

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004



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

1. Reverend Linda Howard, Special Gatherings Ministry, 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

None.

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

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

6. City Manager's Report

Mayor Buckley referenced the memorandum from staff requesting Item 18 "m" (a resolution relating to the St. Johns River Water Management District) be added to the agenda.

Moved by Poole/E. Palmer to add Resolution No. 1888 to the agenda as Item 18 "m."  
Motion carried unanimously.

City Manager Jack Schluckebier reported that the Board of County Commissioners will consider the issue of school impact fees at its August 10 meeting. The Melbourne City Council is on record in support of this issue. He noted that the latest version of the proposal provides for the fees to be collected and disbursed within set districts.

7. Public Comments

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-30 (AR-2004-149), ORDINANCE NO. 2004-31 (CPA-2004-04), AND ORDINANCE NO. 2004-32 (Z-2004-981) ARMSTRONG HOMES: Ordinances providing for annexation of 5.75 acres, a Comprehensive Plan Amendment, and rezoning on a 4.8-acre parcel, located on the north side of Eau Gallie Boulevard, west of Wickham Road and east of the intersection with Sarno Road. (Owner - Gleason Brothers and Company) (Applicants - Alex Sokolik & Dave Armstrong)
- a. Ordinance No. 2004-30/AR-2004-149: (First Reading/Public Hearing) An ordinance providing for the annexation of a 5.75-acre parcel. (Denied - 5/25/04) (Action Rescinded - 7/13/04)
  - b. Ordinance No. 2004-31/CPA-2004-04: (First Reading/Public Hearing) An ordinance establishing a Medium Density Residential land use on a 4.8-acre parcel.
  - c. Ordinance No. 2004-32/Z-2004-981: (First Reading/Public Hearing) An ordinance establishing a zoning designation of R-2 (8) (One-, Two-, and Multiple-Family Residential with a cap of eight units per acre) on a 4.8-acre parcel.

City Attorney Paul Gougelman read each ordinance by title. Mrs. Dittmer briefed Council on the item. The following is an excerpt from the agenda report:

Council denied Ordinance No. 2004-30 at its May 25 Council meeting. As a result, no action was taken on the Comprehensive Plan Amendment and rezoning ordinances. On July 13, Council rescinded the action taken on this item and authorized the public hearing to be advertised for this agenda as a first reading.

The Planning and Zoning Board unanimously recommended approval with the condition that the area residents be re-notified when a site plan is submitted for approval. After the County submitted its comments (following the Planning and Zoning Board meeting), staff recommended the density be lowered to eight units per acre.

The recommendation is for approval of Ordinance No. 2004-30, Ordinance No. 2004-31, and Ordinance No. 2004-32, subject to the findings contained in the Planning and Zoning Board memorandum and the following conditions:

- a. Area residents will be re-notified when a site plan is submitted for approval.
- b. No access will be permitted for the development from the Baker Road right-of-way.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mayor Buckley called for disclosures. There were no disclosures by Council. Mayor Buckley referenced the correspondence from Susan Arnold, dated July 21, 2004. In the letter, Ms. Arnold outlines the reasons the area residents are opposed to this request.

Mayor Buckley opened the public hearing.

Clayton Turck, 1720 Williamsburg Way, said that he is the President of the Creekwood Homeowners' Association. He stated that the area residents have a major concern with this request as it relates to stormwater runoff. Mr. Turck submitted a drawing that shows the flow of stormwater in this area. He added that there is a major erosion problem when there is a heavy rain.

Mr. Turck asked if there is a binding site plan that shows how the water will be handled if this property is annexed. Mayor Buckley said not at this time. The Mayor added that the applicant would not prepare a plan until he was sure this item would be considered.

Mr. Turck concluded by saying the residents do not want this development to impact an existing problem.

A brief discussion followed regarding the residents' attempts to work with the County on the existing flooding problem. Mr. Turck confirmed for Mr. Contreras that they started with former County Commissioner Voltz who attended homeowners' meetings. About four years ago, the canal backed up and the residents had standing water in their yards. Mr. Turck added that they have now gone to Commissioner Colon with the issue. Mr. Contreras asked if it would be safe to say that, in all these years, nothing has been done by the County. Mr. Turck replied that the County cleaned out the Hopkins ditch and recently cleaned out another ditch that borders on Creekwood.

Susan Arnold, 3603 Palomino Road, stated that she is representing her friends and former neighbors. Ms. Arnold referenced the 165 people who signed the petition of opposition previously submitted. She confirmed that the residents continue to oppose this request and the issues remain the same – whether the property is developed at 15 units per acre or eight units per acre.

Ms. Arnold outlined and elaborated on the following issues: the area is made up of single-family residential homes; compatibility; density; drainage; increased traffic; and environmental preservation. She asked how the residents can determine how water from this property will be handled without a binding development plan.

Regarding the issue of the County, Ms. Arnold said that Scott Ellis also worked with the residents on the drainage issue in the area. She pointed out that the documentation she has submitted shows that the property lies within a floodplain area as identified on the FEMA map.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Ms. Arnold reported that recently Brevard County Planning and Zoning did not give a recommendation for a nearby development of seven single-family homes because of school overcrowding in the area. She added that the residents' distrust of Mr. Armstrong has widened since he tried to blindside them with this amended proposal. The residents are concerned that if this request is approved, he will have free reign and the residents will have no protest.

Regarding Baker Road, Ms. Arnold said that a County employee has indicated that Baker Road leads to Aurora Road and then joins with Turtle Mound Road. Because of this, the County has indicated that the road would never be vacated. However, the City's Engineering Department said that an application to abandon and vacate would be considered if the Baker Road right-of-way were annexed into the City.

Mayor Buckley read condition "b" for Ms. Arnold.

Mr. Contreras asked the connection between this issue and Clerk of Court Scott Ellis. Ms. Arnold said that Mr. Ellis worked with the residents when he was a County Commissioner. Additionally, he has worked on this issue since.

Mr. Contreras asked about Baker Road connecting with Turtle Mound Road. He noted that this is new evidence that needs to be explored. Mr. Schluckebier said that this proposal relates to the portion of Baker Road as shown on the map and there is nothing in the City's plan regarding future transportation linkages. Mrs. Dittmer agreed and said this item relates to the portion of Baker Road from Eau Gallie Boulevard to the northern end of the subject property.

Council Member Grace Walker asked what the County Commissioners who have investigated this issue have done to assist the residents with the drainage problem. Ms. Arnold said they have been trying to improve the situation for a number of years. The drainage ditches are now cleaned on a regular basis, which helps.

Ms. Arnold concluded by saying the City should remove Baker Road from the equation since the applicant did not make this part of his request.

Colleen Richards, 1977 Pinewood Road, informed Council that she owns the property directly east of Baker Road. She referenced the subject property on the map and said the only way the applicant can have access would be to cross or develop a portion of Baker Road. Ms. Richards stated that Baker Road has been designated as a part of the Pinewood Estates, which is in the County. Because of this, she questioned why it should be annexed.

Continuing, Ms. Richards asked how this property can be developed at eight units per acre when the County would not allow a nearby property to be developed with seven homes.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Liz Adesso, 265 Baker Road, said her greatest concern about whatever is developed on the property behind her is the stormwater retention. The property is already located in a flood zone and she is not convinced that the developer will be able to solve the problem.

Ms. Adesso read a letter dated June 30 from Fran Baker, her neighbor, who is out of town. In the letter, Ms. Baker has questioned how Mr. Armstrong plans to resolve the drainage issues.

Mr. Contreras pointed out the condition whereby area residents would be notified when a site plan is submitted. Ms. Adesso replied that she and Ms. Richards never received notification about this action. And, she is located closest to the property.

Roy Raithel, 965 Cobb Lane, stated that he is opposed to the annexation. He listed several of his reasons including the impact the stormwater from this property has on the surrounding area; the subject property being located in a 100-year floodplain; the requested density; the location of wetlands; and the affect on wetlands, habitat and endangered wildlife. Mr. Cobb asked Council to consider a study by a qualified independent engineering firm before entertaining any permits or annexation on this property.

Mr. Raithel confirmed for Mrs. Poole that he has seen a pair of nesting Sandhill Cranes on this property for the past 11 years.

Richard Marshall, commercial realtor representing Armstrong Custom Homes, stated that he is in favor of the annexation and rezoning. He reported that, subsequent to the first reading of this item, he and Mr. Armstrong met with the homeowners in the area. They believe they have satisfactorily addressed the concerns cited. There is an existing flooding problem in this area. The subject property is higher on the side that fronts Eau Gallie Boulevard, which causes water to flow north. They believe that they can minimize or eliminate drainage from this property.

Continuing, he noted that the development will not damage or have an adverse affect on the existing wetlands; there will be a natural, native barrier; the development will not exceed two floors in height; they have assured the homeowners that they have no intent to extend Baker Road; Mr. Armstrong did not include Baker Road in his request, the City did; it is not practical to spend thousands of dollars to develop a site plan until the City approves this action; the environmental report on the property indicates no scrub jay habitat and one gopher tortoise burrow; Mr. Armstrong has agreed not to disturb the burrow and to relocate the tortoise.

Mr. Marshall concluded by asking for approval of the annexation and rezoning.

Following a brief discussion, Mrs. Palmer said that Scott Ellis, who is a former County Commissioner, lived in this area during the time when there was a great deal of

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

flooding. He became very interested in the drainage issue and has remained interested, as a citizen, not as the Clerk of Court.

David Armstrong, applicant, said he has a survey that shows the natural lie of the land. It indicates that the property does not outfall onto anything. Additionally, he has a study that is over 60 days old showing no endangered habitat. Regarding the development plan, Mr. Armstrong said no one puts \$40,000 – 60,000 into a development plan unless they have the agreement of the people involved to move forward with the project. He stated that the plans will be reviewed by staff. And, the plans will show how and where the water will flow.

Mr. Armstrong stated that he did not ask for Baker Road to be included in the annexation; therefore, it should not be a part of the decision. He noted that it will provide a phenomenal buffer zone between this property and the adjacent property.

Mr. Armstrong referenced the comments made about a nearby development with seven homes being denied by the County. He said that development included wells and septic tanks; it cannot be compared to this project.

Continuing, Mr. Armstrong said the area has had flooding problems because the ditches and culverts have not been maintained. He noted that he plans to return with a development plan that will show how water will be retained, that the development will not encroach on wetlands, and that it does not involve wildlife habitat.

Mr. Palmer asked Mr. Armstrong how he proposes ingress and egress to the property. Mr. Armstrong said that curb cuts exist on Eau Gallie Boulevard. Mr. Palmer asked how stormwater runoff will be handled. Mr. Armstrong replied that the plan will be engineered so that retention will be on-site. Mr. Palmer stated that this development will impact our school system since it will not be restricted to the elderly. Mr. Armstrong said that it looks like the school impact fee will pass, which will solve that problem. He added that he believes everybody should share financially in educating our children.

Mr. Palmer asked if there were any plans for Baker Road and Mr. Armstrong replied none. They will not use Baker Road under any circumstances.

A brief discussion followed between Mr. Armstrong and Mrs. Poole about wildlife, endangered habitat, and the impact on schools.

Mayor Buckley read the stipulations and Mr. Armstrong said he agreed with them.

Mrs. Walker asked Mr. Armstrong whose responsibility it is to maintain the culverts. Mr. Armstrong said a lot of those issues can be handled by maintenance. The ditches are on County property and the culverts are located on private property; however, maintenance needs to be handled by everybody.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mrs. Walker said within the last month she drove around the area and saw three Sandhill Cranes.

Ms. Richards returned to the podium and asked, if the property is annexed, if Mr. Armstrong could pave Baker Road without notice to the neighbors. The Mayor said he imagines he could but doesn't know why he would. He added that the developer has said he is not going to use Baker Road.

Moved by Buckley/Contreras for approval of Ordinance No. 2004-30.

Mrs. Poole discussed the history of this item. She said that if a development is denied there is a good reason because developments are seldom denied. She pointed out that the property has an advisory future land use designation of low density residential, yet the applicant is requesting medium density residential. If this is approved, it would not be in accordance with the advisory designation. She questioned how this annexation will promote the public health, safety, welfare, etc.

Mrs. Hand said she also has concerns about this development. A townhome-type development will have a greater impact on the schools. For that reason, she noted that she won't support the motion.

Mr. Contreras asked about low density residential versus medium density residential. Mrs. Dittmer said that Mrs. Poole was referencing a future advisory land use. This is a land use that the County has on property located outside of the City. Mr. Palmer asked if the density of eight units per acre will adversely impact the area. Mrs. Dittmer said that staff made a determination that it does not believe so.

The question was called. Motion failed. (Aye: Contreras, E. Palmer and Buckley. Nay: Poole, Walker, C. Palmer and Hand.)

Recessed: 7:55 p.m.  
Reconvened: 8:06 p.m.

9. 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: (Second Reading/Public Hearing) An ordinance changing the land use from Commercial to Medium Density Residential (8 units per acre). (First Reading - 7/13/04)
  - b. Ordinance No. 2004-45/Z-2004-987: (Second Reading/Public Hearing) An ordinance changing the zoning from C-P to R-2 (8) (One-, Two-, and Multiple-Family Residential with a cap of 8 units per acre). (First Reading - 7/13/04)

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

The City Attorney read both ordinances by title. Mrs. Dittmer summarized the item. The following is an excerpt from the agenda report:

At its July 13 meeting, Council took the following action on this item: voted to rescind the action taken June 22; voted to consider Ordinance Nos. 2004-44 and 2004-45 as a continuation of the public hearing; approved Ordinance No. 2004-44 on first reading; and approved Ordinance No. 2004-45 on first reading with a decrease from the requested density to eight units per acre.

Mr. Rufo presented information regarding property tax valuation and details on vacant commercial buildings in the general vicinity. City staff has reviewed the property tax comparison of a commercial versus a residential project. Although the total amount of property tax revenue may be slightly higher for residential property than commercial, the implication of the comparison is not correct. For example, because land may produce more revenue for the City has nothing to do with the level of any associated expense. Further, neither of these has anything to do with the appropriateness of the proposal as a Comprehensive Plan change. Without the stipulation offered herein, the comparisons are without basis or validity, as the zoning has nothing to do with the size or value of the particular unit to be built or by whom.

In regards to the commercial vacancy data provided by Mr. Rufo, it contained many buildings not located within the City of Melbourne. Council had specifically requested information on vacant commercial property within the City, which was provided by City staff in the June 22 agenda package and showed a total of 12,800 square feet of vacant space in the Wal-Mart shopping center. Compared to the gross commercial footage, this was a small, nominal percentage.

If Council desires to approve the requests during the second reading, staff would recommend the following stipulations: a) The proposed development shall be substantially consistent with the renderings submitted by the applicant at the July 13 meeting, including tile roofs on the buildings. b) The proposed development shall have units that are a minimum of 2,000 square feet with a two-car garage.

The recommendation is for denial of Ordinance No. 2004-44 and Ordinance No. 2004-45.

Mayor Buckley read the letter/petition dated July 23 signed by the residents of Unity Drive. The residents indicate they are opposed to any change of zoning that would grant more than six units per acre; opposed to construction of any housing except for one- or two-story upscale townhomes; opposed to the original plan where the homes faced toward the perimeter rather than inward; prefer the present commercial zoning.

Additionally, Council received a letter dated July 27 from Coy Clark. Mr. Clark indicates that he has met individually with most of the homeowners on Unity Drive and he believes he will gain their full support of this project.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mayor Buckley opened the public hearing.

Brian Hoffman, 720 Unity Drive, confirmed that Mr. and Mrs. Page are his parents. They are the owners of the house and live in Ohio; however, he has lived in the home for 12 years. Mr. Hoffman said his parents are aware of the proposed development and have decided to support the request for rezoning.

Gwen Burley, 710 Unity Drive, reported that several of the residents attended the Planning and Zoning Board meeting on this item. Since the board approved the zoning, the residents figured that it would be approved by Council.

Ms. Burley described the community on Unity Drive. She said that last night Mr. Clark knocked on doors and met with the neighbors. As a community, the residents unanimously turned down commercial; they are concerned about the traffic impact and nuisance lighting. Most decided they were willing to go with eight units per acre. Ms. Burley said that her personal observation is that beachside residents have everything in the way of commercial that they need – grocery stores, adequate retail, etc.

Mr. Palmer disclosed that he spoke with Ms. Burley on the telephone. He said that what she has said at this meeting is the opposite of what she said on the telephone.

Ms. Burley said they have since been provided with additional information and the only change they are willing to make in the letter/petition submitted is a change from six units per acre to eight units per acre. They still want all the other restrictions indicated. And, eight units per acre is agreeable to the neighborhood.

Mrs. Poole said she also spoke with Ms. Burley on the phone. She handed Ms. Burley an article about Pop's Casbah (the original owner of Pop's built Ms. Burley's home). Ms. Poole said that Ms. Burley was also opposed to this when she talked with her.

Mayor Buckley asked if there were any other disclosures. Mr. Contreras said he spoke with Mr. Rufo on July 15 who mentioned he would be presenting additional information to Council. Mrs. Palmer said she received messages from Mr. Rufo and Mr. Clark; however, she did not speak to or meet with either. Mrs. Hand stated that two days after the last meeting she spoke with Mr. Rufo regarding the information he presented on taxes. Mrs. Walker disclosed that she saw Mr. Rufo by chance and he addressed the same information with her.

Mark LaRusso, 622 Sanderling Drive, said that services come to mind with a development like this, including fire, police, schools, etc. The taxes Mr. Rufo mentioned are worthy of consideration; however, if that is the only criteria to rezone, then all of Melbourne should be rezoned residential.

Mr. LaRusso said he disagrees with the applicant that the proposed development is comparable with the surrounding area, especially with the activity that is occurring on

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Eau Gallie Boulevard. He recommended Council allow the commerce to catch up with the explosive residential boom.

Mayor Buckley read a statement prepared by Jacie Stivers. Ms. Stivers indicates that she is not involved with this property although she had a client who pursued a commercial development on this site. It did not work because of the configuration of the property. The property is not viable for a commercial development.

Gene Lewis, 209 Freddie Street, Indian Harbour Beach, said he owns commercial property within 500' of the subject property. Mr. Lewis stated he is for the rezoning request and added there is too much vacant commercial property located beachside. He added that he believes residential would be more compatible with the surrounding areas.

In response to Mrs. Poole, Mr. Lewis said his business is Century 21 Spectrum, a real estate company.

Coy Clark, property owner, informed Council that he recently closed on this property. He recapped the reasons he believes this property is compatible with the other properties along the Eau Gallie Causeway. Mr. Clark noted that he is very concerned about commercial vacancies on Eau Gallie Boulevard and A1A. He does not feel that a commercial development would be successful on this site.

Mr. Clark said his request is for eight units per acre. He would like to develop 26 townhomes that would be owned fee simple. The development would be a gated community and the site plan previously submitted would be binding with the exception of the pool. The pool and the retention area would be reversed. He also noted that the architectural rendering would be binding with the exception of the colors. They plan on having tile roofs and the units would sell for \$350,000 - \$425,000.

Mr. Clark apologized to the residents of Unity Drive. He said he was under the impression that they supported a residential development over a commercial development. He referenced the additional letters of support that have been submitted by the residents. Also, he submitted a layout of Unity Drive, which shows each address and corresponding property owner.

Mayor Buckley read the conditions and asked Mr. Clark if he was in agreement. Mr. Clark replied yes.

In response to Mrs. Poole, Attorney Gougelman read the Planning & Economic Development recommendation (for denial) from the agenda package.

Mr. Schluckebier said that the staff recommendation has not changed. He added that given the understanding that this proceeded with a favorable vote at the last meeting, two conditions were recommended.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mayor Buckley stated that most of the vacant commercial property outlined in the materials submitted by the applicant is located in Indian Harbour Beach or Brevard County. He added that this is the only piece of commercial property located in Melbourne on the Eau Gallie Causeway. The City needs commercial property and that is the reason he will vote for denial.

Moved by Poole/E. Palmer for denial of Ordinance No. 2004-44.

Mrs. Poole expressed concern with the recent trend for developers to request that previous actions be rescinded. She noted that we are being flexible to the breaking point.

Continuing, Mrs. Poole said that the item was rescinded because people did not get a chance to speak. Yet, no one attended the last meeting to speak. It was a one-side presentation and Council has a chance to rectify that by denying the ordinance. This is the main thoroughfare to the beaches and the City needs to maintain commercial for its beachside residents.

Mrs. Hand stated that she can't support the motion for denial. She said that we have commercial strips in our own community that are empty. There is an opportunity with this property to use it for residential; it will increase our tax base; and it won't provide for an empty, deteriorating building to be used by vagrants.

Mr. Palmer said that he believes this property should remain commercial. The people on the beachside need commercial development, particularly on a thoroughfare like Eau Gallie Boulevard. The other vacancies in the area should have no bearing on the decision made at this meeting.

Mrs. Palmer said she has had a chance to reflect on this and take the longer, broader view. She said she realized that the County is located across the street from this property, not two or three miles away. Also, she looked at the dimensions of the property and the only commercial development it would be able to support would be a strip mall, which would definitely not be compatible with the peaceful neighborhood to the west. Mrs. Palmer said she does not think another strip mall would be in the best interest of our beachside residents. And, the City needs to look beyond its borders into the surrounding area.

Mrs. Walker agreed with Mrs. Palmer's comments.

Mr. Contreras said that the people on Unity Drive truly affected by this development would prefer this plan for eight units per acre over the choice of a strip mall, intrusive lighting, traffic, 24-hour operation, etc. With all the pluses and minuses, he said he had to take into consideration the quality of life that the adjacent residents would prefer. Therefore, he can't support the motion for denial.

The question was called. The roll call vote was:

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Aye: E. Palmer, Poole and Buckley

Nay: Contreras, Walker, Hand and C. Palmer

Motion failed.

Moved by Hand/Walker to approve Ordinance No. 2004-44. The roll call vote was:

Aye: Contreras, Walker, Hand and C. Palmer

Nay: E. Palmer, Poole and Buckley

Motion carried.

Moved by Contreras/C. Palmer for approval of Ordinance No. 2004-45 with the addition of two stipulations (outlined in the agenda report). The roll call vote was:

Aye: Contreras, Walker, Hand and C. Palmer

Nay: E. Palmer, Poole and Buckley

Motion carried.

10. ORDINANCE NO. 2004-52 (A&V NO. 272): (Second Reading/Public Hearing) An ordinance to abandon and vacate a 50-foot wide public right-of-way known as Church Street from Race Street west to Grant Street and a 24-foot wide public right-of-way known as Davis Street. (First Reading - 7/13/04)

Attorney Gougelman read Ordinance No. 2004-52 by title. There were no disclosures by Council. Mayor Buckley opened the public hearing.

Bruce Buggs, applicant, said he wished to correct an answer he gave to a previous question asked about this property. He stated that the intended use will be for a cemetery; however, the property actually won't be sold. The Grant Street Community Cemetery is a non-profit corporation that does not have a bank account, does not collect funds and the property will not be sold.

Mrs. Palmer asked the process when someone desires a burial plot. Mr. Buggs said the normal charge for digging a grave. He added that any other funeral home may utilize the cemetery and pay an opening and closing fee.

Mr. Palmer asked if the sites will be surveyed. Mr. Buggs said the cemetery itself will be surveyed but not the individual plots. Following a brief discussion, Attorney Gougelman said generally speaking older cemeteries don't have a survey. Rather, they use a matrix. A fee simple interest is not conveyed. The cemetery grants

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

something similar to a license or easement right to use the area in perpetuity as a gravesite.

Discussion followed about the operation of the cemetery, the regulatory requirements, etc. Mr. Buggs confirmed for Mrs. Poole that the property would have to be rezoned for use as a cemetery.

Mrs. Poole said that a similar abandon and vacate request was previously denied because of the amount of property involved. She said she doubts if any other entity is burying at this cemetery outside of the Grant Street group. She questioned giving all of this land to one person.

Mrs. Palmer asked Mr. Buggs if other funeral homes are able to bury at this cemetery and Mr. Buggs said yes. He listed the other funeral homes that have used this cemetery.

Mrs. Palmer said her initial concern was that this property would be used for a private individual's use. She added that she would like to be sure that anyone from the public can be buried in this cemetery without paying for the land.

In response to Mr. Contreras, Mr. Buggs confirmed that people of all different races and nationalities are interred in the cemetery.

Discussion followed about private cemeteries in the area, the old section of the cemetery versus the newer section, and the problems faced by larger companies.

Mr. Buggs said that the larger companies charge an exorbitant fee and the cost is prohibitive for the everyday person to afford a decent funeral. He noted that is another reason for this request.

Moved by C. Palmer/Contreras for approval of Ordinance No. 2004-52. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2004-54 (CPA-2003-11) AND ORDINANCE NO. 2004-55 (Z-2003-968) NORTH WICKHAM ROAD: Ordinances providing for a Comprehensive Plan Amendment and zoning on a total of 120.5± acres, located east and west of Wickham Road, north of Post Road, and south of Pineda Causeway. (Owner/Applicant/Representative - Pineda Crossing Corporation, Jay Moynahan) (Owner/Applicant - EVV Florida Investments, Ltd.) (Representative - K2 Development, Bob Kurlander) (Owner - Hoff of Brevard) (Owner - Bear Hugs Child Care, Inc.) (Owner -

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Brevard County) (Owner - Pineda Crossing Homeowners' Association) (Owner - Deer Lakes Homeowners' Association)

- a. Ordinance No. 2004-54/CPA-2003-11: (Second Reading/Public Hearing) An ordinance establishing a Commercial land use on 74.5 acres, Low Density Residential on 39.57 acres, and Conservation land use on 6.4 acres. (First Reading - 7/13/04)
- b. Ordinance No. 2004-55/Z-2003-968: (Second Reading/Public Hearing) An ordinance establishing C-P (Commercial Parkway) zoning on 60.2 acres, C-2 (General Commercial) zoning on 12.96 acres, C-1 (Neighborhood Commercial) zoning on 3.47 acres, and R-1B (Single-Family Residential) zoning on 43.8 acres. (First Reading - 7/13/04)

Attorney Gougelman read the ordinances by title. There were no disclosures by Council. Mayor Buckley opened the public hearing.

Jay Moynahan, President, Pineda Crossings, thanked Council for its consideration.

Following a brief discussion about Deer Lakes, the City Manager confirmed that the residential components of Deer Lakes are not included in this request. Mr. Moynahan agreed and said that the entrance of the subdivision goes through the commercial area. The commercial area is included in this request.

Moved by E. Palmer/Hand for approval of Ordinance No. 2004-54. The roll call vote was:

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

Nay: Poole

Motion carried.

Mrs. Poole said she voted nay because the development will add to the overcrowding of schools, roadways, etc.

Moved by Contreras/Hand for approval of Ordinance No. 2004-55. The roll call vote was:

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

Nay: Poole

Motion carried.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

12. ORDINANCE NO. 2004-56 (CPA-2003-13) AND ORDINANCE NO. 2004-57 (Z-2003-970) DAIRY ROAD/FLORIDA AVENUE: Ordinances providing for a Comprehensive Plan Amendment and zoning on a total of 38.73 acres, located west of Dairy Road and north of Florida Avenue. (Owners/Applicants - James W. Morgan Jr., Charles Brown/William Marcus, John Weare Jr., Thomas and Carol Guthrie, Barbara Losson, Steven J. Morgan, F. Alan Ford/Catherine A. Ford, Wendy L. Potter, William and Wendy Potter, William Edward and Susan Lyndall Riebsame, Vincent H. and Margaret E. Angleton, Alfred and Jane Theis, Carlton and Sandra Holder, and Gregory and Margaret Parker)
- a. Ordinance No. 2004-56/CPA-2003-13: (Second Reading/Public Hearing) An ordinance establishing a Low Density Residential land use on 38.73 acres. (First Reading - 7/13/04)
- b. Ordinance No. 2004-57/Z-2003-970: (Second Reading/Public Hearing) An ordinance establishing Agricultural Estate Use (AEU) zoning for the Terra del Sol Subdivision on 37.22 acres and R-1AA (Single-Family Residential) for three parcels on 1.51 acres abutting Florida Avenue. (First Reading - 7/13/04)

Attorney Gougelman read Ordinance Nos. 2004-56 and 2004-57 by title. There were no disclosures by Council and no comments from the public.

Moved by C. Palmer/Walker for approval of Ordinance No. 2004-56. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/E. Palmer for approval of Ordinance No. 2004-57. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

13. COUNCIL ACTION RE: Contract award for Lift Station No. 24 replacement, Project No. C02313, Jobear/Warden Construction, Inc., Palm Bay, FL - \$451,440.52 and

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

transfer of \$110,000 from Miscellaneous Water & Sewer Projects to this project budget.

City Engineer Howard Ralls briefed Council. The recommendation is for award of the construction contract to Jobear/Warden Construction in the amount of \$451,440.52 and transfer of \$110,000 from Miscellaneous Water/Sewer Projects Account to this capital project's budget.

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

14. COUNCIL ACTION RE: Approval of basic design consultant services contract for City Hall renovation/expansion, Project No. C04105, BRPH Architects-Engineers, Inc., Melbourne, FL - \$333,450, with design services of \$253,450 to be awarded now and the \$80,000 fee for services during construction to be awarded next fiscal year subject to an appropriation for the City Hall renovation project in the FY 04/05 budget, and authorization for the City Manager to make minor changes to the contract language upon finalization of the City Attorney's review.

Mr. Ralls briefed Council. The recommendation is for Council to approve the contract with BRPH Architects-Engineers, Inc. in the amount of \$333,450, but only award the design services now, which are to be funded from the current \$300,000 budget. The remaining \$80,000 of the consultant contract for services during the construction phases would be awarded next fiscal year subject to budget appropriation for the City Hall renovation project. Further, recommend that the City Manager be authorized to make minor changes to the contract language upon finalization of the City Attorney's review.

Mrs. Poole expressed surprise that the proposal includes the removal of both annexes.

Mrs. Hand asked Mr. Ralls if he felt that this was the best way to go. Mr. Ralls replied that this is the decision that was made by Council. There is a savings involved with remaining on this site because the infrastructure is in place. Additionally, City Hall is considered a part of the Downtown area.

Mrs. Palmer said she thought we had some figures that compared the cost of renovating this building, building new on this site, new on Wells Park property and new on the Babcock property. She thought the most cost effective was the Wells Park site.

Mayor Buckley said that Council made the decision to build/renovate on this site. A brief discussion continued.

Moved by Poole/E. Palmer for approval of the recommendation. Motion carried.  
Council Member Hand and Vice Mayor Cheryl Palmer voted nay.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

15. COUNCIL ACTION RE: Contract awards for Masterson, Tradewinds, and Carol Williams Glanton Parks, Project Nos. CD0368(A) & (B), L.A. Construction, Inc., Merritt Island, FL:
- a. Contract award for park pavilions at Masterson, Tradewinds, and Carol Williams Glanton Parks, Project No. CD0368(A), L.A. Construction, Inc., Merritt Island, FL - \$30,000.
  - b. Contract award for park improvements at Masterson, Tradewinds, and Carol Williams Glanton Parks, Project Nos. CD0368(B), L.A. Construction, Inc., Merritt Island, FL - \$75,754.

Mr. Ralls reviewed the agenda report. The recommendation is for approval of the contract for park pavilions with L.A. Construction, Inc., in the amount of \$30,000 and approval of the contract for various park amenities with L.A. Construction, Inc. in the amount of \$75,754.

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

16. COUNCIL ACTION RE: Change Order No. 1 to the Fee Avenue Pool replacement project for Housing & Community Development building renovation, Project No. C03103, PAVCO Construction, Inc., FL - \$67,824 and transfer of \$5,000 from Miscellaneous General Fund projects to this project budget.

Mr. Ralls briefed Council. The recommendation is for approval of Change Order No. 1 to the PAVCO Construction contract for the Fee Avenue Park Pool Building for the purpose of renovating the Housing and Community Services Building in the amount of \$67,824 and transfer of \$5,000 from Miscellaneous General Fund Projects Account to this capital project's budget.

The City Manager confirmed for Mrs. Poole that staff performs its own internal review before adding on to a contract. He assured Council that we believe this is better than competitive for the City.

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

17. COUNCIL ACTION RE: Supplement No. 206 to the continuing consultant contract for Fire Station No. 78, Project No. C04109, Frazier Engineering, Inc., Melbourne, FL - \$69,380.

Mr. Ralls briefed Council. The recommendation is for Council to approve Supplement No. 206 to Frazier Engineering's Continuing Consultant Contract in the amount of \$69,380.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mrs. Poole asked if this property was given to us by a developer. Mr. Ralls replied that the total property is 4.25 acres – the City paid for 3.25 acres.

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

18. CONSENT AGENDA:

Mrs. Palmer asked for Item “i” to be voted on separately.

Moved by Hand/C. Palmer for approval of the Consent Agenda, Items “a – h” and “j – m.” Motion carried unanimously.

Mrs. Palmer said that we have done so well with our in house conservation program that we had to raise our consumer water rates. She added that Council is being asked to allow extortion. We have to give money to the SJRWMD so they look favorably on our permits. SJRWMD is a large quasi-governmental organization. People are not able to vote on anything they do; they are not representative of the people.

Moved by Poole/E. Palmer for approval of “i.” Motion carried. Council Member Contreras and Vice Mayor Palmer voted nay.

The consent agenda was approved as follows:

- a. Change Order No. 1 to contract for University Boulevard landscaping and irrigation improvements, Project No. CD9504, Vila & Son Landscaping Corporation, - \$21,996.
- b. Purchase of four Isco fiberglass refrigerated composite samplers and accessories, AMJ Equipment, Lakeland, FL - \$17,188
- c. Purchase of annual maintenance and support services for Police Department software, Hewlett Packard, Roseville, CA - \$26,433.60.
- d. Contract award for the purchase of quicklime for the wastewater treatment facilities, Global Stone Tenn Luttrell, Luttrell, TN - \$110.45/ton unit price, estimated annual cost of \$55,225.
- e. Contract award for the purchase of 1,200 Watts 7-10-U3 dual check regulator valves, Agua-Draulics Plumbing Supply, Rockledge, FL - \$14.68/each unit price, estimated annual cost of \$17,616.
- f. Contract award for the purchase of 120,000 liquid gallons of sulfuric acid, 93%, Sulfuric Acid Trading Company, Inc., Tampa, FL - \$0.4507/liquid gallon unit price, estimated annual cost of \$54,084.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

- g. Contract award for custodial services, Long's Services, Inc., Orlando, FL - \$63,347.04.
- h. Increase to existing annual sodium hypochlorite contract – 45,000 additional gallons for the D.B. Lee facility and 21,900 additional gallons for the beachside chlorine stations, Odyssey Manufacturing Company, Tampa, FL - \$0.55/gallon unit price, estimated additional annual cost of \$36,795.
- i. Request from St. John's River Water Management District for funding participation in the 2005 Water Conservation Public Awareness Campaign - \$7,000.
- j. Approval of a Memorandum of Understanding to remove the criteria of “past performance” for establishment of the promotion eligibility list from the current Coastal Florida Police Benevolent Association contract under Article 29, Section 29.1. This is a standardless non-defined limitation, which has delayed promotions.
- k. Lien Rescission CE-03-033: Approval of request for lien reduction from \$11,400 to \$0. (James W. & Mary F. Howard – 2706 Carver Street)
- l. Lien Rescission CE-04-026: Denial of request for lien reduction from \$21,250 to \$0. (Katherine Jackson, Life Estate – 2375 Lipscomb Street)

Added to the agenda:

- m. Resolution No. 1888: Authorizing the City Manager to submit a grant application to the St. Johns River Water Management District for grant funding through the FY 2004-2005 alternative Water Supply Construction Cost-sharing Program for the Grant Street/D.B. Lee Reclaimed water Interconnect.
19. COUNCIL ACTION RE: Request for two off premise directional signs for the Harbor City Center project, to be placed at two locations, south of Crane Creek on both sides of South Harbor City Boulevard. (Requested by Hynes Properties)

Mrs. Dittmer reviewed the agenda report. The recommendation is for denial of the off-premise directional signs for 2221 and 2226 South Harbor City Boulevard.

Chris Calvetti, representing Hynes Properties, disagreed with the staff recommendation. He said that they already have a design for the construction sign on site. Since it is so close to the sales center, it is not considered directional. Mr. Calvetti noted that the purpose of the directional sign is to direct people from outside the community so they don't have trouble finding the area. The construction sign on site will not serve this purpose.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Moved by Poole/E. Palmer for denial. Motion carried. Council Members Contreras and Hand voted nay.

Moved by Hand/C. Palmer to convene as the Melbourne Downtown Community Redevelopment Agency for Items 20 and 21. Motion carried unanimously.

20. COUNCIL ACTION RE: Request by Melbourne Main Street for the City to co-sponsor the 12<sup>th</sup> Annual Fall Fine Art and Craft Festival scheduled for October 23-24, 2004 in Downtown Melbourne at an estimated cost of \$3,800-\$4,300.

From the agenda report: The recommendation is for approval of co-sponsorship with funding from the downtown Redevelopment Fund.

Betsy Vosburgh, applicant, reviewed the request.

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

21. COUNCIL ACTION RE: Request to establish a project budget of \$85,000 for consultant fees to prepare a new Downtown Melbourne Community Redevelopment plan including expansion of the redevelopment district.

Mrs. Dittmer briefed Council. The recommendation is to proceed with an expansion of the Downtown Melbourne CRA and the establishment of a project budget of \$85,000 to hire a consultant to provide a new redevelopment plan.

Mr. Contreras said he would like to ensure that the review includes a time certain for when the current CRA will cease and a time certain for the new area.

Mrs. Poole asked if the Redevelopment Area will be able to continue. Mrs. Dittmer explained that the current Melbourne Downtown CRA was created in 1982 and does not fall under today's guidelines. The CRA could continue forever as long as we keep amending the plan. She added that Mr. Contreras is looking for a timeframe of when the projects will be completed.

Mr. Schluckebier said that since the Melbourne Downtown CRA was created, there have been major changes in the authority granted to cities in charter counties. Today, CRA areas have a 30-year time certain. The Melbourne Downtown CRA does not have a time certain to elapse. With this amendment, depending on the County's interpretation, the new area may be subject to such window of time that the County may impose. Alternatively, the new area may fall under the authority that we previously had with no expiration. It is that issue that may be a point of contention.

Continuing, Mr. Schluckebier said he understands that Mr. Contreras would prefer that the original area and the new area be subject to a time certain.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mrs. Poole said she does not agree.

Mr. Contreras said he has received copious amounts of telephone calls from constituents who are okay with “x” number of years; however, as taxpayers, they want to know when they will benefit from all the additional revenue that could potentially go into our coffers.

Mrs. Hand stated that she is in favor of expansion of the CRA. She referenced the crime statistics in the backup material and said she hopes we can establish better police coverage in that area.

Mr. Schluckebier agreed that this area experiences its share of crime. He noted that almost half the calls for service don’t necessarily represent crime in the way that we measure crime.

Laird Gann, Executive Director, Melbourne Main Street, spoke in support of expanding the district and developing a new plan

In response to Mrs. Poole, Mr. Gann said he would support the Redevelopment District continuing in perpetuity. In response to Mr. Contreras, he said he understands that the taxpayers don’t want redevelopment to go on in perpetuity. He added that the bottom line is, if it is smartly done, it funds what could be the greatest single opportunity for cluster development.

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

Moved by C. Palmer/E. Palmer to reconvene as the City Council for the remaining agenda items. Motion carried unanimously.

22. PRESENTATION TO COUNCIL: A briefing by William Dietrich from the Melbourne Housing Authority regarding the sale of Ramshur Towers.

Ronald Sellers, Chief Executive Officer, Brevard County Housing Authority, said that the sale of Ramshur Towers is moving along as smoothly as possible. Mr. Sellers referenced his backup material and said that the item titled “contracted for non-elderly disabled site and commercial site in Palm Bay on July 15, 2004” should be changed to “Melbourne.” That property is located on the south side of University Boulevard west of the Department of Motor Vehicles building.

Continuing, Mr. Sellers said that part of the process in disposing of a HUD development requires the Housing Authority to appear before the elected body to make sure it is aware of the sale or auction. HUD needs to receive a letter of acknowledgment from the City Council that it has been briefed by the Housing Authority.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Mrs. Poole asked if the residents of Ramshur Towers are aware of the process and if they want to move. Mr. Sellers said the residents were ready to move yesterday. He added that they have had three different meetings and plan to meet once a quarter to provide updates.

Mr. Sellers confirmed that a condition of the sale for purchase of Ramshur Towers is that the current residents will be allowed to remain up to 36 months on Section 8 vouchers. This means they will be required to move one time – from Ramshur Towers into the new facility.

Mr. Sellers confirmed for Mr. Schluckebier that the residents will not be required to stay three years if they choose to do something different.

Regarding the handout material supplied by the Housing Authority, Mr. Schluckebier said that some of the property will be located in Palm Bay and some will be located in Melbourne.

Mr. Sellers clarified that the 26-acre elderly site is located in Palm Bay. The 57-acre site for non-elderly disabled and commercial is located in Melbourne.

Mrs. Palmer asked about the “commercial” development. Mr. Sellers explained that HUD passed an Act in 1998-1999 that allows Housing Authorities to become more entrepreneurial. The commercial activities they will be seeking will be services for residents – dentists, doctors, etc.

Mayor Buckley said that Council will provide a letter of acknowledgement.

23. COUNCIL ACTION RE: Consideration of historical sign at Port O’Call. (Requested by Council Member Pat Poole)

From the agenda report: Mrs. Poole asked that Council consider placement of a historical sign at Port O’Call. Because this is actually on Airport property, staff recommends that this request also be forwarded to the Melbourne Airport Authority.

Mrs. Poole said she believes that the City owes this to the people who lived in Port O’Call for 35 years. The sign could be placed on the City’s right-of-way or easement. She added that Weona Cleveland is working on the wording.

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

24. COUNCIL ACTION RE: Board Appointments

- a. Appointment of two regular members to the Building Board of Adjustment and Appeals.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Moved by Poole/C. Palmer to reappoint Len Fallen and David Wickham. Motion carried unanimously. (7/28/2004 – 7/27/2008)

- b. Appointment of one regular member to the Building and Construction Advisory Committee.

Mr. Palmer nominated Alan Kardoff. Moved by E. Palmer/Hand to close the nominations. Motion carried unanimously. Moved by Poole/Walker to appoint Alan Kardoff. Motion carried unanimously. (7/27/2004 – 5/26/2007, unexpired three-year term)

- c. Appointment of one regular member to the Code Enforcement Board.

Mrs. Poole nominated alternate member Thomas Olexa.

Mr. Contreras said that typically Council appoints alternate members to regular member seats; however, he pointed out the attendance record of Mr. Olexa (absent 14 out of 21 meetings since his August 2002 appointment). Mr. Contreras said that we have an opportunity to appoint a professional architect, Dave Kaufmann. He referenced the current makeup of the board and said that we don't currently have an architect. Mr. Contreras nominated Dave Kaufmann.

Mrs. Poole asked if Council has to appoint an architect. Attorney Gougelman said that Council appoints members in accordance with the State Statutes. The Statutes provide that, whenever possible, an architect should be included.

Continuing, Mr. Contreras recommended that if Mr. Kaufmann is appointed, that he be titled as the architect (he would switch titles with member Bennie Hopkins).

Moved by Contreras/Walker to close the nominations. Motion carried unanimously. The roll call vote was:

Olexa: Poole

Kaufmann: Contreras, E. Palmer, Walker, Hand, C. Palmer and Buckley

Appointed: Dave Kaufmann (7/27/2004 – 10/14/2006, unexpired three-year term)

Mayor Buckley said he voted for Mr. Kaufman because this board should have an architect as a member.

25. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Phil Nohrr, asked Council to consider placing the following item on the next agenda to discuss a motion to rescind:

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

Ordinance No. 2004-53 (CU-2004-09) Mainstreet Pub: An ordinance granting a conditional use to allow the consumption of alcohol on the premises of a property zoned C-3 (Central Business District), located at 705 East New Haven Avenue, on the south side of the road, east of Livingston Street and west of Grant Place.

Mr. Nohrr said that perhaps information was not adequately provided on this item and they would like to see if Council believes it is worthy of a vote.

Moved by C. Palmer/Walker to do that (place the item on an agenda to consider a motion to rescind).

Mrs. Hand stated that she won't be here for the August 10 meeting. Mrs. Poole said she objects to the new trend to rescind items. Attorney Gougelman said that Mr. Nohrr is seeking a motion to rescind and if successful, a first reading. Attorney Nohrr said no, he is seeking a motion to rescind. If he is fortunate to receive that, he would like the item advertised to allow for public input at the following meeting. Mrs. Palmer said that applicants needs to provide all of the information the first time an item is presented to Council. Mr. Palmer said that this recent trend is bizarre.

Following a brief discussion, Mr. Nohrr asked for this to be placed on the August 24 agenda.

Note: The above motion was not voted on. By consensus, Council agreed to place this item on the August 24 agenda.

Mr. Schluckebier informed Council that the most recent appraisal of the Melbourne Harbor property, currently leased by Hynes Properties, shows that the value has gone from approximately \$180,000 to \$280,000. The lease payment is 13% of the appraised value. The representative of Hynes Properties has asked if the City would ever consider selling that property. Staff has not looked into this.

Additionally, the City Manager advised Council that two other properties – the Thornton and Rossetter properties – that the City expressed an interest in purchasing are available for sale. Both parcels are used by the City to provide parking at City Hall east of the railroad tracks. The Rossetter estate is being handled by the Florida Historical Society. The Society previously indicated it did not want to sell; however, it has since changed its mind and is open to that. Staff agreed to split the cost of an appraisal.

Attorney Gougelman said if the City is interested in the Thornton property it needs to move quickly. It is being marketed without being listed and it may already be too late.

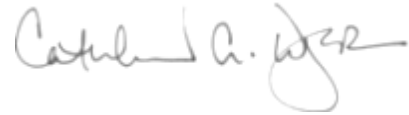
Moved by Contreras/Hand for the City to enter into negotiations to split the cost of an appraisal to determine the value of the property. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 27, 2004

26. ADJOURNMENT

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

The meeting adjourned at 10:50 p.m.



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City Clerk – 8/5/2004

Approved by Council: August 10, 2004