

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
APRIL 27, 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 Terry Morris, His Place 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
	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

Absent: Cheryl Palmer Vice-Mayor, District 5 (vacation)

4. Proclamations and Presentations

Mayor Buckley presented the following proclamations:

“National VNA Week”, May 6-12, 2004; accepted by Lisa Grodin, Community Relations Specialist, Visiting Nurse Association.

Recognizing Land Yacht Port O’ Call’s 35 years in Melbourne; accepted by Virginia High, President, Land Yacht Port O’Call, and several directors.

5. Approval of Minutes – April 13, 2004 Regular Meeting

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

6. City Manager’s Report

No additions/no discussion.

7. Public Comments

Fred Bierman, 117 Oak Lake Road, presented a petition containing 373 signatures from residents of Southlakes, Eagle Lake, Eagle Lake II, and Lake-in-the-Woods Homeowners’ Associations requesting a traffic signal be placed at the corner of Sun Lake Road and Babcock Street. He said that he understands the City is not the final authority on this issue; however, the residents would like the City’s support.

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City Manager Jack Schluckebier accepted the petition on behalf of Council and designated City Engineer Howard Ralls as the contact for Mr. Bierman. Mayor Buckley indicated to Mr. Bierman that the City will verify whether that light is scheduled or close to meeting warrants.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-08: (Second Reading/Public Hearing) An ordinance providing for a moratorium on slot machines within the City of Melbourne. (Postponed by Council - 1/27/04)

From the agenda report: Council delayed action on this item for 90 days at second reading during the January 27, 2004 Council meeting, pending assessment of effectiveness of a law enforcement option prior to final action. The City Attorney provided background information as well as an analysis of this issue as it now stands. It is the opinion of the City Attorney's office that an occupational license moratorium might not be sustained by a court of law and, based on recent actions by the State Attorney and the Melbourne Police Department, that a moratorium is not needed.

City Attorney Paul Gougelman read the ordinance by title and discussed the history of this ordinance. He explained that at the time of second reading, the Police Chief was able to work out an arrangement with the State Attorney on how the law could be enforced. As a result, Council decided to defer second reading for 90 days to allow the normal law enforcement process. Since that time, the Melbourne Police Department has investigated two amusement arcades. Equipment and money have been seized. At this point, the State Attorney is preparing for prosecution and the City is involved in the forfeiture hearing. The 90-day period has ended and the recommendation is for Council to withdraw further consideration of this ordinance. The City has achieved its objective – the Police Department is enforcing the law and the State Attorney's Office is prosecuting.

Mayor Buckley opened the public hearing.

Betty Upperman, 113 Bauer Drive, Melbourne, stated that the City Council has taken away the entertainment for seniors. She explained that there is no place in this town that she can go for entertainment that is as cheap as (a slot machine business). Ms. Upperman noted that a lot of skill is required to play these machines and playing keeps her mind sharp. She added that seniors do not expect to win; they go for the fun and entertainment.

George Deschenes, Brixton Lane, Satellite Beach, objected to Council calling these gambling facilities. He said that the games are games of skill. Additionally, the state is allowed to have gambling but the counties are not. This is a double standard and it is wrong. Mr. Deschenes stated that the baby boomers are arriving with expendable income. He suggested that a coalition be formed to work towards turning our ancient laws around. If we don't, cities like Biloxi (Mississippi) will flourish and Florida will be left without diversified income.

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Marge Webb, 361 Kilmarnock Place, Suntree, agreed with Ms. Upperman's comments. She added that she plays slot machines almost every day and she does not consider this gambling. Ms. Webb stated that the seniors should consider this the next time they cast their votes. And, it is wrong to close these shops.

That concluded comments from the public.

Mayor Buckley said that the recommendation is to withdraw Ordinance No. 2004-08.

Moved by Poole/Hand to withdraw the ordinance.

Council Member Ed Palmer asked the City Attorney to address the comment made that the City is closing these businesses down. Attorney Gougelman explained that the withdrawal of this ordinance will have no affect on the continued existence of any of these facilities.

Council Member Grace Walker asked what will be accomplished by withdrawing this ordinance. Mr. Gougelman said that withdrawal of the ordinance will enable the City to collect the occupational license tax on amusement arcades. He added that the occupational license is nothing more than a receipt for payment of a tax.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. 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 the annexation of 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)
- a. Ordinance No. 2004-24/AR-2004-146: (Second Reading/Public Hearing) An ordinance providing for the annexation of a 5.95-acre parcel. (First Reading - 4/13/04)
  - b. Ordinance No. 2004-25/CPA-2004-01: (Second Reading/Public Hearing) An ordinance establishing an Industrial land use for mini-storage warehouses. (First Reading - 4/13/04)
  - c. Ordinance No. 2004-26/Z-2004-976: (Second Reading/Public Hearing) An ordinance establishing a zoning designation of M-1 (Light Industrial). (First Reading - 4/13/04)

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Attorney Gougelman read Ordinance Nos. 2004-24, 2004-25 and 2004-26 by title. There were no disclosures by Council and no comments from the public.

Moved by E. Palmer/Poole for approval of Ordinance No. 2004-24. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Mrs. Poole said that she voted for this item because the City will have better control of the property after it has been annexed.

Moved by Hand/Walker for approval of Ordinance No. 2004-25. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/Contreras for approval of Ordinance No. 2004-26. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2004-27 (Z-2004-975) MELBOURNE MARKETPLACE APARTMENTS: (Second 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)

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

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

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Mrs. Poole said she is opposed to the rezoning because this area was meant to be commercial. Also, she questioned the accuracy of saying that an apartment complex will serve the people working at the hospital and in the area. Mrs. Poole asked about the conditional use previously granted for a medical facility. Following a brief discussion between Mr. Gougelman and Planning & Economic Development Director Cindy Dittmer, Mr. Gougelman said that the conditional use has not been exercised. If the medical facility had been built, the conditional use would run with the land. Mrs. Dittmer added that this rezoning will result in the conditional use being repealed.

Mrs. Poole recommended that the City consider administratively rezoning the property in this area to Commercial Parkway.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

11. ORDINANCE NO. 2004-28 (Z-2004-960) AND PRELIMINARY DEVELOPMENT PLAN (SP-2003-27) CAPTIVA (PUD)/FKA STROKES: (Second 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 plan approval 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.) (First Reading - 4/13/04)

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

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-28 and the Preliminary Development Plan. The roll call vote was:

Aye: Contreras, E. Palmer, Hand and Buckley

Nay: Poole and Walker

Motion carried.

Mrs. Poole voted no because the schools are overcrowded and the development will add to the traffic congestion.

12. ORDINANCE NO. 2004-29 (Z-2004-980) AND FINAL PLAT APPROVAL (SD-2001-01A) SONESTA WALK: An ordinance providing for a zoning change and final plat approval on a 55.15-acre parcel, located at the southeast corner of Dairy Road and Range Road.

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(Owner/Applicant - Dairy Towns Community Developers, Inc.) (Representative - Richard J. Kern, P.E.)

- a. Ordinance No. 2004-29/Z-2004-980: (Second 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 with a cap of six units per acre) on a 55.15-acre parcel. (First Reading - 4/13/04)
- b. Final Plat Approval (SD-2001-01A): Final plat approval for Phase One (94 lots) of a 304-unit residential town home development.

The Planning and Zoning Board and staff recommended approval of the rezoning. Additionally, they 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 Campbell Surveying, Inc., of Melbourne, Florida, dated January 14, 2004 with the findings contained in the agenda package and the following conditions:

- 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.

Attorney Gougelman read Ordinance No. 2004-29 by title. There were no disclosures by Council and no comments from the public.

Moved by Hand/E. Palmer for approval of Ordinance No. 2004-29 and approval of the final plat, subject to the conditions.

Mrs. Poole referenced the two variances previously granted on the plat and stated that they are not in the interest of public safety (no connection to Range Road and block lengths greater than 1,500'). She said that people would have difficulty leaving the area if there was a fire; the streets should have a cut through. Mrs. Walker agreed.

The question was called. The roll call vote was:

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Aye: Contreras, E. Palmer, Hand and Buckley

Nay: Poole and Walker

Motion carried.

NEW BUSINESS

13. COUNCIL ACTION RE: Contract award for sanitary sewer manhole rehabilitation, Chaz Equipment, Wellington, FL - estimated annual cost \$123,525.

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

Moved by Poole/Walker for approval of the contract with Chaz Equipment Company in the amount not to exceed \$123,525. Motion carried unanimously.

14. CONSENT AGENDA:

Moved by Hand/E. Palmer for approval of the consent agenda. (Replaced by substitute motion.)

Staff answered questions about Item “g”; however, the item was not removed from the consent agenda.

Mr. Contreras said he would like to remove Item “h” for discussion. Moved by Contreras/Walker to discuss Item “h” as a separate item. Motion carried unanimously.

The following substitute motion was made: Moved by Hand/Walker to approve Items “a – g” and Item “i”. Motion carried unanimously.

A brief discussion followed on whether Item “h” would be postponed, moved to the end of the agenda, or heard under this item.

City Manager Jack Schluckebier said that Item “h” has two components – “a” is the budget workshop and public hearings schedule and “b” is the grants-in-aid funding level.

Moved by Contreras/Hand for approval of Item 14 “h (a)” (calendar/schedule). Motion carried unanimously.

Moved by Hand/Contreras to pull Item 14 “h (b)” and have a separate discussion. Motion carried. Mrs. Poole voted nay.

Mayor Buckley said that a person has asked to speak on this item.

Tina Suiter, representing the Melbourne Art Festival, stated that the Festival is concerned that the City has proposed limiting funding to only those organizations that have received

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funding for the last two fiscal years. Since they have not been on the schedule for two years, they would not be able to apply again this year.

Ms. Suiter reported that the Art Festival just celebrated its 20<sup>th</sup> year. The Festival draws approximately 50,000 people to town and has an impact of over one-half million dollars. They do apply for a lot of corporate funding; however, the Festival feels that the City of Melbourne should take part. Ms. Suiter added that by limiting the funding to past recipients, many other worthy organizations are also prohibited from applying. She concluded by saying the process seems unfair and the Festival would like to get back into the cycle of at least being able to apply.

Mr. Contreras agreed that the Melbourne Art Festival has been a contributor to the City of Melbourne. He added that other organizations have inadvertently been injured by virtue of the requirement of having to receive money for two years in a row. The Art Festival and others have been cut out and he does not believe that was the intent. Mr. Contreras recalled that several weeks ago (March 23 Council meeting) he recommended that the Art Festival apply for grants-in-aid money. That is why he asked to pull this item from the consent agenda.

Mrs. Poole said she has a problem with simply continuing with funding the same organizations. However, she feels that organizations that have big fundraisers, like the Art Festival, can make it. There are so many other organizations that don't have big fundraisers that are doing things in our community. The City's budget is tight and the Art Festival does have other means.

Mrs. Hand stated that the Melbourne Art Festival brings a lot to the City in the way of economic value. She said that Council needs to revisit this and find a way to give assistance. The Art Festival is well known all over the country – not just Florida. This is something we are proud of and we need to do our best to give support.

Ms. Suiter commented that the Festival is more concerned about every other non-profit organization that may want funding. It is almost a matter of principal. The greater issue is that this action would prohibit anyone else from making application.

Mrs. Walker said that as we approach the new budget, we need to consider all agencies.

Moved by Buckley/Hand to add \$10,000 for the Art Festival to the list, bringing the total funding for grants-in-aid to \$85,162.

Mr. Contreras said that Resolution No. 1727 is the bigger picture. Council may have inadvertently injured other organizations by stipulating a two-year cycle. Mr. Palmer agreed and said that Council needs to readdress this issue. Mrs. Poole recommended that the motion be withdrawn so that Council can consider the entire item at a future meeting.

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Mr. Schluckebier said that staff was looking for direction in formulating the budget and whether to send out requests for proposal. Last year, Council gave direction to freeze. That is not the case this year and staff will proceed accordingly.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

The consent agenda was approved as follows, with a change to Item “h” as noted in the above discussion:

- a. Supplement No. 191 to the Continuing Consultants Contract for consumptive use permitting services and 5-year compliance report for the water plant, Frazier Engineering, Inc., Melbourne, FL - \$43,300.
- b. Task Order No. 7 amendment to the agreement for professional engineering services for Harlock Road water main extension, Phase I, Project No. C97215, Hazen and Sawyer, Ft. Pierce, FL - \$40,300.
- c. Supplement No. 190 to the Continuing Consultants Contract for Turtle Mound Road waterline extension, proposed Project No. C04326, Frazier Engineering, Inc., Melbourne, FL - \$39,300 and transfer of \$45,000 from the Harlock Road watermain extension account into this project budget.
- d. Right-of-way use agreement with John F. and Marian L. Arden, to allow a fence to be constructed within an unimproved right-of-way known as Menzies Avenue.
- e. Purchase of two CMS-T331 LED portable changeable character matrix, trailer mounted message signs, American Signal Company, Atlanta, GA - \$26,200.
- f. Annual contract for the purchase of anhydrous ammonia, LaRoche Industries, Atlanta, GA - estimated annual cost \$26,100.
- g. Purchase of a Vermeer SC352 diesel stump cutter, Vermeer Southeast Sales and Service, Inc., Orlando, FL - \$20,872.
- h. Budget schedule and Grant in Aid funding level.

Note: See discussion for change to Item “h.”

- i. Resolution No. 1876: A resolution authorizing the City Manager to execute a Quit-Claim Deed conveying a parcel of land south of Croton Elementary School to the Brevard County School Board.

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15. RESOLUTION NO. 1877: A resolution supporting the adoption of a Countywide School Impact Fee.

The City Attorney read the resolution by title. Mayor Buckley reported that he and the City Manager will present the position of the City Council to the Board of County Commissioners workshop meeting scheduled for April 29 in Viera.

Moved by Walker/Poole for approval of Resolution No. 1877. Motion carried unanimously.

*Mayor Buckley announced that Council will convene as the Olde Eau Gallie Riverfront Community Redevelopment Agency for the following item:*

16. a. RESOLUTION NO. 2004-01: A resolution of the Olde Eau Gallie Riverfront Community Redevelopment Agency (CRA) authorizing the Chairman of the CRA governing board to execute a warranty deed conveying property, located at the corner of Eau Gallie Boulevard and Highland Avenue, from the CRA to the City of Melbourne so that the property is jointly held with the CRA to satisfy the Florida Communities Trust grant requirements.

From the agenda report: In October 2003, the City was awarded a Florida Communities Trust (FCT) grant in the amount of \$101,840 for the property located on the corner of Eau Gallie Boulevard and Highland Avenue. The Olde Eau Gallie Riverfront Community Redevelopment Agency (CRA) holds the title to this property. FCT grant program officials have notified the City that the project will be ineligible for funding if the City of Melbourne does not hold title to the property.

This proposed resolution would add the City of Melbourne to the title of the property, which would be jointly held with the CRA. This should resolve the funding issue for the grant.

Attorney Gougelman read the resolution by title.

Moved by E. Palmer/Contreras for approval of Resolution No. 2004-01.

Attorney Gougelman confirmed for Mrs. Poole that the legal counsel for the Department of Communities Affairs, Florida Communities Trust reviewed the resolution and deed and indicated it is satisfied with the format. Additionally, the loan agreement between the CRA and the City obligates the CRA to re-pay the loan. The deed will not change that arrangement.

The question was called. Motion carried unanimously.

*Council reconvened for the remaining agenda items.*

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- b. COUNCIL ACTION RE: Acceptance of conveyance of property to the City of Melbourne and the Olde Eau Gallie Riverfront Community Redevelopment Agency.

Moved by E. Palmer/Hand to accept the conveyance of property to the City of Melbourne and the Olde Eau Gallie Riverfront Community Redevelopment Agency. Motion carried unanimously.

Recessed: 8:02 p.m.  
Reconvened: 8:13 p.m.

17. FINAL PLAT APPROVAL (SD-2004-02) ELLIS ROAD INDUSTRIAL PARK SUBDIVISION: (Public Hearing) A request for final plat approval on 50.72 acres, zoned M-1 (Light Industrial) and M-2 (Heavy Industrial) with a future land use of Industrial, located north of Ellis Road, between Wickham Road and John Rodes Boulevard at Gemaire Drive. (Owner/Applicant - Ellis Road Industrial Park, LLC) (Representative – Luke Miorelli, P.E.) (P&Z Board - 4/01/04)

Ms. Dittmer briefed Council and reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the final plat for Ellis Road Industrial Park, consisting of a two-sheet plan prepared by Kane Surveying, West Melbourne, Florida, with the approved variances for block length in excess of 1,500 feet and the elimination of the construction of sidewalks, with the findings in the agenda package and the following conditions:

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

Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to: 1) an increase of more than one lot.

- b. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.

- c. Provide the additional required documents prior to plat recordation, including the following:

- Joinders in dedication from any mortgagor for any public dedications.
- A copy of the articles of incorporation.
- Dedications of any off-site easements or dedications.
- A performance bond or suitable improvement guarantee in the amount of 110% of any outstanding construction at the time of plat recording.
- A St. Johns River Water Management District letter acknowledging the

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homeowners' association documents.

- An approval letter from Brevard County 911.

Mrs. Dittmer briefed Council. There were no disclosures by Council.

Mrs. Walker asked if the City has received all the required documents. Mrs. Dittmer said not all; however, the City will not sign the final plat until everything has been received.

Mayor Buckley opened the public hearing.

Luke Miorelli, engineer for the project, agreed with the conditions.

Moved by Walker/E. Palmer for approval, subject to the conditions. Motion carried unanimously.

18. ORDINANCE NO. 2004-30 (AR-2004-149), ORDINANCE NO. 2004-31 (CPA-2004-04), AND ORDINANCE NO. 2004-32 (Z-2004-981) ARMSTRONG HOMES: Ordinances providing for annexation of 5.75 acres, a Comprehensive Plan Amendment, and rezoning on a 4.8-acre parcel, located on the north side of Eau Gallie Boulevard, west of Wickham Road and east of the intersection with Sarno Road. (Owner - Gleason Brothers and Company) (Applicants - Alex Sokolik & Dave Armstrong) (P&Z Board - 4/01/04)
- a. Ordinance No. 2004-30/AR-2004-149: (First Reading/Public Hearing) An ordinance providing for the annexation of a 5.75-acre parcel.
  - b. Ordinance No. 2004-31/CPA-2004-04: (First Reading/Public Hearing) An ordinance establishing a Medium Density Residential Land Use on a 4.8-acre parcel.
  - c. Ordinance No. 2004-32/Z-2004-981: (First Reading/Public Hearing) An ordinance establishing a zoning designation of R-2 (One-, Two-, and Multiple-Family Residential) on a 4.8-acre parcel.

Attorney Gougelman read each ordinance by title. Mrs. Dittmer reviewed the agenda report and stated that the proposed annexation would be located in City Council District 5. She noted that the Planning and Zoning Board unanimously recommended approval with the recommendation that the area residents be re-notified when a site plan is submitted for approval. (The condition is included in Ordinance No. 2004-32.)

There were no disclosures by City Council. Mayor Buckley opened the public hearing.

Susan Arnold, 3603 Palomino Road, stated that her concerns regarding this item relate to compatibility to surrounding homes, density, drainage in a flood prone area, traffic increase and environmental preservation. She noted that even though the requested zoning is similar to the County zoning, the surrounding area is not built out to the requested density; 2.2 units per acre is the overall density in the area. She added that they have one-story, ranch style homes on one- to four-acre tracts.

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Continuing, Ms. Arnold asked how anyone can determine how the developer plans to handle stormwater on the site without a binding development plan. She asked who would be responsible if the property is annexed and causes flooding to surrounding County property. Additionally, she commented on the following: the area lies in a flood plain as identified by FEMA; the proposed density does not attempt to avoid or minimize impact on wildlife; neighborhood concessions will not be heard without a binding development plan; and the residents do not want Baker Road to cut through to Eau Gallie Boulevard. Ms. Arnold asked that the request be denied until the neighbors are given an opportunity to see exactly what is planned.

John Catlow, 1937 Trimble Road, asked that the item be tabled for 30 days to allow time for the area residents to review the plan.

Frances Baker, 277 Baker Road, requested the following: that the proposed development not increase the current drainage problem or damage the existing wetland on the property; that a natural native plan area remain between the proposed development and the existing residential property; that the development not exceed two stories in height and be sited as close to Eau Gallie Boulevard as possible; that Baker Road not cut into Eau Gallie Boulevard; and that a site plan be provided.

Alex Sokolik, applicant, stated that the property is within the City's water service district. The annexation and rezoning are being requested so they can receive City services. He added that they had the option of rezoning in the County or coming into the City. They would like to have City water and sewer; they do not want to build with septic tanks. Mr. Sokolik said that staff did a good job of analyzing the project; the proposal is consistent with the State Comprehensive Plan; the request has gone through the Planning and Zoning Board; and they concur with the findings in the staff report. He concluded by saying the developer, Dave Armstrong, is available to answer general questions on the site plan, which is different than the process on this agenda for land use and zoning.

Mr. Sokolik distributed a copy of an "Environmental Survey Map" prepared by BKL, Inc. and said that only a small portion of the property is wetlands. He noted that one gopher tortoise may be removed and, from a wildlife standpoint, there is nothing that cannot be mitigated.

In response to Mrs. Poole, Mr. Sokolik said that this item is for annexation, land use and zoning; the site plan will come later. He added that he and Mr. Armstrong have called a number of people in the area. They are willing to talk to and work with the residents. Additionally, he pointed out that if this does not go in the direction of nice townhomes, it could be developed as something else in the future. He noted that M-1 is located to the south.

Mr. Contreras asked the essence of the discussions they have had with the area residents. Mr. Sokolik said that the residents don't want high density or four- and five-story structures. Also, they want to protect the wildlife. He stressed that the drainage

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can be addressed. The request meets the criteria for a Comprehensive Plan change. And, they would prefer to be in the City.

Mr. Contreras said that it would be prudent for the applicants to continue discussions with the area residents and work towards finding common ground and understanding.

David Armstrong, Armstrong Custom Homes, elaborated on several of the rumors about this development. He stated that they do extensive research on property. He reported that there is one gopher tortoise on the property that may be active. The wetlands on site won't be impacted; there will be a 35' restriction on height; and they plan to build two-story structures.

Mr. Armstrong said that the land would not have to be built up as high if they developed with City sewer (instead of septic tanks). This would result in less water run-off. He noted that they do not want to put Baker Road through. The project is recommended in the County plan for 15 units per acre; however, it is in the best interest to come into the City of Melbourne. He commented that they will not go through the cost of developing a site plan without first having this approval.

Mr. Palmer said if the property remained in the County, the density would be one unit per quarter-acre. Mr. Armstrong said it is in a holding pattern now; however, it would qualify for 15 units per acre provided that water and sewer are available. Mrs. Poole pointed out that if this is not approved, they would not be able to build that many units in the County. Mr. Armstrong said there are ways to purchase water and sewer.

In response to Mrs. Poole, Mr. Armstrong said that the flooding in the area has nothing to do with development. It is because of poor maintenance of the ditches leading to Lake Washington.

Mrs. Walker asked if they would consider changing their plans if area residents and homeowners groups felt that they were overbuilding. Mr. Armstrong replied that they have indicated that they would do almost everything Mrs. Baker has asked. He added that there is a point when the project would no longer be viable.

Mrs. Walker asked what size the units will be. Mr. Armstrong said 1,800 – 2,600 s.f. with a clubhouse and pool. He stated that they will make sure the development is nice, fits and that nobody will be impacted. Responding to Mrs. Poole, he said that at this point they are not planning on building a "seniors only" community.

Karen Twigg, 389 Tolley Avenue, read a letter from Roy Raithel on Cobb Lane. In the letter, Mr. Raithel indicates that he is opposed to the annexation and land use change for the following reasons: low density housing would have a detrimental effect on the environment; compatibility – the area currently has two homes per acre; flooding; the development could degrade the existing home values; traffic concerns; a cut through would bring non-area drivers into the neighborhood; protection of the marsh; and protection of wildlife.

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Ms. Twigg stated that she lives near Baker Road and every week she moves more than one gopher tortoise so it doesn't get run over. She said she knows there is more than one gopher tortoise on the property. She explained that after a hard rain, water leaves the subject property and impacts everyone in the neighborhood. She stressed that they can't handle any more water; they are at capacity.

Liz Adesso, 265 Baker Road, pointed out her property on the map. She said that when it rains water from the subject property fills her yard. She commented that a family of gopher tortoises is in her backyard; tortoises are everywhere. Also, a pair of Sandhill Cranes live in the swamp. She said that she knows that the area is going to be developed; however, she wanted to correct the information about the gopher tortoises and the fact that there is more than one bird on the property. Ms. Adesso stated that 15 units per acre is unacceptable. The property will have to be developed either up or out and it will not be conducive to the surrounding area.

Mrs. Walker asked Ms. Adesso the size of her property. Ms. Adesso said it was built in 1986 and is almost half an acre.

Mrs. Poole asked if people in the area can be considered expert witnesses, especially since they have seen flooding and wildlife. Mr. Gougelman said yes.

Mayor Buckley read the condition of the zoning ordinance, which requires area residents to be re-notified when a site plan is submitted for approval.

Moved by Walker/Poole to postpone this item for 30 days – at least two meetings. Motion carried. Mayor Buckley voted nay.

Mayor Buckley announced that this item will return on the May 25 agenda.

19. COUNCIL ACTION RE: Authorization for the City Manager to petition the Corps of Engineers for assistance with the Crane Creek Dredging project and for the City to assume responsibility as financial project sponsor.

From the agenda report: This item is provided at the request of Friends of Crane Creek and specifically adjacent property owners. The specific plan is to apply for no-cost technical assistance from the Corps of Engineers and encourage placement of this project in the queue for federal funding. The City would need to commit for the local share only if a subsequent specific plan based agreement occurs.

The recommendation is to authorize the City Manager to communicate the City's interest and request the Corps of Engineer's assistance with the City of Melbourne as a local sponsor.

Mr. Schluckebier said that this item is to ask the Corps of Engineers to do the preliminary work. If they ultimately decide to proceed with the project, the City's portion would be 35%. This could be partially offset by the City's ownership of the spoil site and would not preclude the City from finding co-sponsors to help with the 35% share.

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A brief discussion followed regarding the possible cost of such a project. Mr. Schluckebier confirmed for Mrs. Walker that there is no initial cost to the City to investigate.

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

20. COUNCIL DISCUSSION RE: Proposals pending before Brevard County Charter Commission.

From the agenda report: The recommendation is for Council to authorize the Mayor, Council Members, and City Manager to appear at the Charter Review meetings and to otherwise indicate City concerns and disapproval of the several measures, which seem to limit or reduce City home rule authority.

Attorney Gougelman reviewed the agenda report and briefed Council. He said that all amendments presented over the years have dealt with the unincorporated area; however, this time the Charter Review Commission decided it would allow anybody in the County to submit proposed changes to the Charter. As a result, the Commission was deluged with 47 proposals. A number of the amendments affect operations of the municipalities. The Charter Commission has killed some of the proposals (reference 8, 9 and 10 in the agenda report).

At the request of the President of the Space Coast League of Cities, there is a time certain hearing before the Commission at 11:00 a.m. on Friday, April 30, in Viera. The City intends to point out the proposals that directly impact and in some cases adversely impact the municipalities. The most dangerous proposal at this point for municipalities is #11. It smacks of a County-wide planning and zoning board.

Attorney Gougelman read the recommendation and stressed the need for Council Members to attend the meeting on April 30.

A brief discussion followed about the reasons behind the proposed changes. Mrs. Poole said she is most interested in what could happen with continued growth. Mr. Schluckebier referenced the rate of growth and said he does not believe that the cities will out pace the growth in the County. The growth rate in the unincorporated area is three to four times that of the cities.

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

21. COUNCIL ACTION RE: Board Appointments

- a. Melbourne Housing Authority – confirmation of Mayor's appointment

Mayor Buckley said that he has appointed Rita Wensell to the Housing Authority.

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Moved by E. Palmer/Poole for approval of the Mayor's appointment. Motion carried unanimously. (April 27, 2004 – December 8, 2005, unexpired four-year term)

- b. Appointment of three regular members to the Babcock Street Community Redevelopment Agency Advisory Committee

Moved by E. Palmer/Poole to reappoint Frank Facciobene, William Koehne and James Whaley. Motion carried unanimously. (May 4, 2004 – May 3, 2006, two-year term each)

22. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

The City Engineer and the City Manager informed Council that the Brevard County Storm Water Utility is proposing a storm water treatment pond at the northeast corner of Eber Road and Dairy Road. The 15-acre pond would be built with state and federal funding and would accommodate storm water from outside the City. The City has asked that several of our concerns relating to the Southwest canal system be addressed. Mr. Schluckebier noted that the City intends to be a good neighbor; however, we don't intend to provide funding for this system.

Mr. Ralls discussed a contested outstanding change order that the City has with CH2MHill on the design of the Phase 2 surface water treatment plant. He referenced the previous two updates that have been sent to Council. Mr. Ralls explained that in 1989 the City hired CH2MHill to design the surface water treatment plant. Phase 2 of the design contract was approved in July 2002. During the design process our staff reviewed plans and conveyed comments to CH2MHill. In November 2002 Matt Alvarez with CH2MHill floated the idea that the City had about \$50,000 extra in costs. By December, that amount had reached \$161,000. Staff asked for written information on the additional costs. The Public Works/Utilities Director Robert Klaproth met with the firm in June 2003 and at that time was told that the actual costs were \$178,000, but they would like to be reimbursed \$148,000. The City finally received a written claim in November 2003.

Mr. Ralls said that from a contractual perspective, CH2MHill had no written authorization to perform any additional work. The City reviewed the work that was done. Staff set aside the issue of whether CH2MHill had approval and instead looked at the benefit we might have received. Staff told the firm that the City could reluctantly support an amendment in the \$75,000 range. Almost four months ago, the regional manager met with staff. At this point, the last "offer" from CH2MHill is in the \$120,000 range. With that, they would look at and resolve the operational problems with Phase 1.

Mr. Ralls elaborated on the operational problems with Phase 1.

Mr. Palmer asked if the firm did this unilaterally without coordinating with or receiving approval from the City. Mr. Ralls said that a lot of this was the result of operational problems with Phase 1. Staff asked if they would look at certain items. The problem is that too much sludge is being produced, which affects the whole system.

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Mr. Contreras said it sounds like the company was re-involved for the Phase 1 activities. And it appears as if Phase 1 is not performing in accordance with the design specifications. Mr. Ralls agreed.

Following a brief discussion, Mr. Ralls said we need to resolve the operational problems and proceed with Phase 2 pending this issue. We need to resolve the cost issue and get CH2MHill moving forward. Staff intends to make a one time offer in the \$75,000 range to get them back to work. Work has been on hold by mutual arrangement; they are at 90% with Phase 2. We almost have to finish this project with CH2MHill; it would be next to impossible for another engineering firm to take over the project.

The City Manager added that we believe CH2MHill needs to complete the design, evaluate the bids and obtain the permits. Beyond that, we are not certain about any additional work.

Mr. Ralls continued and noted that we may likely have to obtain a construction litigator. If the firm doesn't accept the one time offer, then the contract calls for alternative dispute resolution, which is mediation. We need a construction litigator early in the process.

Mrs. Poole said she would like to hear an explanation from CH2MHill. Mr. Schluckebier discussed Council entering a mediation posture. He added that Council certainly has the ability to make such a business decision.

Continuing, Mr. Schluckebier said that given the fact we have concerns with Phase 1, we need to retain the services of a construction litigator. We want someone on board with expertise. Mrs. Hand asked if the City can afford that and the City Manager replied yes.

Mr. Contreras said that this is a contract/performance issue. In writing we need to voice our dissatisfaction with unapproved costs and with Phase 1 not performing in accordance with design requirements.

Mrs. Poole asked if staff would check with officials in Tampa to determine if they are also experiencing problems with the Actiflo system. Mr. Schluckebier agreed.

Mayor Buckley asked what the recommendation is. The City Manager asked Mr. Ralls to outline staff's plan. Mr. Ralls said we intend to make an offer in the \$75,000 range. If that is not successful, we would need an attorney to proceed with alternative dispute resolution.

Mr. Schluckebier confirmed for Mrs. Walker that the City Attorney would be involved in every step.

Mr. Palmer said that it violated the contract for work to be done without our approval. Mr. Schluckebier said there are subtleties. CH2MHill did the work and we benefited from the work. Along the way, there were probably misinterpretations of our questions. Somewhere they inferred that we were asking for additional design work. They did the work and we benefited. Mr. Palmer said then there should be some compensation.

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Mayor Buckley agreed. Mr. Contreras said at some point the “freebies” stop and perhaps this is a lesson well learned. In the future we should determine whether the questions are within the scope and if not what the cost will be.

Mayor Buckley asked if the recommendation is to hire an outside attorney. Attorney Gougelman said yes and referenced the history of the “additional costs.” They initially came to us with \$50,000 in additional charges and over a year later it has reached \$178,000, which is disingenuous. The firm seems quite disinterested in negotiating and he is not sure there aren’t more charges coming our way. It took them over a year to quantify the original claim.

Mr. Gougelman said the immediate recommendation is to get a good construction litigator involved now. Under the contract we are required to go through mediation and this will provide an excellent opportunity for us to get someone competent to walk us through the process. The litigator will learn our case through mediation, which will be helpful if this slips into litigation. He added that it will be expensive.

Moved by Buckley/Contreras to make a written offer to CH2MHill for \$75,000 and to hire a construction litigator. Motion carried unanimously.

Attorney Gougelman informed Council that the developer of Prairie Trace would like to place its site plan on hold for a period of up to a year. They are considering an alternative, non-affordable housing project with a decreased density. If there are no objections, staff intends to go down that trail.

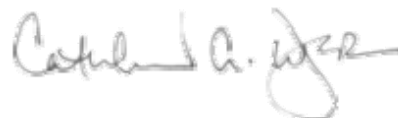
The City Manager reported that the truck recently stolen from the City’s public works facility has been recovered; however, the trailer is still missing.

Mr. Palmer asked for an update on the Palms Theater property, including how much money the City has invested in the property. Mr. Schluckebier said that this information would be included on the next agenda with the Palms Theater sale item.

23. ADJOURNMENT

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

The meeting adjourned at 10:33 p.m.



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City Clerk – 5/6/2004

Approved by Council: May 11, 2004