

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004



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

1. Pastor Pete Inman, Lighthouse Assembly of God, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Immediately after the recess, Mayor Buckley presented a proclamation for “National Safe Boating Week,” May 22 – 28, 2004, to Bill Miller, Flotilla Commander, and Jim McGuinness, Vice Flotilla Commander and Public Affairs Officer, South Brevard Flotilla 42, U.S. Coast Guard Auxiliary.

5. Approval of Minutes – April 20, 2004 Budget Workshop and April 27, 2004 Regular Meeting

Moved by Hand/Walker for approval of the minutes from both meetings. Motion carried unanimously.

6. City Manager’s Report

City Manager Jack Schluckebier clarified that the next meeting of the Brevard County Charter Review Commission will be held May 26, 2004 at 6:00 p.m. in Viera (instead of May 25).

7. Public Comments

None.

At this point, the following motion was made regarding Item #20:

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Moved by Buckley/Contreras to postpone Item #20 until two weeks from now (May 25 Council meeting).

Council Member Pat Poole said that she would like the privilege of removing this item from the agenda since she is the one that placed this item on the agenda. Mayor Buckley said that Mrs. Poole could make the motion to postpone as long as she didn't make a statement. Mrs. Poole replied that her intent is to postpone the item after she makes a statement.

The question was called. Motion carried unanimously.

8. COUNCIL ACTION RE: Contract award for University Boulevard landscaping and irrigation, Project No. CD9504, Vila & Son Landscaping Corporation, Winter Garden, FL - \$88,452.78.

City Engineer Howard Ralls reviewed the agenda report. The recommendation is for approval of the contract with Vila & Son Landscaping Corporation in the amount of \$88,452.78.

Mr. Ralls responded to general questions about the project. Regarding the question about whether the bids were comparable, Mr. Ralls said one factor is that the City asked for a licensed landscaping contractor as part of the bid requirement.

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

9. COUNCIL ACTION RE: Pedestrian Bridge on Pineapple Avenue
- a. A request to establish the Pineapple Avenue Pedestrian Bridge Project, Project No. I04107 with a budget of \$100,000 and transfers of \$19,734.76 from the Pineapple Sidewalk budget, \$25,000 from the NASA Boulevard Bike Path project, and \$55,265.24 from the Bikeways/Sidewalk Trust Fund into this project budget.
 - b. Supplement No. 194 to the Continuing Consultant's Contract for design and construction services for a pedestrian bridge over Cliff Creek on Pineapple Avenue, Project No. I04107, Frazier Engineering, Inc., Melbourne, FL - \$9,350.

Mr. Ralls briefed Council and responded to questions. The recommendation is to establish Capital Improvement Project I04107, Pineapple Avenue Pedestrian Bridge over Cliff Creek, with fund transfers to the project for a budget of \$100,000, and approval of Supplement No. 194 to Frazier Engineering's contract in the amount of \$9,350.

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

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

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

10. COUNCIL ACTION RE: A request to endorse the decision of the Babcock Street Community Redevelopment Agency (CRA) Advisory Committee on the sale of the Palms 8 Theater property and to authorize the City Attorney to finalize a contract for the sale of the property.

Planning and Economic Development Director Cindy Dittmer reviewed the agenda report. On March 23, Council heard three proposals for the sale and development of the Palms Theater property, two from the Coy Clark Development Company and one from Todd Deratany. City Council then requested that the two proposals be refined and returned to City Council after a 30-day period. The proposals were refined and presented to the Babcock CRA Advisory Committee on April 28.

The committee discussed all three proposals and questioned both companies regarding their proposals. After a lengthy question and answer period, the committee recommended acceptance of Coy Clark Development Company's proposal with retail as the first choice and mixed use residential as the second choice, with contract considerations to be negotiated by the City Attorney.

Note: Council received the following correspondence: E-mail dated May 10 from Elsie Freeland, 331 Jeanne Drive, outlining questions about development of a grocery store and townhomes on this site and suggesting the property be converted to a park. E-mail dated May 10 from Karen Harshaw, 289 Lynn Avenue, encouraging a mixed land use with housing and retail.

Vice Mayor Cheryl Palmer asked about the status of any other offers. Planning & Economic Development Director Cindy Dittmer said that staff has been telling folks that two proposals were reviewed publicly by Council. If Council does not proceed with either of the two, then the process would be re-opened for additional proposals.

Coy Clark reported that his proposal is to work with two different types of projects. He stated that he is communicating with Wal Mart for a neighborhood grocery store; Wal Mart is looking seriously at this site. He added that he is also communicating with a drugstore. The first proposal would be an anchored commercial site that would be balanced with retail. If he is not successful in obtaining leases with a grocer and/or drugstore, his second proposal would be to construct townhomes. He commented that the townhomes would be a high end, quality project

Mr. Clark said that \$900,000 is his offer. He noted that the Community Redevelopment Agency Advisory Committee said it would prefer to retain ownership of the property until permits are issued in order to retain control over the project. He stated that is acceptable.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Mayor Buckley asked when the development would start. Mr. Clark replied that a retail development would start sooner than a townhomes project. Development of townhomes would require a Comprehensive Plan Amendment. He added that he needs assurance that the road will go in and, once the road construction has started, he would be prepared to close.

Council Member Ed Palmer referenced the communication from Ms. Freeland, which indicates that the townhomes would be priced in the \$20,000 range. Mr. Clark said that they would be priced in the neighborhood of \$175,000 - \$225,000.

In response to Council Member Richard Contreras, Mr. Clark said if he doesn't secure a grocery store, he would construct a drugstore with townhomes. Council Member Grace Walker asked Mr. Clark how confident he is about the grocery store. Mr. Clark said that Wal Mart is definitely interested and he hopes to have an answer in 90 days.

Mr. Clark confirmed for Mr. Contreras that once the City has a contract for construction of the roadway, he would close and begin breaking ground.

Mayor Buckley said he would prefer that townhomes be built on this site. He pointed out that the U-Haul business on U. S. 1 is an old Winn Dixie store.

Mrs. Poole said she prefers retail in this area. She added that a lot of people in the area have said that they need a grocery store.

Mrs. Walker asked the status of the roadway project. Mr. Schluckebier advised that new bids, which are quite a bit higher than the original budget estimate, were received on April 30. Financing options are being evaluated. Staff is aware that it is Council's intention to make the project work – that is the underlying reason for purchase of the property.

Mr. Palmer asked Mr. Clark the construction period if he receives the contract. Mr. Clark replied that will be a market driven decision. In today's market, they would be in and out in 12 – 14 months. If the interest rates go up, it could be two – three years for a total sell out.

Note: Mr. Deratany was invited to make a presentation; however, he was not present.

Moved by Contreras/Poole to approve the Coy Clark proposal for retail. Following a brief discussion, the maker/seconded agreed that the intent of the motion was to approve retail as the first choice and a mixed use residential as the second choice.

Attorney Gougelman asked Council if development of townhomes would be acceptable if the retail option does not go through. By consensus, Council replied yes. Several members said that was understood.

The question was called. Motion carried. Mayor Buckley voted nay.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Moved by Walker/C. Palmer to reconvene as the Melbourne City Council. Motion carried unanimously.

11. CONSENT AGENDA:

Moved by C. Palmer/Contreras for approval of the consent agenda, Items “a – i.”

At the request of Mrs. Poole, Housing and Community Development Administrator Melinda Thomas reviewed Item “e.” Ms. Thomas stated that the two units are in need of significant repairs. If Council grants the request, the City would enter into an agreement with the Coalition for the Hungry and Homeless. In exchange the Coalition would agree to keep the property in good repair and rent to very low-income persons with rents dictated by HUD. A mortgage would be filed against the property for the amount of assistance; however, there would be no payments as long as the property is serving the very low income. Currently, the City has \$250,000 in HOME funds uncommitted and \$150,000 in SHIP funds uncommitted. Staff looked at this property carefully, received input from other departments/divisions and recommended funding.

Mrs. Poole said that the Downtown area is beginning to get a lot of these projects. With regard to Habitat for Humanity projects, she said at least the City knows where they are going and what they are doing. She concluded by saying this is a high price for the project.

Mr. Palmer asked the size of the duplex. Mrs. Thomas said the duplexes are 500 s.f. each for a total of 1,000 s.f. for the building.

Mrs. Palmer asked the value of the property. She commented that the rehabilitation costs seem more than constructing a new building. Mrs. Thomas said that building new is not an option. The units are currently occupied and they would like to keep them in the low-income inventory. The zoning is M-1 and once the buildings are gone they could not re-establish a residential use. Additionally, the residential use may not be expanded in the M-1 zone. Ms. Thomas stressed that this is a gut rehab; the units will be reconfigured and have new plumbing, roof, fascia, floor coverings, etc. She added that the assessed value of the property is \$57,000.

Mrs. Hand asked how many people live in the duplex. Ms. Thomas replied two single males, one on each side.

Mrs. Palmer said she is going to assume that the Coalition has looked at whether or not this is the best use. It is her understanding that this is the best, most effective use of funds to prevent homelessness.

Ginger Ferguson, Executive Director, Coalition for the Hungry and Homeless, replied yes to Mrs. Palmer. She added that there is very little affordable housing available. And, the Coalition provides services as well as housing.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

A brief discussion continued regarding the surrounding area; amount of rent; amount of income the renters receive; and the services provided by the Coalition. Mrs. Thomas confirmed that this is the maximum amount that will be provided. Any excess costs will be picked up by the Coalition.

Mrs. Poole referenced Item “h” and asked if the City is getting into a potential problem. Mr. Schluckebier said that the City has been using the Palm Bay firing range for quite some time. This agreement offers Palm Bay more protection than a verbal “okay.” The City Attorney reviewed the agreement and made several changes. Council has the final product that works for both cities.

Mr. Palmer referenced Item “f” and asked the rationale for reducing the lien from \$40,250 to \$2,500. Code Enforcement Administrator Dan Porsi provided the history of the code violation. In addition to charging the City’s costs of approximately \$400, the Code Board wanted to charge an additional amount because representatives from the homeowners’ association did not attend Code Board meetings or contact staff. The amount was rounded to \$2,500. The attorney for Summerbrook was amenable to that.

Mr. Contreras briefly discussed Item “b.” Mr. Ralls confirmed that the first issue would be to define the project. Mr. Schluckebier added that the project would have to be phased in order to accommodate employees in the building. He added that Council would be involved before a final renovation plan is developed. The action on this agenda is simply picking a consultant.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Supplement No. 197 to the Continuing Consultant’s Contract for Pineapple Pier surveys and inspection services, Project No. I04108, Frazier Engineering, Inc., Melbourne, FL - \$20,200.
- b. Approval of design consultant ranking and authorization for contract negotiation for the City Hall expansion and renovation project.
- c. A request for authorization to provide a letter of consent from the Mayor to the Department of Law Enforcement Office of Criminal Justice in support of a Byrne Grant proposal from the Brevard County Sheriff’s Office for prisoner transportation and SHOCAP tracking.
- d. A request for authorization for the City Manager to execute a termination of articles of agreement and related interlocal agreement between the City of Melbourne and the City of Palm Bay.
- e. Award of \$75,515 in HOME CHDO funds to the Coalition for the Hungry and Homeless of Brevard, Inc. for the rehabilitation of property located at 706 Fee

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Avenue, transfer of \$75,515 from the Rental Project budget, and authorization for the City Manager to execute an agreement with the Coalition for this project.

- f. Lien Rescission CD-03-105: Request for rescission of Code Enforcement lien from \$40,250 to \$2,500 to be paid within 30 days (Summerbrook Homeowners' Association).
 - g. Resolution No. 1878: A resolution adopting street names for private streets within Venetian Village.
 - h. Resolution No. 1879: A resolution authorizing the City Manager to execute a firearms range agreement between the City of Melbourne and the City of Palm Bay.
 - i. Resolution No. 1880: A resolution supporting Patrick Air Force Base.
12. SITE PLAN APPROVAL (SP-2004-05) FADDEN RESIDENCE: (Public Hearing) A request for site plan approval to construct a multiple-family project consisting of a single-family residence and two apartments in a C-3 (Commercial) zoning district with a future land use of Commercial/High Density Residential on a 0.14-acre site, located at 2008 Waverly Place. (Owner - Mother's House, Inc.) (Applicant - Tom Davis Construction) (P&Z Board - 4/24/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board and staff recommended approval of SP-2004-05, site plan for Fadden Residence, consisting of a four-page plan numbered 03-139, with the following conditions:

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

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) any change in the number of units; 2) any change in the building locations or access points shown on the site plan; or 3) an increase in building size or height.
- b. The applicant will meet all applicable stormwater, driveway, tree removal and landscaping requirements.
- c. The applicant will provide color samples and a landscaping plan for review by the Architectural Review Board.

There were no disclosures by Council.

Tom Davis and Bill Fadden, applicants, were present. In response to Mrs. Poole, Mr. Davis said that Mr. Fadden removed the trees on the property before he (Mr. Davis) was

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

hired. He added that he does not believe Mr. Fadden was aware of the landscaping ordinance.

Mayor Buckley asked Mr. Davis if he agreed with the stipulations and Mr. Davis replied yes.

Mrs. Poole asked if the City could require more trees to be placed on the property. Mr. Gougelman said he is not familiar with the background on this property. Mr. Porsi explained that Mr. Fadden indicated that the trees were dead and/or diseased and they were removed. The Code allows for a dead or hazardous tree to be removed without a permit. Since there was no way to verify this, staff could not move forward with Code Enforcement action.

Continuing, Mr. Porsi discussed the landscaping requirements that would be required on this property.

Moved by Hand/E. Palmer for approval of the site plan, subject to the conditions. Motion carried. Mrs. Poole voted nay.

Recessed: 7:46 p.m.
Reconvened: 7:59 p.m.

Following recess, Mayor Buckley presented a proclamation (see Item #4).

13. FINAL PLAT APPROVAL (SD-2003-01) “THE PRESERVE” AT LAKE WASHINGTON SUBDIVISION: (Public Hearing) Final plat approval on a 34.63-acre parcel, zoned R-1B (Single-Family Residential) and M-1 (Light Industrial), located on the south side of Lake Washington Road, west of Avocado Avenue. (Owner/Applicant - Riverside Development Group, Inc.) (Representative - Jake Wise) (P&Z Board - 4/24/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board and staff recommended approval of the final plat (SD-2003-01), consisting of a one-sheet plan prepared by AAL Land Surveying of West Melbourne, Florida, with Project Number #8515-8, with a stamped and sealed date of February 26, 2004, with 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

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

guarantee of at least 110% is provided to the City to ensure the completion of the improvements.

- c. Provide deed restrictions for the property zoned M-1 to prohibit its use for industrial and/or commercial purposes.
- d. Provide the additional required documents, pursuant to Chapter 29, Section 29-5 (c) (4) prior to plat recordation.
- e. Upon completion of the subdivision improvements, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly identify the flood zone designation/elevation of the property as a result of the improvements. Copies of the changes approved by FEMA shall be provided to the City of Melbourne Planning and Economic Development, Building (Code Compliance) and Engineering Departments.

Mrs. Poole stated that she is pleased with the conservation area; however, the cats from neighboring homes will wipe out the scrub jays. She added that she is happy they are saving 24 gopher tortoises. Mrs. Poole asked about wetlands on the property.

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

Jake Wise, engineer of record, said that the low area on the property is considered a natural low area – not a wetland. He confirmed there are no wetlands on site. That is the reason they were able to preserve and enhance the scrub jay habitat. Mr. Wise elaborated on the development, location of homes, and the retention pond. He concluded by saying that the plat has not changed from what was previously approved and he agrees with the stipulations.

In response to Mr. Contreras, Mr. Wise and Richard Wagner (representing the applicant) discussed the approximate size of the homes and the price range. There are no plans to add additional recreational facilities and Tracts H and J will be used for future development or could become part of the scrub jay habitat area.

Mrs. Poole expressed appreciation to the applicant for preserving the environment. She said that she would be able to vote for this item if Tracts H and J remained scrub jay habitat. Mr. Wise said that he cannot guarantee that at this time. He added that the R-1B zoning district has been modified to include open space requirements. This plat is the perfect example of preserving habitat area while increasing the density in the buildable areas.

There were no other comments from the public. Mayor Buckley said that the recommendation is for approval of the final plat subject to the conditions.

Moved by E. Palmer/Hand for approval of the recommendation. Motion carried. Mrs. Poole voted nay.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

14. ORDINANCE NO. 2004-33 (CU-2004-02) EXECUTIVE CIGAR SHOP: (First Reading/Public Hearing) An ordinance granting a conditional use to allow the consumption of alcohol on the premises on a 0.27-acre parcel, zoned C-3 (Central Business District), located on the north side of New Haven Avenue, west of Municipal Lane. (Owner - Scott Lillycrop) (Applicant/Representative - S. Sam Nardone) (P&Z Board - 4/24/04)

Attorney Gougelman read Ordinance No. 2004-33 by title. There were no disclosures by Council. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of this request.

Mayor Buckley asked if the business is still operating as a restaurant. Mrs. Dittmer replied no and said it is a retail cigar business. Mr. Palmer asked if alcohol would be restricted to beer and wine only. Mrs. Dittmer explained that the Zoning Code does not differentiate between beer/wine and liquor. The conditional use will not dictate the type of alcohol.

Mayor Buckley opened the public hearing.

Sam Nardone, applicant, confirmed that he will sell beer and wine only. He added that this is not a restaurant. It is a lounge that will cater to folks who want to sit down and smoke.

Moved by E. Palmer/Hand for approval of Ordinance No. 2004-33. Motion carried unanimously.

15. ORDINANCE NO. 2004-34 (Z-2004-982) THE RICHMAN GROUP: (First Reading/Public Hearing) An ordinance to change the zoning from C-2 (General Commercial) to R-2 (One-, Two-, and Multiple-Family Residential) on four parcels totaling 14.35 acres, located on the west side of South Harbor City Boulevard, between Caroline Street and NASA Boulevard. (Owner - Richard L. Schmidt) (Applicant - The Richman Group of Florida, Inc.) (Representative - Robby Block) (P&Z Board - 4/24/04)

The City Attorney read the ordinance by title. There were no disclosures by Council. Mrs. Dittmer reviewed the agenda report. She noted that a development plan has not been submitted at this time; however, the applicant has requested a density increase of 10% for affordable housing. Based upon the requested rezoning to R-2, which would allow 15 units per acre, approximately 236 units could be built on the site. The Planning and Zoning Board unanimously recommended approval of this request.

Mrs. Dittmer confirmed for Mr. Palmer that the 10% density bonus is included in the 236 units. The City Code allows for a 10% density bonus if the development meets our definition of an affordable housing project. The Code is broken into various percentages and is fairly specific.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Mrs. Palmer asked if we have any information about the percentage of housing in Melbourne that meets the criteria for affordable housing. Mrs. Dittmer replied that Housing and Community Development may have that type of data. Mrs. Palmer said she would like to see that. She added that based on the age of our housing market, she believes we may have a high percentage of affordable housing.

Mr. Schluckebier noted specific information from the 2000 census will be provided to Council as part of this item, prior to or at the next meeting. He added that during the staff review of this item, we discovered that the State no longer awards extra points to a project that has received a density bonus. Since this is no longer recognized as an incentive, Council may wish to review whether the bonus still makes sense.

Mrs. Poole pointed out that Council does not have to vote for this change from commercial to residential. She stated that this request is for affordable housing on the river, which is our high residential property. It is not an appropriate place for affordable housing. This type of development is beginning to have a Citywide effect and Council needs to look at this.

Mr. Schluckebier said that for any projects in motion at this moment, the current Code would have to be followed. With respect to future development, Council may want to evaluate whether it wishes to have bonuses for something that is no longer required.

Mrs. Poole expressed concern that this rezoning is being done on pure speculation. She added that they do not have a site plan, the density is too high and it is proposed in the wrong area.

Mayor Buckley opened the public hearing.

Phil Nohrr, attorney representing the applicant, informed Council that this is an in-fill project. The development will be less intense than if it were ultimately developed under C-2 zoning. Brevard County has already approved this project for allocation of funds. The bond financing is in place and the project is ready to go.

Continuing, Mr. Nohrr said that the project will serve working class folks – people who will earn up to \$40,000 annually. A one-bedroom unit will be a minimum of 800 s.f. with rents of \$650; two-bedroom minimum of 950 s.f. with rents of \$850; and three-bedroom units 1,100 s.f. with rents of \$950 per month. The development will have a 4,000 s.f. clubhouse. He added that they intend to bring forward a site plan as quickly as they can, but they wanted to move forward with the zoning.

Mr. Nohrr said at the Planning and Zoning Board meeting, a neighbor to the south spoke. They have answered that person's questions and they are no longer opposed. He commented that he is not aware of any opposition. Regarding staff's comments (in the agenda package) about the desire for a future linear park along the river, they are aware of that and will work with staff. He added that the property on the east side of U. S. 1 is not part of this request.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Mr. Nohrr explained that the term “affordable housing” was used because of their financing. He added that there will not be any HUD or direct subsidies. The project will be financed with tax exempt bonds. He stated that they don’t believe there will be a bonus density; the project is being designed with 214 units. He stated that he does not believe this project will qualify for a bonus density under our Code. And, that is not the main focus of this project.

Mr. Nohrr concluded by saying that this is a quality project that will withstand the scrutiny of anyone who is concerned about affordable housing. The neighbors do not have any problems with the request and they believe this is an excellent in-fill project. He added that a representative from the Richman Group is present.

Mrs. Walker asked Mr. Nohrr if they have conducted any meetings with the neighbors. Mr. Nohrr said no; however, the notice went out and one person attended the Planning and Zoning Board meeting. At this point, Mr. Nohrr stated that he would be able to commit to 214 units at the next meeting.

Mr. Palmer said that the high density bothers him. He asked about surrounding density. Mrs. Dittmer said that the future land use is commercial/high density residential, which could allow for density higher than 15 units per acre. However, the R-2 zoning caps the density at 15 units per acre. There are no residential projects in the vicinity; most of the uses are commercial.

There were no other comments from the public.

Responding to Mr. Gougelman, Mr. Nohrr made the following comments: He would be able to respond to capping the density at the next meeting; a site plan would come forward within 60 days; and they would be able to provide an architectural elevation at the next meeting.

Mrs. Walker asked for information about the Richman Group. Robert Block, Richman Group, West Palm Beach, discussed the history of the company. He reported that they have approximately 3,000 units under construction in the State. They are long-term holders and typically hold their properties for 15 – 30 years. He added that in order to apply for Brevard County local bonds, zoning has to be a condition. Last week they were allocated bonds. They will close on the bonds in November and start construction in January.

Mr. Palmer asked Mr. Block if he would be amenable to a reduction of 10% in density. Mr. Block said he could agree to R-2 up to 15 units per acre and forget about the 10% density bonus.

Mrs. Palmer said that the real question is whether Council wants to change the zoning from commercial to residential. If we want to keep the property commercial, density is not an issue.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Moved by Hand/Contreras to approve the ordinance subject to the findings in the Planning and Zoning Board memorandum.

Mayor Buckley said he is willing to vote for this on first reading; however, his final vote will depend on what is presented at second reading.

Mrs. Poole encouraged Council to think about the request. She said that a site plan has not been prepared and we are talking about a change from commercial to residential. Mr. Palmer recommended postponing the item. He said without a site plan, Council does not know what it is voting on.

Moved by Poole/E. Palmer to postpone this item for one month, until the June 8 meeting.

Mrs. Palmer said that she has a problem with changing the zoning. She does not want the applicant to prepare a site plan if she does not intend to change her mind on the rezoning.

The question was called. The roll call vote was:

Aye: E. Palmer, Poole and Walker

Nay: Contreras, Hand, C. Palmer and Buckley

Motion to postpone failed.

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

Aye: Contreras, Walker, Hand and Buckley

Nay: E. Palmer, Poole and C. Palmer

Motion carried.

16. ORDINANCE NO. 2004-35 (CPA-2004-03), ORDINANCE NO. 2004-36 (Z-2004-979), AND SITE PLAN APPROVAL (SP-2004-04) CYPRESS SPRINGS CONDOMINIUMS: Ordinances providing for a comprehensive plan amendment and rezoning and site plan approval on an 8.74±-acre parcel, located on the north side of Eber Road, west of Babcock Street. (Owner/Applicant - Boca Ven Land, Inc.) (Representative - Scott B. McGuire, Knight McGuire & Associates, Inc.) (P&Z Board - 4/24/04)
- a. Ordinance No. 2004-35/CPA-2004-03: (First Reading/Public Hearing) An ordinance changing the land use from Commercial to Medium Density Residential.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

- b. Ordinance No. 2004-36/Z-2004-979: (First Reading/Public Hearing) An ordinance changing the zoning from C-1 (Neighborhood Commercial) to R-2 (One-, Two-, and Multiple-Family Residential) on an 8.74±-acre parcel.
- c. Site Plan Approval (SP-2004-04): (Public Hearing) A request for site plan approval to develop an 88-unit multiple family condominium project.

Attorney Gougelman read Ordinance Nos. 2004-35 and 2004-36 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board and staff recommended approval of the request, including the two-page site plan, dated April 6, 2004, prepared by Knight, McGuire & Associates, Inc., of Vero Beach, Florida subject to the findings contained in the Planning and Zoning Board memorandum and the following conditions:

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

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; 2) an increase in more than eight units proposed; 3) any increase in building height; or 4) any substantial change to the building elevation as proposed.

- b. A deceleration lane shall be required if deemed necessary by the Engineering Department.
- c. Appropriate environmental permits for any scrub jay habitats or gopher tortoises must be obtained from the appropriate state and federal agency.

(Note: the conditions are a part of the site plan approval.)

Mr. Palmer asked the density of the development. Mrs. Dittmer said it would be approximately 10 units per acre.

Mrs. Poole expressed concern with developing 88 condominiums on such a narrow piece of property. She added that they look like attached townhomes.

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

Scott McGuire, representing Boca Ven Land, Inc., explained that the applicant has owned this property for quite some time. He also owns the property up to Babcock Street. Currently, a lot of that is undeveloped commercial property. The property to the north and west of this parcel is multi-family residential. He stated that they have a specific site plan with two-story, relatively small buildings and eight units per building. The plan is visually pleasing and the density is significantly less than what the zoning district allows.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Mr. Contreras asked the square footage and price range of the units. Mr. McGuire outlined the configuration of the units and said that they would be in the 1,200 – 1,500 s.f. range with a price range around \$100,000.

Mrs. Hand pointed out that this development will be called Cypress Springs and the City already has Cypress Bend. She asked if there would be confusion with the 911 emergency system. Mr. McGuire said that he would check with emergency services.

Attorney Gougelman said that the retention pond is situated partially on the adjacent property. He asked the applicant if they have an easement. Mr. McGuire said they have an agreement whereby the pond will be shared by both properties.

Mayor Buckley asked Mr. McGuire if he agreed with the conditions. Mr. McGuire replied yes. Regarding the rendering, Mr. McGuire said that it shows how the building will look. They will meet all the landscaping requirements.

Moved by C. Palmer/Walker for approval of Ordinance No. 2004-35. Motion carried.
Mrs. Poole voted nay.

Moved by Hand/E. Palmer for approval of Ordinance No. 2004-36. Motion carried. Mrs. Poole voted nay.

Moved by E. Palmer/Contreras for approval of the site plan, subject to the conditions.

For the record, Attorney Gougelman said that the site plan approval is contingent upon approval of the Comprehensive Plan and zoning ordinances at second reading. Council agreed.

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

17. ORDINANCE NO. 2004-37 (Z-2004-983AD/LDR-2004-02/FOC-2004-02) ZONING CODE: (First Reading/Public Hearing) An ordinance amending the City Code by providing for Agricultural Estate Use (AEU) and Rural Estate Use (REU) zoning districts; amending Appendix B, Article V, Definitions; amending Article XII, Use Districts and Regulations; amending Article XVIII, Supplementary District Regulations; amending Chapter 5, Animals; by adding an exception for beekeeping in an Agricultural Estate Use zoning district; amending Appendix D, Chapter 9, by including the Agricultural Estate Use in the Standards for Fences; providing an exception for fence height in the Agricultural Estate Use district, and including a reference to the AEU and REU zoning districts in the Parking, Storage or Use of Recreational Equipment. (Administrative request by City Council)

Attorney Gougelman read the ordinance by title.

Mrs. Dittmer reviewed the agenda report. This is an ordinance requested by the City Council to establish new rural residential zoning districts to apply to property previously

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

annexed or newly proposed for annexation. The request from City Council was to provide zoning consistent with the current uses permitted by residents in rural residential under the Brevard County Code.

Staff has proposed two new rural zoning districts. REU is proposed as a replacement for the current RR-1 County zoning and requires a minimum of one-acre lots, and permits horses on the lot. AEU is proposed as a replacement for the current AU County zoning and requires a minimum of two and one-half-acre lots, and permits various agricultural uses. Other minor changes are proposed throughout the City Code to address the new zoning districts.

Although there was a single request that the City give consideration to lowering City standards regarding the handling of the discharging of firearms, that is not recommended. The current City standards would remain enforceable Citywide. Staff also believes that the use of firearms is not a land use or zoning issue. The Planning and Zoning Board recommended approval of the ordinance by a 6-1 vote.

Mrs. Palmer asked for an overview of the substantial changes between our regulations and the County's regulations. Mrs. Dittmer said there are not any substantial changes. She explained the process staff followed in developing the ordinance. Everything that the City is aware of has been addressed. Residents in the affected areas were sent copies of the ordinance, and they have called with questions. There may be some minor changes along the way, but we believe we have addressed the issues.

Mrs. Palmer referenced the letter in the package (from Steven Morgan) about pole barns. Mrs. Dittmer said she would need to look at that issue specifically. Her opinion is that a pole barn is an accessory structure rather than a barn because it doesn't house horses or livestock and it is open.

Mrs. Palmer thanked staff for its hard work in preparing this ordinance. Mayor Buckley commended staff and pointed out that it wasn't a matter of copying the County Code. Staff compiled bits and pieces from throughout the County Code to develop these regulations.

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

Moved by Poole/E. Palmer for approval of Ordinance No. 2004-37. Motion carried unanimously.

18. COUNCIL ACTION RE: Approval of the City of Melbourne's proposed five-year Transportation Improvement Program for local, state, and federal funding.

Mrs. Dittmer briefed Council. The list contains the current transportation projects from the City's Capital Improvement Program. One change includes a joint endeavor with Melbourne, West Melbourne and Brevard County to study the entire Wickham Road

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

corridor to determine what types of improvements or transportation control measures could be added to increase capacity.

Mayor Buckley said that the recommendation is to approve transmission of the proposed projects and priorities as listed to the Brevard Metropolitan Planning Organization.

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

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

Attorney Gougelman referenced the historical data provided in the package. He addressed the issues and options as follows:

Issue #1: Should the definition of the term “sign” be revised?

Option A: Remove the confusing language that suggests a sign is only “commercial” in nature and define the term mural. This does not mean murals will be regulated. That will be determined based on Council’s resolution of Issue #2.

Option B: Leave the definition as is but make minor revisions to make it clear that only commercial signs are regulated.

Moved by C. Palmer/Contreras to approve Option B.

Mayor Buckley said this is contrary to the staff recommendation (to select Option A). Mrs. Palmer said if we do this and look at murals separately, we won’t have a subjective process.

Mayor Buckley stated the motion. The question was called. Motion carried unanimously.

Attorney Gougelman continued:

Issue #2: Should murals be included as part of the definition of a “sign?”

He commented that based on the first motion, the only types of signage that will be regulated are commercial. No other type, including political, will be regulated. Mrs. Hand and Mrs. Poole said that this was not clear and they would like to change their vote.

Mrs. Palmer said her intent was to make minor revisions but to separate murals from commercial signs.

Moved by Hand/Poole to reconsider.

A brief discussion followed.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Moved by C. Palmer/Poole to approve Option A (under Issue #1).

The question was called on the motion to reconsider and the motion to approve Option A (under Issue #1). Motion carried unanimously.

Council continued with Issue #2. Attorney Gougelman reviewed Options A – F.

Mrs. Poole's motion to approve Option A did not receive a second.

Mrs. Hand expressed concern that nudity could be included with the "artwork" in Option E.

Mrs. Palmer pointed out that a patriotic mural was cited, yet Council approved a mural that covers the side of the art museum. She said this issue should not be determined based on whether Council likes the mural, organization, artist, etc. The City needs to be objective with its regulations. And, Option C would allow the City to establish rules and regulations.

A brief discussion followed on size and number of murals and murals being allowed in the Downtown areas without a variance.

Mr. Contreras asked how we would regulate murals if Option C were selected. Attorney Gougelman said the regulations would have to be light and could include number of murals, size of murals, etc.

Moved by Contreras/C. Palmer to approve Option C.

Mrs. Hand said that she is very concerned about the content of murals. Following a brief discussion, Attorney Gougelman said that based on the determinations of the U. S. Supreme Court, there are a lot of things that we legally can't regulate. Mrs. Palmer asked if we currently regulate the content of murals. Attorney Gougelman replied, "Probably not."

The question was called. The roll call vote was:

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

Nay: Poole, Hand and Buckley

Motion carried.

Council selected Option C for Issue #2 as follows: "Regulate murals only with very general conditions in much the same manner as the City of Ft. Lauderdale. For example murals could be freely permitted but regulated as to size or number."

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Mrs. Palmer suggested each Council Member submit a list of regulations to staff to be compiled and returned to the next meeting. Several Council Members nodded their head in agreement.

Mayor Buckley said that one person has asked to speak although this is not a public hearing.

Hamilton Boone, 301 Hibiscus Boulevard, stated that he is in favor of patriotic murals and banners. He referenced his banner at 301 Hibiscus Boulevard and said that it is an expression of speech. He informed Council that he served his country so that every person could be free and express freely, whether he agrees with that or not. He implored Council to allow expressions of patriotism, if only during times of war.

A brief discussion followed about Mr. Boone's banner; whether the banner is patriotic or political; the length of time it was in place; and whether it was placed on the roof of his building. Mr. Boone distributed a photograph of his banner.

Moved by C. Palmer/Contreras to extend the courtesy we extended since September 11 until we are no longer a country at war.

Mrs. Palmer pointed out that the City has supported this effort by supplementing the income of employees called to active duty. She said she would like to extend the allowance for patriotic expression.

Mr. Palmer said that patriotism is a continuous feeling and respect for our nation. He stated that he does not think we can put a restriction on patriotism. And, the City ought to condone patriotic banners.

A brief discussion followed about the wording of the motion.

Mayor Buckley said that the motion is to allow patriotic expressions until the end of the present conflict with Iraq. The question was called. Motion carried. Mrs. Poole voted nay.

Attorney Gougelman reviewed the last two issues, which relate to banners over a public right-of-way (not on private property) and a request for Council to direct staff to prepare language to permit the municipal logo on certain structures. Attorney Gougelman clarified that an example of a "structure" would be a water tower.

With regard to banners over rights-of-way, they are currently permitted on a limited basis with the permission of the City Manager. The Code does not contain standards or guidance, and the suggested language rectifies this.

Mr. Schluckebier added that the Code needs to specifically authorize logos on City facilities. It would be appropriate for the City to regulate itself in the same way others are regulated.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004

Moved by E. Palmer/Contreras for approval (of the banners over public rights-of-way language and the drafting of language to permit logos on certain structures). Motion carried unanimously.

Mrs. Palmer asked Mr. Gougelman to provide Council with Ft. Lauderdale's model regulations on murals.

20. COUNCIL DISCUSSION RE: A request by Council Member Pat Poole for Melbourne International Airport master plan discussion.

At the beginning of the meeting, Council postponed this item until May 25.

21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

The City Manager briefed Council on the following:

- A handout will be circulated regarding the Citizens' Academy scheduled for June 24 at the Eau Gallie Civic Center.
- The City Manager has been invited to be a speaker (along with Marilyn Crotty, Institute of Government, and Franck Kaiser, Home Builders) at a forum the Florida Today is sponsoring next week about growth management.
- Due to the amount of building taking place, the concrete market is backlogged. This will affect the Fee Pool construction and we expect the opening to be moved from May 30 to approximately June 15.

Attorney Gougelman reported that he will be on vacation from June 13 – June 26. There were no objections from Council.

In response to Mrs. Poole, Mr. Schluckebier described how the City maintains its status as a "Tree City."

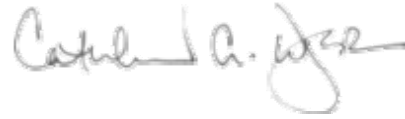
Mrs. Hand expressed concern about the removal of the palm trees from the triangular piece of property located between U. S. 1 and the Eau Gallie Causeway.

22. ADJOURNMENT

Moved by Contreras/Walker to adjourn. Motion carried unanimously.

The meeting adjourned at 10:26 p.m.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 11, 2004



City Clerk – 5/18/2004

Approved by Council: May 25, 2004 with correction to Item #10 (Page 5)