

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 22, 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. Reverend Willie Lockett, St. Martha's Church 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
	Suzanne Novak	Assistant City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Planning & Economic Development Director

Absent: Cheryl Palmer Vice-Mayor, District 5 (out of town)

4. Proclamations and Presentations

Mayor Buckley presented a Beautification Award to Jim Justice and John Allen on behalf of First Baptist Church of Melbourne.

5. Approval of Minutes – June 8, 2004 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier reported on the following:

- The fireworks display is scheduled for July 4. The event is co-sponsored by the City with fundraising from the community. The support level at this time is in the \$12,000 range, which is slightly ahead of where we were last year at this time.
- The water plant annexation legislation enacted by the Legislature has been signed by the Governor, and the effective date is July 1.

Council Member Ed Palmer referenced the report on the Deferred Retirement Option Plan (DROP) for Public Works/Utilities Director Robert Klapproth. He said that, to his knowledge, this is the first time someone has joined DROP and then changed their

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mind. He asked if there is anything that would prohibit another employee from doing this or if this is just one situation.

Mr. Schluckebier said it is extremely unlikely to happen again. For information, the police and fire retirement systems have irrevocable letters. In the case of Mr. Klaproth, who is in the Florida Retirement System, the State did allow an escape hatch. It was at the expense of Mr. Klaproth and the money paid into his DROP account has to be returned. Mr. Schluckebier confirmed that as City Manager he approved the request based on consultation with the Personnel Division.

Mr. Palmer asked if this will have an adverse affect. Mr. Schluckebier said no and added that the City will receive a \$20,000 - \$25,000 refund from the State as a result of this situation.

Mayor Buckley referenced the memorandum to add Item 12 "h" to the agenda. Moved by Contreras/E. Palmer to add Item 12 "h", contract for custodial services, to the agenda. Motion carried unanimously.

7. Public Comments

Ann Marie Marcellino, 1921 Elizabeth Street, explained that representatives of the Pentagon Apartment complex have filled in an easement located behind her home with concrete blocks, yard trash, etc. The debris is pushing over the residents' fences. She said she has contacted Code Enforcement; however, she wanted Council to be aware of this situation. Ms. Marcellino commented that this situation is adding to the flooding problem in the area.

Mayor Buckley asked the City Manager to investigate and respond to Ms. Marcellino.

8. PRESENTATION TO COUNCIL: Legislative update from State Representative Thad Altman.

State Representative Thad Altman briefly discussed the last legislative session. He reported that the biggest success for Brevard County was in the field of education. The change in formula on how money is paid to the counties will result in an additional \$1.2 million this year. Representative Altman outlined the upcoming challenges in education.

Continuing, Mr. Altman said that although the enclave annexation problem was not solved this year, he believes the Legislature will be successful in addressing that problem in the future. He listed the local projects that were not vetoed by the Governor, including Circles of Care adult substance abuse; I-95 guard rail program; Indian River Lagoon restoration; and creation of the ocean license plate, which will fund a world class marine institute facility in Brevard County.

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In closing, Representative Altman thanked City of Melbourne officials for taking time to travel to Tallahassee during the session. He commended the City's legislative representative, Jerry Sansom, and stated that Mr. Sansom is one of the most ethical, hardworking lobbyists in Tallahassee.

Council Member Pat Poole referenced the Beach and Riverfront Acquisition, which will soon sunset after 20 years. She asked if this program can be renewed. Representative Altman said it can only be continued with approval of a referendum. He commented that the Legislature fully funded the Florida Forever Program.

Council Member Ed Palmer reported that the funding from the Corps of Engineers for the dredging of Lakes Sawgrass and Hell 'N Blazes has been dropped. Muck from those lakes is threatening our water supply, Lake Washington. He asked Representative Altman to look into funding for this important project.

Representative Altman agreed that this is an important project. He added that many water resources projects took a big hit and were vetoed. He noted that in the next year or two there will be a lot of movement on water issues. Water will be third behind education and health care.

UNFINISHED BUSINESS

9. ORDINANCE NO. 2004-34 (Z-2004-982) THE RICHMAN GROUP: (Second 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) (First Reading - 5/11/04) (Postponed - 5/25/04 & 6/08/04)

Assistant City Attorney Suzanne Novak read Ordinance No. 2004-34 by title. Mayor Buckley disclosed that Attorney Phil Nohrr called him (on June 21) and asked whether he had seen the drawing. Mayor Buckley said that he received the drawing today (June 22). There were no other disclosures.

Phil Nohrr, attorney representing the applicant, said that based on comments made at the May 11 Council meeting, the applicant scaled down the plan and reoriented the project. The density has been reduced from 212 units to 192 units per acre. This will provide a density of 13.6 units per acre, which is a decrease from the initial request of 15 units per acre. Mr. Nohrr said that the proposal before Council is a less intense use of the land. The project will provide the flexibility to move buildings to save trees, as opposed to a more rigid general commercial site. He noted that this is an environmentally sensitive, in-fill project.

Continuing, Mr. Nohrr said that this project will require a new water line to be run from Hibiscus Boulevard to provide the Code required pressure. This will be accomplished

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at a significant expense to his client, and it will provide a catalyst for other properties in the area to develop or redevelop.

Mr. Nohrr referenced the conceptual site plan (distributed to Council June 21) and said that the clubhouse will be 4,000 square feet. Although the plan does not indicate this, it will include a tot lot/playground area and volleyball court. With regard to compatibility, Mr. Nohrr said that people are using the hotel/motel located north of this property like apartments.

In closing, Mr. Nohrr said that the project is compatible; they intend to clean up the neighborhood and be good citizens; this will be a modern development; the tax base will be increased; and this will be an asset to the community.

Mrs. Poole asked the size of the swimming pool. Mr. Nohrr said that it has not been designed yet; therefore, they do not have the specific dimensions. Mr. Nohrr added that the conceptual plan is not the site plan; the site plan will return to Council.

Mrs. Poole commented that this development has been represented as being an affordable housing project. Mr. Nohrr said it is to the extent that it is being financed with tax exempt bonds; however, rent payments will not be subsidized.

Mr. Nohrr confirmed for Mrs. Poole that all the trees would not be saved. He stressed, however, that more trees will be saved with this development than if the property developed with a more intense commercial use.

Mrs. Poole said that the Comprehensive Plan designates this area as commercial and the site is completely surrounded by commercial. Mr. Nohrr replied that the request complies with the Comprehensive Plan; however, it is “out of whack” with the zoning. Mayor Buckley pointed out that Council previously turned down an eight story commercial development on this property.

David Archer, representing Sterling Point Properties, expressed support for the request. He reported that currently homeless people live on the property and this is not beneficial to his employees, of which 80% are women. Mr. Archer submitted photographs showing an accumulation of clothing, trash and bedding on the property and added that they have to keep their doors locked because of the homeless people.

Continuing, Mr. Archer said that they support the Richman Group because they have a plan for the property. Currently, they hear gunshots and cars drive into the woods to access the subject property. He stated that they advocate any type of development at this point.

Mrs. Poole stated that all property can't be developed where the homeless are located. She asked Mr. Archer if he has filed complaints or contacted Code Enforcement. Mr. Archer said that he has not taken those steps at this point.

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Following a brief discussion between Mr. Archer and Council Member Poole, Mrs. Poole said that she would not have a problem with this development located elsewhere. She noted that this area was planned for commercial. Commercial needs to be located in a central area of town where people can access those services.

Mayor Buckley read the recommendation. Moved by Hand/Contreras for approval of the recommendation. The maker/seconded agreed that the tot lot/playground area and volleyball court will be added to the site plan.

Mrs. Poole said that the Planning and Economic Development Department is currently studying the issue of the recent trend to rezone commercial to residential. Additionally, the Zoning Code will soon be reviewed. She recommended that Council postpone this item until Planning completes its review and the Zoning Code has been reviewed. Mrs. Poole added that this development will have an adverse affect on schools, traffic and congestion.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

10. ORDINANCE NO. 2004-44 (CPA-2004-07) AND ORDINANCE NO. 2004-45 (Z-2004-987) PAUL RUFO: Ordinances providing for a Comprehensive Plan Amendment and a zoning change on a 3.25±-acre parcel, located on the south side of East Eau Gallie Boulevard, east of Unity Drive, and west of Highway A1A. (Owner - BIFI Brokers) (Applicant/Representative - Paul Rufo)
- a. Ordinance No. 2004-44/CPA-2004-07: (First Reading/Public Hearing) An ordinance changing the land use from Commercial to Medium Density Residential (10 units per acre). (Postponed - 6/08/04)
 - b. Ordinance No. 2004-45/Z-2004-987: (First Reading/Public Hearing) An ordinance changing the zoning from C-P to R-2 (10) (One-, Two-, and Multiple-Family Residential. (Postponed - 6/08/04)

From the agenda report: Council postponed this item at the June 8 meeting. Before postponement, the following motion was on the floor: “Moved by Hand/Walker for approval.”

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

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- a. The project will be generally consistent with the conceptual site plan submitted by the applicant at the Planning and Zoning Board meeting, with the understanding staff has not reviewed the site plan.

At the last meeting, Council requested information regarding the amount of vacant buildings on Eau Gallie Boulevard and within the City of Melbourne.

- Wal-Mart/Winn Dixie Center – Total building area is 206,903 square feet. A total of 12,800 square feet is currently vacant within several tenant units in the retail portion between Wal-Mart and Winn Dixie.

This is the only building with vacancies within the City although there are other vacant retail/office buildings along Eau Gallie Boulevard, which are located in the County.

Staff recommended denial; however, the ordinances have been included in the package in the event that City Council approves the request. If Council considers approval, staff recommends the following conditions: that the density be reduced to eight units per acre, which is the proposal on the applicant's conceptual site plan; that the development substantially match the photographs provided by the applicant at the June 8 meeting showing a Florida vernacular style of architecture; and a requirement that each unit be a minimum of 2,000 square feet.

Attorney Novak read Ordinance Nos. 2004-44 and 2004-45 by title. Planning and Economic Development Director Cindy Dittmer reviewed the agenda report. There were no disclosures by Council.

At the request of Mrs. Poole, Attorney Novak read an e-mail from Mark LaRusso, 622 Sanderling Drive, Melbourne, dated June 21. Mr. LaRusso indicated that he is opposed to the rezoning; one restaurant in the area has a 30 – 45 minute wait; another nationally known restaurant is in the process of building; there is a massive build up along the coast, which will result in people seeking food, entertainment, etc.; and there are 4,398 restaurant chains in the United States that may be interested in expanding into our area.

Mr. Contreras pointed out that Paul Rufo also submitted a letter, dated June 17. Mayor Buckley said that since Mr. Rufo is the applicant, he would like for him to explain his correspondence.

Paul Rufo, applicant, referenced the tax calculation, which has been distributed to Council. He reported that Mr. Hessee, his associate on the project, withdrew his interest in the property. Mr. Hessee did not feel like he could meet the timelines involved. Mr. Rufo said that in the meantime, Coy Clark has replaced Mr. Hessee and is assuming responsibility for the development. He added that Mr. Clark is present and available to answer questions.

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Mr. Rufo said he understands that the City is concerned about vacant City of Melbourne property. However, he said that the vacant commercial property in this area runs along invisible lines. Regarding Mr. LaRusso's correspondence, Mr. Rufo clarified that the restaurants he contacted said that the demographics in the area do not support their guidelines to start another restaurant.

Mayor Buckley confirmed for Mr. Rufo that the former ABC Liquor store was de-annexed from the City of Melbourne and annexed into the City of Indian Harbour Beach. Mr. Rufo said that the City has raised concerns about the lack of commercial property in the City, yet it de-annexed valuable commercial property. He reviewed the list of commercial property in the area and stated that there are serious vacancies.

Continuing, Mr. Rufo said that the proposed site plan and photographs previously distributed are no longer valid since Mr. Hessee has left and Mr. Clark has now joined the development. Mr. Rufo made the following points: a residential development will have more pervious area than a commercial development; the seller has had the property on the market in excess of five years as commercial; the jurisdiction where vacant commercial properties are located is irrelevant; and developing the property as residential would be compatible with the surrounding area.

Mr. Contreras asked Mr. Rufo to elaborate on his letter dated June 17, 2004. Mr. Rufo provided an evaluation of a specific site along East Eau Gallie Boulevard to show a comparative tax income potential to the City on a residential versus commercial basis. Using the example in his letter, a commercial project would generate \$16,749.60 in annual tax income (less credit allowed by Property Appraiser for "lease-up"). A residential project would generate \$43,070.40 in annual tax income to the City.

Mrs. Hand asked Mr. Rufo if a density of eight units per acre would be acceptable. Mr. Rufo said he would not want to commit to that at this time.

Coy Clark informed Council that he has been involved with this project for three days; therefore, he has not formulated a plan. He noted that the density would be between eight and 10 units per acre. He said, if Council approves this at this meeting, he would return by second reading with a site plan, density, elevations and price range. He asked Council to keep the density at eight to 10 units per acre.

Mayor Buckley read the recommendation. City Clerk Cathy Wysor read the motion on the floor and asked for clarification by the maker as to which ordinance it pertains to.

Following a brief discussion, Mrs. Hand clarified that the motion is for approval of Ordinance No. 2004-44. Mayor Buckley stated that the motion is "moved by Hand/Walker for approval of Ordinance No. 2004-44."

Mrs. Poole referenced the reasons and findings outlined by staff in the agenda report, which support denial of the request. Mrs. Poole stated that this is another case of commercial being rezoned to residential. Staff has recommended denial for good

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reasons; nice homes or condominiums are not in the best interest of the City in this location. She recommended Council follow staff's recommendation.

The question was called. The roll call vote was:

Aye: Contreras, Walker and Hand

Nay: E. Palmer, Poole and Buckley

Motion failed. (The effect of the motion is that the ordinance is denied.)

Based on the ordinance being denied Council did not take action on Ordinance No. 2004-45.

Recessed: 8:00 p.m.

Reconvened: 8:11 p.m.

11. ORDINANCE NO. 2004-46 (CU-2004-06) CIGAR BOB'S HAVANA CLUB: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow the consumption of alcohol on the premises in conjunction with a cigar shop on a portion of a 0.92-acre parcel in a C-2 zoning district, located at 426 North Harbor City Boulevard in the Harbor City Plaza, just south of the intersection of North Harbor City Boulevard and Ballard Drive, on the west side of U.S. 1. (Owner - James Vlamis) (Applicant/ Representative - Robert Ripoll) (First Reading - 6/08/04)

The Assistant City Attorney read Ordinance No. 2004-46 by title. Mr. Contreras disclosed that on May 17 he received a call from County Commissioner Colon who described the request as a social club and discussed the activities that would take place. On that same day, he spoke with Mr. Ripoll, the applicant, who articulated the same information.

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

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-46. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

12. CONSENT AGENDA:

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Moved by Hand/Contreras for approval of the consent agenda, Items “a – h.”

Mr. Ralls expanded on Item “a” for Mrs. Poole. The item was not removed from the consent agenda.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Contract award for environmental consulting services for the Reverse Osmosis Water Treatment Plant potable water by-product discharge permit renewal application, Project No. 03303, Reiss Environmental, Inc., Winter Park, FL - \$32,500.
- b. Approval for Brevard County to retain and administer all Brevard County HOME Consortium FY 2003 and FY 2004 American Dream Downpayment Initiative funds for the benefit of low-income homebuyers throughout Brevard County, including Melbourne.
- c. Award of \$35,000 in HOME Rental Rehabilitation funds to Abilities, Inc. of Florida for the rehabilitation of seven units located in San Juan Village Condominiums and authorization for the City Manager to execute an agreement with Abilities, Inc. of Florida for the implementation of the project.
- d. Purchase of a mobile generator for the Wastewater Collection Division, Florida Detroit Diesel Allison, Orlando, FL - \$38,499.
- e. Lien Rescission CE-03-083: A request for lien reduction from \$23,900 to \$1,000 (Earl K. Edwards – 1404 Lillian Lane)
- f. Lien Rescission CE-03-094/CD-03-012: A request for lien reduction from \$91,400 to \$1,000 (Travis Lee Edwards – 357 Jeanne Drive)
- g. Purchase of 17 replacement hand-held radios and accessories, Communications International, Inc., Vero Beach, FL - \$50,684.96.

Added to the agenda:

- h. Annual contract award for custodial services for 10 City buildings, JMC Services, Inc., Gotha, FL - \$58,493.88.

13. COUNCIL ACTION RE: Sunset Review of the Stormwater Utility.

From the agenda report: When Council established the Stormwater Utility by ordinance in 1999, a provision was included for a sunset review report to be provided to Council by the City Manager with a recommendation whether to terminate or

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maintain the Stormwater Utility. The report in the package addresses the background, the administrative and financial aspects, and the accomplishments of the Stormwater Utility.

In the five years since its creation, the Stormwater Utility has generated over four million dollars in revenues that have been used to improve water quality and to alleviate flooding potential within the City. These efforts include the design and construction of capital projects, purchase of a street sweeper and vactor truck, planning for short and long-range stormwater needs, creation of an inventory of drainage facilities, and achieving compliance with federal regulations.

Section 27-14 of the City Code requires that the City Manager submit the sunset review report to the City Council prior to July 1, 2004 with his recommendation, and that prior to September 15, 2004, the City Council vote whether to maintain or terminate the Stormwater Utility. Since efforts are currently underway to develop a system for the City to administer the calculation and billing of the utility fees for the 2004-2005 fiscal year, and because the fiscal year 2005 budget process will be nearly complete by September 15, Council's action on this matter now will determine how those efforts should proceed.

The recommendation is that the Stormwater Utility be maintained.

City Engineer Howard Ralls reviewed the agenda report.

Moved by E. Palmer/Walker to continue with and maintain the Stormwater Utility. Motion carried unanimously.

14. SITE PLAN APPROVAL (SP-2003-13) PINEAPPLE HOUSE: (Public Hearing) A request for site plan approval to develop a three-building, 77-unit condominium project on eight parcels, comprising 1.79± acres, located east and west of Pineapple Avenue, south of Eau Gallie Boulevard, and north of Montreal Avenue. (Owner/Applicant/Representative - Pineapple House of Brevard, Inc.) (P&Z Board - 6/04/04)

From the agenda report: The site plan was originally submitted in early 2003 and has been on hold during several changes to height restrictions in the area. The applicant submitted a vested rights and Bert Harris claim due to those changes in height restrictions. Once a Code complying site plan is approved by City Council, it is anticipated the applicant will withdraw both claims.

The proposed site plan shows three 80-foot buildings containing a total of 77 residential units. Interior parking garages are proposed for each building, containing a total of 140 parking spaces. An additional 18 exterior spaces are provided on site. Access is provided from Pineapple Avenue and from the alley along the western edge of the project.

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The Planning and Zoning Board unanimously recommended approval of SP-2003-13, site plan for the Pineapple House, a three building, 77-unit residential condominium project on a one-page plan prepared by Morgan & Associates Consulting Engineers, Inc., with a sealed date of May 26, 2004, 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) a decrease of five percent of the open space or vegetative areas on site; 2) an increase in the number of residential units; or 3) any increase in building height.

- b. Trees located within common areas and tracts shall be preserved unless determined during construction plan review, that they must be removed to construct improvements.
- c. The project will be substantially built as depicted on the submitted elevation.

There were no disclosures by Council. Mrs. Dittmer reviewed the agenda report. Mayor Buckley opened the public hearing.

Dude Braselton, Vice President, Pineapple House, displayed a rendering of the development. He said that the structures have been oriented on the site to take advantage of the terrain. The building to the east has been angled and narrowed to leave a large breezeway. The portion on the westbound Eau Gallie Boulevard area has been moved back a couple of feet from the property line. And, parking is almost all internal. This will allow green space and trees. Additionally, the surface of the parking lots will be brick paver or paver like material.

Continuing, Mr. Braselton discussed the architectural features of the buildings and explained how they were selected. He noted that the colors will complement the logo of the redevelopment area. Mr. Braselton said that this is an understated, elegant project. The only signage will be "Pineapple House" located by each front door along with the building address.

The project was presented to the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee, which was very supportive and receptive. The Planning and Zoning and Architectural Review Boards also gave unanimous approval.

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

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Mr. Braselton responded to Mrs. Poole's questions regarding ownership of the corporation, the number of buildings, and the architectural style selected.

Mr. Palmer asked if the road that connects Montreal Avenue and Eau Gallie Boulevard, just shy of the park, will be part of the development. Mr. Braselton said no and added that property is not part of their project.

Mrs. Walker asked where guests will park. Mr. Braselton said there will be exterior parking on the outside of the buildings. Mrs. Walker asked if there will be adequate parking. Mr. Braselton noted that their plan exceeds the parking requirements of the City.

Steve Morgan, engineer of record, submitted a packet of information containing the following: review opinion and history by project engineer; site plan of Pineapple House Condominium; resume and qualifications of project engineer; Planning and Zoning Board minutes of June 3, 2004; and City staff and City Manager reports to Council.

In response to Mrs. Poole, Mr. Morgan listed other developments in the area that he has been involved with.

There were no further comments from the public.

Mayor Buckley read the recommendation.

Moved by E. Palmer/Hand for approval, subject to the conditions.

Mr. Braselton confirmed for Mrs. Poole that the buildings will be 80' in height.

The question was called. Motion carried. Mrs. Poole voted nay because of the height.

15. SITE PLAN APPROVAL (SP-2004-08) WICKHAM PARK PHASE I IMPROVEMENTS: (Public Hearing) A request for site plan approval to initiate Phase I renovations of Wickham Park, including the equestrian area, maintenance compound, and a new roadway on a portion of 475.428± acres, located on the north side of Parkway Drive, east of Wickham Road. (Owner/Applicant/Representative - Brevard County Parks & Recreation) (P&Z Board - 6/04/04)

Mrs. Dittmer briefed Council and reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of SP-2004-08, site plan for Wickham Park Phase I Improvements, depicted on a four-page plan prepared by PBS&J, Inc., with a sealed date of May 3, 2004, with the following conditions:

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

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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, or 2) any additional curb cuts on any major roads.

- b. Appropriate permits for any threatened or endangered species must be obtained.
- c. Trees located within common areas and tracts shall be preserved unless determined during construction plan review, that they must be removed for such improvements.
- d. The project will be substantially built as depicted on the submitted elevation.

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

Mr. Contreras referenced the employee and special event use only gate and asked if that entrance will align with Weston Park (to the south) or if it will be off set.

Bill Ross, Brevard County Parks and Recreation, said that the intent is to align both entrances. He agreed with the conditions.

In response to Mr. Palmer, Mr. Ross said that the RV/Camping area, located farther north, will be renovated in another phase.

A brief discussion followed regarding the new horse stall area.

Moved by Poole/Contreras for approval subject to the conditions. Motion carried unanimously.

16. SITE PLAN APPROVAL (SP-2004-06) EAGLE HARBOR COMMERCIAL: (Public Hearing) A request for site plan approval to develop three 9,540 square foot buildings consisting of 18 commercial units on a 3.183±-acre parcel, located on the north side of Eau Gallie Boulevard, between John Rodes Boulevard and Wickham Road. (Owner/Applicant - Eagle Harbor, LLC) (Representative - Matt Soyka, Soyka Engineering, Inc.) (P&Z Board - 6/04/04)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of SP-2004-06, site plan for Eagle Harbor Commercial Center, on a one-page plan prepared by Soyka Engineering & Associates, Inc., with a sealed date of May 20, 2004, 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.

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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 of more than 10% of the square footage of any commercial uses; or 3) any additional driveways.

- b. Appropriate permits for any threatened or endangered species must be obtained.
- c. Trees located within common areas and tracts shall be preserved unless determined during construction plan review, that they must be removed to construct improvements.
- d. The project will be substantially built as depicted on the submitted elevation.

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

Matt Soyka, 1680 West Hibiscus Boulevard, engineer representing the applicant, responded to Mrs. Poole's questions. He said that at this point, they do not have planned occupants for the buildings. He confirmed that he did not prepare the elevations.

Mrs. Poole said she did not recognize the name of the person who performed the environmental impact assessment. Mr. Soyka said that the firm, Biological Research Associates, is well known and located in Vero Beach. He added that the person who provided the report previously worked with the Department of Environmental Protection and St. Johns River Water Management District.

Mrs. Poole asked about the finding in the assessment. Mr. Soyka said he believes it related to an off-site issue, possibly about not working within a certain radius or a certain time of year.

Responding to the Mayor, Mr. Soyka agreed with the conditions.

There were no further comments from the public.

Moved by Walker/Hand for approval of the site plan subject to the conditions noted.
Motion carried unanimously.

17. ORDINANCE NO. 2004-47 (Z-2004-989AD/LDR-2004-03/FOC-2004-03) ADULT ENTERTAINMENT: (First Reading/Public Hearing) An ordinance amending City Code, Appendix B, by revising the location requirements for adult entertainment establishments and establishments for the consumption of alcohol. (Applicant - City of Melbourne) (P&Z Board - 6/04/04)

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From the agenda report: This is the first reading of an ordinance to change the distance requirements contained in Appendix B, Article XVIII for adult entertainment establishments. The proposed change would do the following:

- Add an inverse distance requirement for the location of a bar within 500 feet of an adult entertainment establishment.
- Add an inverse distance requirement for the location of schools, religious institutions, public parks and residential zoning districts from adult entertainment establishments.
- Change the distance requirement from schools to 2,500 feet, which is now required by Florida Statutes.
- *Amend the waiver allowance to be consistent with Florida Statutes.

(*Note: see discussion by Attorney Kahn.)

These changes are necessary to amend the City Code to be consistent with the Florida Statutes and to strengthen the distance requirement between an existing adult entertainment district and a bar (consumption of alcohol on premises).

Based upon input from the City's adult entertainment consultant, Attorney Michael Kahn, the Planning and Zoning Board discussed the existing district and recommended a change. The proposed change to the district will go to the Planning and Zoning Board as a draft ordinance on July 1 and then to City Council on July 27.

The Planning and Zoning Board voted unanimously to recommend approval of this request.

The Assistant City Attorney read the ordinance by title. Mrs. Dittmer briefed Council.

Mayor Buckley referenced the school that Council just approved on Eau Gallie Boulevard and asked if that will be located far enough away. Mrs. Dittmer said that it meets the Code today; however, it will not meet the 2,500' distance (as provided in this ordinance).

Mayor Buckley called for disclosures. There were no disclosures by Council.

Mrs. Poole asked for additional information about the location of the new school. Mrs. Dittmer explained that the distance requirement in the current Code was reviewed when the school application was reviewed.

Mr. Schluckebier confirmed that the permitting of the school was proper and legal. He added that the City is working towards reducing the zone while at the same time

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importing new regulations that the State Legislature has passed. The main point of this ordinance is to import two-way distance regulations.

Michael Kahn, City of Melbourne special counsel, stated that he represented the City 20 years ago when the first ordinance was drafted. He stated that the U. S. Constitution provides for a First Amendment protection for adult entertainment. Continuing, he noted that he has been charged with updating our regulations. And, the update will be done in segments. The ordinance on this agenda adds inverse distance requirements and increases the distance from schools to 2,500'.

With regard to this ordinance, Mr. Kahn submitted the following for the record and Council's review:

- New York State Liquor Authority v. Dennis Bellanca
- Michael Barnes v. Glen Theatre
- City of Erie v. PAP's A. M.
- City of Renton v. Playtime Theatres, Inc.
- Report to the American Center for Law and Justice on the secondary impacts of sex oriented businesses, dated March 31, 1996
- Houston City Council Committee on the Proposed Regulation of Sexually Oriented Business Legislative Report (dated 1983)

Mr. Kahn said that Council has the ability to regulate adult entertainment. The cases show that the City Council also has the ability to regulate the times, places and circumstances under which liquor may be sold; and, that the City has the right to rely on studies performed in other cities on the secondary effects of adult entertainment.

Attorney Kahn briefly discussed each case and the studies and stated that it is a privilege to represent Council.

Moved by Walker/Poole for approval of Ordinance No. 2004-47.

Mr. Schluckebier asked Mr. Kahn to address the waiver allowance. Mr. Kahn explained that the waiver allowance has to be removed from the ordinance [Article XVIII, Section 22 (a) (f)]. The State Statute provides that a governmental entity may opt not to put in the 2,500' distance requirement. However, the way the waiver has been presented in the ordinance, it permits discretion on an ad hoc basis to opt out of the 2,500' and that is not permissible. Mr. Kahn recommended that the ordinance be passed tonight and then be amended at second reading.

Mayor Buckley asked if there were any comments from the public. There were no comments.

The question was called. Motion carried unanimously.

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18. ORDINANCE NO. 2004-48 (CU-2004-07) MOONSTRUCK WINE COMPANY: (First Reading/Public Hearing) An ordinance granting a conditional use to allow the consumption of alcohol on the premises in a C-3 (Central Business) zoning district, located on the northwest corner of East New Haven Avenue and Municipal Lane. (Owner - Scott Lillycrop) (Applicant - Moonstruck Wine Company) (P&Z Board - 6/04/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval subject to the following condition:

- a. Any expansion of the floor area of the proposed conditional use beyond the floor space currently occupied by 834 and 836 East New Haven Avenue will require conditional use approval for the new square footage

Mrs. Walker asked if this request is located adjacent to the cigar bar. Mrs. Dittmer said yes, to the west. Mrs. Walker said she is not in favor of this request. It is located too close to the sidewalk where people walk and browse; it is inviting trouble.

There were no disclosures by Council and no comments from the public.

Mrs. Walker's motion to deny the ordinance did not receive a second.

Moved by Buckley/Contreras to approve Ordinance No. 2004-48. Motion carried.
Mrs. Walker voted nay.

19. ORDINANCE NO. 2004-49 (AR-2004-152), ORDINANCE NO. 2004-50 (CPA-2004-08), AND ORDINANCE NO. 2004-51 (Z-2004-988), SHELL PROPERTIES & RTS DEVELOPMENT: Ordinances providing for annexation, Comprehensive Plan Amendment, and rezoning on 0.93-acre parcel, located on West Drive, between Ellis Road to the south and Dow Road to the north, and a one-acre parcel, located on the northeast corner of the Dow Central Park industrial subdivision at 445 Stan Drive. (Owners - Shell Properties, LLC and RTS Development, Inc.) (Applicant/Representative - Vaheed Teimouri, P.E.) (P&Z Board - 6/04/04)

- a. Ordinance No. 2004-49/AR-2004-152: (First Reading/Public Hearing) An ordinance providing for the annexation of two properties for a proposed plumbing supply business on West Drive.
- b. Ordinance No. 2004-50/CPA-2004-08: (First Reading/Public Hearing) An ordinance establishing an Industrial land use for two parcels.
- c. Ordinance No. 2004-51/Z-2004-988: (First Reading/Public Hearing) An ordinance establishing a zoning designation of M-1 (Light Industrial).

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Attorney Novak read each ordinance by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of this request. If approved, the newly annexed property will be located in Council District 5.

There were no disclosures by Council and no comments from the public.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-49.

Mrs. Poole referenced the agenda report and backup material, which indicates that a pre-annexation agreement for the Stan Drive Industrial Subdivision will be executed in the near future. Also, she pointed out that some of the material indicates .93 acres while other material shows 1.93 acres. And, she pointed out that the annexation involves two parcels rather than one parcel. Mrs. Poole recommended that this annexation be postponed until the Stan Drive properties have executed a pre-annexation agreement.

Mr. Schluckebier said that although the written staff material may not be clear, there is no part of this annexation for which the City does not already possess a written agreement. He stressed that the City will follow the State law and our agreement with the County every time.

Mrs. Dittmer confirmed that the City has a recorded pre-annexation agreement for the Stan Drive Industrial Subdivision. She added that we recently found that we are contiguous to Dow Central Park (Stan Drive area). However, the applicant for this annexation, a plumbing supply business, is ready to proceed. He would have been delayed if the City waited to prepare the entire subdivision for annexation. Mrs. Poole said that is too bad; the entire area should be annexed at one time rather than one acre to allow a plumbing company to develop.

Following a brief discussion, Mr. Schluckebier confirmed for Mrs. Poole that the annexation ordinance can be revised before second reading to show that it is two parcels.

The question was called. Motion carried unanimously.

Moved by E. Palmer/Walker for approval of Ordinance No. 2004-50. Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2004-51. Motion carried unanimously.

20. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

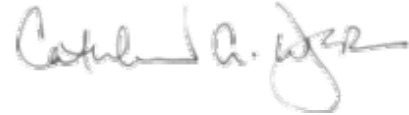
Mayor Buckley reported that he has sent a “welcome” letter to the new residents in the Turtle Mound Road/Parkway Drive annexation areas. The City Manager added that the residents in the new area can expect full City services from this date forward.

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21. ADJOURNMENT

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

The meeting adjourned at 9:57 p.m.



City Clerk – 7/1/2004

Approved by Council: July 13, 2004