the negotiations. The proposals were then presented to the Committee. Mr. Deratany did not have any kind of drawing, probably due to the time crunch and Mr. Clark's group did pull something together, but told the Committee it was done in a hurry. In fairness to them and the City, the Committee felt it would be better to take time to refine the proposals. He does not expect them to spend thousands of dollars; however, they could provide something conceptual.

Mrs. Poole stated that the additional 30 days only benefits Mr. Deratany.

Mayor Buckley stated that Mr. Deratany was not asked to provide plans. Ms. Novak confirmed there was no RFP, which would have told them what to submit. There was a "for sale" sign on the property and each responded in their own particular way.

Mr. Schluckebier stated staff could not give advice on Council's desire, because we don't know whether Council wants residential, commercial or mixed use.

Mrs. Palmer commented it is very important to not have any speculation going on with this property. There won't be another appraisal even though the value may have increased substantially since the last one was done. She wants assurance that whoever Council chooses is the person that develops this property. She also needs to be assured that we will have good legal standing to ensure that what is provided on the conceptual drawing is what is developed.

Mrs. Poole asked the City Attorney to clarify that anyone submitting a site plan has a year to start development and can file an extension at the end of that year. It could be a year before any construction begins. Ms. Novak responded yes.

Mr. Clark stated he would agree to stipulate in his contract that if he is awarded the opportunity to develop the property, he cannot assign his contract or resell the property. He has every intention to develop the property and would stipulate that in his contract. It could require that if he were to sell it to anyone, he would only sell back to the City of Melbourne at the same price.

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Responding to Mrs. Palmer, Mrs. Novak confirmed that a non-assignability clause and the option to repurchase the property in the event that the developer is unable/unwilling to perform could very easily be put into a contract. The contract the City would enter into for purchase and development of the property would include a provision that the right to develop could not be assigned after the property is purchased.

Mrs. Palmer stated that the key to the 30 days is that Mr. Deratany's spent time working out details of a contract. Mr. Clark didn't go through that lengthy process, leaving him time to work on providing Council something to look at.

There was a brief discussion regarding the direction given to each of the gentlemen. Mr. Schluckebier stated both were asked to make a proposal to the CRA Advisory Committee and the City Council. What is in their proposal is of their making. Mrs. Dittmer confirmed that there was never specific discussion about what to prepare.

Mr. Contreras stated that each was told to make a presentation and give it their best shot. One person brought plans, one person chose not to. He does not know why Council cannot make a decision this evening.

Mayor Buckley stated the recommendation is to allow both parties 30 days to come up with more extensive plans – or a definition of their plans for that property. This is what Mr. Gougelman recommended and that is the advice he is giving the two bidders – they have 30 days.

Moved by Contreras/E. Palmer to reconvene for the remaining agenda items. Motion carried unanimously.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Schluckebier noted that the 2002-2003 Comprehensive Annual Financial Report was distributed to Council this evening.

24. ADJOURNMENT

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

The meeting adjourned at 11:24 p.m.



Assistant City Clerk – 4/2/2004

Approved by Council: 4/13/2004