

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 10, 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 John Demarco gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Council Member, District 1 (arrived 7:05 p.m.)
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Vice-Mayor, District 5
	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

Absent: Loretta Isenberg-Hand Council Member, District 6 (vacation)

4. Proclamations and Presentations

Mayor Buckley presented the proclamation “Melbourne Firefighters Appreciation Week,” August 24 – 30, 2004, to Melbourne Fire Chief Walt Chamberlin.

The Mayor presented the May Beautification Award to Jacquie Carpten on behalf of “The Savannahs at James Landing.”

5. Approval of Minutes – July 26, 2004 Special Meeting and July 27, 2004 Regular Meeting

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

6. City Manager’s Report

City Manager Jack Schluckebier reported:

- Coedell Mead, Beautification and Environmental Advisory Committee, passed away. (Ms. Mead was the City’s longest serving board member with 41 years of service.)

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- The Thornton property, located north of Strawbridge Avenue and east of the railway, is under contract. Staff is going to contact the new purchaser to express the City's interest in that property. (The property is used for public parking.)
- The City has reached a tentative settlement with the Laborers' International Union. Additionally, staff has met with the Police Benevolent Association and hopes to finish with that group in the next 30 – 45 days.

Council Member Ed Palmer asked when the ordinance revising Chapter 29, Subdivisions, will be forwarded to Council. Mr. Schluckebier replied the second meeting in September (28).

Mr. Palmer commended Code Enforcement for working towards bringing the Prestige Concrete plant into compliance.

7. Public Comments

Evelyn Morrison, 628 Paul Bryce Drive, informed Council that she is new in the community and plans to be an active citizen. Ms. Morrison said that a group of young boys had planned to attend and talk to Council about the need for a skateboard park. Due to an illness in the family, they were not able to attend.

(Note: The Melbourne Airport requested that the Transportation Security Administration (TSA) create a clearinghouse to check the background of people who refuse to provide a reason for requesting information from airports. The Airport has also asked that certain information about airports be considered confidential, including elements of master plans.)

Mayor Buckley recommended that the people who signed up to speak on the above topic talk to the Airport Authority Board first.

Rob Downey, Mayor, Melbourne Village, stated that the "buck stops with Council" when it comes to Airport Authority operations. He referenced the recommendation by the Airport to have the Airport Master Plan declared security sensitive and said he will present a resolution to the Town of Melbourne Village condemning this action. Mayor Downey added that this is a devious end run in an attempt to have federal agencies get people off of the Airport's back. He asked when this behavior will end and added that the Airport is creating one public relations nightmare after another.

Mayor Buckley challenged Mayor Downey's comments and said that the recommendation to the TSA was made months ago. It was based on someone who refused to say why they were asking for information.

Council Member Ed Palmer stated that he is personally responsible for having the Airport Master Plan placed in the Melbourne Library on Fee Avenue; it is available for public viewing.

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Mayor Downey commended Council Member Palmer for having this done. Regarding the request before the TSA, he said he believes this was done without the knowledge of the Airport Authority Board or Council. Mayor Downey encouraged Council to ask the Airport to rescind this request from the TSA docket. He noted that this doesn't make our Airport look good and it is an abuse of the Homeland Security Act. Mayor Downey added that there is nothing in the Airport Master Plan that constitutes a security risk and it should remain public information.

Council Member Grace Walker questioned why placement of the plan was not announced at a Council Meeting.

Milo Zonka, 1077 Jupiter Boulevard, Palm Bay, said there are two issues – the master plan and the request that the TSA vet the backgrounds of people who request information. Mr. Zonka said that an employee of the City has caused a policy issue to be taken to the national level. Mr. Zonka stressed that he is opposed to background checks.

Mrs. Poole asked if there is anything in the Master Plan that should not be made public. Mr. Zonka replied that there is nothing in the Master Plan that can't be found from other sources; it is a planning document and does not involve security procedures or details about buildings.

Vice Mayor Palmer asked if the Airport Authority voted to place this issue on the TSA docket. Mayor Buckley replied that the Executive Director made that decision and he did inform him (the Mayor) about it.

Mrs. Palmer asked if this request will remain on the TSA docket. Mayor Buckley said as far as he knows it was turned down. Mr. Zonka disagreed and said that the TSA will address every comment made, including Melbourne's. Mr. Zonka added that Melbourne's comments were filed 28 days ago, not months ago.

A brief discussion followed about whether the Master Plan would remain a public document.

Council Member Contreras arrived at 7:05 p.m.

Mrs. Poole asked if people have to give a reason why they are making a public records request. Attorney Gougelman replied that under the Florida Public Records Law, the City can't ask who the requestor is and why they want the information.

Mike Whaley, 2256 Autumn Way, said that it is none of the Airport's business who he is and why he wants public information. He has no ulterior motive and feels like he has a right to look at what the Airport is planning. Mr. Whaley outlined his concerns about the Airport and stated that the City needs to take control.

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Mrs. Poole said she would like to ask the Airport Authority to take that item off of the TSA docket. Mayor Buckley said that is premature; people should present their concerns to the Airport Authority.

Moved by Poole/C. Palmer to ask the Airport Authority to consider withdrawing its request (from the TSA docket). Motion carried unanimously.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: Contract award for construction of a 25-space asphalt parking lot and a 24' wide driveway to serve the tennis facility at Jimmy Moore Park, Project No. 03700, Jobear/Warden Construction, Inc., Palm Bay, FL - \$162,762.05; and a transfer of \$67,193 from Recreation Impact Fees to this project budget.

Mr. Ralls reviewed the agenda report and briefed Council. The recommendation is to approve the contract with Jobear/Warden Construction, Inc., in the amount of \$162,762.05 and a transfer of \$67,193 from Recreation Impact Fees to this project budget.

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

9. CONSENT AGENDA:

Moved by E. Palmer/Contreras for approval of the Consent Agenda, Items “a – h.”

Mr. Palmer referenced Item “c” and asked why the local vendor, Glover Oil, is not receiving a larger share of the contract. Mr. Schluckebier said that we are using the commodity quoted prices in the School Board contract. A brief discussion followed about the School Board extending the contract four times. Director of Finance Michele Ennis said that staff is reviewing the School Board’s contract. She confirmed that the item on this agenda represents the best price available at this time.

Staff responded to Mr. Palmer’s questions on Item “e.”

Regarding Item “a”, Mrs. Palmer asked for an explanation of performance based zoning. Planning & Economic Development Director Cindy Dittmer said that is a catch phrase in the planning field. It refers to the establishment of conditions that can be measured, like setback, square footage, etc.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

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- a. Contract award for planning consultant services, Land Design Innovations, Winter Park, FL - \$29,250 and authorization for the City Manager to make minor changes to the contract language upon finalization of the City Attorney's review.
- b. Purchase of an Afton GSV reverse osmosis concentrate disposal vertical turbine pump and motor, Afton Pumps, Inc., Houston, TX - \$38,020.
- c. Purchase of gasoline and diesel fuel for the period August 1 – October 31, 2004 based on School Board of Brevard County pricing from the following vendors based upon estimated fuel purchases:

Glover Oil, Melbourne, FL	\$43,003
Petroleum Traders Corporation, Fort Wayne, TX	<u>\$138,902</u>
	\$181,905

- d. Purchase and installation of a 60-ton, self-contained, 200V Trane air conditioning unit for the Auditorium, BCH Mechanical, Inc., DBA Conserv Building Services, Cocoa, FL - \$43,500.
 - e. Purchase of liquid chlorine for use at the water treatment facilities and booster stations to disinfect water and remove odor, DPC Enterprises, L.P., Chicasaw, AL - unit prices of \$389/1-ton cylinders and \$55.13/150-pound cylinders, for an estimated annual cost of \$138,852.
 - f. Approval of fees associated with the issuance of the 2004 Water and Sewer Bonds: Bryant, Miller & Olive - \$25,181 (estimated); Nabors, Giblin & Nickerson - \$20,145 (estimated); Public Financial Management - \$20,145 (estimated); and the Bank of New York - \$1,000 (agent/registrar services) and \$750 (escrow agent services).
 - g. Resolution No. 1889: A resolution calling for a General Municipal Election to be held November 2, 2004 to elect one Mayor and four Council Members, one each, from Districts One, Two, Three, and Five; specifying the terms of office for each.
 - h. Resolution No. 1890: A resolution adopting street names for private streets on the Florida Institute of Technology Campus.
10. SITE PLAN APPROVAL (SP-2004-09) RYANWOOD CONDOMINIUMS: (Public Hearing) A request for site plan approval to develop a 74-unit multiple-family condominium project on a 7.47-acre portion of an 11.06±-acre parcel, located on the west side of Harbor City Boulevard, south of Post Road. (Owner - River Oaks Partnership) (Applicant - TFM Enterprises, Inc.) (Representative - Jake Wise, Construction Engineering Group, Inc.) (P&Z Board - 7/15/04)

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There were no disclosures by Council. Mrs. Dittmer briefed Council. The Planning and Zoning Board recommended approval of SP-2004-09 for a 74-unit condominium development, on a single page plan prepared by Construction Engineering Group, Project Number 030154, signed, sealed and dated July 8, 2004, with the following conditions:

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

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

- b. Appropriate permits for any threatened or endangered species must be obtained as part of the construction review process.
- c. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.

Additionally, staff recommended the following condition:

- d. The proposed buildings shall be substantially consistent with the renderings as submitted.

Mrs. Dittmer responded to Council's general questions about the plan.

Mrs. Poole commented on the following: the commercial property, which is not part of this plan; the indication on the site plan that this is 15 units per acre; and whether the homes are required to have a two-car garage. Mrs. Dittmer replied that our Code requires a one-car enclosed garage.

Mrs. Poole asked if recreational facilities, other than pool and clubhouse, have been proposed. Also, she asked if the construction review process occurs before any clearing has been done on the property. Mrs. Dittmer replied that the applicant has not indicated any additional recreational facilities. She confirmed that the construction review will occur before any clearing is done on the property.

In response to Mrs. Poole, Mrs. Dittmer confirmed the following: a tree survey has been submitted; the applicant has attempted to work around the trees; additional parking has been provided on the site; and the buildings won't have to be perfectly aligned, which will allow for trees to be saved.

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Jake Wise, applicant, reported the following information: the developer, Tim McWilliams, has gone through painstaking lengths to save trees; the site has been re-designed to save trees; the majority of tree preservation will be towards the south; there will not be a leasing office, each unit will be individually owned; each unit will have its own garage and driveway; 21 extra parking spaces have been provided on the site; an application for a conditional use to develop residential has been submitted on the commercial property; this development may be a 55-plus community, so at this point they have not planned additional recreational facilities; the entire site was walked and they did not find signs of gopher tortoises or scrub jays; if they do encounter gopher tortoises, they will be relocated on site; the site plan contains a typographical error and will be corrected to reflect 10 units per acre as opposed to 15 units per acre; and this will be a gated community, privately maintained by the homeowners' association. In closing, Mr. Wise stated that the plan meets all of the City of Melbourne standards and Code requirements. He asked for Council's approval.

In response to questions, Mr. Wise elaborated on the square footage of the units and garage size.

Mrs. Palmer asked what kind of buffer will be placed between the buildings and the railroad. Mr. Wise said the closest building will be about 25' away from the railroad right-of-way with the tracks being located another 30' – 40' away. They are proposing an eight-foot fence and are going to save as many trees as possible in the area.

Mrs. Poole asked if any of the pine trees will be saved because they provide refuge for the Red Cockaded Woodpeckers. Mr. Wise said the area along the north boundary will not have retention because of the potential to save Pine Trees.

That concluded comments from the public.

Moved by E. Palmer/Contreras for approval of the site plan, including the conditions ("a – d"). Motion carried. Mrs. Poole voted nay.

11. ORDINANCE NO. 2004-58 (CU-2004-11) AND SITE PLAN APPROVAL (SP-2004-12) AVON PETROLEUM: (First Reading/Public Hearing) An ordinance granting a conditional use for an automobile service station and site plan approval to develop a convenience store with gas pumps on a 0.918-acre parcel zoned C-2 (General Commercial), located at the southeast corner of Apollo Boulevard and Sarno Road. (Owner - A One Petro, Inc.) (Applicant - Avon Petroleum) (Representative - Luke Miorelli, P.E.) (P&Z Board - 7/15/04)

City Attorney Paul Gougelman read Ordinance No. 2004-58 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of the one-page site plan by J. J. Boswell (Reg. No. 9276), dated February 17, 2000, with the findings contained in the agenda package and the following conditions:

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

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of 10 percent of the open space or vegetative area on site; 2) an increase of 10 percent or more of the building area square footage; or 3) any new driveways.

- b. The building shall be substantially consistent with the rendering as presented by the applicant.
- c. The applicant must construct a deceleration lane on Sarno Road, if permitted by Brevard County, to assist with traffic flow along the roadway.

There were no disclosures by Council. Mrs. Dittmer responded to general questions about the site.

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

Moved by Poole/Walker for approval of Ordinance No. 2004-58. Motion carried unanimously.

12. ORDINANCE NO. 2004-59 (A&V NO. 275): (First Reading/Public Hearing) An ordinance to abandon and vacate a five-foot wide utility easement located adjacent to the east property line and a 15-foot wide rear canal maintenance easement except the westerly five feet for 713 Brookside Drive. (Owners - Michael W. Zarkowsky and Ann Del Gaudio)

Attorney Gougelman read Ordinance No. 2004-59 by title. There were no disclosures by Council. Mr. Ralls briefed Council.

Mrs. Poole asked why the applicants made this request. Mr. Ralls said he believes that they wish to make improvements to their property. He confirmed that there is no access for dredging equipment to reach the canal. A barge was used when the canal was recently dredged.

Mrs. Palmer asked if the owners will be responsible for maintaining the seawall. Mr. Ralls said yes and added that we do not believe that the seawall is public. The seawalls were constructed when the subdivision was built about 35 years ago. An owner would be required to obtain a building permit and meet the structural requirements for replacement of a seawall.

There were no comments from the public. The applicant was not present.

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Moved by Contreras/Walker for approval of Ordinance No. 2004-59. Motion carried unanimously.

Recessed: 8:17 p.m.

Reconvened: 8 28 p.m.

13. COUNCIL ACTION RE: Contract award for financial software and hardware.

- a. Contract award for financial software to MUNIS, Inc., Falmouth, ME - \$940,461.
- b. Purchase of a Server for financial software, Dell, Austin, TX - \$30,167; and Microsoft operating system, Software House International, Philadelphia, PA - \$52,869.48.
- c. Transfer of remainder of funds required for the project from:

General Fund	\$ 17,558
Water & Sewer System	\$163,064
Stormwater Utility	\$ 14,299
Golf Courses	\$ 20,653
Airport	<u>\$130,275</u>
Total	\$345,849

Mrs. Elliott briefed Council and reviewed the agenda report. The recommendation is for approval of the contract with MUNIS, Inc.; authorization for the City Manager to execute the contract and make minor revisions thereto; purchase of the Dell and Microsoft hardware/operating system; and approval of the budget transfers from the General Fund and the Enterprise Funds to this project budget.

Mrs. Walker referenced the briefing and asked if the budget for each department is proportionate based on usage. Mrs. Elliott said yes and added that Item "c" on this agenda reflects only the remaining funds required for the project. Mrs. Elliott read the total budget amounts that will be charged to each department.

Mr. Contreras asked if transfer to the new system will involve a parallel effort or if we plan to go for the hard crash. Mrs. Elliott elaborated on the process that will be followed and confirmed that there will be parallel testing.

Mr. Contreras asked if the new system will allow for on-line payments. Ms. Ennis replied that this will lead to the ability to have on-line payments.

Mr. Palmer asked the start time and anticipated completion date. Mrs. Elliott said the project will begin tomorrow and will end by October 2005.

Mrs. Palmer asked how many cities are using this system and how long it has been operational.

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David Carll, sales representative for MUNIS, said that they have over 50 customers in Florida and over 1,000 nationwide. He added that municipalities are their only clients and they have been in operation over 20 years. Mr. Carll explained that the system the City is buying is the newest release; each year there are upgrades.

In response to Council's questions, Mr. Carll elaborated on service after the sale, maintenance costs, etc. Mr. Contreras asked how the City is prepared to handle the major transition. Manager of Information Systems John Nadolny explained that the City has been preparing for the last five years. The existing system is alive; however, it is not easy to maintain. Staff has been migrating to new development areas and taking advantage of all web-based technology.

A brief discussion followed about the future capabilities of the system. Mr. Contreras recommended that the City use the system to its fullest extent to better service our external customers.

Mr. Nadolny confirmed for Mr. Palmer that as far as he is concerned, he did not see any other vendor that could compete with MUNIS.

Mayor Buckley read the recommendation.

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

Mr. Schluckebier recognized the members of staff who have spent a significant part of the last year working on this project.

14. COUNCIL ACTION RE: Consideration of an ordinance to regulate parking at City Hall.

Mr. Schluckebier reviewed the agenda report and briefed Council. The recommendation is to authorize staff to prepare an ordinance amending Section 31-22 of the City Code.

Mr. Palmer asked if this will involve towing. Mr. Schluckebier said that we intend to stay away from that. He confirmed for Mrs. Poole that we will use a ticket system for parking violations. Mrs. Poole asked that initially warnings be considered.

Following a brief discussion, Mr. Schluckebier said that we have a concern for employees at City Hall and for our customers that have to walk a block to conduct business. Mrs. Poole agreed that this is a step in the right direction.

Moved by Poole/C. Palmer for approval of the recommendation.

Mr. Palmer asked if the renovation of City Hall will have an impact on parking. Mr. Schluckebier replied that ultimately the City Engineer believes we will gain an

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additional 25 – 30 spaces on the existing campus west of the railroad tracks. However, during the 18- to 24-month renovation period, the existing parking problem will be exacerbated.

The question was called. Motion carried unanimously.

15. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Attorney Gougelman referenced the Technological Research and Development Authority (TRDA) incubator project. The TRDA has been negotiating with the federal government to obtain a grant. One of the requirements is that a restriction be placed on the property that the TRDA will be leasing at the Airport. That restriction will restrict the property for the incubator project for a certain number of years.

The federal government has a concern about giving the TRDA a million dollars and then the TRDA assigning its lease to someone else.

Both the Airport and City Attorney have been asked to opine to the Economic Development Administration as part of consideration of the grant as to whether the Airport Authority and the City Council would be willing to agree to this type of restriction. The Airport Attorney has already advised that the Airport will sign off on this. Attorney Gougelman added that he is presenting this as a concept to Council rather than a binding decision. The TRDA will ask that the City send a letter indicating that conceptually the City is open to this idea.

Continuing, Attorney Gougelman said one question is what will happen if the TRDA goes belly up. At that point the leaseholder is going to want to assign the lease to someone else. And, someone is going to have to step in and allow the government to recoup part of its grant, probably off the stream of rental revenue.

A brief discussion followed about the project, the City's portion of funding (\$250,000) from CDBG money, the federal government's portion of funding, etc.

The City Manager said that the government wants to ensure that the underlying purpose – job creation – occurs. Mr. Gougelman added that the City will seek some kind of protection. When the final document is drafted, it will have to go before the Airport Authority and the City Council for approval.

In response to Mrs. Palmer, Mr. Schluckebier said that the City is providing a one-time allocation of \$250,000. Mrs. Palmer asked if the TRDA does not meet its requirement if the City will have to repay the CDBG funding. Mr. Schluckebier said it would depend on the circumstances; however, the City Attorney plans to keep our claim to an absolute minimum so there won't be an ongoing obligation on the part of the City.

By consensus, Council conceptually approved proceeding with a restrictive covenant.

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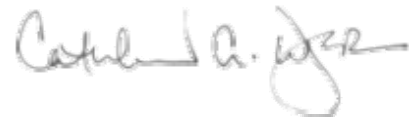
Mr. Palmer asked that anyone who has spare, new notebooks drop them off at the City Clerk's Office. The notebooks will be donated to disadvantaged children for school.

Additionally, Mr. Palmer reported that Honor America will be conducting a 9-11 event at the Military Memorial Park. He asked that the City of Melbourne firefighter and police officer of the year attend the function in order to be recognized.

16. ADJOURNMENT

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

The meeting adjourned at 9:24 p.m.



City Clerk – 8/18/2004

Approved by Council: August 24, 2004