

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 24, 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. The invocation was given by Pastor Bruno Malara.
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
	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

Absent: Grace Walker Council Member, District 4 (ill)

4. Proclamations and Presentations

Mayor Buckley declared September 13, 2004 as “Commodore John Barry Day”. Ed Reilly, Ancient Order of Hibernians in America, accepted the proclamation.

5. Approval of Minutes – August 10, 2004 Regular Meeting

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

6. City Manager’s Report

City Manager Jack Schluckebier reported on the following:

- The Laborers’ International Union agreement has been overwhelmingly ratified by the LIU membership. Staff expects to place this item on the September 14 agenda for consideration.
- Letters were sent to homeowners in the Turtle Mound/Parkway Drive and Stewart Road areas regarding their interest in receiving City services. The first of several meetings will be conducted in early September. (It is possible that this will lead to two or three annexation referenda.)

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- The report outlines the steps taken by City staff in preparation of Hurricane Charley, including the operation of the Emergency Operations Center. The City had minimal damage as a result of the hurricane.
- The report notes that staff is reviewing changes in population since the Council districts were adopted in 2002. The Code provides that there may not be more than a 10% variation in population between the largest and smallest district. That review should be concluded in mid-September.

Immediately following Item 8, Mayor Buckley referenced the memorandum from staff asking for an item to be added to the consent agenda (request for lien reduction, 2664 Hopi Drive).

Moved by C. Palmer/Poole to add this to the agenda as Item 10 “c.” Motion carried unanimously.

7. Public Comments

Mayor Buckley announced that Council will not take public comments with regard to the PBA collective bargaining agreement. Comments regarding those issues should occur at the bargaining table. He added that the City is required to observe Chapter 447, Florida Statutes, with regard to the bargaining process. And, it does not provide for bargaining with the Council.

Milo Zonka, 1077 Jupiter Boulevard, reported that the Melbourne Airport Authority recently voted (4-3) to not withdraw its request to the Transportation Security Administration. (The Airport had asked for the creation of a clearinghouse to check the background of people who refuse to provide a reason for requesting information from airports and that certain information about airports be considered confidential.) Mr. Zonka asked those members of the City Council who disagree with the Airport Authority’s action to place their own comments on the TSA docket.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-58 (CU-2004-11) AND SITE PLAN APPROVAL (SP-2004-12) AVON PETROLEUM: (Second 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.) (First Reading - 8/10/04)

City Attorney Paul Gougelman read Ordinance No. 2004-58 by title. There were no disclosures by Council and no comments from the public.

Moved by Poole/Hand for approval of Ordinance No. 2004-58. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2004-59 (A&V NO. 275): (Second 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) (First Reading - 8/10/04)

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

Moved by E. Palmer/Hand for approval of Ordinance No. 2004-58. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

10. CONSENT AGENDA:

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

In response to Council Member Ed Palmer’s question on Item “b”, Public Works/Utilities Director Robert Klapproth noted that this is a three-year contract and provides for the work to be done annually. He added that the life of the units will increase from one year to five years once the ozone phase has been completed.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Annual contract award for maintenance and support services of the payroll system and human resources software, Hewitt Associates LLC, Chicago, IL - \$31,653.
- b. Annual contract award for turn-key service to furnish all labor, materials, equipment, and supervision to remove, replace, and dispose of carbon in six

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filter units used at the Surface Water Treatment Plant, Norit Americas, Inc.,
Marshall, TX - \$85,170/filter unit, total annual cost of \$511,020.

Added to the agenda:

c. Lien Rescission CE-03-129: Request for lien reduction from \$9,450 to \$438.35
(Guy Ercolani – 2664 Hopi Drive) if paid within 30 days.

11. COUNCIL ACTION RE: A request for preliminary approval of Housing and Non-Housing Community Development Priorities to be included in the proposed 2005-2010 Consolidated Plan for the Brevard County HOME Consortium and authorization to advertise the plan for public comment.

Housing and Community Development Director Melinda Thomas briefed Council on the agenda report. The recommendation is for preliminary Council approval of the priorities identified in the agenda report for inclusion in the 2005-2010 Consolidated Plan and permission to advertise the Plan for public comment upon completion.

Vice Mayor Cheryl Palmer said that mental health services is identified as a priority. She commented that she believes everyone recognizes that part of our homeless problem is mentally ill people on the streets. Mrs. Palmer noted that she does not find anything in the plan that specifically addresses that issue.

Mrs. Thomas replied that most of the public service needs will be accomplished through non-profit partners. She added that the problems are bigger than CDBG funding could ever hope to address.

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

12. COUNCIL ACTION RE: A request for a waiver of the six month waiting period to reapply for a conditional use for consumption of alcohol at Mainstreet Pub. (Requested by Philip Nohrr for E & D Mainstream Corporation)

From the agenda report: The application for a conditional use to allow consumption of alcohol on premises was unanimously denied by City Council on July 13, 2004. The applicant has requested a waiver of the six-month waiting period to reapply. The City Code provides that a waiver should be considered by the City Council if conditions affecting the property have materially changed or the request/plan has been modified. At this time, staff cannot determine if either of these will be met. The staff recommendation is for denial.

Phil Nohrr, attorney representing the applicant, said that they would like to renew the application that was denied by City Council on July 13. Rather than pursuing the original request (for reconsideration) they would like to request a waiver of the six month waiting period. This will allow the application to go through the procedure again

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so they can present new information. He noted that there was information that was not presented on July 13 that would give them a shot at approval. And, at this point it is really a 4 ½ month waiver (six months from the July 13 denial).

Continuing, Mr. Nohrr said that they believe this is worthy of a waiver. After the item was denied, his client submitted packets of information to Council. This is information that was not previously presented. Mr. Nohrr pointed out that his client has cleaned up the property, which was previously a problem in Downtown Melbourne. Since the City Code requires a 5/7 vote on approval of a waiver, Mr. Nohrr asked to address any issues raised by speakers.

In response to Council Member Pat Poole, Attorney Gougelman read from the agenda report on this item.

Mr. Schluckebier noted that the initial conditional use request had a recommendation for approval. Subsequent to Council's action to deny, staff did not believe that it had the latitude to recommend beyond Council's decision.

Laird Gann, Executive Director, Melbourne Main Street, said that Main Street was thrilled six months ago when the applicant described how he wanted to develop this property. He noted that Main Street did not realize that it needed to be vocal throughout the process, including an appearance before Council. He recommended that Council Members tour the property and added that, when it is finished, it will be "the crown" in historic Downtown Melbourne.

Council Member Loretta Hand said that she did not support this request when it came before Council because she thought this was a standalone bar trying to get around the smoking laws in Florida. Also, she said she did not know that the Downtown area supported these kinds of businesses. Mrs. Hand said that Main Street needs to inform Council when it supports a particular item. She added that she could support the request for waiver.

Mrs. Palmer said she wished Mr. Gann had been present at the July 13 Council meeting. She noted that she had heard complaints about the previous establishment, which colored her view about this project. She noted that she has since been deluged with information about the applicant, caliber of person, etc. She commented that she feels terrible that Council had not been privy to this information before and she asked that Main Street contact Council in the future.

Mrs. Poole said that there have been all kinds of problems at this location and with the establishment across the street from this business. Many people have been affected. She noted that the Downtown area already has enough bars and she does not believe this is the type of business needed to upgrade the Downtown area. Mrs. Poole recommended that Main Street look for more restaurants and entertainment for the Downtown area.

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Frank Tubito stated that his balcony overlooks the Mainstreet Pub patio. He reported that after meeting with the applicant and others, he is 100% for this project, especially in light of what previously was located on the property. He added that he spoke to several of his neighbors and they are also in support.

Mr. Nohrr said that there is new information to present; therefore, he believes that they have met the technical requirements under the Code and want the chance to present the information in an organized fashion. For information, he said that at the July meeting, there was a question about screening the second floor. He noted that as a sign of good faith, the area has been screened. Mr. Nohrr asked the City Council to consider granting the waiver.

Mrs. Poole pointed out that no new information has been presented; new facts have not been produced. She disagreed that the waiver should be approved.

Council Member Ed Palmer said the rationale for requesting the waiver is that there is new information; however, new information has not been produced.

Moved by Hand/C. Palmer for approval of the six month waiting period.

Mrs. Poole asked the City Attorney to comment on the voting requirements. Attorney Gougelman said that five out of the six members present at this meeting would need to vote in favor. The City Code provides for a 5/7 voting requirement.

The question was called. The roll call vote was:

Aye: Contreras, Hand, C. Palmer and Buckley

Nay: E. Palmer and Poole

Motion failed.

13. ORDINANCE NO. 2004-60 (CPA-2004-06) AND ORDINANCE NO. 2004-61 (CU-2004-08) WITH SITE PLAN APPROVAL (SP-2004-11) ATLANTIC VISTA CONDOMINIUMS (WCG/NEEL-SCHAFFER): Ordinances providing for a Comprehensive Plan Amendment and a conditional use with site plan approval on a 1.65±-acre parcel, in a C-P (Commercial Parkway) zoning district, located on the west side of Highway A1A, north of Provincial Drive. (Owner - Honey, Inc. (Jung-Lin Chen)) (Applicant/Representative - WCG/Neel-Schaffer)
- a. Ordinance No. 2004-60/CPA-2004-06: (First Reading/Public Hearing) An ordinance changing the land use from Commercial to Commercial/Medium Density Residential. (P&Z Board - 5/06/04)
 - b. Ordinance No. 2004-61/CU-2004-08/SP-2004-11: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval in

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order to develop a four-story, multiple-family residential condominium project on a 1.65±-acre parcel. (P&Z Board - 8/05/04)

The City Attorney read Ordinance Nos. 2004-60 and 2004-61 by title. Planning & Economic Development Director Cindy Dittmer reviewed the agenda report. The Planning and Zoning Board voted 6 to 1 to recommend approval of the Comprehensive Plan Amendment and voted unanimously to recommend approval of the conditional use and Site Plan "A." Staff recommended approval of Site Plan "B." The difference in plans is the location of the driveway (Plan "A" on the west side and Plan "B" on the south side). The board and staff recommended the following conditions:

- a. Any change to the Site Plan ("A" or "B") prepared by Rick Melchiori, P.E., with Project Number WN.01429.001, signed and sealed on 7/23/2004, will require re-evaluation 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 units proposed; 3) any increase in building height; or 4) the addition of a driveway or substantial change in driveway location.

- b. The density of the development may not exceed 10 units per acre.
- c. Appropriate permits for any threatened or endangered species must be obtained as part of the construction review process.

Mrs. Poole pointed out that Plan "B" also provides for two more parking spaces. Mrs. Dittmer agreed.

Mayor Buckley called for disclosures. Mrs. Hand said that last Thursday Hugh Evans, Sr. phoned her regarding the site plan and the driveway. She said at that time he didn't indicate there were two plans. Mrs. Poole said she attended the Planning and Zoning Board meetings on this item.

Phil Nohrr, attorney representing the applicant, added that Mrs. Poole spoke in opposition to this item at the May 6 Planning and Zoning Board meeting. Mrs. Poole responded that she did not speak at that meeting.

Continuing, Mr. Nohrr stated that this project meets or exceeds all of the City's zoning and setback requirements. No variances will be requested and they are not asking for additional height. The project is a residential development in a predominantly residential area. This project will generate less traffic than if it were developed commercial. Additionally, there are no environmental issues associated with the

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property. The main stumbling block relates to ingress and egress. Mr. Nohrr stated that it is the applicant's strong desire that Plan A be considered. However, they don't want the entire plan denied because of this issue so they developed Plan B.

Mr. Nohrr said that clearly Plan A, as identified by City staff and the applicant's traffic engineers, is the safest means of ingress/egress. However, the neighbors don't want the entranceway at this location.

Mr. Nohrr said that another point that was made was "why not ingress/egress off of A1A." He explained that everyone has identified A1A as the least safest. And, ingress/egress from A1A would conflict with the residents (from Provincial Drive) who have raised these concerns. The objective evidence points to Plan A; however, again, they are willing to accept Plan B.

Mayor Buckley read a letter dated August 24 from Russell Scott, 170 and 272 Provincial Drive, who indicates that he is opposed to the development of a condominium at this location because the value of his property would drop. He asked that the zoning remain as is.

Laraine Scoma, 116 Lee Street, stated that this is an issue of compatibility. There are no other properties in the area zoned R-3. She agreed that a business would have more trips per day, but at sundown (condominium) residents would be hanging over their balconies peering into the (Provincial Drive) residents' backyards. Ms. Scoma read from the Zoning Code (site plan approval for multiple-family dwelling districts) and made the following observations: the purpose of the Code is to encourage a harmonious relationship with surrounding developments; the development will have an affect on the privacy of adjacent areas; the proposed development is much denser than the surrounding development; the driveway provides a safety factor; the building will impact the residents' light; and the development will impact traffic through services – trash pickups, deliveries, etc. – which is beyond the two vehicles per day for each unit.

Ms. Scoma discussed the protected area located across A1A, north of Paradise Park and questioned if light from the subject development would stop sea turtles from coming ashore and laying their eggs.

Ms. Scoma concluded by asking Council to review the compatibility issue as well as the impact on property values.

Thomas Catalon, 243 Provincial Drive, submitted pictures that show scrub jays in the area. He reported that when he moved to this area in 1992, he was told that this property was a scrub jay sanctuary. Also, there are gopher tortoises on the property. He stressed that it is important that the environment be taken care of.

In response to Attorney Gougelman, Mr. Catalon said he does not know who said that the property is a sanctuary.

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Barry Dutton, 251 Provincial Drive, said that the homes on Provincial are two stories high – not four. His second concern is the means of ingress/egress. Provincial has a bend at the entrance and it can be tricky, especially since they have so much pedestrian traffic. Mr. Dutton recommended a third plan, with ingress/egress onto A1A. He added that he knows development is inevitable; however, the residents would like for the development to be compatible.

Mr. Dutton confirmed for Mrs. Palmer that there are one- and two-story developments on the abutting Harris Boulevard and Ocean View Lane.

Inge Wemken, 253 Provincial Drive, said she is mainly concerned about the safety factor for the children. There are a lot of young school children on the block who walk to/from the school bus stop. She added that her second concern is for the “sanctuary,” which is home to turtles, birds and raccoons. She stressed that she is totally opposed to the development.

Mason Blake, attorney representing Mr. & Mrs. Laniado, said that the Laniados own property north of this site. They wanted to register their concerns about traffic. Mr. Blake added that a commercial development would reduce the number of trips because it would provide for “capture” trips. Therefore, the proposed residential use would create more trips. A residential development might mean fewer trips to the site but it would mean more traffic on A1A.

Peter Petrillo, 328 Provincial Drive, said that Plan A or B will put traffic on his street. Because of the curve it is a little dangerous at times. He added that he is not sure he objects to condominiums at this location, his problem relates to where the traffic will be. Common sense tells him that an entrance/exit on A1A is fine. He asked that this development not make the situation difficult for the residents of Provincial Drive.

Mike Bruckner, 224 Provincial Drive, stated that his understanding is that the issue is about Plan A or B. Everything else has been approved. He added that he agrees with all the points that have been made; however, the major point is that Plan A would be a big mistake. Plan B is the only option, especially as it relates to children and traffic.

Attorney Nohrr read from the ITE (Institute of Transportation Engineers) Trip Generation, 7th Edition, which indicates that the property would generate 2,073 trips per day more if developed as commercial. He agreed that there is some recapture; however, even with 50% recapture, there will be far more trips from a commercial development than a residential development.

Continuing, Mr. Nohrr commented on the following: they have submitted an environmental report prepared by Bill Kerr that shows the property has no environmental issues; if there were any environmental issues, they would have to follow all state laws and regulations; the lot coverage for commercial is the same as the lot coverage for a condominium; the height is 40', which is the maximum that could

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be developed as a townhouse, condominium or commercial development; a commercial development has a lot more potential for negative impact, from a restaurant to an all night operation; and they believe they are more compatible as a residential than if developed commercial.

Mr. Nohrr said the issue has been bogged down by ingress/egress. He concluded by agreeing with the conditions.

Mrs. Palmer asked the distance from the closest condominium to the closest home. Mr. Nohrr said it is about 120 – 130' from building to building.

Following a brief discussion about sidewalks, Mrs. Dittmer confirmed that the applicant would be required to construct a sidewalk on his property.

Mrs. Palmer referenced the issue about lighting and its impact on sea turtles. She said that public lands set aside for conservation are meant to be overgrown. And, there is a drop down to the beach. She asked Mr. Nohrr if he had any information about whether the lights from this project could light the area across the street.

Mr. Nohrr said that although they have not tested he is convinced that the lighting will not be an issue for the sea turtles.

Mayor Buckley read the recommendation and stated that the applicant's attorney is willing to go along with Plan B.

Mrs. Poole said that area residents left the Planning and Zoning Board thinking that Plan B would be the plan going to Council. However, it has been presented to Council with a recommendation for Plan A. She read from the district and intent of the Commercial Parkway classification in the Zoning Code.

Continuing, Mrs. Poole said that the intent of the Commercial Parkway zone is to serve the needs of the motoring public – not to construct a multi-family development. She expressed concern with rezoning the property and noted that this will start a chain reaction.

Moved by C. Palmer/Contreras to approve Site Plan B.

Mrs. Palmer said she has read the minutes from the Planning and Zoning Board meetings. The area residents know the traffic and the local situation and from their expert point of view, Plan B is the safer of the two options. Regarding the concern that this condominium would block the view, the land was already zoned to allow a 40' height. It could have been developed with a 40' office building or restaurant. This is simply a change from commercial to residential.

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Mr. Palmer asked why staff recommended Plan A over Plan B. Mrs. Dittmer said based on a recommendation from the City's Traffic Engineer regarding the safest location for ingress/egress.

The maker/seconded agreed to consider the Comprehensive Plan ordinance first. Moved by C. Palmer/Contreras for approval of Ordinance No. 2004-60. Motion carried. Mrs. Poole voted nay.

Moved by C. Palmer/Contreras for approval of Ordinance No. 2004-61 with Site Plan B. Maker/seconded agreed that the motion includes an amendment to Section 2 a. of the ordinance to reflect Site Plan B.

Mrs. Poole asked the City Attorney if this plan meets all the requirements outlined in the City Code. Attorney Gougelman said Mrs. Poole is pointing out a glaring inconsistency in the Code. The Code refers to the "motoring public" in the C-P zone yet provides for a multi-family development with a conditional use. Multi-family is inconsistent with the district and intent. Mr. Gougelman said that the Code provision was adopted by a previous City Council and the legislative decision was made that the two mesh. Therefore, the application is properly before Council.

Mr. Contreras referenced the allegation made by the applicant (that Mrs. Poole spoke in opposition to this item at a Planning & Zoning Board meeting). Attorney Gougelman said that he has reviewed the May 6, July 1 and July 16 Planning and Zoning Board minutes. He noted that Mrs. Poole did not speak at the May 6 meeting; however, she made a presentation to the board at the July 15 meeting. The minutes show that Mrs. Poole raised a number of issues/concerns; however, he is not prepared to say that due process was denied.

Motion carried. Mrs. Poole voted nay.

Recessed: 8:28 p.m.
Reconvened: 8:39 p.m.

14. ORDINANCE NO. 2004-62 (Z-2004-990) and ORDINANCE NO. 2004-63 (CU-2004-10) WITH SITE PLAN APPROVAL (SP-2004-15) CASA RIO CONDOMINIUMS: (First Readings/Public Hearings) Ordinances providing for a change in zoning and granting a conditional use with site plan approval on a 1.00+-acre parcel, located on the east side of North Highway U.S. 1, south of Sarno Road, across from Adger Smith Lane. (Owner – Albert J. Bosco) (Applicant – David & Sherrie Bryant)
- a. Ordinance No. 2004-62/Z-2004-990: (First Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) to C-1 (Neighborhood Commercial). (P&Z Board – 8/05/04)
 - b. Ordinance No. 2004-63/CU-2004-10/SP-2004-15: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to

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develop a four-story multiple-family residential condominium project on a 1.00±-acre parcel. (P&Z Board – 8/05/04)

Attorney Gougelman read the ordinances by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the rezoning request, and the conditional use and site plan prepared by David Bryant, P.E., with Job No. 240503C, with a signed and sealed date of July 14, 2004, subject to the following conditions:

- a. Any change to the site plan, prepared by David Bryant, P.E., with Job No. 240503C, with a signed and sealed date of July 14, 2004, 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; 2) an increase in building height; 3) any increase of 10 percent in building area; or 4) the addition of a driveway.

- b. The proposed building shall be substantially consistent with the rendering submitted by the applicant.
- c. A six-foot opaque fence will be required along the north property line where abutting the driveway.

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

Patricia Richardson, Minton Road, said she is representing Mr. and Mrs. Bryant (the applicants, who are out of the country). She noted that the project engineer is also present. She made the following points about the development: Mr. Bryant is a lifetime resident; this is a down-zoning from C-2 to C-1; the Future Land Use calls for High Density Residential on this site; they are not requesting any additional height or density; there will be less vehicle trips compared to a commercial development; they plan to have extensive landscaping and a Mediterranean style building; they have corresponded with the neighbors across Elbow Creek and have agreed to not allow lights on the back of the building to shine towards the water; it is approximately 470' from the back of the neighbors' homes to the back of Casa Rio; and they are planning luxury condominium units that average 1,600 s.f. with a \$300,000 - \$350,000 price range. Ms. Richardson concluded by asking for Council's approval.

Mr. Contreras referenced the August 10 letter from David Bryant distributed to Council that indicates they do not intend to build a seawall or boat slips. Ms. Richardson agreed.

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Shawn McDermott, 844 Whitmire Drive, said he can't imagine what a four-story building will look like at this location. Currently it is nice and dark at night. The development will result in light from balconies shining on the river. He asked how the traffic will be controlled so people can enter/exit Sarno Road in a safe manner. Mr. McDermott concluded by saying Elbow Creek is narrow at this point and this development will impact his privacy.

Bill Ferguson, project manager representing Mr. Bryant, explained that the closest residence will be 470' away. In addition to the width of Elbow Creek, they are set back from the high and mean water line. The building being proposed is within the allowed height.

Mr. Ferguson agreed with the conditions (read by Mayor Buckley).

Mrs. Poole asked why no seawall was planned. Mr. Ferguson said that the area is heavily vegetated and the water is too shallow. They would rather leave the mangroves and aquatic plants.

Responding to Mrs. Poole, Mr. Ferguson said that a retention area will trap any runoff from the parking area. The project is proposed with zero runoff into the creek.

That concluded the speakers from the audience.

Moved by Hand/E. Palmer for approval of Ordinance No. 2004-62.

Mrs. Poole said that this is another case where development will destroy the view for other people.

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

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-63. Motion carried. Mrs. Poole voted nay.

15. RESOLUTION NO. 1891: (Public Hearing) A resolution authorizing transmittal of nine major Comprehensive Plan Amendments and one text amendment to the Department of Community Affairs. (P&Z Board - 8/05/04)

Attorney Gougelman read Resolution No. 1891 by title. Mrs. Dittmer reviewed each amendment. (Comments are noted below following the specific amendment.)

- a. CPA-2004-11 (Intracoastal): Comprehensive Plan Amendment changing the Future Land Use from Commercial to mixed-use *Commercial/High Density Residential on a 6.32-acre parcel, located on the east side of South Harbor City Boulevard, south of Cherry Drive, and north of NASA Boulevard. (Owner - Intracoastal Marina of Melbourne) (Applicant/Representative - David T. Menzel, MAI Architects Engineers)

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*Mrs. Dittmer corrected the agenda item to reflect Commercial/High Density Residential as opposed to Commercial/Medium Density Residential. She noted that the backup material in the package is correct.

Mrs. Hand asked if the Coral Bay Restaurant is going to be destroyed. Mrs. Dittmer said that is staff's understanding. The applicant intends to take everything but the office building and develop residential. That would include removal of the large, dry storage building and fueling stations related to the marina. The slips would perhaps remain for residential use.

Mrs. Hand asked if we had any indication of the proposed height. She recalled that Mr. Rathmann (located on the west side of U. S. 1) is concerned about the view being blocked.

Mrs. Dittmer noted that this is simply transmittal of the Comprehensive Plan Amendment to the Florida Department of Community Affairs. It does not include approval of a development plan. The item would definitely return to City Council for a conditional use and site plan.

Chris Romandetti, 705 South Harbor City Boulevard, said that they have numerous plans; however, nothing has been established. He referenced the cost for engineering fees and said they will begin that process after the amendment has been approved by the Department of Community Affairs.

- b. CPA-2004-12 (Dairy/Madison): A Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential on a 42.83-acre parcel, located west of Dairy Road, and north of Madison Avenue (a.k.a. Range Road). (Owners - Richard E & Micheline A Nichols, Jason W. Sauriol, Iglesia de Dios Pentecostal and Movimiento Internacional, Inc. & Development Group of West Melbourne) (Applicant - Development Group of West Melbourne) (Representative - Jake T. Wise)
- c. CPA-2004-13 (RJP Development): A Comprehensive Plan Amendment designating a Future Land Use of Industrial on a 39.4-acre parcel, located between John Rodes Boulevard and North Drive. (Owners - William C. Potter, Co-Trustee & Hubert C. Normile, Jr.) (Applicant - RJP Development Corporation) (Representative - Jake Wise)

Attorney Phil Nohrr confirmed for Mrs. Poole that Mr. Pence has an interest in RJP Development Corporation.

- d. CPA-2004-14 (M-135, LLC): A Comprehensive Plan Amendment designating a Future Land Use of Industrial/Commercial on 37 acres and Low Density Residential on 138 acres, located west of I-95 and south of Eau Gallie

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Boulevard. (Owner/Applicant - M-135, LLC) (Representative - Scott M. Glaubitz)

Mrs. Hand asked if the industrial area will backup to a residential area. Mrs. Dittmer said that the request for commercial/industrial is located along I-95. She agreed that additional buffer requirements would need to be addressed.

Mr. Contreras asked about the two rectangles located on the map. Mrs. Dittmer said that they indicate billboard locations, which are not part of the Comprehensive Plan Amendment. The City does not permit billboards, so that issue would have to be addressed at the time of annexation. A brief discussion followed regarding billboards.

Anna Glaubitz, BSE Consultants, said that there is an eastern portion to the property that is not shaded on the map.

Mrs. Dittmer said that is probably an error on the part of the mapmaker. She added that this does not change the acreage; the total acreage is correct as noted.

- e. CPA-2004-15 (Palms 8 Theater Property): A Comprehensive Plan Amendment changing the Future Land Use from Commercial to Commercial/Medium Density Residential on a 10.28-acre parcel, located on the west side of North Babcock Street, south of Laurie Street, and north of Alma Drive. (Owner/Applicant/Representative – City of Melbourne)

There was a brief discussion about the contract between Mr. Coy Clark and the City. Attorney Gougelman confirmed that a Comprehensive Plan Amendment is necessary to effectuate the contract.

- f. CPA-2004-16 (Annexation and Land Use Policy): A Comprehensive Plan Amendment to allow a text amendment to add a policy to the Future Land Use Element and Intergovernmental Coordination Element, which would allow an appropriate designation for Future Land Use once a property is annexed into the City from unincorporated Brevard County. (Owner/Applicant/Representative – City of Melbourne)

Mrs. Palmer referenced the table and asked if the Low Density Residential includes our two new zoning designations. Mrs. Dittmer explained that our lowest use is Low Density Residential. A property coming into the City from the County, with an agriculture use, would receive the Low Density Residential designation with an AEU or REU zoning classification.

- g. CPA-2004-18 (Taranto): A Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential on a 30-acre parcel, located between Riverside Drive and Highway A1A, south of the intersection of Eau Gallie Boulevard and Highway A1A, north of Paradise Boulevard. (Owner - Vincent & Marie Taranto) (Representative - Vaheed Temouri)

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Mayor Buckley referenced the correspondence from James E. and Patricia D. Pruitt dated August 17. The Pruitts object to rezoning the property to R-2 and ingress/egress via Riverside Drive. Mr. Schluckebier explained that the zoning, ingress, egress, etc. is not part of this item. This item is for transmittal only to the Department of Community Affairs. The issues raised by the Pruitts will return to the Planning and Zoning Board and Council for consideration.

In response to Mr. Palmer, Mrs. Dittmer clarified that the intent is for the 18-acre parcel to receive a Future Land Use of Low Density Residential and the 12-acre parcel a Future Land Use of Medium Density Residential.

Mark LaRusso, 622 Sanderling Drive, stated that he has been appointed by the Sanctuary Homeowners' Association Board of Directors to represent the residents on this issue. He noted that the main concern relates to the entire 30 acres changing to Medium Density Residential. Mr. LaRusso referenced the staff recommendation for the 18-acre parcel to receive a Low Density Residential land use. Additionally, he noted that a petition is being circulated and will be submitted to City Hall.

Mr. LaRusso concluded by saying that the residents have proactively worked with Mr. Toranto and will continue to work closely with him. He asked for assurance that the entire 30 acres will not be designated Medium Density Residential.

Vince Taranto, applicant, said that there has been confusion with regard to this property. He said that the intent was to apply for Low Density Residential because they plan to build an upscale single-family residential detached retirement community. After elaborating on the type of development, Mr. Taranto said he does not intend to develop high density apartments or townhomes. He added that the confusion is easy to understand because of the type of zoning being requested.

Mr. Contreras asked Mr. LaRusso if everyone is on the same page with regard to this item. Mr. LaRusso said that they (the Sanctuary homeowners and the applicant) are getting there. The residents' main concern is on the zoning.

Mr. Taranto said that the residents should not be concerned with the zoning as much as they should be with the density of the land and the quality of the development. He said that they want to construct an upscale senior community and will be marketing the home and the property under the home. This type of development will not allow for an R-1AA or R-1AAA zoning designation. Rather, they would have to fall into the R-2 zoning category with a binding site plan.

Mrs. Poole asked Mr. Taranto to elaborate. Mr. Taranto said that the development would fall under Chapter 720 of the State Statutes. A person would buy a home and the property under the home. All other property would be held by a homeowners' association as a common area.

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Mr. Palmer asked if this item will be re-written. Mrs. Dittmer referenced the very end of the staff write up which notes that the 12 acres would have a Medium Density Residential land use and the 18 acres would have a Low Density Residential land use. Mr. Palmer asked for an assurance on this item.

Mr. Contreras asked if the binding development agreement would relate to the site plan. Attorney Gougelman said that the Planning and Zoning Board held up the zoning to allow Mr. Taranto, Mr. LaRusso, the attorney for the Sanctuary Homeowners' Association and City staff an opportunity to work through. There will be deed restrictions and all parties should be happy with the end product.

- h. CPA-2004-19 (City of Melbourne): A Comprehensive Plan Amendment designating a Future Land Use of Public Lands and Institutions on a 314-acre parcel located on the west side of I-95 at the western terminus of Lake Washington Road. (Owner/Applicant/Representative - City of Melbourne)
- i. CPA-2004-20 (Parkway Drive, Area A): A Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on parcels totaling 124 acres, located west of Wickham Road, north and south of Parkway Drive. (Administrative request by the City of Melbourne)
- j. CPA-2004-21 (Parkway Drive, Area B): A Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on parcels totaling 116 acres, located adjacent to and west of Turtle Mound Road, south of Parkway Drive, and north of Lake Washington Road. (Administrative request by the City of Melbourne)

Moved by E. Palmer/Contreras for approval of Resolution No. 1891. Motion carried unanimously.

- 16. RESOLUTION NO. 1892: A resolution implementing the FY 2003-2004 Third Quarter Budget Review recommendations.

The City Attorney read the resolution by title.

Moved by Hand/E. Palmer for approval of Resolution No. 1892. Motion carried unanimously.

Mrs. Elliott responded to Mr. Palmer's general questions about the budget review.

- 17. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

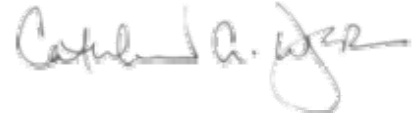
None.

- 18. ADJOURNMENT

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

The meeting adjourned at 10:07 p.m.



City Clerk – 9/1/2004

Approved by Council: September 14, 2004