

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 28, 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 6:38 p.m. by Mayor John A. Buckley.

1. Council Member Pat Poole 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

The Mayor presented a Certificate of Appreciation to Ed Bradford, Chairman, City Code Review Committee, Section 3. Mr. Bradford served on one of four ad hoc committees appointed to review the City Code.

Mayor Buckley reported that the publishers of “Retirement Places Rated, What You Need to Know to Plan the Retirement You Deserve” selected the City of Melbourne as the 2004 fourth best city in which to retire. The City received an Award of Excellence plaque in recognition of this honor.

5. Approval of Minutes - September 14, 2004 Workshop meeting
- September 14, 2004 Budget meeting
- September 14, 2004 Regular meeting

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

6. City Manager’s Report

City Manager Jack Schluckebier reported on the following items:

Agenda Format: In August two additional notices/disclosures were added to the end of the agenda. The notices indicate that Mayor Buckley and Council Members Ed Palmer and Loretta Hand, as members of the Airport Authority Board, may discuss

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Airport Authority issues. Additionally, there is a similar notice for the three members of Council who serve on the Metropolitan Planning Organization (Mayor Buckley and Council Members Walker and Hand). The notices do not constitute a separate agenda item nor do they require any reporting. They simply indicate that we have members who serve in dual roles.

Hurricane Frances: As of Friday 110,000 cubic yards of debris had been removed. The removal represents a “first pass” in the City. Approximately 98% of the City’s 270 road miles had been cleared (prior to Hurricane Jeanne).

Hurricane Jeanne: The City did not experience significant damage to public facilities. There are issues with the Auditorium, Front Street and Ballard Park. Following Hurricane Frances, there was approximately \$40 million in private property damage and we expect a similar report following Hurricane Jeanne. Additionally, Florida Power and Light addressed the City’s power needs quicker following Jeanne. Staff established direct communication with FP&L, which resulted in public facilities being restored within 48 hours of the storm.

Mayor Buckley noted that the Airport lost part of its roof during Frances. And, it received additional damage during Jeanne. Also, a few hangars have been damaged.

The City Manager added that the City had a more rapid response from the County Emergency Operation Center and there has been better coordination with State offices in terms of aid stations and National Guard troop deployment. The City has also received assistance from two South Florida cities and Fish and Wildlife.

Council Member Grace Walker asked how many members of the National Guard are stationed in Melbourne. Mr. Schluckebier said that 200 are staying at Grant Street Civic Center and 50 of those are dedicated to Melbourne.

Vice Mayor Cheryl Palmer said she is glad that the City purchased generators for its lift stations. She has heard horror stories from other cities and counties. She commended everyone for their speed in setting up the four-way stop signs and getting our intersections under control. She added that she is amazed at the speed in which the streets were cleared of downed trees and debris.

Council Member Pat Poole said she was very upset after learning that 200 National Guard members were turned away from the Airport by the Airport Director following Hurricane Frances. Mayor Buckley said that there are numerous chairs in the area where the troops wanted to locate in the Airport. The Trailer Haven Auditorium was offered, but the troops moved to the Eau Gallie Civic Center.

Mayor Buckley reminded Council that Melbourne will host the Space Coast League of Cities meeting on October 11 at Front Street Civic Center. Additionally, the Sixth Annual Board Reception will be held at Front Street on October 14.

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There was a brief discussion regarding the second Council meeting in December. Moved by Poole/Buckley to cancel the second meeting in December. Motion carried unanimously.

Risk Manager Ken Gray confirmed for Mrs. Poole that the boardwalk along Crane Creek has been damaged. Staff has not yet determined the extent of the damage.

Mayor Buckley referenced the memoranda from staff requesting Items 16 “p” and 25.1 be added to the agenda. Mrs. Poole referenced Item 25.1 and asked if there is an emergency. She said she would like more time to review the material. The City Manager said that the item can be added to the next agenda. Staff had hoped to get the information out on Friday; however, the storm interrupted our plans.

Moved by Poole/Walker to add Item 16 “p” (purchase of tools and equipment) to the agenda. Motion carried unanimously.

Mrs. Palmer referenced the request by Coy Clark to delay Item 17. She asked Council to act on this request now in case people were in the audience to hear this item.

Moved by C. Palmer/E. Palmer to postpone Item 17 until the next meeting (October 12).

Mrs. Poole recommended that Council consider a policy requiring at least five days’ notice to request delay or postponement. She added that she spent a considerable amount of time reviewing this item and late today learned about the request for postponement.

Mrs. Hand asked Attorney Gougelman to comment about the recommendation for a policy. Attorney Gougelman said that such a policy would have to be flexible. Many times parties don’t know that something needs to be postponed until the last minute. He added that last week staff expected all the points in the Coy Clark contract to be resolved. At this point, one item remains.

A brief discussion followed. The question was called. Motion carried unanimously.

7. Public Comments

Mike Bell, 1624 Mitchell Street, reported that Conchy Joe’s Restaurant on Pineapple Avenue has taken over the Eau Gallie Library parking lot. He noted that several nights a week patrons of the library, along with fishermen, do not have parking available.

Mayor Buckley asked the City Manager to investigate.

Glenn Tobey, Arthur J. Gallagher and Company, said that his company has been the City’s insurance broker for the past eight years. He expressed concern about the City’s decision to leave Gallagher and insure through the Florida League of Cities

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(Florida Municipal Insurance Trust-FMIT). Mr. Tobey compared Gallagher's surplus with the FLC's surplus and said that he is not sure this is the right time for the City to consider moving its insurance program. Mr. Tobey submitted information regarding Hurricanes Frances and Charley and the FMIT September 2003 financial statement for Council's consideration.

Risk Manager Ken Gray agreed that the Florida League of Cities will take a big hit this year as a result of the hurricanes, just as all companies will. He elaborated on the FLC's insurance program and said that he stands by his recommendation.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2004-64 (Z-2004-991) AND ORDINANCE NO. 2004-65 (CU-2004-12/SP-2004-16) HARBOR GARDENS CONDOMINIUMS: Ordinances providing for a zoning change and a conditional use with site plan approval on three parcels consisting of 2.7± acres, located on the east side of Highway U.S. 1, across from Sarno Road. (Owner - Biosystems, Inc.) (Applicant/Representative - Vaheed B. Teimouri, P.E.)
- a. Ordinance No. 2004-64/Z-2004-991: (Second Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) and R-3 (Multiple-Family Dwelling) to C-1 (Neighborhood Commercial) at 2.7± acres. (First Reading - 9/14/04)
 - b. Ordinance No. 2004-65/CU-2004-12/SP-2004-16: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a multiple-family residential development on 2.7± acres. (First Reading - 9/14/04)

The City Attorney read Ordinance Nos. 2004-64 and 2004-65 by title. Mayor Buckley opened the public hearing. There were no comments from the public and no disclosures by Council.

Moved by Hand/Contreras for approval of Ordinance No. 2004-64. The roll call vote was:

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

Nay: Poole

Motion carried.

Mrs. Poole voted nay because she believes this will start a trend where the view along the scenic Indian River will be destroyed.

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Moved by E. Palmer/Hand for approval of Ordinance No. 2004-65, which includes Site Plan "B." The roll call vote was:

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

Nay: Poole

Motion carried.

9. ORDINANCE NO. 2004-66 (AR-2004-158), ORDINANCE NO. 2004-67 (CPA-2004-22) AND ORDINANCE NO. 2004-68 (Z-2004-998): Ordinances providing for annexation, Comprehensive Plan Amendment and a zoning change on a 0.44-acre parcel, located at 1679 Garden Avenue, west of Wickham Road and south of Aurora Road. (Owner/Applicant - Thomas Thompson and Mitzi Thompson) (Representative - Glenn W. Tomasone)
- a. Ordinance No. 2004-66/AR-2004-158: (Second Reading/Public Hearing) An ordinance providing for the annexation of a 0.44-acre parcel. (First Reading - 9/14/04)
 - b. Ordinance No. 2004-67/CPA-2004-22: (Second Reading/Public Hearing) An ordinance establishing a low-density residential land use on a 0.44-acre parcel. (First Reading - 9/14/04)
 - c. Ordinance No. 2004-68/Z-2004-998: (Second Reading/Public Hearing) An ordinance establishing R-1A (Single-Family Residential) zoning on a 0.44-acre parcel. (First Reading - 9/14/04)

The City Attorney read each ordinance by title. There were no disclosures by Council and no comments from the public.

Moved by Walker/E. Palmer for approval of Ordinance No. 2004-66. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-67. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

Moved by Poole/Walker for approval of Ordinance No. 2004-68. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2004-69 (AR-2004-157) DOW CENTRAL PARK INDUSTRIAL SUBDIVISION: (Second Reading/Public Hearing) An ordinance providing for the annexation of 30 acres of property located on Stan Drive, north of Ellis Road, and east of John Rodes Boulevard. (Owners - Gensen, Edward, Trustee; Dow Central Park Owners' Association, Inc.; Hafizi, Hamid; Hendrickson Electric Service, Inc. J&L Holdings of Brevard FL, Inc.; James O'Neill Construction, Inc.; MH of Brevard, Inc.; MS Thornton Enterprises; Matthews, Earl E.; Michaels Project, Inc.; Murphy Michael P.; Murray, Johathan W.; Plastics USA, Inc.; RTS Development, Inc.; Robinson, Michael; Trick Pro Motorsport, Inc.; Vandiver, Claude H.; Warner, Glen; Wilt, Mel) (Applicant - City of Melbourne) (First Reading - 9/14/04)

Attorney Gougelman read Ordinance No. 2004-69 by title. There were no disclosures by Council and no comments from the public.

Moved by Poole/Walker for approval of Ordinance No. 2004-69. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2004-70: (Second Reading/Public Hearing) An ordinance amending Chapter 14 of the Code of Ordinances entitled "Garbage and Refuse," providing rates for the collection of garbage and trash. (First Reading - 9/14/04)

The City Attorney read the ordinance by title. There were no comments from the public.

Moved by E. Palmer/Hand for approval of Ordinance No. 2004-70. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

12. ORDINANCE NO. 2004-71: (Second Reading/Public Hearing) An ordinance amending Chapter 31 of the City Code entitled “Traffic and Motor Vehicles” by regulating parking at City facilities. (First Reading - 9/14/04)

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

Moved by Poole/Walker for approval of Ordinance No. 2004-71.

Council Member Ed Palmer asked the anticipated start time for the new regulations. Mr. Schluckebier replied that the ordinance will be implemented in the next 45 – 60 days.

The question was called. 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 Phase III demolition at D.B. Lee Wastewater Treatment Plant, Project No. C04317, Cross Environmental Services, Winter Park, FL - \$624,700 and budget transfers of \$129,618 from Project 96373 and \$147,797 from Wastewater Capital Recovery Account to this project budget.

City Engineer Howard Ralls reviewed the agenda report. The recommendation is for approval of the demolition contract with Cross Environmental Services, Inc. in the amount of \$624,700 and transfer of \$129,618 from savings in the D.B. Lee Wastewater Treatment Plant Phase III Improvement Project (just completed) and \$147,797 from the Wastewater Capital Recovery Reserve Account to this project’s budget.

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

14. COUNCIL ACTION RE: Contract award for Fee Avenue waterline replacement at the Florida East Coast Railroad, Project No. C04310, KNCT, Inc., Cocoa Beach, FL - \$120,330.

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Mr. Ralls briefed Council and reviewed the agenda report. The recommendation is for approval of the pipe replacement contract with KNCT, Inc. in the amount of \$120,330.

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

15. COUNCIL ACTION RE: Contract award for the Hibiscus Water Booster Station valve replacement, Project No. E04312, Waterline Industries, Seabrook, NH - \$75,777 and transfer of \$10,000 from Miscellaneous Water & Sewer Projects to this project budget.

Mr. Ralls reviewed the agenda report. The recommendation is for approval of the contract with Waterline Industries in the amount of \$75,777 and transfer of \$10,000 from Miscellaneous Water & Sewer Projects to supplement the current project budget.

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

16. CONSENT AGENDA:

Moved by Hand/E. Palmer for approval of the consent agenda, Items “a through p.” (Note: see substitute motion below.)

Mr. Palmer asked why the variation in fees on Item “d.” Mr. Schluckebier explained that Public Resources Management Group is currently under contract with the City to perform the sufficiency study. As part of that study, they have had to familiarize themselves with issues in this area, which improved their ability to competitively quote.

In response to Mrs. Poole’s question about Item “l”, Mr. Schluckebier said that in this case the new owner took the lien with the purchase and now he would like to have it reimbursed.

Mrs. Poole referenced Item “m” and asked if Mr. Clark is the reason for the delay. The City Manager discussed the history of the negotiations and said that Mr. Clark’s and Council’s first choice of commercial did not work out. Mr. Clark demonstrated a good faith effort to make that happen and he is now working on the second potential use of the site.

In response to Mrs. Poole’s question about Item “n”, Planning and Economic Development Director Cindy Dittmer confirmed that these are items identified in the redevelopment plan and the vision plan.

Mrs. Palmer asked to vote on Item “d” separately.

The following substitute motion was made: Moved by Hand/Walker for approval of Items “a through c” and “e through p.” Motion carried unanimously.

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Regarding Item “d”, Mrs. Palmer said she is not in favor of any further impact fees; therefore, she won’t support hiring a consultant for impact fees. Mrs. Poole stated that this is long overdue and she is glad that the City is pursuing this.

Moved by Poole/Hand to approve Item “d.”

Mrs. Walker asked why we need to hire a consultant and if we have qualified staff to handle this task. Mr. Schluckebier replied that our staff is very capable; they could perform the analysis and mimic other studies. He noted, however, that he believes the issues would be best addressed through an external report from someone with expertise who can answer technical questions about the particular reasons for size, duration, concept, methodology, etc.

Mrs. Walker asked when the report would be complete and Mr. Schluckebier replied that it would be finished in this calendar year.

Mr. Palmer agreed that the City would receive an objective view if the analysis is performed from the outside. Mayor Buckley added that the consultant may find that some of our fees are in line and okay.

Mrs. Palmer stated that one of the reasons we do this is to find someone with the expertise to come up with the conclusion that we desire, which is to impose impact fees.

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

The consent agenda was approved as follows:

- a. Supplement No. 209 to the Continuing Consultant’s Contract for engineering services to provide the design and preparation of bidding documents for the Lorna Drive drainage improvements, Project No. C04900, Frazier Engineering, Inc., Melbourne, FL - \$27,000.
- b. Supplement No. 210 to the Continuing Consultant’s Contract for engineering services to provide a drainage study for the Tallwood Subdivision, Project No. C04902, Frazier Engineering, Inc., Melbourne, FL - \$17,500.
- c. Change Order No. 1 to contract for renovation of public restrooms at the Grant Street Community Center, Project No. CD0461, G. C. Construction & Development, Inc., Melbourne, FL - \$6,210 and transfer of \$6,210 from General Fund Miscellaneous Projects to this project budget.
- d. Contract award for professional services to provide a transportation, recreation, and public facility impact fee study, Public Resources Management Group, Inc., Maitland, FL - \$34,000, authorization for the City Manager to execute a

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contract, and establishment of a project budget of \$34,000 with a transfer from General Fund Contingency.

- e. Renewal of property and casualty insurance coverage, various providers, total cost of \$1,250,852.
- f. Contract award for the purchase of a Gardner Denver multi-stage centrifugal blower model #74108 with 150 hp motor, Gardner Denver Blower Division, Peachtree City, GA - \$75,551.
- g. Purchase of three Ultra-Mix Harmonic Polymer Blending Feed Systems, Precision Control Technology, Inc., Tavares, FL - \$19,485.
- h. Contract award for the cleaning and painting of 14 water main aerial crossings, Seacor Painting Corporation, Campbell, OH - \$33,140.
- i. Purchase of Clarifloc® SE-645 Liquid Polymer for the D.B. Lee Wastewater Treatment Facility, Polydyne, Inc., Riceboro, GA - \$6.45/gallon, total estimated annual cost of \$16,125.
- j. Contract award for sludge hauling services, American Water Services Residuals Management, Inc., Ft. Myers, FL - \$15.60/cubic yard, estimated annual cost of \$187,200.
- k. Purchase of a 5,000-gallon polyethylene vertical chemical storage tank, IMG Corporation, Germantown, TN - \$16,611.
- l. Lien Rescission CEA-059-03: Approval of request for waiver of lien in the amount of \$151.98 and reimbursement of payment for lot mowing fees. (Douglas Berger - 2597 Pepper Street)
- m. Resolution No. 1899: A resolution amending Resolution No. 1705, by extending the terms of financing for the Babcock Street Community Redevelopment Agency Revenue Bond Anticipation Note, Series 2001, to mature on April 1, 2005, and approval of a \$500 loan extension fee.
- n. Resolution No. 1900: A resolution authorizing the City Manager to submit a grant application to the Department of Environmental Project for a Coastal Partnership Initiative Grant for improvements at Pineapple Park.
- o. Purchase of 25 Gemini Digital Plus Head liner video systems for Police Department vehicles, Decatur Electronics, Cape Coral, FL - \$75,500.

Added to the agenda:

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p. Purchase of tools and equipment for a custom fire pump vehicle, 10-8 Fire Equipment, Inc., Bradenton, FL - \$30,376.25.

17. COUNCIL ACTION RE: Approval of final contract with Babcock Palms, LLC for the sale of the Palms 8 Theater property and authorization for the Chairman of the CRA Board (the Mayor) to execute the contract.

Note: Under Item #6, this agenda item was postponed until the October 12 Council meeting.

Recessed: 8:02 p.m.

Reconvened: 8:14 p.m.

18. COUNCIL ACTION RE: Request for an off-premise directional sign to be placed on adjacent property located at 2251 Front Street. (Requested by the Chart House Restaurant)

Mrs. Dittmer reviewed the agenda report. The recommendation is for approval.

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

19. COUNCIL ACTION RE: Request to allow the display of a banner above the sidewalk at 832 East New Haven Avenue. (Requested by Sam Nardone - Executive Cigar Shop)

Mrs. Dittmer briefed Council. The recommendation is for City staff to work with Mr. Nardone and other businesses in the Downtown areas to address the need for an outdoor logo display that can be located above the sidewalk to assist in identifying businesses.

Mrs. Poole stated that she has a problem with this request. She added that she is afraid that once one banner is hung, others will want to do the same. And, eventually the banners will deteriorate. She said that this item needs work.

Ron DiLorenzo, representing the Executive Cigar Shop, said that they want banners to be allowed because a lot of shops in Downtown Melbourne seem to go unnoticed. He added that they want to entice other stores to do the same. Mr. DiLorenzo displayed their banner and said that it has been professionally made and has a nice look.

The City Manager referenced the recommendation and said that it might not be clear because it is neither yes nor no. Staff believes criteria needs to be established with regard to lettering, size, placement, etc. and would like to work with the businesses on this issue.

In response to Mr. Palmer, the City Manager said that this issue would return to Council in the next 30 to 60 days.

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Mr. Contreras said he had the opportunity to see this type of banner in Charleston, although he believes they were sandblasted wood. He commented that he would be more supportive of that type of hanging sign. Additionally, he used Mr. DiLorenzo's banner as an example and pointed out that a certain amount of wrinkling takes place.

Mrs. Hand said that she could agree with a professional, uniform type of hanging sign.

Mrs. Palmer said that her observation with this type of signage is that it makes it easy for pedestrians and drivers to decide where to stop. She expressed support for staff working with the business owners.

By consensus, Council agreed with the recommendation.

20. ORDINANCE NO. 2004-73, GEMAIRE DRIVE: (First Reading) An ordinance amending Chapter 28, by changing the name of Gemaire Drive (located west of Wickham Road, east of East Drive, and running northward from Ellis Road) to Distribution Drive.

Attorney Gougelman read the ordinance by title. Mr. Ralls briefed Council.

Moved by E. Palmer/Hand for approval of Ordinance No. 2004-73. Motion carried unanimously.

21. ORDINANCE NO. 2004-74 (FOC-2004-05/LDR-2004-05): (First Reading/Public Hearing) An ordinance amending Chapter 29, Subdivisions, by adopting the revisions recommended by the City Code Review Committee, Section 2, transferring the Subdivision regulations to Appendix D, Chapter 8. (Applicant - City of Melbourne) (P&Z Board - 8/19/04)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of this request with several minor revisions.

- a. Page 28 e. – “300 or more vehicles in the peak hour” should read “300 trips or more per day”...
- b. Page 36 (h) – should read an opaque buffer screen ~~or~~ or decorative masonry...
- c. Page 16 b. – “Bond Improvements” should read “Surety of Completion of Improvements”....

Planning staff does not agree with the change to the decorative masonry wall; therefore, the staff recommendation is for approval with revisions “a” and “c” only.

Mr. Palmer referenced the allowance for garages in alleys and asked how we will ensure control over flooding. Mrs. Dittmer said that the requirement for curb and gutters is being eliminated, not drainage. She stressed that Engineering would

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continue to review the entire property, including the alley, for the drainage and stormwater requirements.

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

Moved by Hand/E. Palmer for approval of Ordinance No. 2004-74 with the two changes recommended by staff (“a” and “c” noted above). Motion carried unanimously.

22. ORDINANCE NO. 2004-75: (First Reading) An ordinance amending Chapter 19 by implementing Section 550.105, Florida Statutes, providing for a pari-mutuel wagering tax.

The City Attorney read the ordinance by title. Director of Finance Michele Ennis briefed Council. The recommendation is for approval.

Mayor Buckley asked what this change will mean in revenue. Ms. Ennis said we currently receive approximately \$350 per year from the Dog Track. The change would result in approximately \$4,000 per year.

Mrs. Palmer asked if this is something new. Mr. Schluckebier explained that this provision has been authorized under State law since the inception of pari-mutuels because cities are not entitled to any other income from this type of operation. He added that he does not believe this would be considered a problem to a pari-mutuel facility; the amount would come from their regulated revenues. He concluded by saying that there are 31 other pari-mutuel facilities in the State and he would be surprised if we found another City that does not levy this tax.

Phil Nohrr, 1800 W. Hibiscus Boulevard, representing Melbourne Greyhound Park, said that the Park has no objection to this change. He added that the law has been on the books for a while and it seems like everyone but the City receives revenue.

The City Manager expressed appreciation to the Dog Track for allowing the City to use its property as a staging area for distribution of sandbags prior to the last hurricane.

Moved by Poole/Walker for approval of Ordinance No. 2004-75. Motion carried unanimously.

23. ORDINANCE NO. 2004-76, NOISE: (First Reading) An ordinance amending Chapter 20 as it relates to Noise by exempting the use of generators during emergency conditions or extraordinary circumstances.

Attorney Gougelman read Ordinance No. 2004-76 by title. He referenced the Emergency Ordinance No. 2004-72 adopted on September 16 and said that this ordinance will permanently amend Chapter 20. It provides that emergency power

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generators operated at any time during the suspension of electric service caused by a natural disaster are exempt from noise prohibitions.

Mrs. Poole asked about the amount of time a generator could be operated. Mr. Gougelman said it would be during the time period of a power outage caused by a natural disaster.

Mrs. Hand said she is happy to see this, but she thought the entire noise ordinance was going to be tweaked as it relates to residential areas that back up to commercial areas.

Mayor Buckley said that he does not believe that type of change belongs in the noise ordinance. Additionally, this change takes care of the issue addressed during the emergency meeting.

Following a brief discussion, Mr. Schluckebier said if Council wishes, staff could direct the consultant who is reviewing the Land Development Regulations to review this issue. Mrs. Hand said that would be acceptable.

Moved by C. Palmer/Hand for approval of Ordinance No. 2004-76.

Mrs. Poole said she will vote for this; however, she still believes that the issue was blown out of proportion.

The question was called. Motion carried unanimously.

24. COUNCIL ACTION RE: Mainstreet Pub - 705 East New Haven Avenue (E & C Mainstream Corporation)
- a. Request by Mayor Buckley to rescind the action taken by City Council at its August 24, 2004 meeting.
 - b. 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: This item is a request for rescission of Council action at the August 24 meeting concerning the waiver of the six-month waiting period for reconsideration of a conditional use request. It concerns the Main Street Pub and their request for permitting of alcohol sales. The Mayor has forwarded this item to Council again in light of the fact that there was not a full Council at the August 24 meeting; therefore, the request of Mr. Nohrr that Council reconsider should be addressed by Council.

Phil Nohrr, 1800 West Hibiscus Boulevard, referenced the previous 4-2 vote on this item and said perhaps if a full Council had been present, he would have received the

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required five votes. He added that they would like the opportunity to make new application and go through the Planning and Zoning process. He asked Council for favorable consideration of the request.

Moved by Buckley/Walker to rescind the action taken by City Council at its August 24 meeting. Motion carried. Mrs. Poole voted nay.

Mrs. Poole said she is getting tired of requests to rescind and reconsider.

Moved by Buckley/Hand to grant the waiver of the six month waiting period.

Mrs. Poole discussed the history of this item and noted that this is not the type of business that will upgrade the Downtown area. She added that a Council Member being absent is not a reason to return the item. If this had been a good idea in the first place, it would not have been denied.

Mayor Buckley noted that when the item was first denied, the applicant, a representative from Main Street and a representative from the Chamber of Commerce met with him. They were very apologetic and said that the applicant did not understand how the item should have been presented. The applicant provided additional information about the operation. The Mayor added that this will supposedly be a vast improvement over what was located on the site before and he thinks it should be considered.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

25. COUNCIL ACTION RE: Board Appointments

- a. Architectural Review Board - Appointment of two regular members and two alternate members

Moved by E. Palmer/C. Palmer to reappoint the regular members (Timothy Loomer and Shanna Tibbetts). Motion carried unanimously.

Moved by E. Palmer/Hand to reappoint the alternate members (Joyce Miller and David Corbin). Motion carried unanimously.

Terms: 10/1/2004 through 9/30/2007

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- b. Firefighters' Pension Plan Board of Trustees - Appointment of two resident members

Moved by C. Palmer/E. Palmer to reappoint both members (Gary Ford and Melissa Burgess Jackson). Terms: 10/1/2004 – 9/30/2006

- c. Police Officers' Retirement Trust Fund Board of Trustees - Appointment of two resident members

Moved by Hand/E. Palmer to reappoint both members (Melinda Maddox and Elinor Burns). Motion carried unanimously. Terms: 10/1/2004 – 9/30/2006

26. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

The City Manager commended the public safety employees who worked through the last two hurricane events. He noted that our Police and Fire Departments were called upon to evacuate folks from Sherwood Elementary in the middle of Hurricane Jeanne. He stated that this was an outstanding, extraordinary feat.

The Mayor & City Council agreed.

27. ADJOURNMENT

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

The meeting adjourned at p.m. 9:13 p.m.



City Clerk – 10/6/2004

Approved by Council: October 12, 2004