

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
APRIL 13, 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 Jim Cook, Shepherd's Heart Ministries, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Mayor Buckley presented the Veterans of Foreign Wars (Melbourne Post 4206) Firefighter of the Year award to Fire Medic Maan Aboulhosn, Melbourne Fire Department, and the Police Officer of the Year award to Officer Jacquelin Acosta, Melbourne Police Department.

In addition, Mayor Buckley presented Housing & Community Development Director Melinda Thomas with a Certificate of Appreciation from Habitat for Humanity of South Brevard recognizing the City's support of the 16<sup>th</sup> Annual Strawberry Festival, March 2004.

5. Approval of Minutes – March 23, 2004 Regular Meeting

Moved by Hand/Contreras for approval. Motion carried unanimously.

6. City Manager's Report

No additions/no discussion.

7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-17 (CU-2004-01) BUZZARD'S HIDEAWAY: (Second Reading/  
Public Hearing) An ordinance granting a conditional use to allow the consumption of

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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) (First Reading - 3/23/04)

Attorney Gougelman read Ordinance No. 2004-17 by title. There were no public comments and no disclosures by Council.

Moved by Contreras/Walker for approval of Ordinance No. 2004-17.

Council Member Pat Poole stated that bars do not belong in neighborhoods, and this action could establish a precedent. Mayor Buckley pointed out that everyone within 500' of the business was notified and there were no objections.

The question was called. The roll call vote was:

Aye: Contreras, Walker, C. Palmer and Buckley

Nay: E. Palmer, Poole and Hand

Motion carried.

Council Member Ed Palmer said that he voted nay because the conditional use will run with the land. If the business is sold, there is no guarantee about the control.

9. ORDINANCE NO. 2004-19 (AR-2004-150) PARKWAY DRIVE/TURTLE MOUND ROAD ANNEXATION – AREA B: (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 south of Parkway Drive, north of Lake Washington Road, and east and west of Turtle Mound Road. (First Reading - 3/23/04)

Attorney Gougelman read the ordinance by title. There were no comments from the public.

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

Vice Mayor Cheryl Palmer expressed appreciation to the Planning Department for developing the draft agricultural and rural zoning regulations. She noted that she has studied the issue and will not vote in support. One reason is that a person must be a registered voter in Brevard County to vote in the mail ballot election; not all property owners are registered to vote in this County. This results in a person's right being taken away to make a decision on their property. Additionally, a person who owns 20 or 30 acres has the same one vote as a person who owns one residential lot.

Mrs. Poole said she supports this ordinance because of the process. People will have a right to vote on this issue, which affects their property. Mayor Buckley added that State law provides for each property owner to have one vote, regardless of acreage.

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The question was called. The roll call vote was:

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

Nay: C. Palmer

Motion carried.

10. 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)
- a. Ordinance No. 2004-20/AR-2004-147: (Second Reading/Public Hearing) An ordinance providing for the annexation of a 0.96-acre parcel. (First Reading - 3/23/04)
  - b. Ordinance No. 2004-21/CPA-2004-02: (Second Reading/Public Hearing) An ordinance establishing a Commercial land use for a shopping center. (First Reading - 3/23/04)
  - c. Ordinance No. 2004-22/Z-2004-977: (Second Reading/Public Hearing) An ordinance establishing a zoning designation of C-1 (Neighborhood Commercial). (First Reading - 3/23/04)

Attorney Gougelman read each ordinance by title. There were no comments from the public and no disclosures by Council.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-20.

Mrs. Poole said that she will support this because there will be better control if the property is annexed into the City.

In response to Council Member Walker, Planning and Economic Development Director Cindy Dittmer said that City staff verified with County staff that there are no Code violations on site; the site plan has been completed as required. With regard to landscaping, the property is being annexed as is. If the landscaping dies over the years, the owner will be required to meet the City landscaping standards.

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.

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Moved by Hand/Walker for approval of Ordinance No. 2004-21. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Walker for approval of Ordinance No. 2004-22. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2004-23: (Second Reading/Public Hearing) 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. (First Reading - 3/23/04)

Attorney Gougelman read Ordinance No. 2004-23 by title. (Note: Council received an e-mail from Mark LaRusso dated April 13, 2004 supporting the position of "no pay increase" for Mayor & Council.)

Richard Hester, 617 Eau Gallie Boulevard, agreed that Council is underpaid; however, he noted that there are many projects that are on hold because of limited funds. If this item is approved, it will send a message to the people that money is not available for certain projects unless Council wants it to be. He recommended that Council revisit this issue in a year.

Mayor Buckley said that this will be part of the budget for next year and should be included.

Mrs. Poole reported that from 1973 to 2000 Council did not receive an increase in salaries. She elaborated on her concerns with the survey cited by staff. Continuing, Mrs. Poole said that Mayor and Council are not City employees; therefore, inflation and cost of living should not be considered in the pay. If this ordinance is passed, it will let the citizens know how self centered and inconsiderate the members are who voted for it. She added that we have raised taxes, water/sewer rates, storm water utility rates, etc. Mrs. Poole encouraged Council to vote on this issue as dedicated elected officials.

Council Member Loretta Hand said that she is in support of this item. Melbourne is a growing City and needs to attract good people who will spend the time. She pointed out that Council attends more than two meetings per month. Some members serve on the

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Metropolitan Planning Organization and the Airport Authority. This is in addition to the time it takes to prepare and attend regular, special and workshop meetings throughout the year. She stated that she feels this is a justified increase that should be supported by Council.

Mrs. Walker concurred with Mrs. Hand's comments and said she spends time attending meetings, preparing, reading and studying. She pointed out that if this increase is approved, she will receive \$683 more per year. She added that she won't be celebrating too much with that amount.

Mrs. Palmer said she previously voted for the pay raise. She added that she doesn't vote in a way that will get her reelected, rather, she votes for what she thinks is right. Mrs. Palmer noted that she opposed the property tax increase, one-cent sales tax, water rate increase, etc. Anyone who thinks she is greedy and not for the people should take that into account. She stated that she will vote no on the pay increase; however, she does believe it will have to be looked at in the future.

Mayor Buckley reported that one of the City Code Review Committees recommended that Council consider an increase in salary.

Moved by Hand/Walker for approval of Ordinance No. 2004-23. The roll call vote was:

Aye: Walker, Hand and Buckley

Nay: Contreras, E. Palmer, Poole and C. Palmer

Motion failed.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for Sarno/Bell drainage improvements, Project No. 01900, Don Luchetti Construction, Inc., West Melbourne, FL - \$257,911 and transfer of \$13,500 from the Local Option Gas Tax fund balance into this project budget.

City Engineer Howard Ralls reviewed the agenda report and responded to general questions.

Moved by E. Palmer/Contreras for approval of the construction contract with Don Luchetti Construction, Inc. in the amount of \$257,911 and transfer of \$13,500 from Local Option Gas Tax fund balance to this project's budget. Motion carried unanimously.

13. CONSENT AGENDA:

Moved by Hand/Contreras for approval of 13 "a" through "k" as recommended.

Staff responded to questions on Items "c" and "h"; however, they were not removed from the consent agenda.

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The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Supplement No. 188 to the Continuing Consultants Contract for a Public Works/Utility Administration Building, Project No. C04325, Frazier Engineering, Inc., Melbourne, FL - \$36,925 and transfer of \$37,500 from the Grant Street Deepwell Mechanical Integrity Test project budget.
- b. Amendment No. 8 to the agreement with Hazen and Sawyer, Ft. Pierce, FL, for the Grant Street Wastewater Treatment Plant Operating Permit Renewal, Project No. E04309 - \$36,650.
- c. Purchase of 30 speed humps for traffic calming, Project No. 02603, VA Paving Company, Cocoa, FL - \$15,000.
- d. Right-of-way use agreement with John Campione, to allow a private sewage force main to be placed in the right-of-way of Riverside Drive in the Grandview Shores Subdivision.
- e. Professional services agreement to perform a water and wastewater revenue sufficiency analysis and financial forecast, Public Resources Management Group, Inc., Maitland, FL - \$26,410.
- f. Contract award for purchase of automated meter reading (AMR) meters and RTR pit modules (retrofit), Badger, Inc., Milwaukee, WI - \$189,945 estimated annual cost.
- g. Annual contract award for diesel engine generator service, The American Generator Company, Maitland, FL - \$44,457 estimated annual cost.
- h. Contract award for temporary employment service, Spherion Staffing, Melbourne, FL - \$340,000 estimated annual cost for City (\$119,000) and Airport (\$221,000) staff.
- i. Multi-year contract award for the purchase of Police uniforms, Harrison Uniforms, Orlando, FL - \$122,555 estimated annual cost.
- j. Resolution No. 1873: A resolution authorizing the City Manager to submit a grant application for \$15,270 to the Florida Department of Education, Food and Nutrition Management to fund two Summer Food Service Program sites and authorization for the City Manager to execute any documents related to the grant.
- k. Resolution No. 1874: A resolution adopting the City of Melbourne's 2009-2010 Florida Department of Transportation Enhancement application recommendations.

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(Note: On Item “k”, Council received letters of support from Sharon Dwyer, Library Director; Laird Gann, Executive Director, Melbourne Main Street; and Bobby Bechtel, member, Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee.)

14. RESOLUTION NO. 1875: (Public Hearing) A resolution adopting the 2004-2007 SHIP Housing Assistance Plan and authorization for the City Manager to submit the plan to the Florida Housing Finance Corporation and execute all necessary documents pertaining thereto.

Attorney Gougelman read Resolution No. 1875 by title.

Housing and Community Development Administrator Melinda Thomas reviewed the agenda report. The Citizens’ Advisory Board reviewed and approved the proposed 2004-2007 SHIP Housing Assistance Plan at its April 5, 2004 regular meeting. The availability of the plan was advertised in the newspaper on March 24, 2004.

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

Moved by E. Palmer/Hand for approval of Resolution No. 1875 and authorization for the City Manager to submit the plan to the Florida Housing Finance Corporation and execute all necessary documents pertaining thereto. Motion carried unanimously.

15. COUNCIL ACTION RE: (Public Hearing) Proposed CDBG Action Plan for City CDBG programs and projects for FY 2004 and authorization for the City Manager to submit the plan for inclusion in the Brevard County HOME Consortium’s Consolidated Action Plan for 2004-2005 and execute all necessary documents pertaining thereto.

Mrs. Thomas briefed Council. The citizen participation process for the 2004-2005 CDBG program year is nearing completion. Council gave preliminary approval for the projects and activities to be included in the 2004-2005 CDBG Program on February 24, 2004. An advertisement in the newspaper outlined the proposed 2004-2005 action and announced a 30-day public comment period, which ends on April 13. To date, no written comments have been received from the public.

Programs and projects proposed for inclusion in the final 2004-2005 CDBG Action Plan to be submitted to HUD are provided in the agenda package.

The recommendation is for approval of the proposed projects and activities for FY 2004 CDBG funding and the 2004-2005 CDBG Action Plan, and authorization for the City Manager to submit the plan for inclusion in the Brevard County HOME Consortium’s Consolidated Action Plan for 2004-2005 and execute all necessary documents pertaining thereto.

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

Moved by Contreras/Walker for approval of the recommendation.

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In response to Mrs. Poole, Mrs. Thomas elaborated on the programs and activities taking place in the Booker T. Washington neighborhood. She noted that the activities are within the adopted plan. Mrs. Walker asked for additional information on the number of children who participate in the various programs offered in the Booker T. Washington revitalization area.

The question was called. Motion carried unanimously.

16. COUNCIL ACTION RE: (Public Hearing) Proposed projects and activities for FY 2004 HOME funds and authorization for the City Manager to submit proposed projects and activities for inclusion in the Brevard County HOME Consortium's Consolidated Action Plan for 2004-2005 and execute all necessary documents pertaining thereto.

Mrs. Thomas reviewed the agenda report. The Brevard County HOME Consortium will receive \$1,697,710 in FY 2004 HOME funds from the U.S. Department of HUD. Melbourne's share of the FY 2004 HOME funds is \$284,422 for the FY 2004-2005 program year that begins on October 1, 2004. The Citizens' Advisory Board considered and approved staff's proposal for the use of FY 2004 funds on February 2, 2004. City Council subsequently gave preliminary approval to the CAB/staff recommendations at its meeting on February 24.

The proposed use of HOME funds was advertised on March 15 for public comment for a period of 30 days. No comments have been received to date. Melbourne's HOME activities to be included in the Brevard County HOME Consortium's Consolidated Action Plan are detailed in the agenda report. All recommendations are made in compliance with the priority needs and objectives cited in the City's 2000-2005 Consolidated Plan.

The recommendation is for approval of the proposed activities for FY 2004 HOME funds and authorization for the City Manager to submit them for inclusion in the Brevard County HOME Consortium's Consolidated Action Plan for 2004-2005 and to execute all necessary documents pertaining thereto.

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

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

17. COUNCIL ACTION RE: A request for approval of an oversized mural at the Brevard Museum of Art and Science, 1463 Highland Avenue.

Mrs. Dittmer briefed Council. The Architectural Review Board reviewed the aesthetics of the request and approved a "certificate of appropriateness" on February 18, 2004 and further recommended that Council approve the request for the mural.

Mayor Buckley noted that the mural covers 85% of the wall. He said that in the future, he hopes the applicant requests approval beforehand.

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Mrs. Poole said that the mural should not have been painted without a permit. She added that the Architectural Review Board is getting to the point where it approves almost everything; therefore, she does not have a lot of confidence in that process. Additionally, she said that she does not think the mural looks that great. And, Council would be setting a precedent by approving this.

Mrs. Dittmer clarified that the museum did not know that it needed a permit for the mural. Also, she noted that the review board approved the mural “after the fact” as well.

Mrs. Palmer asked if the Architectural Review Board has specific guidelines. Mrs. Dittmer said the guidelines on murals are vague. Mrs. Palmer asked how the board based its opinion. Mrs. Dittmer said she believes it was based on the aesthetics and whether the mural blends with the community and the redevelopment district.

Moved by E. Palmer/Hand for approval of the request with the condition that any substantial change to the content of the mural will require re-approval by City Council. Motion carried. Mrs. Poole voted nay.

18. SITE PLAN APPROVAL (SP-2004-03) WICKHAM CLUB APARTMENTS: (Public Hearing) A request for site plan approval to develop 132 units of multi-family housing in an R-2 (One-, Two-, and Multiple-Family Residential) zoning district on a 9.006-acre parcel, located east of Wickham Road and south of Weston Drive. (Owner/Applicant - Wickham Club Partners, Ltd.) (P&Z Board - 3/18/04)

Council Member Contreras said he received a call on April 12 from Attorney Nohrr who indicated that this is a tax credit project. Additionally, he said that he (Mr. Contreras) placed two calls to the Weston Village Homeowners’ Association – Jim Swank and Harper Wren – about the site plan.

Mrs. Palmer asked for clarification about the process of disclosing a site visit. Attorney Gougelman said that if a member has visited the site, he/she should disclose it along with anything noticed – pro and con - during the visit that might influence the decision. The whole idea is to make the disclosure up front so that everyone has a chance to respond.

Mrs. Palmer disclosed that she has seen the site; however, she has not walked/scrutinized the area. Mr. Gougelman said that simply driving by the site does not require a disclosure unless a member notices something that might affect how they will vote.

Mrs. Dittmer briefed Council on the agenda report. The Planning and Zoning Board unanimously recommended approval of SP-2004-03, site plan for Wickham Club Apartments, consisting of a two-page plan prepared by B.S.E. Consultants, drawing number 1072001100A, dated March 4, 2004, with a stamped date of \*March 5, 2004, with the following conditions:

\*During her presentation, Mrs. Dittmer corrected the year of the drawing to “2004.”

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- a. Any change to the site plan will require reevaluation 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 of units; 2) any change in the proposed roadway access drives; or 3) any decrease of 10% of green space or landscape areas abutting other residential uses.

- b. Appropriate permits for wildlife, habitat, wetlands, and stormwater will be required prior to the approval of construction plans. Should threatened or endangered species be found on the site after commencement of construction for which a permit has not been granted, the owner/applicant shall cease construction until the appropriate permits are obtained.
- c. The applicant must obtain a variance from the Director of Public Works and Utilities for the proposed location of the solid waste receptacles.

Mr. Palmer pointed out that the concurrency memorandum was not included with this item. He reminded staff that this should be included with each development.

Mrs. Poole asked if a tree survey was completed. Mrs. Dittmer said no and added that will be done during construction plan review. Mrs. Poole said that the buildings are not the most attractive and the drawing does not show landscaping. She added that it certainly looks affordable. Also, with one-, two- and three-bedroom apartments there will be a lot of children. She asked if the schools have capacity. Mrs. Dittmer replied that the property is already zoned R-2, so the School Board did not comment on this development.

Mayor Buckley pointed out that Council previously approved this site three times at this density.

Mayor Buckley opened the public hearing.

Phil Nohrr, 1800 West Hibiscus Boulevard, attorney representing the applicant, stated that this project not only meets but exceeds the City's site plan requirements. The setbacks are in excess of Code; they have been sensitive to the property to the east; there are no hardwood trees on site, although there are some pine trees; they already have permits for gopher tortoises and clearance for scrub jays; the construction plans have been submitted to the City and are under review; a tree survey was included with the construction plans; they have provided excess parking, playground and pool; and the site has been oriented so there will no access to Wickham Road.

Continuing, Mr. Nohrr said he contacted Council Member Contreras to ensure that the neighbors were aware of this project. The property is zoned R-2 and this density already exists to the north; they are not bringing anything new to the area. Mr. Nohrr concluded

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by saying this plan has been crafted to exceed the City requirements. He noted that the engineer and owner's representative are present.

Mr. Palmer asked the type of construction. Steve Joos, owner's representative, said that it will be frame with siding, asphalt shingled roof. Mr. Palmer asked about the tax credits. Mr. Joos said that they have received tax credits through the Florida Housing Finance Corporation.

In response to Council, Mr. Nohrr said that the rents will be between \$544 and \$838. Mr. Nohrr agreed with the conditions.

Mrs. Poole asked about the mitigation for gopher tortoises. Hassan Kamal, B.S.E. Consultants, said they have an incidental take permit with payment to a mitigation fund. He added that there is a very small population with less than five burrows on site.

Mrs. Poole clarified that, rather than being moved, the gopher tortoises will be killed. Mr. Kamal said that the site will not accommodate relocation; therefore, they believe the best method is payment into the fund.

Mrs. Poole asked about scrub jays. Mr. Kamal said the U. S. Fish and Wildlife issued a clearance letter; the property does not have scrub jays.

Mr. Contreras asked if a color rendering is available. Mr. Nohrr displayed a color rendering of the development (prepared by Slocum Platts Architects Design Studio entitled Building Type I and XI – Exterior Elevations – dated 3/15/04). Attorney Gougelman said that the rendering will become part of the record. He asked if the rendering depicts the color scheme. Mr. Joos said that is the color scheme today; however, it has not been finalized. Mr. Contreras cautioned that it should be close to the rendering.

In response to Mrs. Walker, Mr. Nohrr discussed the square footage of the apartments and the number of one-, two- and three-bedroom units.

Mrs. Palmer asked for information about the east border. Mr. Kamal said there will be a 25' landscape buffer along the east property line. From that point, there will be a 60 – 64' wide parking area. He added that the landscaping will meet/exceed the City's criteria. Mr. Nohrr reported that a six-foot wood fence will also be placed along that boundary.

Mrs. Walker asked for additional information about the parking. Mr. Nohrr said they will have 274 regular spaces and 15 handicapped spaces. The regular spaces will be 11'.

Moved by Contreras/Hand for approval of the site plan, subject to the conditions. Motion carried. Mrs. Poole voted nay because the gopher tortoises will be taken.

Recessed: 8:04 p.m.  
Reconvened: 8:16 p.m.

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19. ORDINANCE NO. 2004-24 (AR-2004-146), ORDINANCE NO. 2004-25 (CPA-2004-01), AND ORDINANCE NO. 2004-26 (Z-2004-976) GARY OLNEY/BREVARD MINI STORAGE: Ordinances providing for annexation 5.95 acres, and a Comprehensive Plan Amendment, and rezoning on a 1.99-acre parcel, located on the east side of John Rodes Boulevard, immediately south of Dow Road. (Owner/Applicant - Gary Olney, Brevard Mini Storage) (P&Z Board - 3/18/04)
- a. Ordinance No. 2004-24/AR-2004-146: (First Reading/Public Hearing) An ordinance providing for the annexation of a 5.95-acre parcel.
  - b. Ordinance No. 2004-25/CPA-2004-01: (First Reading/Public Hearing) An ordinance establishing a Industrial land use for mini-storage warehouses.
  - c. Ordinance No. 2004-26/Z-2004-976: (First Reading/Public Hearing) An ordinance establishing a zoning designation of M-1 (Industrial).

Attorney Gougelman read Ordinance No. 2004-24, Ordinance No. 2004-25 and Ordinance No. 2004-26 by title.

Ms. Dittmer briefed Council. The property is currently developed as mini-storage warehouses. The County has not stated any concerns about this annexation, proposed land use or proposed zoning. The Planning and Zoning Board unanimously recommended approval. The annexed area will become a part of Council District 5.

There were no disclosures by Council.

In response to Mr. Palmer, Mrs. Dittmer explained that the property owner asked to annex 1.99 acres. The additional acreage is the canal right-of-way, which is fairly large and runs 1,000' – 1,500'. The right-of-way is not included in the Comprehensive Plan or zoning ordinances.

Mayor Buckley opened the public hearing. There were no comments from the audience. The applicant was not present.

Mrs. Poole asked who will maintain the canal. Attorney Gougelman said he does not know whose canal it is. However, as an example the City brought Wickham Road into the City, but the maintenance remains assigned to the County.

Mrs. Poole said that she will vote for this because, although the trees are gone and the storage facility is built, the City should have control.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-24. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2004-25. Motion carried unanimously.

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Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2004-26. Motion carried unanimously.

20. ORDINANCE NO. 2004-27 (Z-2004-975) MELBOURNE MARKETPLACE APARTMENTS: (First Reading/Public Hearing) An ordinance providing for a zoning change from C-2 (General Commercial) to R-2 (One-, Two-, and Multiple-Family Residential) on a 14.61-acre parcel, located on the east side of Airport Boulevard, beginning approximately 250 feet north of the intersection of Airport Boulevard and Hibiscus Boulevard. (Owner - Florida Marketplace of Brevard, Inc.) (Applicant - SSW and Bush, Inc.) (Representative - Philip F. Nohrr) (P&Z Board - 3/18/04)

Mr. Gougelman read the ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval with the following condition:

- a. The proposed residential development shall provide a driveway access point at the traffic signal at Airport Boulevard and Eddie Allen Road.

Mrs. Poole said that it appears as if the rezoning is being done on speculation. A plan has not been presented to Council for review. She said that she looked at the property and she doesn't like what is being requested.

Mayor Buckley opened the public hearing.

Philip Nohrr, 1800 West Hibiscus Boulevard, attorney representing the applicant, reported that there are no concurrency issues; this is a classic in-fill project that will bring needed apartment-type housing into the area, which is surrounded by businesses; the Comprehensive Plan calls for high density and this is medium density; they are developing plans and hope to have something filed within the next 30 – 45 days; and the contract purchaser is in the business of developing apartment complexes, so this development is not speculation at this point.

Mr. Nohrr concluded by agreeing with all terms and conditions.

Mrs. Poole said that the zoning along Airport Boulevard is Commercial Parkway; therefore, it will be important for the setbacks to be retained. Mr. Nohrr said this request is a change in zoning to R-2.

Mrs. Poole said that the area was meant to be developed as commercial. She asked whether this will be affordable housing. Mr. Nohrr replied that this is a straight market demand type of project.

Mr. Contreras stated that this is a rezoning request; therefore, the C-P zoning becomes a moot point if this is approved. Attorney Gougelman clarified that the property is currently zoned C-2 and is proposed for rezoning to R-2. However, there are other properties in the area zoned C-P. The enhanced setbacks of the property to the north, which is zoned C-P, don't currently exist in the C-2 district.

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Mrs. Hand said that this development will be beneficial for the Babcock Redevelopment Area.

Moved by Hand/Walker for approval of Ordinance No. 2004-27.

Mrs. Palmer said that she feels this is totally incompatible with the area and the long range goals for the area. Port O'Call is leaving, which will take away one of the residential areas surrounding this development. And, she questioned how long other residential property will remain. This is a business district and Council has an opportunity to leave this as a commercial parcel.

Mrs. Poole agreed and added that Council does not have a site plan to review.

The question was called. Motion carried. Council Member Poole and Vice Mayor Cheryl Palmer voted nay.

21. ORDINANCE NO. 2004-28 (Z-2004-960) AND PRELIMINARY DEVELOPMENT (SITE) PLAN (SP-2003-27) CAPTIVA (PUD)/FKA STROKES: (First Reading/Public Hearing)  
An ordinance providing for a zoning change from R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) and C-R-2 to PUD (Planned Unit Development) and preliminary development (site) plan approval for the Different Strokes Driving Range/Brevard Golf Athletic Center on a 37.88-acre parcel, located on the east side of Dairy Road, between Eber Road and Range Road. (Owner/Applicant - Strokes Community Developers, Inc.) (P&Z Board - 3/18/04)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval subject to the following conditions:

- a. The development must be consistent with the preliminary development plan consisting of a three-page site plan prepared by Soyka Engineering & Associates, Inc., of Melbourne, Florida, and titled Captiva PUD, signed and dated March 11, 2004.

Any substantial change to the preliminary development 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) a decrease of the open space or vegetative areas on site; 2) an increase of 10% of the number of units proposed; or 3) the addition of a driveway access point.

- b. The developer will coordinate with the City of Melbourne and the Brevard County Bicycle Pedestrian Advisory Committee during the preliminary plat process to include a 10-foot pedway along the north side of Range Road (consistent with the County's Greenways and Trail Plan).

Mrs. Dittmer confirmed for Mrs. Palmer that the applicant is not proposing to change the future land use, which is low density residential.

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Mrs. Poole said she was glad she attended the Planning and Zoning Board meeting because she learned a lot about this item and the next agenda item.

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

Mayor Buckley asked if this is proposed for zero lot line development. Mrs. Dittmer said that the package does contain building footprints. The Building Code will dictate 10' between buildings.

Mr. Contreras asked what type of recreational amenities will be provided. Mrs. Dittmer said the southwest corner will have a large recreational area with various playgrounds, the southeast corner will have a pedway around a retention area, and a preserved wetland with walkway will be in the northeast corner. Additionally, she said she believes there will be a playground in the middle of the development. She pointed out that there is a significant amount of open space.

Mrs. Poole asked if the lake has to have a dock in the PUD district to be considered recreation. Mrs. Dittmer said yes; however, in this case they are not using the retention areas to meet the open space requirement. They are making the wetlands usable by providing walkways.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2004-28 and Preliminary Development Plan (SP-2003-27), subject to the proposed conditions. Motion carried.  
Mrs. Poole voted nay.

22. ORDINANCE NO. 2004-29 (Z-2004-980) SONESTA WALK: (First Reading/Public Hearing) An ordinance providing for a zoning change from PUD (Planned Unit Development) to R-2 (6) (One-, Two-, and Multiple-Family Residential) on a 55.15-acre parcel, located at the southeast corner of Dairy Road and Range Road. (Owner/Applicant - Dairy Towns Community Developers, Inc.) (Representative - Richard J. Kern, P.E.) (P&Z Board - 3/18/04)

City Attorney Gougelman read Ordinance No. 2004-29 by title. Mrs. Dittmer briefed Council. The applicant is requesting the approval of a zoning change on a single parcel totaling 55.15 acres and final plat approval for Phase 1 (94 lots) of an overall 304-unit residential townhome development. The proposed development density is 5.51 dwelling units per acre.

The Planning and Zoning Board unanimously recommended approval of the rezoning. Further, it recommended approval of the final plat for Phase One of Sonesta Walk Subdivision (formerly Sunny Lakes Village Subdivision), consisting of a three-sheet plan prepared by R.K. Engineering, Inc., of Melbourne, Florida, dated January 14, 2004, located on 55.15 acres, located east of Dairy Road and south of Range Drive, subject to the following conditions:

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- a. A change to the final plat will require review by the Engineering and Planning and Zoning Departments.

Any substantial change to the final plat will require review and approval by the Planning and Zoning Board/Local Planning Agency and City Council. A substantial change includes, but is not limited to: 1) a decrease of 10 percent of the amount of open space or vegetative areas on site unless necessary to comply with a code provision; 2) an increase in the total number of units shown on the plat; or 3) any additional impact to the large wetland within Tract I.

- b. The owner/applicant shall extend Range Road east of the proposed street connection to an area adjacent to the jog in the north line of the plat, west of the public drainage canal.
- c. The owner/applicant shall convey to the City of Melbourne a 10-foot wide strip of land along the south edge of Range Road.

Mr. Palmer asked how many units were built in Phase One. Mrs. Dittmer said 94 units are planned for Phase One. The units are not yet built; however, the infrastructure is under construction.

A brief discussion followed about the history of this project. Mrs. Dittmer clarified that Phase One, which is under construction, is the same as it was under the Sunny Lakes development. Phase One has never changed. The request today will take the development back to a 100% townhome development.

Discussion continued. Mrs. Dittmer stated that the entire property (55 acres) is being rezoned and the final plat is on a portion of that. Mr. Palmer asked the advantage to rezoning. Mrs. Dittmer said that the applicant would like to return to the previous preliminary plat approved in 2002.

Mrs. Palmer asked if this will simply return to what was previously approved for the R-2 development if Council approves this item. Mrs. Dittmer replied "exactly."

Mayor Buckley opened the public hearing.

Bo Bar-Navon, Mercedes Homes, said that they started building the first phase for 304 townhomes. In the PUD, Phase One is identical; nothing has changed. They never finished the PUD process. The issue from the Planning and Zoning Board was whether this development would retain the approvals previously received by changing to R-2. He said that his answer on that is no and stressed that Council will see Phases Two and Three as new plat submittals.

Continuing, Mr. Bar-Navon said that they saved every one of the gopher tortoises on site and preserved a huge wetlands. There are no scrub jays on site and the site has already been cleared. He added that they were fined \$5,000 for over clearing the property. Mr. Bar-Navon agreed with the stipulations.

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In response to Mrs. Poole, Attorney Gougelman said that Mr. Bar-Navon previously indicated that he will do whatever the City wants to address the plat for Phases Two and Three. Mr. Gougelman noted that they won't bring in a preliminary plat for Phase One because it is essentially the same configuration and they are vested now because of the infrastructure that is in place.

Mr. Palmer asked for clarification. Mr. Bar-Navon said that Phase One includes the road, storm water and wetlands. They are platting all 55 acres in Phase One and reserving tracts for a future Phase Two and Three. The Phase One plat is the entire site and Phases Two and Three will be replats of the empty areas.

Discussion continued. Mayor Buckley read the recommendation.

Moved by Walker/Hand for approval (of the recommendation).

Mr. Palmer said he doesn't know what the approval is for. Mayor Buckley said it has been explained. Mr. Bar-Navon submitted a color drawing (entitled Project Phasing prepared by R. K. Engineering) that shows what was originally approved and how it will be phased.

Attorney Gougelman said on first blush this issue is confusing; however, it is really a procedural issue rather than a substantive issue.

Mrs. Poole asked if the school issue should be given consideration. Mrs. Palmer replied that they already have approval to build homes on this property. Mr. Bar-Navon added that they are not increasing the density; therefore, it is not an issue with the School Board.

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

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Vice Mayor Palmer said she has received calls from people who live on Riverside (beachside) who are not receiving lawn trash pick up. City Manager Jack Schluckebier said that a letter was sent to Waste Management this week regarding this area as well as others. Staff will follow up.

Council Member Poole recommended that the City Council recognize the residents of Land Yacht Port O'Call before they leave the area.

The City Manager briefed Council on the following items:

- The sign/mural issue will return to Council on the May 11 agenda.
- The budget workshop meeting will be conducted April 20 at 6:30 p.m.

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- The Board of County Commissioners will meet on April 29 regarding the school impact fee issue. A resolution will appear on the April 27 agenda for Council consideration.
- Regarding the citizen initiative to increase homestead exemption from \$25,000 to \$50,000, the City initially thought that this would result in lost revenue of \$2 million. However, we have received information from the Property Appraiser that this would result in a “shift” or higher tax rate on the non-exempt property. The City would not lose revenue; the millage rate would change automatically.
- The City Manager has been nominated to serve on the Florida City and County Managers Association Board of Directors for a one-year term. If there is no objection from Council, he intends to accept the appointment.
- Firefighter Shane Potter, who was recently injured on the job, is recovering.
- The City’s web site now contains a “welcome” video from Mayor Buckley.
- If there are no concerns from Council, employees will begin displaying “We Support our Military” bumper stickers on City vehicles. This is a County-wide effort for the community to show its support for Patrick Air Force Base. A decision on base closures will be made in the next three to four months. If Patrick is close in the scoring, the level of community support will count in our favor.

Mrs. Poole asked that the bumper stickers be placed in the right side rear window.

- A discussion item on the Brevard County Charter will appear on the next one or two agendas.

Council Member Ed Palmer referenced the establishment of a task force (by the Space Coast Office of Tourism) to study the need for a convention center. Mr. Schluckebier said that Recreation Administrator Wendi Reilly will serve as the City’s representative. He will provide the City Council with information, as it becomes available.

Council Member Richard Contreras asked that the Council Members’ biographies be placed on the City’s web site by the end of April.

Mr. Contreras asked for information on the construction activities at Station 72. The City Manager said that there are a few items that need to be addressed and there will be a final review by our insurance representatives.

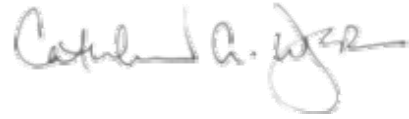
Mrs. Poole asked about the fencing at Station 74. Mr. Schluckebier reported that it will be a vinyl siding type of fence. He added that the Architectural Review Board reviewed the original wooden fence and determined it should not be approved.

24. ADJOURNMENT

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

The meeting adjourned at 9:51 p.m.



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City Clerk – 4/22/2004

Approved by Council: 4/13/2004