

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 11, 2005



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. Pastor Jeff DeLaughter, Sonrise Fellowship Church of God, 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

None.

5. Approval of Minutes - December 14, 2004 Regular Meeting

Moved by Palmer/Walker for approval. Motion carried unanimously.

6. City Manager's Report

Mayor Goode referenced the material from staff requesting Resolution No. 1916 be added to the agenda as Item #13 "m." Without objection, Council added this item to the agenda.

City Manager Jack Schluckebier referenced the City Hall renovation project. He noted that the assumption is that the current shared Mayor/Council office configuration, which provides for a space in proximity to the City Clerk's office, is satisfactory. Additionally, it is likely that the space will be moved to a different part of the building. He asked Council Members to comment if there was a desire for additional space.

Mr. Schluckebier informed Council that the Director of Finance will discuss the utility drive-through window at the next Council meeting. Staff needs direction on whether to continue with that arrangement before sending the renovation plans back to the architect.

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Vice Mayor Contreras referenced the planned resident opinion survey and asked if Council will have the opportunity to provide input and/or review before it is mailed. Mr. Schluckebier replied yes.

7. Public Comments

Pat Poole, 805 East Palmetto Avenue, referenced the December 28 newspaper article about the trash problems in Downtown Melbourne. She said that she – as the former Council representative for that area – is surprised that she and the City Manager were never contacted about this issue. Mrs. Poole recommended that new Council Members work with the City Manager and staff to resolve issues rather than organizing committees on their own.

UNFINISHED BUSINESS

Moved by Hand/Walker to convene as the Melbourne Downtown Community Redevelopment Agency for the following item. Motion carried unanimously.

8. COUNCIL ACTION RE: Approval of consulting contract for engineering design services for Downtown Melbourne Lighting and Streetscaping, Phase III, Project No. C04102, Baskerville-Donovan, Inc., Melbourne, FL - \$219,730. (Postponed - 12/14/04)

From the agenda report: At the December 14 meeting, Council postponed taking action on this item to give the firm an opportunity to include additional work for the same fee. The consultants have agreed to provide design services for the section of New Haven Avenue between U.S. 1 and Front Street for the originally proposed contract amount. The contract has been revised accordingly.

Mayor Goode expressed appreciation for the revision to the contract.

Moved by Contreras/LaRusso to approve the contract with Baskerville-Donovan, Inc. in the amount of \$219,730. Motion carried unanimously.

Moved by LaRusso/Walker for the City Council to reconvene for the remaining agenda items. Motion carried unanimously.

9. ORDINANCE NO. 2004-99 (AR-2004-163) OAK HAMMOCK ESTATES: (Second Reading/Public Hearing) An ordinance providing for annexation of 43 acres, located at the northwest corner of the intersection of Lake Washington Road and McGraw Avenue. (Owners - Hoekstra Family Limited Partnership #1 and Bernini Family Limited Partnership #1) (Applicant - OHE Development, LLC) (Representative - Robert Renfro) (First Reading – -12/14/04)

City Attorney Paul Gougelman read Ordinance No. 2004-99 by title. Mayor Goode opened the public hearing. There were no comments.

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Moved by Hand/Meehan for approval of Ordinance No. 2004-99. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2004-100 (Z-2004-1005) MAYFAIR: (Second Reading/Public Hearing) An ordinance rezoning 47.32 acres from R-2 (One-, Two-, and Multiple-Family Residential) on 7.8 acres and R-1B (Single-Family Residential) on 39.52 acres to R-2 (One-, Two-, and Multiple-Family Residential) on 14.264 acres and R-1B (Single-Family Residential) on 33.054 acres, located on the north side of Florida Avenue, west of Aldrin Street. (First Reading - 12/14/04)

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

Moved by Contreras/Walker for approval of Ordinance No. 2004-100. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2004-98 (Z-2004-989B-AD/FOC-2004-03B/LDR-2004-03B) ADULT ENTERTAINMENT DISTRICT: (Second Reading/Public Hearing) An ordinance amending Article XVIII (20) and (22), Appendix B to provide locational requirements for all adult entertainment establishments and sexually-oriented businesses. (Applicant - City of Melbourne) (First Reading - 12/14/04)

Attorney Gougelman read Ordinance No. 2004-98 by title.

Michael Kahn, special legal counsel to the City of Melbourne, referenced the previous record submitted for Ordinance Nos. 2004-98, 2004-101 and 2004-102. He said that record, along with the following supplemental items, support all three ordinances:

Studies:

The Physical Environment of Street Blocks and Resident Perceptions of Crime and Disorder: Implications for Theory and Measurement (Douglas D. Perkins, et al, 1991)

The Physical Environment of Street Crime: Defensible Space, Territoriality and Incivilities (Douglas D. Perkins, et al, 1993)

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Case Law:

Geaneas v. Willets; Moffett v. State; Barnes v. Glen Theater, Inc.; Café 207, Inc. vs. St. Johns County; and Board of County Commissioners v. Dexterhouse.

Publications:

Local Regulation of Adult Businesses, 2004 Edition, by Jules B. Gerard.

Defensible Space, Crime Prevention through Urban Design, by Oscar Newman.

The City Attorney continued and read Ordinance Nos. 2004-101 and 2004-102 by title.

Attorney Kahn called Richard Wagner as his first witness. Mr. Wagner was placed under oath by Attorney Kahn.

Richard L. Wagner, 115 E. New Haven Avenue, stated that he has lived in Brevard County for 30 years. He provided his educational background/experience and noted that he is a licensed general real estate appraiser with the MAI designation.

In response to Mr. Kahn, Mr. Wagner stated that he reviewed the information provided by Mr. Kahn. And, it is his opinion that an adult entertainment establishment placed in proximity to a residential subdivision would have an adverse effect on property values.

Council Member Cheryl Palmer referenced the Indianapolis study and asked Mr. Wagner if the crime rate is part of the reason property values decrease. Mr. Wagner replied that he is not an expert in crime; however, his experience is that any adverse influence – anything that draws crime to an area – negatively impacts property values.

Mr. Kahn called Barry Inman to the podium and placed him under oath.

Barry Inman, Brevard County Health Department Epidemiologist – Control and Prevention of Communicable Disease, provided his education, experience and background. He noted that for the past six to seven years his work has been in the study of the prevalence of communicable disease.

Mr. Kahn asked Mr. Inman if he reviewed the factual findings of the three ordinances and if those factual statements are generally accurate. Mr. Inman replied that the statements are generally accurate.

Continuing, Mr. Inman discussed HIV, AIDS, sexually transmitted diseases and the linkage between prostitution, sexually transmitted diseases and drug use. He added that wherever there is substance abuse, there is the potential for disease.

Mr. Kahn submitted Mr. Inman's resume and a compact disk that contains the information Mr. Inman testified to.

Mrs. Palmer said that in the Indianapolis study she noticed 77% higher incident of sex oriented crimes in the study area that had an adult business compared to the rest of the

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district. She asked Mr. Kahn if Council is safeguarding the health, safety, and welfare of our community by using zoning to regulate the location of sex related businesses.

Mr. Kahn replied yes. He said that the interrelationship Mr. Inman presented with regard to sexually transmitted diseases and prostitution, coupled with the studies and findings in the other cases, which have correlated prostitution with adult entertainment establishments, support the finding that this is a health, safety and welfare issue.

Mrs. Palmer asked Mr. Kahn if he believes that Melbourne's ordinances provide everything the Constitution requires for these types of businesses. Mr. Kahn replied yes and elaborated on the case law.

Vice Mayor Richard Contreras referenced the report on the City of Garden Grove and asked Mr. Kahn to explain the secondary effects of adult entertainment businesses.

Mr. Kahn replied that although Council can't regulate First Amendment speech, it can regulate the secondary effects of these types of businesses. These are called "time, place, and manner" restrictions. Crime, prostitution, decreased property values, etc., are all secondary effects of adult entertainment establishments and sexually oriented businesses.

In response to Mr. Contreras, Mr. Kahn explained the different types of approach when regulating adult entertainment establishments. Mr. Contreras asked Mr. Kahn to discuss "content neutral." Mr. Kahn replied that a content-based ordinance is one that is aimed at the content of speech. The proposed ordinances are content neutral. Rather than being based on the content of speech, they are based on regulating the secondary effects. The power of that with regard to the U. S. Supreme Court is that it gets intermediate scrutiny rather than strict scrutiny.

Mrs. Palmer asked Mr. Kahn to summarize the list of secondary effects that have been proven by these studies. Mr. Kahn listed crime, adverse real property values, health, prostitution, and aesthetics. He said these are a few of the effects and there are subcategories within each of these.

Mr. Kahn confirmed for Mrs. Palmer that the reduced zone definitely provides sufficient sites for adult entertainment.

Mr. Schluckebier pointed out several crucial points of the new regulations. The previous Code did not make any allowance for suspension or revocation of licensing. He noted that the City ought to be able to take away a license for bad behavior. Additionally, the new Code provides for an impartial hearing officer to consider the facts, rather than appointing the City Council as the arbitrator.

Mayor Goode said that the news media has picked out small portions of the regulations to report. He commented that Brevard County already has ordinances in place that regulate some of these things.

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Mr. LaRusso asked Mr. Kahn how many years he has been practicing. Mr. Kahn said he began his work on Melbourne's initial ordinances in 1986 and since then has drafted for numerous other cities and counties. He added that he has never worked for an adult entertainment establishment.

There were no further comments from the audience and no disclosures by Council.

Moved by Palmer/Walker for approval of Ordinance No. 2004-98.

Mrs. Palmer said that day care centers, businesses, industry, restaurants, etc. have moved in to the current area; therefore, it is time to pare down the size of the area. She added that because of the secondary effects, Council is doing the right thing.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2004-101 AND ORDINANCE NO. 2004-102, ADULT ENTERTAINMENT CODE AND PUBLIC NUDITY: Ordinances repealing Chapter 2.5 and adopting Chapter 2.6, Adult Entertainment Code, and addressing public nudity.

a. Ordinance No. 2004-101: (Second Reading/Public Hearing) An ordinance repealing Chapter 2.5 and adopting Chapter 2.6, Adult Entertainment Code, providing for classifications, licensing requirements, licensing procedures, and licensing application fees for adult entertainment establishments and sexually oriented businesses. (First Reading - 12/14/04)

b. Ordinance No. 2004-102: (Second Reading/Public Hearing) An ordinance prohibiting nudity and sexual conduct in public places, providing definitions, enforcement, and penalties for violation. (First Reading - 12/14/04)

(Note: see previous item for record submitted by Attorney Kahn on this item.)

The Mayor said that three people with the American Association for Nude Recreation have signed up to speak. He said that he asked them to designate a spokesperson.

Pat Orner, 1703 N. Main Street, Kissimmee, Florida, representing the American Association for Nude Recreation (AANR), said that their organization has concerns relating to the language in the public nudity ordinance.

Ms. Orner discussed her background and the people who are involved with AANR. She added that they have no problem with what Council is trying to do with the adult

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entertainment ordinance. She stressed that they are not any part of the adult entertainment industry. Their organization is based on simple, social nude recreation. Ms. Orner submitted a packet of information about AANR.

Ms. Orner said that her organization believes that recognition of family-oriented nude recreation is important for the following reasons: Dress code and nudity ordinances have a tendency to cast a broader net than originally intended, often with the unforeseen consequence of punishing those who enjoy nudist parks or an innocent skinny dip in remote areas; there are already laws regulating indecent exposure and criminal activity; there are considerable economic advantages to making provisions for well-managed nudist clubs and nude recreation areas; and a number of communities have made the distinction between adult entertainment and nude recreation in their statutes.

Continuing, Ms. Orner said that a new law may prove to be time consuming and costly to enforce. She added that the “Peek-A-Boo Lounge v. Manatee County” case law that the City’s expert introduced illustrates a long term, costly litigation. Ms. Orner asked Council to consider separating the ordinances and tabling the vote on the nudity ordinance to allow further study of the language.

Mrs. Palmer asked Ms. Orner for a definition of nude recreation. She added that she is afraid someone who wanted to be involved in the adult entertainment industry could call that nude recreation.

John Callender, Attorney, Jacksonville, Florida, representing the AANR, replied that they don’t control the phrase “nude.” He said that they are advocating that there are geese and then there are other birds. They partake in an innocent social activity that is within the law and his hope is that Council will permit further study.

Mrs. Palmer said she is afraid that she doesn’t understand nude recreation. Mr. Callender said this is nude recreation, family oriented, social nudity in appropriate settings. He stressed that they do not advocate walking down the middle of main street and confronting people in a way that would be awkward to them. They go to places that are set apart for nudity. Additionally, he pointed out that nude recreation does not cause the secondary effects outlined by the City’s attorney.

Emily Kubica, President of Digital Light Productions, Digital Light Drive, said that her business is located in a serious high tech business park. She questioned the accuracy of placing this area within the adult entertainment zone and stressed the importance for maintaining the integrity of this business area.

Mayor Goode asked Ms. Kubica how long her business has been at this location. Ms. Kubica said five years. Mayor Goode said that almost 20 years ago, that entire neighborhood was designated as an adult entertainment zone.

That concluded comments from the public.

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Mrs. Palmer referenced the exemptions outlined in Section 2.6-65 of Ordinance No. 2004-102. Mr. Kahn confirmed that if the City had a district set apart for nude recreation, it would constitute an exemption outlined in this section.

Mrs. Palmer said she has received several telephone calls about thong bathing suits. She asked Mr. Kahn to state what the law is right now with regard to thong bathing suits. Mr. Kahn said that in Brevard County, thongs are not permitted.

Moved by Hand/Walker for approval of Ordinance No. 2004-101. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/Goode for approval of Ordinance No. 2004-102. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

13. CONSENT AGENDA:

Moved by Walker/Hand for approval of the consent agenda, “a through m.” Motion carried unanimously.

The consent agenda was approved as follows:

- a. Approval of a Right-of-Way Use Agreement with Tuttle-Armfield-Wagner for underground communication lines to cross Bignonia Street.
- b. Supplement No. 217 to the Continuing Consultant’s Contract for design of the Public Works Operations and Maintenance Building, Project No. 05336, Frazier Engineering, Inc., Melbourne, FL - \$35,000.
- c. Approval of a contract between the City of Melbourne and the City of West Melbourne to provide sewer billing services to the water customers located in the Quail Run and Pine Lakes Mobile Home Park at the rate of \$1.19 per account per month.

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- d. Approval of a Landscape Maintenance Agreement between the City of Melbourne and the Florida Department of Transportation for a Brevard Enhancement Project on SR5 (US Hwy. 1) from Post Road to Dixie Way.
- e. Approval of SHIP awards to Community Housing Initiative in the amounts of \$510,000 for administration of the Purchase Assistance Program and \$13,358 for administration of the Homebuyer Education/Housing Counseling Program to be administered in conjunction with the Purchase Assistance Program in the State Fiscal Years 2004-2005, 2005-2006, and 2006-2007; and authorization for the City Manager to execute an agreement.
- f. Approval of a SHIP award to South Brevard Sharing Center, Inc. in the amount of \$180,000 for implementation of the Tenant Assistance Program in the State Fiscal Years 2004-2005, 2005-2006, and 2006-2007; and authorization for the City Manager to execute an agreement.
- g. Purchase of upgraded networking equipment (switches, routers, and fiber converters) for City Hall, Morse Communications, Inc., Melbourne, FL - \$37,704.
- h. Purchase of a 2005 Ford F750 truck, Atlantic Truck Center, Apopka, FL - \$55,365; a 2005 Ford F550 truck, Don Reid Ford, Maitland, FL - \$34,209; and a 2005 Ford F250 Cargo Van, Don Reid Ford, Maitland, FL - \$17,120.
- i. Emergency purchase of replacement lighting and barrier netting for Carver Park ball field, Dixon Electric Company, Inc., Cocoa, FL - \$22,650.
- j. Emergency purchase of replacement lighting and Lipscomb Park ball field, Dixon Electric Company, Inc., Cocoa, FL - \$16,500.
- k. Purchase of hand-held Police radios, antennas, batteries, chargers, and accessories, Communications International, Inc., Vero Beach, FL - \$65,247.10.
- l. Lien Rescission CE-98-088: Approval of request for lien reduction from \$10,750 to \$622.68 with the provision that the fine be paid within six months or the lien reverts back to the original amount. (Katie McFatten – 614 Tucker Street)

Added to the agenda:

- m. Resolution No. 1916: Repealing Resolution No. 1914 and authorizing the execution and delivery of an interlocal agreement with the Jacksonville Economic Development Commission (JEDC) relating to issuance by the JEDC of Special Facility Airport Revenue Bonds (Holland Sheltair Aviation Group Project) in an amount not to exceed \$2,500,000 to finance all or a part of the costs of the acquisition, construction, renovation, expansion, improvement and equipping of certain general aviation facilities at Melbourne International Airport.

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14. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed.

15. PRELIMINARY PLAT APPROVAL (SD-2004-11) OAK HAMMOCK ESTATES SUBDIVISION: (Public Hearing) A request for approval of a preliminary plat for a 28-lot, single-family development on a 43-acre property zoned SEU (Suburban Estate Use), located on the northwest corner of Lake Washington Road and McGraw Avenue. (Owners - Hoekstra Family Limited Partnership #1 & Barnini Family Limited Partnership #1) (Applicant - OHE Development, LLC) (Representative - Mike Renfro) (P&Z Board - 12/16/04)

Mrs. Dittmer briefed Council. This is a request for preliminary plat approval on a 43-acre parcel located at the northwest corner of Lake Washington Road and McGraw Avenue. The parcel is in the process of annexing into the City to utilize City water service for the project.

The proposed layout of the subdivision has two roadways that end in a cul-de-sac, which exceeds the City Code allowed 1,000 feet. The applicant is requesting a subdivision variance to allow the roadways to exceed the distance. This proposed plat is a very low-density project, and only 14 lots will be located along each roadway.

The recommendation is for approval of the preliminary plat, including the requested subdivision variance to allow two cul-de-sacs to exceed 1,000 feet in length, as shown on the three-page preliminary plat prepared by Bussen-Mayer Engineering Group, with Project Number 340901, dated December 8, 2004, with the findings listed in the agenda package and 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 two units; and 2) any change in the proposed access to the subdivision.

- b. Appropriate environmental permits must be obtained as part of the construction plan review process.
- c. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings, and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- d. Only one building permit may be issued on the plat prior to recordation of the final plat.

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There were no disclosures by Council and no comments from the public.

Moved by Contreras/LaRusso for approval of the preliminary plat as recommended.
Motion carried unanimously.

16. SITE PLAN APPROVAL (SP-2004-17) ENSCO ADDITION: (Public Hearing) A request for site plan approval for additional office space; including a two-story attached addition and one new detached two-story building on a 8.2±-acre parcel, located on the east side of Wickham Road, south of Mariah Drive, and north of Summer Brook Street. (Owner - ENSCO Services Company, Inc.) (Applicant/Representative - Vaheed Teimouri, PE, Teimouri & Associates, Inc.) (P&Z Board - 12/16/04)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of the site plan, consisting of a two-sheet plan prepared by Teimouri and Associates, Inc., of Melbourne, Florida, with a stamped and sealed date of November 26, 2004, to develop an office addition project with the following conditions:

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

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; or 2) the addition of a driveway on Wickham Road.

- b. The buildings shall be substantially consistent with the rendering submitted by the applicant.
- 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.

There were no disclosures by Council and no comments from the public.

Moved by LaRusso/Meehan for approval as recommended. Motion carried unanimously.

17. ORDINANCE NO. 2005-01 (AR-2004-164), ORDINANCE NO. 2005-02 (CPA-2004-24), AND ORDINANCE NO. 2005-03 (Z-2004-1008) LEICHTENBERG PROPERTY: Ordinances providing for annexation and a Comprehensive Plan Amendment designating a Low Density Land Use for a 1.7-acre parcel and rezoning the 1.7-acre parcel and a 17.54-

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acre parcel, located west of I-95 and north of Eau Gallie Boulevard. (Owners - Robert L. Leichtenberg/Michael R. Leichtenberg) (Applicant - Richard P. Love, Jr., Matnick Partners, Inc.) (P&Z Board - 12/02/04)

- a. Ordinance No. 2005-01/AR-2004-164: (First Reading/Public Hearing) An ordinance providing for annexation of a 1.7-acre parcel.
- b. Ordinance No. 2005-02/CPA-2004-24: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment to designate a Low Density Future Land Use on a 1.7-acre parcel.
- c. Ordinance No. 2005-03/Z-2004-1008: (First Reading/Public Hearing) An ordinance rezoning 17.54 acres from R-A (Residential Holding, 1 dwelling unit per acre) to REU (Rural Estate Use, 1 dwelling unit per acre) and applying REU zoning on 1.7 acres of newly annexed property to allow the development of a single-family residence and the construction of an accessory barn for horses.

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

Mrs. Dittmer responded to general questions about the location of the property.

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

Moved by Contreras/LaRusso for approval of Ordinance No. 2005-01. Motion carried unanimously.

Moved by Walker/LaRusso for approval of Ordinance No. 2005-02. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2005-03. Motion carried unanimously.

18. ORDINANCE NO. 2005-04 (CU-2004-18/SP-2004-24) FIRE STATION 78: (First Reading/Public Hearing) An ordinance granting a conditional use and site plan approval to allow a fire station in an R-2 (One-, Two-, and Multiple-Family Dwelling District) on a 4.52-acre parcel, located on the north side of Eber Road, east of Dairy Road, and west of Stack Boulevard. (Owner/Applicant/Representative - City of Melbourne) (P&Z Board - 12/02/04)

Attorney Gougelman read Ordinance No. 2005-04 by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously voted to recommend approval of the conditional use and the site plan, consisting of a single-sheet plan prepared by Frazier Engineering, Inc., of Melbourne, Florida, with a stamped and sealed date of November 22, 2004, with the findings as outlined in the agenda package and the following conditions:

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

Any substantial change to the proposed site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change includes, but is not limited to: 1) an increase in the number of driveways beyond the two proposed on Eber Boulevard; or 2) a decrease of 10% or more of the green area.

- b. Appropriate environmental permits must be obtained as part of the construction plan review process.
- c. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- d. The buildings shall be substantially consistent with the rendering submitted by the applicant.

Mrs. Palmer said she would like to know if the fire station will blend with the area rather than standing out with bright blue and red colors. Mrs. Dittmer said there are no colors proposed at this time with the conditional use. Mr. Schluckebier said that he does not believe that the colors will be as vibrant since the station will be located in a predominantly residential area.

Mayor Goode opened the public hearing.

Lee Estep, 908 South Fork Circle, said he lives directly across from the fire station site. Mr. Estep noted that he is concerned about the noise from the sirens, especially the air horns, from 11:00 p.m. until 6:00 a.m. He asked what the Fire Chief's policy is on the use of air horns.

The City Manager said that the Fire Department is aware that sirens and air horns are not applied randomly without cause or need. He said he knows it is their intention to provide the least amount of noise pollution. Additionally, Mr. Schluckebier noted that the fire station is proposed for this location because that is where the calls are.

Fire Chief Paul Forsberg stated that by state statutes the City must use its sirens when responding to an emergency with red lights. He added that this is for liability reasons in order to protect the City.

A brief discussion followed regarding the direction the trucks would be traveling, location to nearest station, and call volume in the middle of the night. The City Manager said he does not believe that the predominant number of calls occurs in the middle of the night. Mr. Estep asked for some assurance that the air horns will be used minimally after midnight.

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Mrs. Palmer said that she lives three blocks away from a fire station and she has never been awakened by the sound of trucks in the middle of the night.

Moved by Palmer/Contreras for approval of Ordinance No. 2005-04. Motion carried unanimously.

19. COUNCIL ACTION RE: Request by Brevard County Property Appraiser Jim Ford for waiver of City Sign Code as it relates to his political sign bond.

Mayor Goode said that Mr. Ford wrote him after the election and asked for the Code to be waived with regard to his sign bond. The Mayor said he explained that he does not have the authority to waive the Code. Mr. Ford was not satisfied with that and he asked for the agenda item.

Council Member Grace Walker referenced the agenda report and said she supports taking no action. Council Member Loretta Hand pointed out that Mr. Ford received instructions with the sign bond. Additionally, all other candidates had to abide by the law.

Moved by Walker/Hand to take no action on Mr. Ford's request. Motion carried unanimously.

20. COUNCIL ACTION RE: Appointment of one alternate member to the Code Enforcement Board (Postponed - 12/14/04)

Mr. Contreras nominated Karen Garavaglia. Moved by Contreras/Palmer to close the nominations. Motion carried unanimously. Moved by Contreras/Walker to appoint Karen Garavaglia. Motion carried unanimously. (1/11/2005 – 7/8/2008, unexpired three-year term plus full three-year term)

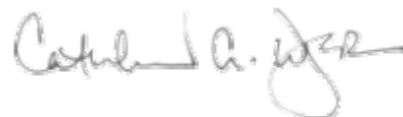
21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

22. ADJOURNMENT

Moved by Hand/LaRusso to adjourn. Motion carried unanimously.

The meeting adjourned at 8:25 p.m.



City Clerk – 1/20/2005

Approved by Council: 1/25/2005