

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 23, 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 Harry Goode.

1. Reverend Calvin Gittner, Pineda Presbyterian, gave the invocation.
2. Pledge of Allegiance
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Richard Contreras	Vice Mayor, District 1
	Mark LaRusso	Council Member, District 2
	Kathy Meehan	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, 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 Goode presented a Certificate of Appreciation to Council Member Mark LaRusso in recognition of his volunteer service on the Zoning Board of Adjustment.

5. Approval of Minutes - November 9, 2004 Regular Meeting

Moved by Contreras/Hand for approval. Motion carried unanimously.

6. City Manager's Report

City Manager Jack Schluckebier asked for direction from the City Council on the following items:

Mayor Goode's request to amend Chapter 2 of the City Code to allow him the option to occasionally vote first on an item: Council Member Loretta Hand asked the reason for this request. Mayor Goode replied that the City Code requires the Mayor to vote last and occasionally he may want to vote first in order to express his opinion on an item. Council Member Grace Walker stated that the Mayor always has the opportunity to express his opinion before a vote is taken. Following a brief discussion, there was no direction to staff to draft an ordinance.

Consent Agenda Procedure. After the agenda package has been distributed, Council Members would have until 3:00 p.m. on Monday prior to the meeting to ask for an item

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to be removed. If the item is removed, it will be considered later on the same agenda. Following a brief discussion, Council agreed with the new procedure. A new item will be added to the agenda with the heading "Items Removed From the Consent Agenda."

7. Public Comments

None.

UNFINISHED BUSINESS

8. 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) (Postponed by Council - 10/26/04)

From the agenda report: This item was postponed on October 26 at the request of Council. At that meeting discussion ensued regarding fencing around the perimeter of the property. Prior to the motion to postpone, the following motion was on the floor:

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

The cost of installing a masonry wall around the entire perimeter of the property (3,300 feet) would be substantial. City staff recommends that the applicant be required to meet the visual screen requirements of Appendix B, which would permit a six-foot opaque barrier consisting of fencing or vegetation.

Mayor Goode stated that someone from the audience has asked to speak. However, procedurally, public comments may not be accepted after there is a motion on the floor.

*Council Member Cheryl Palmer withdrew her motion.

Mayor Goode announced that based on withdrawal of the motion the public hearing has been reopened.

Pat Poole, 805 East Palmetto Avenue, asked/commented on the following: whether the gopher tortoises will be relocated or if they will be killed; this area is a bird and animal habitat; the property contains a wetland; the property is zoned commercial and is surrounded by commercial; 192 apartment units will have an impact on the area schools; the proposal for a wooden fence is not acceptable; and a concrete block wall will protect the area from noise, traffic and it is needed for the safety of the children.

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Phil Nohrr, 1800 West Hibiscus Boulevard, attorney representing the applicant, distributed and discussed photographs of the property. He said that the northwest corner of the site is heavily wooded and will remain in its natural state. A wall or buffering is not proposed for this area because it will serve no purpose and will disturb the environment. The railroad tracks sit eight feet above the subject property. It would be better to have vegetative buffering next to the tracks rather than a fence that is two feet lower. Additionally, a building abuts this property to the east, which will serve as a wall. The applicant is recommending some sort of opaque fencing for that area along with the remainder of the property. He noted that this is more compatible and in keeping with the area.

Continuing, Attorney Nohrr said that the cost for a concrete wall would be well over \$300,000. It has an economic impact and would disturb the environment. Mr. Nohrr closed by saying that this project meets/exceeds all Codes and they are not requesting any special variances.

Mr. Nohrr reported that the applicant is willing to deed the portion of this property located east of U. S. 1 along the river in exchange for impact fee credits. He asked Council to accept the site plan as submitted and adopt the recommendation of staff and the Planning and Zoning Board.

Mrs. Palmer said that her concern for the wall is related to safety, not aesthetics or noise buffering. She commented that she opposed rezoning this property residential because it abuts the railroad tracks and U. S. 1. Additionally, everything around this parcel is commercial. The two- and three-bedroom apartment complex will house children who need to be protected from the tracks. She asked the applicant to describe how he proposes to make this development safe for children.

Mr. Nohrr said that they would be pleased to put up a wooden fence with buffering. As comparison, he noted that this developer was involved with another project approximately three miles north. That property abuts the railroad tracks as well. They left the border in its natural state, and they have not had any safety problems with children. Mr. Nohrr agreed to put in fencing along the railroad tracks or any place else Council wishes. He added that this will not be a gated community.

In response to Mrs. Palmer, Mr. Nohrr said they would stipulate to replace fencing with landscaping, rather than landscaping, if the fencing ever comes down.

Dave Menzel, applicant, stated that they are proposing a chain link fence with a vegetative buffer.

Mrs. Palmer said that a chain link fence can be easily climbed.

Council Member Kathy Meehan said that she prefers a chain link fence over a wooden fence. One reason relates to the safety of being able to see through a chain link fence.

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Mrs. Walker said she has concerns about the gopher tortoises, scrub jays and other wildlife on this property.

Mr. Nohrr said that there are no scrub jays on the property. Regarding the gopher tortoises, they will be relocated on this site.

Mrs. Meehan asked the School Board's position on this item. Mr. Schluckebier said that the School Board typically weighs in on issues at the time land use is being modified to increase density. They typically don't comment at the site plan stage.

Regarding the property located on the east side of U. S. 1, Mr. Schluckebier asked Council to make conveyance of that property a condition of site plan approval.

Mr. Nohrr said that the school impact fee has been enacted; therefore, this development will generate taxes for the school board along with fees. Beyond that, he is not sure what else they can do.

Todd Fabbri, Richman Group, applicant, discussed the rental rates in response to Mrs. Walker.

Mrs. Palmer asked if this is considered a low-income development. Mr. Fabbri said that, in his opinion, this is not low income. The financing mechanism is tax exempt bonds, which is below market financing in terms of interest rates. In return, they rent at an affordable rate; however, renters must be able to afford/pay rent. He confirmed that it is tied to the income limit - 60% or less of the median income.

Attorney Gougelman read the following recommended condition regarding the property located east of U. S. 1:

- e. The owner shall convey the riverfront portion of the property east of U. S. 1 prior to issuance of the first building permit on the property permitted by the site plan. The property shall be conveyed free of any mortgage or security interest by warranty deed in form and substance acceptable to the City Attorney.

Mayor Goode asked Mr. Nohrr if he was satisfied with this condition. Mr. Nohrr replied yes and added that they may return to ask for latitude. The financing details may affect timing of the deed.

Mrs. Palmer said she can't support bringing in low-income apartments into an area where the City has worked so hard to improve. The location between U. S. 1 and the railroad tracks won't be safe for children. She asked Council to ensure that a buffer is required to add protection for the children and to keep certain people from hopping the fence.

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Mayor Goode stated that this is a disclosure item. Mrs. Palmer said she had a conversation with Phil Nohrr prior to the Council meeting. She apologized for not returning his telephone call.

Moved by Contreras/LaRusso for approval of the site plan subject to the findings and conditions in the agenda package, as well as condition “e” as read by the City Attorney and an additional condition (“f”) requiring appropriate fencing for the property, whether chain link, opaque, etc., in accordance with the City Code.

Attorney Gougelman asked Planning and Economic Development Director Cindy Dittmer if she is clear on the fencing issue. Mrs. Dittmer said her understanding of the motion is that staff would determine the fencing style it deems appropriate for the safety of the children and the complex.

Mr. LaRusso asked Mr. Nohrr to comment about the safety of the children. Mr. Nohrr said that if a child can climb a six foot wall, he/she can also climb a six foot fence. He added that landscaping would make this more difficult. He repeated that they have a good track record with another property located farther north. Safety will be addressed through fencing and the landscaping will provide the opaqueness. He added that the property will be entirely fenced, with the exception of the northwest corner, which will be left in its natural environmental state.

The question was called. The roll call vote was:

Aye: LaRusso, Meehan, Hand and Contreras

Nay: Walker, Palmer and Goode

Motion carried.

9. COUNCIL ACTION RE: Approval of an interlocal agreement between Brevard County and the City of Melbourne providing for participation in the Brevard County Educational Facilities Impact Fee Ordinance. (Postponed by Council - 11/09/04)

From the agenda report: This item was removed from the November 9 consent agenda and postponed at the request of Council. The City has been requested to enter an agreement with the County, which puts the burden of collecting and accounting for the school impact fees on the County government. The City Attorney has reviewed the draft proposal and suggested several improvements to the agreement, all accepted by the County. Council had previously expressed approval of the School Impact Fee concept, which was adopted by the Board of County Commissioners in summer 2004 to be effective in October 2004.

Attorney Gougelman explained that this agreement recognizes the fact that, regardless of the City’s position, school impact fees will be in effect in the City of Melbourne. The fees were adopted by ordinance of the County Commission and are effective County-

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wide. The sole purpose of this agreement is to work out the method of collection of the fees. The County will have the responsibility to collect and unless the City of Melbourne does something negligent in the process, the City will be indemnified against any damages for enforcing the County's ordinance.

Mrs. Hand outlined the questions she had about this agreement, which have been answered by the City Manager since the last meeting.

Moved by Walker/Meehan for approval of the agreement. Motion carried. Mrs. Palmer voted nay.

10. COUNCIL ACTION RE: Contract award for wrecker services to the City for removal, recovery, and transport of City vehicles, Kendall Towing & Recovery, Melbourne, FL - \$20,000 estimated annual usage. (Postponed by Council - 11/09/04)

From the agenda report: This item was removed from the November 9 consent agenda and postponed at the request of Council. Based on some letters and e-mails, there may be an erroneous perception that this is for commercial or public towing of some type. This is for transport of City vehicles; it does not affect people who have personal experience with towing.

The recommendation is to award the contract to Kendall Towing & Recovery, Melbourne, to provide wrecker services to the City for removal, recovery, and transport of City vehicles, \$20,000 estimated annual usage.

Mrs. Hand said that since the last meeting, the City has received additional correspondence from people asking that this contract not be awarded to Kendall. She stated that she can't support the award based on some of the issues with this contractor.

Mrs. Palmer said that aside from the reputation of Kendall Towing, there are extra costs involved with Kendall when drivers are at the scene more than 30 minutes. She said she believes that the add-on expenses do not make this the low bid. Mrs. Palmer added that it is unfair to the other bidders for Kendall to provide a lower initial cost and then add extra expenses that the other bids did not include.

Gissenia Rios, owner, Kendall Towing, detailed her background for Council. She referenced the comment made by a Council Member at the last meeting that something was stolen from her vehicle while in storage. Ms. Rios said that they fence and secure the yard; however, they have no control over people hopping the fence and breaking in to vehicles. She added that she is hurt that hearsay about her company has been accepted as proof. She asked Council to ask her about what she has done with management of the company.

Mrs. Hand said she was the person who made the comment. And, the car was not in storage – the wallet was taken within a 15-minute drive from her house. In response

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to Ms. Rios, she said that she does not recall the date.

Ms. Rios stated that Kendall has been in business since 1978 and she has had the company for the past year and a half. She pointed out that it is not fair to blame new management for everything that has happened since 1978.

In response to Mr. LaRusso, Ms. Rios elaborated on the driver license and background check for drivers, probation period, drug screenings, etc.

Vice Mayor Richard Contreras asked Ms. Rios if she has “cleaned house” since assuming management. Ms. Rios noted that she eliminated the position of general manager. She considers herself to be “hands on” and all complaints are routed through her.

Mrs. Palmer asked staff whether or not the City experienced a problem with Eau Gallie Towing and if they charged extra fees for wait time. Mr. Schluckebier said that he is not aware of any problems with Eau Gallie Towing. Eau Gallie Towing quoted a slight increase over their past level with no add-ons. They quoted the specifications by the City and quoted an hourly rate beyond the standard tow, with a standard tow being expected to take one hour. On the other hand, Kendall quoted an alternative that assumed a tow would take less than an hour, but there would occasionally be times when a tow would take a full hour. They made the assumption they would be spending less time on the job. City staff believes there is merit to that assumption; however, it can be subject to interpretation and question. If it proves to be accurate, there would be a savings as described in the agenda material.

Mrs. Palmer referenced the rates quoted by Kendall and Eau Gallie and noted that after 30 minutes, Kendall is at \$66 per hour, counted by the quarter hour. She stated that this is a blank check and it all depends on how fast the driver gets the work done. Continuing, Mrs. Palmer said that her husband is in the auto repair business. Based on his experience and the experience of people he knows, Kendall does not have a great reputation to hand a blank check with fees. Therefore, she can't support giving the contract to Kendall Towing at this time.

Mrs. Meehan referenced one of the e-mails, which indicates that items have been stolen from City vehicles. Mr. Schluckebier said that the various Departments performed a review of this item and did not disclose that any items had been stolen. Additionally, the Police Department reviewed the compete experience with this company, not just related to City equipment/property, and several other companies over a two-year period. This company had 11 complaints (with no arrests) relating to equipment broken, missing equipment, etc. Of the others, one had 14 incidents, one also had 11, and the remainder had between two and four.

Moved by Hand/Palmer to award the contract to Eau Gallie Towing. The roll call vote was:

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Aye: Palmer and Hand

Nay: LaRusso, Meehan, Walker, Contreras and Goode

Motion failed.

Moved by Meehan/Walker to approve the contract with Kendall Towing with a condition that Council be provided a report after six months about the full cost and any incidents. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Contreras and Goode

Nay: Palmer and Hand

Motion carried.

NEW BUSINESS

11. CONSENT AGENDA:

Mrs. Hand declared a conflict of interest on Item "m" because she is employed as a nurse by Health First. She asked for the item to be removed from the Consent Agenda. Mrs. Palmer asked for Item "n" to be removed from the agenda.

Mayor Goode announced that Items "m" and "n" have been removed from the Consent Agenda.

Moved by Contreras/LaRusso for approval of the Consent Agenda, with the exception of Items "m" and "n." Motion carried unanimously.

The Consent Agenda was approved as follows:

- a. Contract award for the purchase of fire hydrant replacements, Project No. C05314, Mueller Service Co., Pompano Beach, FL - \$199,269.
- b. Contract award for the purchase of fire hydrant service and repairs, Project No. C05315, Mueller Service Co., Pompano Beach, FL - \$55,120.
- c. Contract award for the construction of two pavilions to be installed at Southwest Park, Project No. E02121, L.A. Construction Services, Merritt Island, FL - \$29,000.
- d. Change Order No. 2 to the contract for electrical upgrades at the Lake Washington Water Treatment Plant, Project No. C02304, Florida Industrial

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Electric, Inc., Longwood, FL - \$6,906.74 and transfer of \$1,500 from Water & Sewer Miscellaneous Projects to this project budget.

- e. Approval of a Transportation Impact Agreement between the City of Melbourne and the Florida Institute of Technology.
- f. Contract award for the purchase of 1,000 Ford V42-7W meter resetters or yokes, Sunstate Meter and Supply, Inc., Newberry, FL - \$25.99/unit, total estimated annual cost of \$25,990.
- g. Emergency purchase for backstop replacement at the McGrath Sports Complex, American Fence Co., Melbourne, FL - \$42,506.
- h. Purchase of nine 2005 Crown Vic Pursuit vehicles, Don Reid Ford, Maitland, FL - \$172,042, and one 2005 Chevrolet Blazer, Alan Jay Chevrolet Cadillac, Sebring, FL - \$18,444.
- i. Emergency purchase of three boat ramp docks for Front Street Park, Johnson Amphibious Marine Contractors, Inc. Merritt Island, FL - \$34,867.
- j. Emergency purchase of an 8' x 70' pier for Front Street Park, Johnson Amphibious Marine Contractors, Inc. Merritt Island, FL - \$22,688.
- k. Contract award for scheduled mowing and maintenance of the City's northern area roadways (medians and rights-of-way), Green Side Up of Brevard, Melbourne, FL - \$22,363, and Space Coast Quality Lawn, West Melbourne, FL - \$53,337, total combined annual cost - \$75,700.
- l. Purchase of hydrogen peroxide for odor control at various lift stations, Altivia Corporation, Orlando, FL - \$3.40/gallon, total estimated annual cost of \$100,000.80.
- m. (See below – this item was voted on separately.)
- n. (See below – this item was voted on separately.)
- o. Resolution No. 1909: A resolution authorizing the City Manager to execute the third addendum to the lease agreement with Robert Scott Harrell, 912 East Palmetto Avenue.

At this point, Council considered the following items:

- m. Contract Award for basic physicals and other medical services for City employees at unit prices, Melbourne Urgent Care, LLC, Melbourne, FL - \$19,984 - \$23,594 estimated annual cost range.

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Mrs. Hand repeated that she has a conflict of interest on this item.

Moved by Walker/Meehan to approve Item “m.” The roll call vote was:

Aye: LaRusso, Meehan, Walker, Palmer, Contreras and Goode

Nay: None

Motion carried unanimously. Mrs. Hand abstained from voting.

- n. Approval of an interlocal agreement between the City and Brevard County, providing for local registration, licensing, and disciplinary action of registered contractors.

Mrs. Palmer asked how this will change the current process. Building Official Al Beyer said that licensing has been through Brevard County; however, the County won't prosecute our complaints against their licensed contractors. Following negotiations, the County has agreed to provide their special master and licensing board to hear complaints at no cost to the City.

Moved by Contreras/LaRusso for approval of Item “n.” Motion carried unanimously.

12. RESOLUTION NO. 1910: A resolution implementing FY 2003-2004 Fourth Quarter Budget Review recommendations.

Attorney Gougelman read the resolution by title.

Moved by Hand/LaRusso for approval of Resolution No. 1910. Motion carried unanimously.

13. PRELIMINARY PLAT APPROVAL (SD-2004-04) CROSSROADS VILLAGE SUBDIVISION: (Public Hearing) A request for preliminary plat approval for a retail/office development on a 13.02-acre parcel, zoned C-2 (General Commercial), located on the east side of Wickham Road, south of the Pineda Causeway. (Owner/Applicant - CRV Melbourne Corporation) (Representatives - Robert Kurlander & Steve Kelly) (P&Z Board - 11/04/04)

There were no disclosures by City Council.

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the preliminary plat, consisting of a single-sheet plan prepared by Campbell Surveying, Inc., of Melbourne, Florida with a stamped and sealed date of October 27, 2004, with the findings contained in the agenda package and the following conditions:

- a. Any change to the preliminary plat will require its reevaluation by the Planning

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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, an increase in the number of driveways beyond the two proposed on Wickham Road.

- b. Any deviation from the uses identified in the concurrency review will require a re-evaluation by staff of traffic impacts.
- c. Appropriate environmental permits must be obtained as part of the construction plan review process.
- d. 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.
- e. The applicant must obtain the necessary permits from Brevard County for driveways along Wickham Road.
- f. Only one building permit may be issued on the plat prior to recordation of the final plat.

Mayor Goode opened the public hearing.

Bob Kurlander, representing the applicant, commended staff for its presentation and agreed with the conditions.

That concluded comments from the public.

Mrs. Palmer asked if this would impact the property needed to make the Pineda Causeway connection. Mrs. Dittmer said no and noted that the subject property will be located at the southern edge of the Pineda Extension.

Moved by Palmer/Meehan for approval of the preliminary plat subject to the conditions.
The roll call vote was:

Aye: LaRusso, Meehan, Walker, Palmer, Hand, Contreras and Goode

Nay: None

Motion carried unanimously.

14. ORDINANCE NO. 2004-85 (CU-2004-17) MAINSTREET PUB: (First Reading/Public

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Hearing) An ordinance granting a conditional use to allow a bar on a 0.15-acre parcel in a C-3 (Central Business District) zoning district, located at 705 E. New Haven Avenue, between Livingston Street and Grant Place. (Owner - JMC Limited Corp.) (Applicant/ Representative - E&D Mainstreet Corporation, d.b.a. Mainstreet Pub) (P&Z Board - 11/04/04)

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

Phil Nohrr, attorney representing the applicant, stated that his client acquired the Parker Brothers' house, which was a source of concern and disruption in the immediate neighborhood. That business has since closed and his client has invested over a quarter of a million dollars to clean up and improve the property.

When this item previously appeared before Council, one of the Members requested screening on the upper floor. The applicant intends to provide that. Mr. Nohrr stated that they believe this business will be an asset to the community. The application has been reviewed by staff and the Planning and Zoning Board and comes to Council with a recommendation for approval. He added that they agree with the conditions.

Mr. Nohrr submitted a letter from Mr. Frank Tubito, 2012 Grant Place (directly behind the subject building), who indicates that he has met with the owners and manager of Mainstreet Pub and is very comfortable with their plans. Further, he requests Council's approval.

Mr. Nohrr concluded by asking Council to approve the request.

Mayor Goode opened the public hearing.

Deon Donovan, owner of Magnolia Cottage, 701 East New Haven Avenue, said that she is a neighbor of Mainstreet Pub. She reported that she has known the owners for a few years and she is looking forward to the opening of the pub. Ms. Donovan added that she believes this business will be an asset to Downtown Melbourne.

Laird Gann, representing Melbourne Main Street and Beverly Sanders, representing the Melbourne-Palm Bay Area Chamber of Commerce, addressed Council. Mr. Gann stated that they fully support this request.

That concluded comments from the public.

Mayor Goode called for disclosures. Mr. Contreras said that on July 24, 2004 he received a message from Tom Cross who wanted him to visit the site. On July 28 he left Mr. Cross a message that he would not be visiting the site. The Mayor said that before he was elected he visited the site and talked to a representative of the pub who provided him with an overview of their plans.

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Moved by Hand/Meehan for approval of Ordinance No. 2004-85. Motion carried unanimously.

Mayor Goode announced that “Comp Plan Sign Up Sheets” are available for Items 15 through 20 if anyone wishes to be notified by the Department of Community Affairs about the status.

15. ORDINANCE NO. 2004-86 (CPA-2004-11) INTRACOASTAL CONDOMINIUMS: (First Reading/Public Hearing) An ordinance providing for a 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 Street, and north of NASA Boulevard. (Owner - Intracoastal Marina of Melbourne) (Applicant/Representative - David T. Menzel, MAI Architects Engineers) (P&Z Board - 8/05/04)

Attorney Gougelman read Ordinance No. 2004-86 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of this request.

Mrs. Palmer asked the present elevation of the property. Mrs. Dittmer said the elevation of U. S. 1 is 21’ or 22’ and this property is slightly below at 20’.

Dave Menzel, MAI Architects Engineers, stated that although this project is still in the planning stages, it will be a mixed use. He added that the restaurant and almost all of the boat slips were destroyed by the hurricane(s).

Chris Romandetti, 705 South U. S. 1, property owner, informed Council that the existing restaurant won’t re-open. However, they have multiple plans that involve one or two smaller restaurants on the new development. He added that their goal is to bring back the 180 employees who lost their jobs.

Continuing, Mr. Romandetti said that the docks are at an elevation three; however, they never had a rise in water above elevation five. Retail may be constructed at the lower level but residential space would not be proposed below U. S. 1.

In response to Mrs. Walker, Mr. Romandetti said this will be a major development, in excess of \$150 million.

There were no further comments from the public.

Moved by LaRusso/Walker for approval of Ordinance No. 2004-86. Motion carried unanimously.

Recessed: 8:12 p.m.
Reconvened: 8:22 p.m.

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16. ORDINANCE NO. 2004-87 (AR-2004-153) AND ORDINANCE NO. 2004-88 (CPA-2004-12) DAIRY/MADISON: (First Readings/Public Hearings) Ordinances providing for annexation and 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) (P&Z Board - 8/05/04)

The City Attorney read Ordinance Nos. 2004-87 and 2004-88 by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the request.

Mayor Goode asked if this will be developed as a PUD. Mrs. Dittmer said it will be an attached townhome development under the PUD zoning category.

Mayor Goode opened the public hearing.

Jake Wise, representing the developer, said they are excited about annexing into the City of Melbourne. He noted that their plans include extension of the water and sanitary sewer system; the conceptual layout is part of the developer's agreement; the agreement, which is voluntary, will cap the density; it is his understanding that the Department of Community Affairs approved the amendment today; this will be a townhome project in the PUD zoning district; they will meet or exceed the City's requirements; and they plan to exceed the 15% recreation requirement.

There were no further comments from the audience.

Moved by Contreras/Meehan for approval of Ordinance No. 2004-87. Motion carried unanimously.

Moved by Hand/Palmer for approval of Ordinance No. 2004-88. Motion carried unanimously.

17. ORDINANCE NO. 2004-89 (AR-2004-154), ORDINANCE NO. 2004-90 (CPA-2004-13), AND ORDINANCE NO. 2004-91 (Z-2004-994) RJP DEVELOPMENT: (First Readings/Public Hearings) Ordinances providing for annexation, a Comprehensive Plan Amendment designating a Future Land Use of Industrial, and a zoning designation of M-1 (Light Industrial), on a 39.415-acre parcel located west of North Drive, east of John Rodes Boulevard, and south of Sarno Road. (Owners - William C. Potter, Co-Trustee & Hubert C. Normile, Jr.) (Applicant - RJP Development Corporation) (Representative - Jake Wise) (P&Z Board - 8/05/04)

The City Attorney read each ordinance by title. There were no disclosures by Council.

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Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval.

Jake Wise, civil engineer of record for the project, said that this project is intended to be a platted industrial subdivision. The item will return to Council for the plat approval process. Mr. Wise stated that the wetland on the property will be preserved. Additionally, a buffer will be provided for the only non-industrial use located to the south.

There were no further comments from the public.

Moved by Palmer/Walker for approval of Ordinance No. 2004-89. Motion carried unanimously.

Moved by Contreras/Hand for approval of Ordinance No. 2004-90. Motion carried unanimously.

Moved by Walker/Meehan for approval of Ordinance No. 2004-91. Motion carried unanimously.

18. ORDINANCE NO. 2004-92 (CPA-2004-19) AND ORDINANCE NO. 2004-93 (Z-2004-995) CITY OF MELBOURNE WATER PLANT: (First Readings/Public Hearings) Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of Public Lands and Institutions and I-1 (Institutional) zoning 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) (P&Z Board - 8/05/04)

Attorney Gougelman read the ordinances by title and there were no disclosures by Council. Mrs. Dittmer reviewed the agenda report and said that the Planning and Zoning Board unanimously recommended approval of this request.

There were no comments from the public.

Moved by Hand/Contreras for approval of Ordinance No. 2004-92. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2004-93. Motion carried unanimously.

19. ORDINANCE NO. 2004-94 (CPA-2004-20) AND ORDINANCE NO. 2004-95 (Z-2004-996) PARKWAY DRIVE AREA A ANNEXATION: (First Readings/Public Hearings) Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential (up to six units per acre) and REU (Rural Estate Use) zoning on 110 acres, located west of Wickham Road, north and south of Parkway Drive. (Administrative request by the City of Melbourne) (P&Z Board - 8/05/04)

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Attorney Gougelman read each ordinance by title. There were no disclosures by Council. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of this request.

Mayor Goode opened the public hearing. There were no comments from the audience.

Moved by Walker/Contreras for approval of Ordinance No. 2004-94. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2004-95. Motion carried unanimously.

20. ORDINANCE NO. 2004-96 (CPA-2004-21) AND ORDINANCE NO. 2004-97 (Z-2004-997) PARKWAY DRIVE AREA B ANNEXATION: (First Readings/Public Hearings) Ordinances providing a Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on parcels totaling 116 acres and REU (Rural Estate Use) zoning on 88.45 acres and AEU (Agricultural Estate Use) zoning on 19.96 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)

The City Attorney read each ordinance by title. There were no disclosures by Council. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the request.

There were no comments from the audience.

Moved by Contreras/LaRusso for approval of Ordinance No. 2004-96. Motion carried unanimously.

Moved by Walker/LaRusso for approval of Ordinance No. 2004-97. Motion carried unanimously.

21. COUNCIL ACTION RE: A request for withdrawal of four proposed Comprehensive Plan Amendments:
- a. CPA-2004-14 M-135, LLC (Finkelstein): 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 Boulevard. (Owner/Applicant - M-135, LLC) (Representative - Scott M. Glaubitz) (P&Z Board - 8/05/04)
 - b. 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.

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(Owner/Applicant/Representative - City of Melbourne) (P&Z Board - 8/05/04)

- c. 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) (P&Z Board - 8/05/04)
- d. CPA-2004-18 (Taranto): A Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential on 12 acres and Low Density Residential on 18 acres, 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) (P&Z Board - 8/05/04)

Moved by Palmer/LaRusso for approval of the withdrawal of the four Comprehensive Plan amendments. Motion carried unanimously.

22. COUNCIL ACTION RE: Board Appointments

- a. Babcock Street Community Redevelopment Agency Advisory Committee - appointment of one regular member

Mrs. Palmer nominated John Edmiston. Council closed the nominations. By consensus, Council unanimously appointed John Edmiston. (11/23/2004 – 5/3/2006, unexpired two-year term)

- b. Citizens' Advisory Board - appointment of one alternate member

Mrs. Palmer nominated Eva Mills and Mr. LaRusso nominated John Caso.

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

Mills: Walker, Palmer, Hand, Contreras and Goode

Caso: LaRusso and Meehan

Appointed: Eva Mills (11/23/2004 – 11/11/2006, unexpired three-year term)

- c. Library Board - appointment of three regular members

Mayor Goode called for nominations for the first seat. Mrs. Hand nominated Arlene McCrea. Moved by Walker/Goode to close the nominations. Motion carried

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unanimously. Moved by Palmer/Hand to appoint Arlene McCrea. Motion carried unanimously. (12/3/2004 – 12/2/2009)

Mayor Goode called for nominations for the second seat. Mrs. Palmer nominated Thomas Urquhart. Moved by Walker/Palmer to close the nominations. Motion carried unanimously. Moved by Walker/Palmer to appoint Thomas Urquhart. Motion carried unanimously. (12/3/2004 – 12/2/2009)

Nominations were accepted for the third seat. Mrs. Palmer nominated Judith Davis. Moved by Contreras/LaRusso to close the nominations. Motion carried unanimously. By consensus, Council unanimously appointed Judith Davis. (11/23/2004 – 12/2/2006, unexpired five-year term)

d. Planning & Zoning Board - appointment of one regular member

Mrs. Meehan nominated Hank Lauritsen. Moved by Contreras/Palmer to close the nominations. Motion carried unanimously. By consensus, Council unanimously appointed Hank Lauritsen. (12/13/2004 – 12/12/2007)

e. Zoning Board of Adjustment - appointment of three regular members and two alternate members

The Mayor called for nominations for the first regular member vacancy. Mrs. Walker nominated Dale Young. Moved by Contreras/Palmer to close the nominations. Motion carried unanimously. Moved by Hand/Walker to appoint Dale Young. Motion carried unanimously. (11/23/2004 – 12/2/2006, unexpired three-year term)

Nominations for the second regular member vacancy: Mr. LaRusso nominated Chip Allen and Mr. Contreras nominated Glenn Morris.

Moved by Palmer/Walker to close the nominations. Motion carried unanimously.

Mr. Contreras reported that during the Zoning Board of Adjustment's recent review of the senior center, Mr. Allen made comments that were not in the best interest of the City of Melbourne. He said that he is not able to support Mr. Allen's reappointment.

Mr. LaRusso said he sat on the Zoning Board of Adjustment for almost a year. He agreed that Mr. Allen seems to run amok from time to time; however, his 18 years of experience is invaluable to the board. He added that although Mr. Allen can be challenging, his heart is with the City.

In response to the Mayor, the City Manager confirmed that we do not have term limits on City boards.

The question was called. The roll call vote was:

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Allen: LaRusso, Meehan, Palmer and Hand

Morris: Walker, Contreras and Goode

Appointed: Chip Allen (12/3/2004 – 12/2/2007)

Nominations for the third regular member vacancy: Mrs. Walker nominated Glenn Morris and Mrs. Hand nominated Brenda Burgener. Moved by Palmer/Walker to close the nominations. Motion carried unanimously. The roll call vote was:

Morris: Walker and Contreras

Burgener: LaRusso, Meehan, Palmer, Hand and Goode

Appointed: Brenda Burgener (12/3/2004 – 12/2/2007)

Nominations for the first alternate: Mrs. Walker nominated Glenn Morris. Moved by Hand/Contreras to close the nominations. Motion carried unanimously. Moved by Walker/Contreras to appoint Glenn Morris. Motion carried unanimously. (12/27/2004 – 12/27/2007)

Nominations for the second alternate. Mr. LaRusso nominated James Taylor. Moved by Contreras/Walker to close the nominations. Motion carried unanimously. Moved by Hand/Walker to appoint James Taylor. Motion carried unanimously. (11/23/2004 – 12/26/2007, unexpired term plus full three-year term)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. LaRusso asked Council to consider an item for the next agenda to discuss plurality versus majority in the City's election process. He pointed out that in the last election there were six candidates in one district. And, he believes that representatives should be elected by a majority rather than 20 – 30% of the vote. He added that he realizes this would require a Charter change; however, he would like to start the discussion.

Moved by LaRusso/Palmer to place this item on the next agenda for discussion. Motion carried unanimously.

Mr. LaRusso requested that in the future, if an agenda item relates to the reversal or discussion of an advisory board's decision – or if the issue is controversial – a representative from that board attend the Council meeting to answer questions.

Moved by LaRusso/Contreras for approval. Motion carried unanimously.

Mayor Goode said that he would like to discuss the open container ordinance as it pertains to street events. As Council is aware, staff has an administrative procedure where open container is waived until 10:00 p.m. only. Previously events could have

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open container until 1:00 or 2:00 in the morning. He stated that Meg O'Malleys would like to conduct a New Year's Eve Party in Downtown Melbourne. They would like open container waived until 12:30 a.m. with the streets being cleared by 1:00 a.m. If Council is in agreement, he would like to direct staff to allow an exception for the New Year's Eve event only. Beyond the New Year's Eve event, the Mayor said he would like for the City Clerk to work with the Downtown merchants and Melbourne Main Street towards a compromise on street events with regard to open container. He added that he believes 1:00 or 2:00 in the morning is too late; however, he also believes that 10:00 p.m. is too early.

Moved by Goode/Palmer for approval.

Mrs. Palmer stated that she was contacted by many people who were upset that the annual Meg O'Ween event was not conducted.

Motion carried. Mrs. Hand voted nay.

The City Manager reported on the following items:

- There will be several grant opportunities related to hurricane mitigation – some with matching requirements and some without. The application period may not always allow time to bring the item before Council first. In all cases, the grant applications will be reported to Council. The City Council will always have the ability to ask staff to withdraw the application.

Council Member Palmer asked that Council also be provided with information on on-going costs associated with each grant.

- City staff would like to conduct an executive session with Council concerning the PBA negotiations.

By consensus, Council agreed to conduct an executive session on January 4 at 6:30 p.m.

- The City recently completed its United Way campaign. City employees increased their contributions by over \$9,000 from last year. And, last year employees increased their contributions by \$13,000 from the previous year.
- The Code Compliance Division has been instructed to continue waiving building permit fees for permits related to hurricane damage. The folks who paid the fee during the first week of November will be refunded.
- City staff is continuing to work with FEMA representatives on hurricane costs and recovery. The City is waiving many of its rules; however, staff does not have the ability to waive the appropriate zoning. A current issue involves the Hallandale

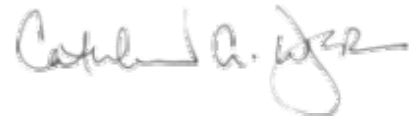
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Mobile Home Park (non-conforming park located on Pineapple Avenue). Code Enforcement issued a citation after 18 travel trailers were moved into the park.

- The Police Department roof replacement will appear on the December 14 agenda for Council action.

24. ADJOURNMENT

Moved by Meehan/LaRusso to adjourn. Motion carried unanimously. The meeting adjourned at 9:28 p.m.



City Clerk – 12/6/2004

Approved by Council: 12/14/2004

Attachment to official minutes: Memorandum of Voting Conflict form for Council Member Loretta Hand, reference Item 11 “m.”