

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 26, 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. Council Member Ed Palmer 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

Mayor Buckley displayed the award he accepted on behalf of the City from Keep Brevard Beautiful, Inc. The City received the “2004 Building a More Beautiful Brevard” award under the category of new landscaping for the Babcock Street Community Redevelopment landscaping project.

Mayor Buckley presented a proclamation recognizing the Booker T. Washington Neighborhood Association for its revitalization efforts.

Dr. Lancaster, Commander, Brigadier General Theodore W. Brevard Chapter, Military Order of the Stars and Bars, presented Council Member Pat Poole with the Judah P. Benjamin Award (highest award given to a non-member for exceptional service in the promotion of southern heritage, education and activities).

Mrs. Poole displayed the “Columbia Memorial Medal” she received from the Sons of the American Revolution, Brevard Chapter, in recognition of her support.

5. Approval of Minutes - October 12, 2004 Regular Meeting

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

6. City Manager’s Report

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City Manager Jack Schluckebier referenced his report on the Brevard County Endangered Environmental Land (EEL) Program. He said that he asked Leisure Services Director Mary Ann Bowman to brief Council on the upcoming referendum issue.

Mary Ann Bowman provided a brief report on the Brevard County EEL and Water Areas bond referendum (“Referendum #2 on the November 2 ballot). Although the County has not provided a list of lands proposed for acquisition, Mrs. Bowman displayed a map showing property, generally in North and South Brevard, that has been acquired. She noted that future purchases will focus mainly in the Grant area.

7. Public Comments

Tom Sawyer, 2106 Helen Street, presented a petition signed by residents of Helen Street. The residents object to the change of “Genesis House” from a home for expectant mothers to a battered women’s facility. Additionally, they do not believe that a facility like this is compatible with the neighborhood.

Mrs. Poole said that the residents had contacted her about this issue and she recommended that they submit a petition. She added that she is sure staff will look into this issue.

Norma Coffin, 1417 Lime Drive, discussed her concerns with the “Riverwalk Club” townhome development (located on the north side of Eau Gallie Boulevard, west of Commodore Boulevard). She reported that part of the approval process included the preservation of trees, maintenance of a natural buffer, and preservation of vegetation along the river. (Reference site plan approval January 14, 2003.) Ms. Coffin submitted photographs of the development and said that the conditions are not being met.

Mayor Buckley said that City staff will review this matter.

UNFINISHED BUSINESS

Mayor Buckley announced that the City Council will convene as the Babcock Street Community Redevelopment Agency for the following item:

8. 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. (Postponed - 10/12/04 at the request of the applicant)

(Note: There are still issues being negotiated and the recommendation is to postpone this item until the November 9 meeting.)

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Moved by E. Palmer/Poole to postpone this item until the November 9 meeting. Motion carried unanimously.

Mayor Buckley announced that the City Council will reconvene for the remaining agenda items.

9. ORDINANCE NO. 2004-77 (Z-2004-1003) PALM BAY DEVELOPERS, LLC: (Second Reading/Public Hearing) An ordinance changing the zoning from C-1 (Neighborhood Commercial) to R-2 (One-, Two-, and Multiple-Family Residential) on a 9.62±-acre portion of a 48.04-acre parcel, located on the north side of Palm Bay Road, east of Dairy Road, and west of Stack Boulevard. (Owner/Applicant – Palm Bay Developers, LLC) (Representative - Clayton A. Bennett, P.E., Fleis & Bennett Engineering, Inc.) (First Reading - 10/12/04)

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

Moved by Hand/E. Palmer for approval of Ordinance No. 2004-77. The roll call vote was:

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

Nay: Poole

Motion carried.

10. ORDINANCE NO. 2004-78 (CU-2004-16) LOTUS GALLERY/SKOL MARTINI BAR: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow the sale of alcoholic beverages on a 0.10±-acre parcel zoned C-3 (Central Business District), located on the north side of East New Haven Avenue, west of Municipal Lane, and east of Waverly Place. (Owner/Applicant - Primp by Appointment Only, Inc.) (Representative – David T. Menzel, President, MAI, Inc.) (First Reading - 10/12/04)

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

Moved by Contreras/Hand for approval of Ordinance No. 2004-78. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

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11. COUNCIL ACTION RE: Contract award for environmental consulting services for the Reverse Osmosis Water Treatment Plant potable water by-product discharge permit renewal application, Project No. C03303, Reiss Environmental, Inc., Winter Park, FL - \$230,000.

Assistant Public Works Director Harold Nantz briefed Council. The recommendation is to approve the employment of Reiss Environmental Services, Inc. to provide consulting services related to the City's application for an FDEP R.O. by-product discharge permit in the amount not to exceed \$230,000.

Mrs. Poole said she is very concerned about discharge into the Eau Gallie River. She said it is important for people to know how hard the City tried to use the deep well. And, she asked that we continue looking for new ways to discharge.

Council Member Ed Palmer said that the discharge is detrimental to the health of the river and it is important for the City to do everything possible to protect the quality of the river.

Mr. Nantz agreed that protection of the river is important. He added that the Florida Department of Environmental Protection will require the City to comply with all the regulations. Additionally, staff is looking into potential regulatory changes to determine if there are other options.

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

12. CONSENT AGENDA:

Moved by Hand/Contreras for approval of the consent agenda, Items "a through i."

Council Member Grace Walker referenced Item "f" and asked why there is a difference between the two companies furnishing petroleum. Mayor Buckley explained that Glover fills the smaller tanks and Petroleum Traders fills the larger tanks. This is based on bid prices.

On the same item, Mr. Palmer expressed concern with using the School Board contract, which has been renewed for a fifth time. He said he believes that the local Melbourne business should receive the bulk of the contract and he would like this reviewed in greater detail prior to award of the next fuel contract.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

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- a. Contract award for lighting improvements at Jimmy Moore Park, Project No. 02120, Santa Cruz Construction, Inc., Merritt Island, FL - \$38,973, and transfer of \$12,965 from Recreation Impact Fees to this project budget.
 - b. Approval of a temporary Parking Space Use Agreement between the City of Melbourne and Dr. John C. Lozito, M.D., People's Physical Therapy, 1322 Oak Street, Melbourne.
 - c. Approval of a 48-month lease agreement for a DM800™ mailing system for the Utility Billing Collection Division, Pitney Bowes Orlando, Altamonte Springs, FL - \$27,024.
 - d. Approval of annual contracts for the purchase of janitorial supplies, All American Poly, Piscataway, NJ - \$5,332.38; Bestway Industrial Supply, Inc., Orlando, FL - \$3,571.50; W.W. Grainger, Niles, IL - \$2,803.74; Janitorial Depot, Melbourne, FL - \$16,068.97; Peninsular Paper Company, Winter Park, FL - \$6,338.63; and Southern Janitor Supply, Inc., Melbourne, FL - \$3,995.53; for a total estimated annual cost of \$38,110.75.
 - e. Purchase of automotive parts, supplies, and filters, Central Auto Parts, Inc., Melbourne, FL - estimated annual cost of \$40,000.
 - f. Purchase of gasoline and diesel fuel, Glover Oil, Melbourne, FL - \$51,695; and Petroleum Traders Corporation, Fort Wayne, Indiana, - \$156,587; for a total estimated annual cost of \$208,282.
 - g. Purchase of licenses and maintenance for Novell software, Softchoice Corporation, Tampa, FL - \$28,283.42.
 - h. Purchase of wireless data communications services for police patrol vehicles, Verizon Select Services, Inc., Irving, TX - \$60.46 per car/per month, estimated annual cost of \$65,296.80.
 - i. Resolution No. 1904: A resolution naming the surface water treatment plant the "John A. Buckley Surface Water Treatment Plant."
13. COUNCIL ACTION RE: Acceptance of the revenue sufficiency analysis report prepared by Public Resources Management Group, Inc.

From the agenda report: The revenue sufficiency analysis was prepared by Public Resources Management Group, Inc. (PRMG), the rate consultant for the Water and Sewer System. This analysis is a required component included in the Preliminary Official Statement for the Water and Sewer Refunding and Improvement Revenue Bonds, Series 2004.

Robert Ori of PRMG will summarize the report for the Council. The report examines the System's revenue needs for the next five fiscal years and calculates the projected water and sewer rates necessary to generate sufficient revenues to keep the system

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financially sound. The report reaffirms the need for the currently adopted rate increases scheduled for October 1, 2005 and 2006. Although the report provides a recommended rate adjustment in fiscal years 2008 and 2009, the City does not intend to adopt any additional rate adjustment for those years at this time. Further, the rate increase, which is recommended at 4.5% for these years, would be further reduced by any increases in the subsequent adopted impact fees, connection fees, and miscellaneous or other fees now under study by PRMG. PRMG is evaluating the water and sewer impact fees and miscellaneous charges to determine the impact potential increases may have on their recommended rate adjustments and the City is prioritizing and reviewing the timing of the construction projects in the forecast period to further mitigate the need for future rate increases.

Director of Finance Michele Ennis introduced Rob Ori. Mr. Ori provided an overview of the report.

Mr. Ori confirmed for Mr. Palmer that the City needs to maintain the next two scheduled five percent increases. Mr. Schluckebier added that PRMG would like to see us adopt some increase, possibly 4.5%, in fiscal years 2008 and 2009. However, staff is not recommending any change at this time. Higher than projected growth, impact fee adjustments, etc. would reduce that amount.

Mrs. Palmer asked if the projected amount from new construction impact fees has been factored into the need for a 2008 and 2009 adjustment. Mr. Ori said no and added that it would not be prudent to rely on a fee that has not been adopted. Mrs. Palmer said she was pleased with that answer.

The City Manager credited the City Council with taking aggressive action in 2002 with regard to the rates. The changes made at that time provided for the long term and, although it was difficult at that time, laying out a five-year program is the best way to go.

Moved by Poole/Walker for acceptance and approval of the revenue sufficiency analysis report prepared by Public Resources Management Group, Inc. Motion carried unanimously.

14. RESOLUTION NO. 1905: A resolution authorizing the issuance of the Water and Sewer Refunding and Improvement Revenue Bonds, Series 2004 in the aggregate principal amount not to exceed \$37,500,000.

The City Attorney read the resolution by title. Mrs. Ennis briefed Council and explained that the resolution authorizes the issuance of the Water and Sewer Refunding and Improvement Revenue Bonds, Series 2004, in the aggregate principal amount not to exceed \$37,500,000. The City plans to refund the 1994A Bonds to achieve debt service savings, in addition to providing approximately \$22,500,000 of bond proceeds to finance certain capital improvements. The City will proceed with this

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refunding if the net present value does not fall below 3% of the par value of the refunded bonds.

Duane Draper, Bryant, Miller and Olive (bond counsel), added that this is a delegated resolution. The sale will be done by competitive bids based on satisfaction of certain parameters. Mr. Draper elaborated on the parameters.

Mr. Draper responded to Mr. Palmer's general questions about the bond issue.

Moved by E. Palmer/Contreras for approval of Resolution No. 1905. Motion carried unanimously.

Recessed: 7:55 p.m.
Reconvened: 8:05 p.m.

15. PRELIMINARY PLAT APPROVAL (SD-2004-07) STEWART AND LAKE WASHINGTON TOWNHOMES SUBDIVISION: (Public Hearing) A request for preliminary plat approval for a 288-lot development on a 38.47-acre parcel, 21.45 acres zoned R-2 (8) and 17.11 acres zoned R-2 (13) (One-, Two-, and Multiple-Family Residential with a cap of 8 units per acre and 13 units per acre), located on the east side of Stewart Road, north of Lake Washington Road. (Owner - Brefrank, Inc.) (Applicant - RJP Development Company) (Representative - Jake Wise, P.E., Construction Engineering Group) (P&Z Board - 10/07/04)

Planning and Economic Development Director Cindy Dittmer briefed Council and reviewed the agenda report. In 2002, Council denied a site plan for Prairie Trace Apartments. The proposed plan contained 344 units at a density of 10.36 units per acre. The decision to deny the site plan was overturned by the Brevard County Circuit Court. The legal effect of the Court's decision was to return the denied site plan to Council for approval or to require approval of a substantially similar plan acceptable to the developer. In March 2004, Council agreed to allow the applicant to submit a new development plan instead of approving the previous plan. Thus, Council now has a choice of either the plan presently before Council or the higher density site plan for affordable housing that was earlier denied by Council.

The Planning and Zoning Board unanimously recommended approval of SD-2004-07 on a two-page site plan by MAI, Architects Engineers, Project No. 04-365, signed, sealed and dated September 22, 2004, subject to the following conditions:

- a. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: 1) an increase of more than 28 lots; or 2) a decrease in the size of tracts intended to provide open space of more than 10%.

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- b. The owner/developer shall provide the City with a copy of the formal executed agreement between RJP Communities and the Northside Presbyterian Church (with regard to granted ingress-egress and utility easement), prior to final plat approval.
- c. All hardwood trees shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees.
- d. The applicant shall obtain appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission to relocate or take gopher tortoises, and from the U. S. Fish and Wildlife Service to take scrub jays and scrub jay habitat. Appropriate permits must also be obtained from the St. Johns River Water Management District and/or the Corps of Engineers to remove wetlands. Should threatened or endangered species be found on the site after commencement of construction for which a permit has not been granted then the owner/applicant shall cease construction until the appropriate permits are obtained.

Additionally, the recommendation includes approval of the requested subdivision variance to not connect to existing streets to the north.

In response to Council Member Loretta Hand, Mrs. Dittmer showed the portion of this property that backs up to the Prestige Concrete Plant. The remainder of the property backs up to other industrial uses. She added that there is a minimum 180-foot buffer proposed along the entire eastern boundary of the subdivision.

Mrs. Hand stated that she has problems with this request because of the current problem Monaco Estates is having with the concrete plant.

Mrs. Dittmer said that in Monaco Estates, the residents' backyards abut the plant. However, in this proposed layout, there is a fairly large buffer of 180' proposed.

Mrs. Poole said she feels like Council is between a rock and a hard place with this item. The previous development and the proposed development are not desirable and she hopes that purchasers thoroughly investigate before buying.

Mrs. Walker asked for examples of the opaque barrier. Mrs. Dittmer said it could be an opaque fence – wood or concrete – or it could be vegetation. Council could specify the type. Mrs. Poole recommended that it be a combination of both.

Mayor Buckley called for disclosures. The Mayor disclosed that Phil Nohrr visited him and asked his opinion. At the time he (the Mayor) thought the church provided a buffer; however, during this meeting he has noted that the 180' buffer is greater than what was previously discussed.

Mayor Buckley opened the public hearing.

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Jack Kirschenbaum, 1800 West Hibiscus Boulevard, said he is filling in for Phil Nohrr. He agreed with Mrs. Poole's comment about being stuck between a rock and a hard place. The Court has required the City to accept the first option or this option, which is substantially less dense. He noted that they believe this is a much better alternative.

Mayor Buckley asked what type of barrier will be provided. Mr. Kirschenbaum replied that they have not gotten that far in the design; however, they will comply with the Code. Mrs. Walker said she would like assurance that there will be solid greenery and shrubs.

Following a brief discussion Mr. Pence indicated from the audience that he would use a solid wall and trees to the greatest extent possible. After further discussion, Mr. Pence agreed to concrete block as the solid wall.

Attorney Gougelman said that Mr. Pence's indication from the audience will be included in the minutes; language will be included on the final plat.

Mayor Buckley read the recommendation, including the subdivision variance.

Moved by E. Palmer/Contreras for approval, including the additional stipulation, which will require a solid block wall and vegetation on the east portion of the property. Motion carried. Mrs. Poole voted nay.

16. SITE PLAN APPROVAL (SP-2004-21) MANATEE COVE APARTMENTS: (Public Hearing) A request for site plan approval for a 192-unit multiple-family apartment project on a 14.35-acre parcel zoned R-2 (One-, Two-, and Multiple-Family Residential), located on the west side of Harbor City Boulevard, north of Carolin Street, and south of NASA Boulevard. (Owner - Manatee Cove Apartments, LLC) (Applicant - MAI Architects Engineers) (Representative - Phillip Nohrr) (P&Z Board - 10/07/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of SP-2004-21, prepared on a two-page site plan by MAI, Architects Engineers, Project No. 04-365, signed, sealed and dated September 22, 2004, subject to 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 19 units.

- b. Appropriate environmental permits must be obtained as part of the construction plan review process.

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- 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.
- d. The proposed building shall be substantially consistent with the rendering submitted by the applicant.

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

Jack Kirschenbaum, Gray Robinson, representing the applicant, stated that they are proposing a density that is substantially less than what is allowed.

Mrs. Poole commented that she does not like the proposal to use a wooden wall. She pointed out the condition of many wooden fences throughout the City after the recent hurricanes. Mayor Buckley agreed that we have had poor luck with wooden walls.

Mayor Buckley read the recommendation and asked Mr. Kirschenbaum if he agreed with the conditions. Mr. Kirschenbaum replied absolutely.

Mrs. Hand asked the applicant if he would have a problem with Council stipulating that the wall not be constructed of wood.

Mr. Kirschenbaum said that a concrete block wall would be cost prohibitive. A vegetative buffer would comply with the City Code and eliminate the concern regarding wood walls and wind damage.

Mrs. Poole said that this is a high traffic area and a concrete wall should be required. A wood fence or vegetative buffer would not work in this area. Mayor Buckley said that at a minimum, he feels there should be a concrete buffer along the railroad tracks.

Dave Menzel, MAI Architects Engineers, pointed out that a series of buildings will buffer this project from U. S. 1. He discussed the site and layout and noted that they have a small entrance. Mr. Menzel suggested use of a Viburnum hedge in lieu of a concrete fence. It is softer and takes care of acoustics. Additionally, he said that a concrete fence is expensive.

Mayor Buckley recommended a concrete fence along the railroad tracks and a vegetative buffer around the remainder of the property.

Todd Fabbri, Richman Group of Florida, representing the owner, said he would like consideration to require a concrete wall along the railroad tracks only where the property is developed. He does not want to provide the wall for an additional 600' of property where there will be no development.

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Vice Mayor Cheryl Palmer spoke in support of requiring a concrete barrier around the entire development. She said that she does not believe this is the right place for an apartment community; however, the zoning is in place and the applicant is doing everything per our Code. Mrs. Palmer added that a concrete wall will protect the people who will live in the apartments. And, a concrete buffer won't die during a drought.

Moved by C. Palmer/Poole to require a concrete wall around the entire development.

Mayor Buckley said he believes this is excessive.

Mrs. Dittmer noted that a portion of this property is also located east of U. S. 1. Staff discussed with the applicant during plan review the City's desire to have a linear park along that portion of U. S. 1. At this point, staff would like to add a condition that the City will provide a transportation impact fee credit in exchange for the applicant conveying the property located on the east side of U.S. 1 to the City.

Mrs. Walker said there are too many unresolved items and she recommended postponement.

Moved by Walker/Buckley to postpone this item for one month (November 23 meeting). Motion carried. Council Members Contreras and Poole voted nay.

17. ORDINANCE NO. 2004-79 (AR-2004-161) PARKWAY DRIVE/HARLOCK ROAD - ANNEXATION AREA C: (First Reading/Public Hearing) An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation area, located adjacent to Parkway Drive and Harlock Road.

Attorney Gougelman read the ordinance by title and Mrs. Dittmer reviewed the agenda report. The recommendation is for approval of Ordinance 2004-79, to allow for the annexation of the area described as Parkway/Harlock Road – Annexation Area C, once approved by a majority of the registered voters of the proposed annexation area.

Mrs. Poole said she is in support of this annexation and added that it will help the City's tax base. She asked if this area is currently on septic tanks. Mrs. Dittmer replied yes. Mrs. Poole asked if the City would provide sewer in the future. Mrs. Dittmer explained that there is no proposal to extend the sewer, and the residents have not expressed interest.

Mr. Schluckebier confirmed for Mrs. Poole that there is absolutely no danger of infiltration into the City's waterlines from septic tanks in the area. Regarding future sewer he noted that the residents in the area wish to retain their rural lifestyle; however, they definitely want water. They are looking forward to a partnership with the City. Staff made it clear to the residents that we don't have plans to extend the sewer.

Mrs. Dittmer confirmed for Mrs. Walker that a significant number of people in the area

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requested the annexation. Additionally, the informational meetings were well attended.

Mayor Buckley opened the public hearing.

Ivan Porter, 2840 Harlock Road, asked if anything related to his farm and horses would change after the area has incorporated.

Mayor Buckley said that the City zoning would be the same as the County zoning. Mr. Contreras added that one difference is firearms. Mayor Buckley agreed and said that firearms can't be used in the City.

Mr. Porter asked if tax payers who are not registered to vote will have a say. Mayor Buckley replied that in order to vote a person has to be a registered voter.

Mr. Schluckebier confirmed for Mrs. Palmer that people who live in the area still have an opportunity to register to vote prior to the December 21 election. Mrs. Palmer asked if a property owner who is registered to vote in another place is eligible to vote. Mr. Schluckebier said that the same rules apply for any election – folks aren't eligible to vote from afar.

Mr. Porter asked if there would be a difference in taxes. Mr. Schluckebier said that the Planning staff is available to specifically review his property; however, generally there will be a less than one mill change as properties go from the County into the City.

Mr. Porter stated that as a disabled veteran, he receives an extra \$500 exemption. Mr. Schluckebier said that tax exemption would apply in the City too.

Moved by Poole/Walker for approval of Ordinance No. 2004-79.

Mrs. Palmer said she would like to know how to change the way voting is done for mail ballot annexation elections. She said that some people believe there is an inequity in a small parcel having the same vote as a multiple acre parcel. New residents are moving into subdivision developments in the County and they want to be in the City. There are County residents with large acreage that want to continue living in the County.

Attorney Gougelman explained that the process is set forth by state law and we don't have the ability to deviate from that formula. It is based on the voters in the area to be annexed and whether the majority voting favor the annexation. It has nothing to do with who owns how many acres. This does raise a question of fairness and equity with regard to acreage; however, it is a system set up by the Florida Legislature. The Legislature has been remarkably resistant to making changes in the law. The law being referenced was codified in 1974 and since that time there have been only minor changes.

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Mrs. Palmer said that she is hesitant to force annexation on a long time resident when the annexation is being supported by new developed parcels. Therefore, she is not going to support this item.

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

18. ORDINANCE NO. 2004-80 (AR-2004-162) TURTLE MOUND ROAD/CONNORS COVE/HAMMOCK TRAIL - ANNEXATION AREA D: (First Reading/Public Hearing)
An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation area, located adjacent to Turtle Mound Road, Hammock Trail, Connors Cove, and Beth Lane.

Attorney Gougelman read Ordinance No. 2004-80 by title. Mrs. Dittmer briefed Council. The recommendation is for approval of Ordinance 2004-80, to allow for the annexation of the area described as Turtle Mound Road/Connors Cove/Hammock Trail – Annexation Area D, once approved by a majority of the registered voters of the proposed annexation area.

Mrs. Poole stated that this type of annexation is good for the tax base. It does not involve tearing up new land for development.

Mayor Buckley opened the public hearing.

Jack Bryant, 3170 Turtle Mound Road, said he is looking for good, clean water.

Sabas Murrillo, 3200 Turtle Mound Road, said he does not object to his neighbors annexing; however, he does not wish to annex. He currently pays for electric only (to run the pump) when he fills his bathtub and he does not want to pay for water.

Mr. Murillo displayed a refuse collection bill that he received from the City of Melbourne (although his property has not been annexed). City Clerk Cathy Wysor explained that a mapping error occurred with the first annexation referendum. Several properties were listed as being in the City although they were not part of the annexation. That has been corrected and staff will remove Mr. Murillo from the billing system.

Cherie Murillo, 3200 Turtle Mound Road, listed the people in her neighborhood who are opposed to the annexation. She said she has nothing against the City; however, she likes country living.

Ms. Murillo stated that she owns two properties and asked if she will get to vote twice. Mrs. Palmer replied that she will not.

Ms. Murillo concluded by saying that the process is not fair; the long time residents don't have a choice.

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Mrs. Palmer said she does not agree that a person who owns a mobile home lot or subdivision lot will have the same vote as a person who owns a lot of acreage.

Moved by Poole/Hand for approval of Ordinance No. 2004-80. Motion carried. Mrs. Palmer voted nay.

19. ORDINANCE NO. 2004-81 (AR-2004-160) HAZELWOOD DRIVE ANNEXATION AREA: (First Reading/Public Hearing) An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation area, located on Hazelwood Drive.

The City Attorney read the ordinance by title. Mrs. Dittmer reviewed the agenda report. The recommendation is for approval of Ordinance 2004-81, to allow for the annexation of the area described as Hazelwood Drive Annexation area, once approved by a majority of the registered voters of the proposed annexation area.

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

Moved by Poole/E. Palmer for approval of Ordinance No. 2004-81.

Mrs. Palmer said that her objections to the previous two annexation referenda on this agenda do not apply in this case. This property is located in an enclave.

The question was called. Motion carried unanimously.

20. ORDINANCE NO. 2004-82 (AR-2004-156) HARRIS CORPORATION ANNEXATION: (First Reading/Public Hearing) An ordinance providing for annexation of 39 acres, located on the east side of John Rodes Boulevard, north of Dow Road. (Owner - Harris Corporation and 505 Partners, Inc.) (Applicant - City of Melbourne) (P&Z Board - 10/07/04)

Attorney Gougelman read Ordinance No. 2004-82 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of this request.

Mrs. Hand left the Council Chamber at 9:39 p.m.

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

Moved by Poole/C. Palmer for approval of Ordinance No. 2004-82. Motion carried unanimously. (Six votes, Mrs. Hand absent from the Council Chamber.)

21. ORDINANCE NO. 2004-83: (First Reading) An ordinance amending Chapter 23, Retirement and Pensions, Article VII, General Employees' and Special Risk Class Employees' Pension Plan, amending Benefits Amounts and Eligibility, clarifying that a

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member is required to complete six years of credited service, regardless of age, to be eligible for retirement benefits.

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

Mrs. Hand returned to the Council Chamber at 9:43 p.m.

Moved by E. Palmer/Hand to approve Ordinance No. 2004-83. Motion carried unanimously.

22. ORDINANCE NO. 2004-84 OPPORTUNITY DRIVE: (First Reading) An ordinance amending Chapter 28 by adopting the name Opportunity Drive, for an existing unnamed right-of-way located west of North Drive.

Attorney Gougelman read the ordinance by title. Mrs. Dittmer briefed Council.

Moved by Walker/Contreras for approval of Ordinance No. 2004-84. Motion carried unanimously.

23. COUNCIL ACTION RE: Proposed legislative priorities for the 2005 Legislative Session of the Florida Legislature.

Assistant City Manager Amy Elliott briefed Council. The agenda package contains a list of proposed legislative priorities to be presented to the Brevard Legislative Delegation for action during the 2005 Legislative Session. No date has been established yet for the Delegation's meeting, but it is expected to be shortly after the election. Staff will request the Legislative Delegation sponsor and support legislation to further the City's interests as stated in the legislative priorities.

Additionally, it is proposed that the services of Jerry Sansom be retained again for the upcoming legislative session. Mr. Sansom was very responsive in communicating issues of concern during the 2004 session. This year as we are asking departments to be more involved in the State grant funding process, it will be very beneficial to retain Mr. Sansom's services to assist in pursuing State funding for local projects as well as follow up on the legislative priorities. Mr. Sansom does not charge an ongoing retainer, but bills at the rate of \$100 per hour. It is estimated that the cost for services will be between \$10,000 to \$12,000 for the 2004-2005 fiscal year, and funding could be provided from General Fund (Non-Departmental).

The recommendation is for approval of legislative priorities and transmittal to the Brevard Legislative Delegation, and approval to retain Jerry Sansom to assist with legislative and State grant funding efforts at a fee not to exceed \$12,000.

Mr. Schluckebier and Mrs. Elliott responded to general questions about the priorities.

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Moved by E. Palmer/Hand to approve the legislative priorities for their transmittal to the Brevard Legislative Delegation and approval to retain Jerry Sansom to assist with legislative and state grant funding efforts at a fee not to exceed \$12,000. Motion carried unanimously.

24. COUNCIL ACTION RE: Board Appointments

- a. Appointment of three regular members and one alternate member to the Citizens' Advisory Board.

Moved by Hand/C. Palmer to reappoint the current members (Dale Haynes, Cleave Frink, Rhodie Humbert and Ricardo Rangel). Motion carried unanimously. (11/12/2004 – 11/11/2007, 3-year term each)

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

Moved by E. Palmer/Contreras to reappoint Bennie Hopkins. Motion carried. Mrs. Poole voted nay. (11/12/2004 – 11/11/2207, 3-year term)

- c. Appointment of "fifth member" to the Police Officers' Retirement Trust Fund Board of Trustees

Moved by Poole/E. Palmer to confirm the reappointment of Janice Hill as the fifth member. Motion carried unanimously. (11/1/2004 – 10/31/2006, 2-year term)

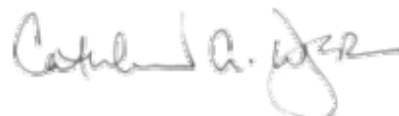
25. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Vice Mayor Palmer referenced the attempt by a person to speak from the audience (under Item #9) earlier in the meeting. Mrs. Palmer said that the person should have appeared under public comments. The citizen would like to express her displeasure with the sewer portion of her water bill.

26. ADJOURNMENT

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

The meeting adjourned at 9:59 p.m.



City Clerk – 11/4/2004

Approved by Council: November 9, 2004