

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
APRIL 26, 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 Vice Mayor Richard Contreras.

Vice Mayor Contreras welcomed Boy Scout Troop 555 to the Council Meeting.

1. Reverend Melissa Delker, First United Methodist Church, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	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

Absent: Harry C. Goode, Jr. Mayor (Illness)

4. Proclamations and Presentations

Vice Mayor Contreras presented the April Beautification Award to Holy Trinity Episcopal Church; accepted by Jim Cole and Robbie Watson.

Additionally, the Vice Mayor presented the following proclamations:

“National VNA Week”; accepted by Linda Shelby, Director of Professional Services, Visiting Nurse Association, Space Coast Office.

“Beta Sigma Phi Day”; accepted by Wynona Johnson, President, South Brevard City Council of Beta Sigma Phi.

5. Approval of Minutes - April 12, 2005 Regular Meeting and April 14, 2005 Special Meeting

Moved by Walker/Hand for approval of the April 12 and April 14 minutes. Motion carried unanimously.

6. City Manager’s Report

No additions/no discussion.

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7. Public Comments

Sam Nardone, 832 East New Haven Avenue, stated that he has two issues. First, he would like for Council to approve the display of banners in Downtown Melbourne. He reported that he spoke with and provided information to staff from the Planning Department last October. He noted that he believes banners would beautify Downtown Melbourne and enhance the economic situation for merchants. He displayed the banner that he was cited for hanging, which is 48" x 34". He asked Council to consider allowing a banner of this size, or slightly smaller, along with an annual fee of \$20.00 or \$25.00.

Second, Mr. Nardone said he held a meeting at his shop on April 15 regarding the homeless issue and associated activities in Downtown Melbourne. He said he would like Council to approve the formation of a committee to be comprised of Downtown Melbourne merchants, representatives from the Daily Bread and the Police Department and concerned citizens to work towards improving Downtown Melbourne. Although a number of organizations currently represent Downtown, he stated that he feels this committee would be independent and would report directly to the City Council.

Vice Mayor Contreras asked the City Manager and City Clerk to review Mr. Nardone's request and report to Council.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: Request for approval of \$74,000 funding assistance for the Henegar Center for building repairs and capital improvements to the primary building.

Moved by Palmer/Hand to convene as the Melbourne Downtown Community Redevelopment Agency for item "a." Motion carried unanimously.

- a. Approval of \$74,000 funding assistance to the Henegar Center with \$54,000 for building repairs and \$20,000 for capital improvements.

Pat Poole, 805 East Palmetto Avenue, distributed a report showing the grants the City of Melbourne has given to the Henegar Center since 1988. She discussed the conditions in the deed that transferred the property from Brevard County to the Brevard Regional Arts Group (Henegar Center). She added that the County has researched its files to determine if the conditions have been met and the information is now ready. Mrs. Poole asked Council to postpone taking action on this item until the information from the County has been reviewed.

Continuing, Mrs. Poole said that the deed contains a reverter clause. With regard to the capital improvements, the Henegar Center was supposed to obtain funds from the private business area rather than depending on the City for financial contributions.

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Jerry Brees, Executive Director, and Wendy Brandon, Board Member, Henegar Center, were present.

Mrs. Brandon reported that she has been a volunteer involved with the Henegar Center for close to 15 years and Mr. Brees has been the Executive Director for the past five and one-half years. She explained that the Henegar Center property was originally owned by the County. They deeded it to the Henegar Center with reversions in case the Henegar Center's efforts did not prevail. Mrs. Brandon reported that about nine years ago the Henegar Center made a presentation to the County showing that their monetary commitment had been met. Additionally, she referenced the letter in the agenda package from the County (Duwayne Lundgren, Special Assistant, County Commission District 4) indicating that the terms of the deed had been met.

Mrs. Brandon discussed the significant amount of money that the Henegar Center received from the State – money that they would not have received without local money. Contributions came from the community along with in-kind contributions. The Henegar Center suffered a tremendous financial loss after last year's hurricanes due to lost revenue. She added that the buildings did not receive any physical damage. The request on this agenda will not be on-going. It is a unique situation and they are very much in need of assistance.

Council Member Cheryl Palmer asked Mrs. Brandon to clarify the hurricane losses. Mrs. Brandon said that because they had no physical damage to the buildings, they were not able to receive insurance money for lost revenue.

Mr. Brees confirmed for Mrs. Palmer that as a result of the Center receiving grant money from the State, the building must be used for public purposes until at least 2014.

There were no further questions from Council.

City Attorney Paul Gougelman distributed a deed from 1976, which conveyed the property from the School Board to Brevard County. The deed contains a reverter clause that requires the property to be used for public purposes. Subsequently, Brevard County deeded two of the three parcels to BRAG.

Moved by Hand/Meehan for approval of Item "a" as recommended. Motion carried unanimously.

Moved by LaRusso/Walker to reconvene for the remainder of the agenda. Motion carried unanimously.

- b. Transfer of \$74,000 from the Downtown Parking Lot Resurfacing & Restriping project budget to the Henegar Center contribution budget. (Postponed - 3/22/05 & 4/12/05)

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Moved by Palmer/Hand for approval of Item “b” as recommended. Motion carried unanimously.

Mrs. Palmer asked if it would be appropriate for the City to make the County aware of the reverter clause in the 1976 quit claim deed from the School Board to the County. Council agreed that the City Manager should inform the County about the reverter clause.

9. ORDINANCE NO. 2005-20 (A&V # 279): (Second Reading/Public Hearing) An ordinance vacating the northern 1.5-feet of a 10-foot wide public utility and drainage easement along the south lot line of the property located at 2851 Chartres Avenue West. (Applicant - Larry & Jessica Shaffer) (First Reading - 4/12/05)

Attorney Gougelman read Ordinance No. 2005-20 by title. There were no disclosures by Council and the applicant, Larry Shaffer, was present and available for questions. There were no comments by the public.

Moved by Walker/Palmer for approval of Ordinance No. 2005-20. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2005-21 (AR-2005-168), ORDINANCE NO. 2005-22 (CPA-2005-05), AND ORDINANCE NO. 2005-23 (Z-2005-1022) DARLA M. & FREDRICK A. TRENNER: Ordinances providing for annexation, a Comprehensive Plan Amendment, and a zoning designation for a 0.19-acre parcel, located at 321 Live Oak Lane, north of Post Road, west of U.S. Highway 1, east of the Florida East Coast Railroad right-of-way. (Owner/Applicant/Representative – Darla M. & Fredrick A. Trenner) (P&Z Board – 3/17/05)

a. Ordinance No. 2005-21/AR-2005-168: (Second Reading/Public Hearing) An ordinance providing for annexation of 0.19-acre parcel. (First Reading - 4/12/05)

b. Ordinance No. 2005-22/CPA-2005-05: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment establishing a Low Density Residential land use on a 0.19-acre parcel. (First Reading - 4/12/05)

c. Ordinance No. 2005-23/Z-2005-1022: (Second Reading/Public Hearing) An ordinance establishing an R-1A (Single-Family Residential) zoning district on a 0.19-acre parcel. (First Reading - 4/12/05)

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The City Attorney read each ordinance by title. The applicant, Darla Trenner, was present and available for questions. There were no comments from the public and no disclosures by City Council.

Moved by LaRusso/Meehan for approval of Ordinance No. 2005-21. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/LaRusso for approval of Ordinance No. 2005-22. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/Meehan for approval of Ordinance No. 2005-23. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL PRESENTATION RE: Comprehensive Annual Financial Report (Hoyman, Dobson, & Company)

Chas Hoyman and Debbie Bradley, Directors from Hoyman, Dobson, & Company, the City's external auditing firm, were present.

Ms. Bradley provided an overview of the financial report and discussed the General Fund unreserved fund balance; the General Fund operating revenues and operating expenditures; the Water and Sewer System operating revenues and operating expenditures; the Golf Course operating revenues, operating expenses, and change in net assets; and the Airport operating revenues and operating expenditures.

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Ms. Bradley referenced the “single audit” section of the report regarding internal control over financial reporting and compliance with other matters based on audit of financial statements. She noted that they had no findings of significance; the City has a good Finance Department and good internal controls. Additionally, she noted that they have offered areas of improvement for the City’s computer system. This will be followed up on next year’s audit and is intended to ensure that good computer controls are in place.

Continuing, Ms. Bradley referenced the unfunded actuarial liability in the Fire Pension (\$2.5 million) and the Police Pension (\$17.3 million). She noted that if/when the market returns, that unfunded liability will go down. She added that there are ways to reduce the unfunded liability.

Council Member Mark LaRusso referenced the unfunded police pension liability and asked if the City is in a crisis mode. Ms. Bradley replied no and commented that the actuary assumes that everyone will retire and the payout will be today. If the market continues to not be good, the City’s contributions will have to increase in the budget. She added that it is good management to look at ways to change.

That concluded the report from the auditor.

12. COUNCIL ACTION RE: Contract award for the construction of a Public Works & Utilities Administration building, Project No. C04325, Certified General Contractors, Melbourne, FL - \$512,391; and transfer of \$162,000 from Water & Sewer Contingency to this project budget.

Assistant City Engineer Martha Campbell briefed Council. The recommendation is for approval of the construction contract with Certified General Contractors in the amount of \$512,391 and transfer of \$162,000 from the Water and Sewer contingency account to this project budget.

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

13. CONSENT AGENDA:

Note: Staff distributed a memo to Council indicating that the applicant for Item “i”, Courtney Fine, has withdrawn her request.

Moved by LaRusso/Palmer to withdraw Item “i.” Motion carried unanimously.

Moved by LaRusso/Palmer for approval of Items “a” through “h.” Motion carried unanimously.

Moved by Palmer/Walker to convene as the Babcock Street Community Redevelopment Agency for Item “j.” Motion carried unanimously.

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Moved by Palmer/LaRusso to approve Item “j.” Motion carried unanimously.

Moved by LaRusso/Walker to reconvene as the City Council. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Approval of agreement for design services for the Babcock Street waterline relocation at Fee Avenue, Project No. C05346, Kimley-Horn and Associates, Orlando, FL - \$39,225 and transfer of \$42,000 from Miscellaneous Water & Sewer Projects to establish a budget for this project.
- b. Change Order No. 4 to contract for construction of sidewalks under the Babcock Street Realignment, adding sidewalks on Sarno Road, Front Street Park, and Southwest Park, Project No. 01610, William Turnbaugh Construction, Inc., West Melbourne, FL - \$35,546.25.
- c. Approval of a reimbursement to Brevard County for a change order to a County contract for delays associated with their Turtle Mound Road sidewalk project, resulting from conflict with the Turtle Mound North Waterline Extension, Project No. C04326, \$30,000 and transfer of \$30,000 from the Water and Sewer Contingency budget to this project budget.
- d. Extension of HOME Tenant Based Rental Assistance benefits for Mary Graham and Beverly Jackson.
- e. Approval of Emergency Relief Program Agreement between the State of Florida, Department of Transportation and the City of Melbourne for Federal Highway Administration funding assistance for Hurricanes Frances and Jeanne and authorization for the City Manager to execute this agreement and all other documents pertaining hereto.
- f. Purchase of gasoline and diesel fuel, Glover Oil, Melbourne, FL and Petroleum Traders Corporation, Fort Wayne, IN – total estimated cost of \$365,423.
- g. Purchase of an ALERT AM® Emergency Advisory Radio System, Information Station Specialists, Inc. (ISS), Zeeland, MI - \$26,465.
- h. Travel authorization for Mayor Goode to participate in the Patrick Air Force Base 920th Rescue Wing 2005 Civic Leader Tour, May 19-20, 2005, Niagara Falls, New York.
- i. Denial of request for a fee waiver at the Melbourne Auditorium and reconfirmation of the provisions set forth in Resolution No. 1506 that establishes a fee system and policies and procedures for the use of such facilities. (Courtney Fine, 178 N. Crescent Drive, Beverly Hills, CA)

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Note: Item “i” was withdrawn at the request of the applicant.

- j. Approval to repay the outstanding balance (\$77,623) of the loan agreement authorized by Resolution No. 1787, dated October 22, 2002, to the General fund.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the consent agenda.

15. COUNCIL ACTION RE: Request for approval of a financial assistance program for swim lessons for children of low-income families residing in the City of Melbourne.

Leisure Services Director Mary Ann Bowman briefed Council.

Moved by Meehan/Walker for approval of the Leisure Services Financial Assistance Program for summer swim lessons. Motion carried unanimously.

16. ORDINANCE NO. 2005-25 (AR-2004-169), ORDINANCE NO. 2005-26 (CPA-2005-06), AND ORDINANCE NO. 2005-27 (Z-2004-1024) LARSON, LLC: Ordinances providing for annexation, a Comprehensive Plan Amendment, and establishing zoning on a 1.02-acre parcel, located on the east side of West Drive, south of the intersection of West Drive and Dow Road, and south of the Crane Creek Drainage District M-1 Canal. (Owner/Applicant – Larson, LLC) (Representative – Van and Stacey Jackson) (P&Z Board – 4/07/05)

- a. Ordinance No. 2005-25/AR-2004-169: (First Reading/Public Hearing) An ordinance providing for annexation of a 1.02-acre parcel.
- b. Ordinance No. 2005-26/CPA-2005-06: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Industrial.
- c. Ordinance No. 2005-27/Z-2004-1024: (First Reading/Public Hearing) An ordinance designating M-1 (Light Industrial) zoning on a 1.02-acre parcel.

Attorney Gougelman read Ordinance Nos. 2005-25, 2005-26 and 2005-27 by title. Planning & Economic Development Director Cindy Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval.

The applicant was not present. There were no comments from the public and no disclosures by Council.

Moved by Palmer/Hand for approval of Ordinance No. 2005-25. Motion carried unanimously.

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Moved by LaRusso/Meehan for approval of Ordinance No. 2005-26. Motion carried unanimously.

Moved by Walker/Meehan for approval of Ordinance No. 2005-27. Motion carried unanimously.

17. SITE PLAN APPROVAL (SP-2004-10) HOME DEPOT AND PINEDA RIDGE SHOPPING CENTER: (Public Hearing) A request for site plan approval for a 140,000 square foot home improvement store and 30,000 square feet of specialty retail stores on a 20.6-acre parcel zoned C-P (Commercial Parkway), located on the west side of Wickham Road, south of Pineda Causeway, across from Mariah Drive. (Owner - Home Depot U.S.A., Inc. and CBL Properties, Inc.) (Applicant/Representative - Kimley-Horn and Associates, Inc.) (P&Z Board - 04/07/05)

Mrs. Dittmer briefed Council and reviewed the agenda report. Transportation concurrency issues have been under review for more than six months and considerable discussion and coordination have taken place with Brevard County staff regarding this project. Brevard County staff indicated in a letter that the proposed project meets their traffic concurrency requirements. After a lengthy review, the City of Melbourne also determined that the proposed project meets current Melbourne traffic concurrency requirements. Subsequently, Brevard County indicated that concurrency may not have been met for the County. Both Brevard County letters are contained in the package.

The Planning and Zoning Board voted unanimously to recommend approval of the site plan, consisting of a two-sheet plan prepared by Kimley-Horn and Associates, Inc., of Vero Beach, Florida, with a stamped and sealed date of March 24, 2005, 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; 2) any change in the approved uses identified in the traffic study that will increase traffic; or 3) 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.

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- d. In order to mitigate the total loss of existing trees on site due to the amount of fill for the project, all interior island palms proposed in the construction/landscaping plan shall now become 65-gallon hardwood variety trees, or placed along the west property line as determined by City staff during construction plan review.
- e. The applicant must obtain the necessary permits from Brevard County for Constellation Drive and driveways along Wickham Road. Driveways are not eligible for impact fee credits since they are considered access improvements.
- f. The applicant will contribute a “fair share” portion of the cost of the mitigation, estimated at 8.5%, at the Wickham Road/Post Road intersection, subject to warrant with methodology approved by the City. This cost will be eligible for City of Melbourne Transportation Impact Fee credits.
- g. Constellation Drive shall be constructed to the westernmost access drive for Home Depot, and associated Wickham Road/Mariah Drive intersection improvements shall be constructed prior to a Certificate of Occupancy for Home Depot or the out parcel.
- h. Subject to satisfying a signal warrant and approval by Brevard County, and prior to a Certificate of Occupancy for Home Depot or the out parcel, the traffic signal with mast arm posts at Wickham Road/Mariah-Constellation Drive shall be constructed or a performance bond in the amount of 110% of the design and construction costs must be posted. Costs are subject to approval by the City of Melbourne. This project will receive its share (approximately 9/79) in credits of the eligible signal costs against the Transportation Impact Fee.
- i. Subject to approval by Brevard County and prior to construction plan approval for Home Depot or the out parcel, a continuous right turn lane with directional striping shall be required along Wickham Road.

Note: See Council action for additional conditions imposed.

Mrs. Palmer asked if it is the City’s opinion that this project meets City and County concurrency. Mrs. Dittmer replied that it is her opinion that this project meets the City’s concurrency requirements.

City Manager Jack Schluckebier agreed and added that the City does not issue official or unofficial recognition of the County’s concurrency system. Their system differs from ours. However, we do extend the County great latitude and great cooperation through our planning agreement. In this case the City asked the developer to demonstrate that it had the County’s approval to obtain access to Wickham Road. The County issued its approval and then changed its mind. In the past, the County had not considered its own concurrency for projects inside the City; apparently it now does. The City has not

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removed its cooperative attempt to work with the County and one of the conditions requires the applicant to obtain approval from the County for a driveway permit.

Phil Nohrr, attorney representing the applicant, stated that the Council has a positive recommendation from staff and a unanimous recommendation from the Planning and Zoning Board on this item. The applicant has met every one of the City's objective criteria in the Code for site plan approval. With regard to traffic concurrency, the City calculates using one method and the County calculates using another method. They had to prepare two reports and, according to their traffic consultant, they meet concurrency for the City and the County. He stressed that they are aware that the driveway issue is out there, and they are prepared to work with the County; that is going to be their burden.

Mr. Nohrr reported that they are going to install a six-foot wall along the north and west boundaries. Residents in this area expressed concern that their property is built up higher so the wall would need to start at their level in order for them to receive the full benefit. This would require an encroachment into the 25' landscape buffer; however, this won't be a material impact on the plan.

With regard to the conditions, Mr. Nohrr said that they agree with the findings and recommendations. They believe this is a good project and that Home Depot will be a good neighbor.

Mrs. Palmer asked if Home Depot made any calculations regarding the number of customers that would be drawn from the south. A Home Depot is located on New Haven Avenue and she is curious if this store will divide the customers.

Karl Passetti, P.E., traffic engineer with Kittelson & Associates, 315 East Robinson Street, Orlando, said that one version of their report considered a 10% reduction. This was based on a review of the map and use of judgment rather than a zip code determination. Subsequent to that, they determined that to apply such a reduction, they would have to provide hard data. Therefore, they pulled back and have not provided such a reduction in the report. He added that from an engineering perspective, people are traveling to the store located over eight miles to the south, and the proposed store would reduce the number of trips.

Council Member Kathy Meehan expressed concern with delivery trucks parking overnight, especially if they run their generators. This would affect the adjacent residents.

Peter Van Rens, Kimley-Horn, 601 21st Street, Vero Beach, said he is not aware that Home Depot allows trucks to park overnight.

Mr. Nohrr said if no overnight parking becomes a condition, it won't be an issue from their point of view.

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Council Member Mark LaRusso referenced the agenda package, which notes that there is a wetland area, evidence of gopher tortoises on site, evidence of scrub jay area on the site and the calculation that the development will generate 1,309 trips per day. He added that everyone knows that it is heck driving through this area now. He stated that he is having a hard time seeing this project, as massive as it is, melding with the community.

Mr. Nohrr said that a 0.3-acre wetland has been identified and they will have to comply with St. Johns River Water Management District rules. They are aware that there are scrub jays and gopher tortoise issues and they will be dealt with through the appropriate permitting agency and in compliance with Florida law. With regard to traffic, he said they can't run or hide from that issue. All they can do is deal with the objective criteria. With respect to the County changing the rules in the middle of the game, that is an issue of fairness. The professionals indicate that the problem or bottleneck occurs at Wickham and Post Roads. City staff said that issue needs to be addressed, and the applicant is willing to contribute to that improvement.

Council Member Loretta Hand said that her main concern is traffic. When there is a traffic accident, traffic is stopped and doesn't move. She said she wished that she had faith in the traffic counts, but she's having a problem with that. On Saturdays everyone is trying to drive north on Wickham Road to shop at the new Viera Mall. This is adding to the traffic backup.

Mr. Nohrr said that they are hoping to see a drop in the traffic counts now that U. S. 1 is open. He repeated that they are prepared to acknowledge their responsibilities and contribute towards a solution on Wickham Road.

Vice Mayor Contreras opened the public hearing.

John Panik, 3202 Lago Vista Drive, said he reviewed the proposal and he has an issue with the proposed wall. According to the plan, the applicant's highest grade is 38' but the wall is proposed to be built on an elevation that is 35.5'. He asked that the wall be constructed at the higher grade of 38'. Additionally, he said he talked to someone who suggested that a dirt berm be compacted prior to constructing the wall on top. This would place the wall about 14' high off grade and would allow for the sound from the delivery trucks to hit the wall and bounce the sound up rather than out.

Continuing, Mr. Panik said that the site plan shows a generator located in the back of the building; however, it does not appear to be buffered. He asked that some type of wall be built around the generator to buffer the noise. He concluded by repeating that he would like the six foot fence to be built on an eight foot high berm. And, he would like for the berm to start at the property's highest elevation, which is 38'.

Mrs. Meehan asked Mr. Panik if he supported or opposed the development. Mr. Panik replied that he kind of approves it.

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Doug Dixon, 2779 Caitlin Court, President, Live Oak Homeowners' Association, stated that the homeowners are opposed to the site plan approval. He added that residents first heard about this development in a newspaper article in yesterday's (April 25) paper. He recommended that Council allow time for the governing bodies of the seven homeowners' associations in the area to consider the impact the Home Depot will have on this area.

Continuing, Mr. Dixon said he spoke with County Commissioner Sue Carlson who indicated that concurrency has not been met with the County. And, even if the traffic counts are accurate, it is unlikely Viera will cease development. The true effect on the quality of life on the residents caused by noise, lights and loading dock activity needs further discussion. The most important issue is safety. In the past few years four people have been killed within one mile of their community. There are five schools in the area and traffic safety problems do exist.

Council Member Grace Walker asked how many members are in the Live Oak Homeowners' Association. Mr. Dixon replied 236 homes.

Council Member Mark LaRusso asked if the installation of the traffic signal would be something the residents would like. Mr. Dixon said that the quality of life outweighs the convenience of having a traffic signal and a nearby Home Depot.

Council Member Cheryl Palmer said that the City has criteria and an applicant has to meet that criteria. She informed Mr. Dixon that when his subdivision was being built there was great outcry that homes would bring more traffic. She recommended that he have a conversation with Commissioner Carlson about the huge impact that the development in Viera is having – which she suspects is much more than this commercial development.

Catherine Sanderson, 2790 Mariah Drive, Live Oak Subdivision, said that the residents are very concerned and are not in favor of this development for the following reasons: traffic; they don't need a traffic signal as a peace offering; two huge apartment complexes with over 500 units are being built in this area; vegetation will be destroyed for this big development and then in 10 years it will move to another area; and there are plenty of vacant buildings around that could be used. She stated that the area is at its maximum and gridlock is here.

Katherine Botto-Luisi, 2792 Mariah Drive, school security, Brevard Public Schools, reported that many children in the area bike to school. She said that she believes the development will bring sexual predators to the area. She submitted an FDLE printout and said there are 73 registered sexual offenders in the area. Additionally, Home Depot is not needed because there are already stores, hardware stores and landscaping businesses in the area. She stressed that her main concern is for the safety of the children.

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Julie Johnson, 2509 Tara Court, said when she moved to Melbourne in 1988 it was a fantastic alternative to living in Miami. Now, 17 years later, it takes her 20 minutes to drive 2.3 miles to drop her children off at school. She explained that it is her belief as a Brevard County high school teacher that we put our teenage drivers at a disadvantage when we overcrowd our roads. Additionally, Ms. Johnson said that the Home Depot parking lot will enable sexual predators to park across from the subdivision and watch the comings and goings of the neighborhood children. She asked Council to make the right decision.

Jack Bryant, 3170 Turtle Mound Road, said he is also concerned about Turtle Mound Road becoming the off load for Wickham Road. He said that he would like to see the dialogue expanded to a two mile radius rather than just the adjacent properties. Mr. Bryant recommended West Melbourne and Melbourne Village be contacted to determine what kind of neighbor Home Depot is. He is not sure that simply being concurrent with the Code makes a business a good neighbor.

Attorney Nohrr said he would like to refocus the discussion. The property is zoned commercial and if Home Depot goes away tomorrow, the acreage would still be commercial. The applicant does not prepare the meeting notice, so he is not sure what the residents know or don't know. The property has been zoned commercial a long time so there shouldn't be a lot of surprises.

Mr. Nohrr said he's having trouble with the logic. If he lived in Live Oak and the traffic is as it has been described, he thinks he would want a light. At the end of the day, it comes down to the fact that they meet the City's objective criteria. This is a quasi judicial hearing and there needs to be competent, substantial evidence in the record if the City is going to deny this request.

Continuing, Mr. Nohrr said that the project meets concurrency; they will raise the level of the wall, so that is not an issue; and they will stipulate to no overnight parking. With regard to sexual predators, he said he's not sure where to go with that issue, but he does not believe it falls into this equation. They won't impact the schools; sidewalks will be installed on the west side of Wickham; they meet the setbacks; they will install a traffic signal; they will participate in improvements at Wickham and Post; they will meet the rules and regulations of the State; and they will build a wall around the generator to muffle the noise.

That concluded comments from the public. The Vice Mayor closed the public hearing.

Vice Mayor Contreras called for disclosures. Mrs. Hand said Freda Schafer phoned her. She lives in the area and is opposed because of traffic and environmental issues. Mr. Hugh Evans spoke with her today regarding the zoning being commercial and the fact that whether it's a large building or a bunch of small businesses, it's still going to have the traffic situation on Wickham Road.

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Mrs. Palmer said she had a discussion about this at the Metropolitan Planning Organization meeting and she received information of opposition from Sue Carlson.

Mrs. Meehan said she received a call from Freda Schafer who is concerned about this development. Mr. LaRusso added that Ms. Schafer phoned him but he did not return the call.

Vice Mayor Contreras said that on April 6 he received a message from J. Moynahan regarding the traffic concurrency for Home Depot, the Planning and Zoning Board meeting, and the site plan. On April 11 he spoke with J. Moynahan regarding Home Depot and about the County rescinding the concurrency, which had previously been approved. On April 18 he spoke with Phil Nohrr about the site plan, the independent concurrency study and the North Wickham Road corridor being a much bigger problem. On April 18 he and the City Manager met with Commissioner Carlson regarding Home Depot, concurrency, County driveway permit and the MPO involvement. On April 24 he received a letter from Penne Funk who is opposed. On April 25 he received a call from Bruce Mochwart in support of the Home Depot development. On April 25 he received a call from Doug Dixon, President, Live Oak Homeowners' Association opposed to the Home Depot.

Attorney Gougelman recommended that disclosures be made prior to the public hearing so people in the audience have an opportunity to offer evidence. Additionally, if any of the Council Members speak to anyone during the break about this issue, it will need to be disclosed when Council reconvenes.

Recessed: 8:42 p.m.
Reconvened 8:52 p.m.

Moved by Palmer/Meehan for approval of the Site Plan (including the conditions outlined in the agenda package). (*See clarification below.)

Mrs. Meehan said that this is commercial property. And a Home Depot is not as traffic oriented as other commercial uses. The project meets concurrency and City staff has done a great job of researching this item.

Mrs. Walker said that the zoning is in place. She does have a concern for the safety of the children and drivers, but she believes a traffic light will help.

Mrs. Hand said that legally she does not believe the City could turn this down because it does meet the criteria. She added that she can't offer anything to deny the request.

Mrs. Palmer said that this is commercial property and will be developed commercially. She appreciates that a traffic signal will be installed; Live Oak residents have needed that from day one.

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Mr. Contreras said that the City Code requirements have been met. The significant issue has been traffic and he knows that City staff and the developer have looked at this issue for months. The City's concurrency is at the front end and the County's concurrency is after the fact. He added that nothing will happen until the driveway permits have been authorized by the County.

Mr. Contreras concluded by saying that the City has previously wasted thousands of tax payer dollars defending lawsuits that couldn't be defended for denying developments that met the City's Code.

Mr. Contreras said he has questions concerning some of the conditions that were brought up.

*Mrs. Palmer said it was her intent to include the additional conditions, including raising the grade level for the wall, no overnight parking of trucks, and a buffer for the generator. Mrs. Meehan, as the seconder to the motion, agreed.

Mr. Nohrr said that for the record they agree with the additional conditions.

Mr. Contreras referenced Mr. Nohrr's earlier comments about an encroachment into the landscape buffer relative to the six foot wall. Mrs. Dittmer said that Mr. Nohrr said that if there is a need to add a berm to raise the elevation of the fence, they will move the wall off the property line. It is impossible to put a berm and a fence on the property line. The wall would slide inward, at least five feet, to prepare the berm and the foundation for the wall. There would still be landscaping in the 25'.

A brief discussion followed regarding the overnight parking of trucks. Mr. Nohrr stated that he understands that the City does not want the overnight parking of trucks and they would stipulate to that.

Mr. Schluckebier said they would like the opportunity to work with the applicant on the language. Mr. Nohrr has conceptually agreed with the conditions. Mr. Nohrr said he would agree to working with staff on the language.

The question was called on the motion, including the clarification, and any "fine tuning" of the language. Motion carried unanimously.

18. ORDINANCE NO. 2005-28 (Z-2004-993) AND ORDINANCE NO. 2005-29 (CU-2004-15/SP-2004-13) INTRACOASTAL MARINA: Ordinances providing for a zoning change and a conditional use with site plan approval on a 6.32-acre portion of a 6.5-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 – 04/07/05)

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- a. Ordinance No. 2005-28/Z-2004-933: (First Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) and C-C-2 (Conditional Use approval for height) to C-1 (Neighborhood Commercial).
- b. Ordinance No. 2005-29/CU-2004-15/SP-2004-13: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow an additional building height of 89 feet, 8 inches and to allow the development of 170 residential condominiums in a C-1 zoning district.

Attorney Gougelman read each ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted 5 to 1 to approve the request.

Mr. Contreras called for disclosures. Mr. LaRusso said he met with Mr. Romandetti yesterday morning in his office and he presented him with a packet of information about the project. Mrs. Meehan said she met with Mr. Romandetti at Meehan's and he presented her with a copy of the proposal. Mrs. Walker said she met with Mr. Romandetti who presented her with a copy of the proposal. Mrs. Palmer said she received a call from Chris Romandetti who asked to meet with her. She asked him to leave the information at City Hall and yesterday (April 25) she picked up the information from the City Clerk's Office. Mrs. Hand said she was apparently left out.

At the request of Attorney Gougelman, Mr. Romandetti submitted a duplicate packet to the City Clerk for inclusion in the record.

Chris Romandetti, applicant, apologized for not providing information to all the members in advance of the meeting. He referenced the packet of information distributed and provided an overview. The information shows how the buildings and green area would look with the conditional use for height versus without a conditional use for height. The development provides for 170 upscale riverfront condominium units, marina basin, river views, and parking for public and guest access; the marina and facilities would be open to the public; there will be one-half mile of public docks and walkways; a river walk would be engineered to accommodate future plans of the City for a walk along the U. S. 1 corridor; and a retail area and restaurant would be accessible to the public. The office complex would provide employment for more than 300 local area residents.

Mr. Romandetti compared the features of the basic plan and the recommended plan along with the tax advantages. He summarized the benefits and reported that he met with folks in the area who are in favor of the project. He added that he received quite a bit of input before reaching this point.

In response to Mrs. Palmer, Mr. Romandetti said they don't plan to restrict any of the parking on the upper level. It will be available for the restaurant, shops, river walk, etc.

Mrs. Palmer asked Mr. Romandetti to expand on his meetings with area residents. Mr. Romandetti said that four houses were within 500'; however, they went beyond that

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and approached over 60 houses. They walked the neighborhood with fliers and information and no one has said that they don't like the plan.

Mr. LaRusso asked about a fence, wall, and/or shrubbery that would block the view. Mr. Romandetti said that by Code they are required to put in shrubs; however, he will not construct a wall or gate. He stressed that his landscaping plan will exceed Council's expectations.

Mr. LaRusso asked about the FAA approval for the height. Mr. Romandetti replied that they are located in the approach area for the Airport, but they believe they have done their homework with FAA.

In response to Mr. LaRusso, Mr. Romandetti said they already have 110 reservations for the first building.

Mrs. Palmer said that Council has seen a lot of site plans and conceptual drawings that didn't reflect the final product. She asked the applicant how committed he is to the concept and if he was willing to enter into a pre-development agreement.

Mr. Romandetti said that his information might not reflect the color choices; however it reflects height, footprint and setback. He asked for flexibility with the balconies and windows.

Mrs. Hand referenced the flight path and asked if the units will be soundproofed. Mr. Romandetti said that it will be a solid concrete building and they will use high impact glass.

Mrs. Meehan asked if the condominiums would have shutters. Mr. Romandetti replied that on the north, south and west sides they plan on using high impact glass. Towards the east, he's not sure that he'll have a restriction on shutters. If they do have shutters, they will be clear.

Mr. Contreras asked if the conditions are sufficient to reserve public parking. Attorney Gougelman said that he feels the conditions in the ordinance are sufficient unless Council feels the need to go further with the applicant.

In response to Mr. LaRusso, Mr. Romandetti said he verbally agreed to keep 90% of the boat slips open to the public. The state determines the restriction; however, the marina will always be open to the public and a person won't have to buy a condominium to rent a slip. As the state moves on that, he will have to do whatever the state requires.

Mr. LaRusso asked if this means the state moves from 90% public to 80% public if he would then be in violation. Mrs. Palmer said she believes that the State number would be a minimum number rather than the absolute number required.

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Vice Mayor Contreras opened the public hearing.

Pat Poole, 805 E. Palmetto Avenue, said that although she has problems with the height, she supports the request. The applicant has his heart in this project and is willing to please the people in the neighborhood. Additionally, she is in favor of the additional green area, the walkway and the landscaping.

Bill Miller, 2016 Grant Place, stated that as a long time resident of Downtown Melbourne, he is in support of this project.

The Vice Mayor asked the Airport to comment on the flight path issue.

Rick Cloutier, Director of Operations, Melbourne Airport, explained that the air space at the Airport is a complicated, mathematical equation. From the end of the runway an imaginary surface goes up. He calculated, using FAA guidelines that govern imaginary surfaces, a maximum height for the building of 137'. Therefore, from the Airport's concern, it is below their imaginary surfaces line.

Mr. Cloutier said that they did talk about a navigation easement above the property, which would let people know that planes would be taking off and the proximity to the Airport so questions don't arise later.

That concluded comments from the public.

Attorney Gougelman referenced condition "g" in Ordinance No. 2005-29 and asked for a description of the easement. Mrs. Dittmer explained that there is a utility easement on the property that has to be abandoned and a request is proceeding through the Engineering Department.

Attorney Gougelman recommended minor changes to Section 2 of Ordinance No. 2005-29 as follows: Condition "a" – the site plan information should be revised to reflect the project number, signed and sealed date, and the revision date. Condition "c" – revised to reflect 10-foot wide easement. Condition "g" – revised to include a description of the easement that needs to be abandoned and vacated.

Moved by Hand/Walker for approval of Ordinance No. 2005-28. Motion carried unanimously.

Mr. LaRusso said he would like to move for approval of Ordinance No. 2005-29 with a change that the number of public boat slips will be regulated by the State rather than the City.

Following a brief discussion, Mr. Schluckebier said if Council is inclined to make an allowance for the possibility that the State might reduce the number in the future, that a number below 90% be selected rather than dispensing with the number altogether.

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Mr. Contreras asked Mr. Romandetti if he was amenable to a number between 50% and 90%. Mr. Romandetti promised Council that he would never make membership or purchase of a condominium a requirement to rent a boat slip. However, he does not want to be in conflict with the State's requirements.

Mr. LaRusso said that the condition should refer to the State required number rather than compelling the marina owner to stay at 90%. He added that marina owners have to recuperate their losses.

Discussion continued. Mr. Romandetti stated that he would never go less than 50% public on the boat slip rentals.

Moved by LaRusso/Meehan to approve Ordinance No. 2005-29 with a revision to condition "d" that public access to the marina shall never be less than 50% of the slip rentals, along with the revisions noted by the City Attorney. Motion carried unanimously.

Mrs. Palmer said that without the conditional use, this project could have gone through with greater density, less setbacks and no breezeway. This is a definite improvement over what could have been done within the current regulations.

19. ORDINANCE NO. 2005-30, GOLF COURSES ADVISORY BOARD: (First Reading) An ordinance amending Chapter 2, Administration, Division 9 relating to the Golf Courses Advisory Board secretary and scheduled meetings.

Attorney Gougelman read the ordinance by title. The City Manager briefed Council.

Moved by Walker/Meehan for approval of Ordinance 2005-30. Motion carried unanimously.

20. ORDINANCE NO. 2005-31 (LDR-2005-01/FOC-2005-01) PARKING REGULATIONS AND RESOLUTION NO. 1931: An ordinance amending Appendix D, Chapter 9, parking regulations and a resolution adopting a "Fee in Lieu of" for downtown parking.

a. Ordinance No. 2005-31/LDR-2005-01/FOC-2005-01: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 9, parking regulations. (Applicant – City of Melbourne) (P&Z Board – 04/07/05)

b. Resolution No. 1931: A resolution adopting a "Fee in Lieu of" for downtown parking.

Attorney Gougelman read Ordinance No. 2005-31 by title. Mrs. Dittmer briefed Council on the request and reviewed the agenda report.

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Mrs. Hand referenced Section 2 of the ordinance and said she has concerns with allowing 10' parking spaces. She added that a large sport utility vehicle would probably not have enough room to maneuver.

Mrs. Dittmer said that 10' would be adequate and would accommodate an SUV. The intent is to allow 10' for spaces that are assigned or provided for employees.

Mrs. Walker stated that she can't support 10' wide spaces. Too many cars are big and cars get banged when doors are opened.

There were no comments from the public.

Moved by Meehan/Palmer for approval of Ordinance No. 2005-31.

Mrs. Palmer said she feels there may be a misunderstanding on what spaces these pertain to. Mrs. Dittmer explained that the only place where a 10' space would be allowed would be in an enclosed garage where the spaces are assigned. A 10' space would not be allowed in an open parking lot; outside parking spaces would remain at 11'.

The question was called. The vote was:

Aye: Meehan, Palmer and Contreras

Nay: LaRusso, Walker and Hand

Motion failed.

Moved by Hand/LaRusso for approval of Resolution No. 1931. Motion carried unanimously.

Mr. Schluckebier asked the Members who voted nay to let him know if there are any provisions of the ordinance that are worth pursuing, especially since a lot of staff time went into this ordinance and it has a lot of viable ideas.

21. COUNCIL DISCUSSION RE: Establishment of a committee of community and civic leaders for the purpose of identifying and recommending to Council naming opportunities within the City of Melbourne to honor Dr. Martin Luther King, Jr. (Requested by Council Member Mark LaRusso)

Mr. LaRusso said he is proposing an ad hoc committee to be appointed as follows: Each member of City Council would recommend one person and the City Manager would recommend three. This would model the way the Historic Preservation Advisory Board was established. Additionally, staff would be available for these meetings and the committee would have full access to City information.

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Mrs. Meehan asked the timeframe for the committee to work. She added that she is thinking of one year. Mr. LaRusso asked why a year should be placed on the committee if it can complete its work in six weeks.

Mrs. Meehan stated that she wants business owners and residents on the committee.

Mr. LaRusso said that each Member will choose a committee member from their district and the Manager would choose three to fulfill the committee.

Mrs. Hand said that the committee should not be comprised of 10 because they could have a split 5/5 vote. Mr. LaRusso said in that case the City Manager should appoint two or four.

(Note: Council received a letter dated April 26 from Leonard Ross, Coalition for the Achievement of the Martin Luther King, Jr. Dream, requesting the City co-sponsor the annual MLK Peace March and program by providing a portion of the auditorium costs and the liability insurance costs.)

Mrs. Palmer asked Mr. Ross to discuss his letter. She asked if this request is in place of a street naming.

Leonard Ross, 448 Coach Road, Satellite Beach, said that the co-sponsorship would be in addition to the street naming. He discussed the cost involved and the difficulty the organization has in obtaining donations.

Mrs. Meehan said she would like to make that a separate issue from the agenda item. Mr. Contreras agreed that they are two distinct issues. Mr. Schluckebier said that Mr. Ross's request could be referred to the committee.

Mrs. Palmer said she understands why Mr. LaRusso would like to form this committee. And, it sounds like a good idea. However, her reservation is that when we form committees and give them a task to return with recommendations, quite often they expect their recommendations to be automatically approved. If this committee is formed to do what couldn't be done through the normal process – which is to rename an existing street – she would have great difficulty with that. She added that she would be more comfortable with tasking this committee with looking at new streets and parks rather than renaming an existing street.

Mr. LaRusso said he is looking for civic and community leaders to make specific recommendations. He added that he would like the committee to conduct at least one public hearing.

A brief discussion followed.

Moved by LaRusso/Palmer to establish a committee with each Council Member and the Mayor recommending one committee member from their district, whether civic or

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community leader; that the City Manager recommend two people; that no timeframe be assigned on when they have to return to Council; and that the committee conduct a public hearing before submitting its recommendation to City Council.

Mrs. Palmer asked Mr. LaRusso if he really wants each Council Member to appoint someone from their district. Mr. LaRusso said this would ensure that the entire City is represented.

The question was called. Motion carried unanimously.

22. COUNCIL ACTION RE: Movement of members on the Architectural Review Board.

From the agenda report: At the February 8 meeting, City Council appointed Ann Luttrell as a regular member to the Architectural Review Board. It was not clear in the agenda material that alternate member Joyce Miller should have been appointed as the regular member in order to comply with the City Code provision for the board, which states, “at all times each (redevelopment) district shall be represented by at least one member.” The two affected members have no objection to changing places on the committee.

Moved by Palmer/Walker to appoint Joyce Miller as the regular member representing Downtown Melbourne. Motion carried unanimously. (Term: 4/26/2005 through 2/25/2008, unexpired three-year term)

Moved by Walker/LaRusso to appoint Ann Luttrell as an alternate member. Motion carried unanimously. (Term: 4/26/2005 through 9/30/2007, unexpired three-year term)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 East Palmetto Avenue, referenced the Henegar Center (Item #8), and said that the information that the County is retrieving from its records will be available on Wednesday (April 27). She questioned the validity of the letter in the agenda package from Duwayne Lundgren that indicates that based on the “memory” of someone from the County, the conditions of the deed had been met.

The City Manager reported that West Melbourne is considering levying a property tax. Currently they receive services from Brevard County Fire/Rescue through an MSTU. If they levied a property tax, they would be in the position of contracting for fire service. Since Melbourne will soon have a fire station on Eber Road, staff is having preliminary discussions with West Melbourne about providing services through a contract. The County has been notified about the discussions.

Mr. Schluckebier asked Council to comment if there were any objections to the City pursuing this idea with West Melbourne. There were no comments.

Council Member Meehan referenced the request from Leonard Ross that the City co-sponsor the annual Martin Luther King Jr. Peace March and program. Council

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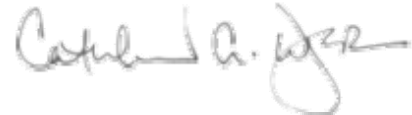
concurrred with considering this request during the annual budget review of requests for funding from non-profit organizations.

Mrs. Meehan said she would like to see the City begin clearing pepper trees and overgrowth along the river on U. S. 1. The City Manager replied that 80 – 90% of the property in that area is privately owned. Staff will continue to work towards acquiring more frontage along the river.

24. ADJOURNMENT

Moved by Meehan/Walker to adjourn. Motion carried unanimously.

The meeting adjourned at 10:47 p.m.



City Clerk – 5/3/2005

Approved by Council: 5/10/2005 w/addition of
verbatim of Council discussion on Item #17

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PARTIAL VERBATIM – ITEM #17

NOHRR: We will work with your staff, when it comes down to the final plans, to try and mitigate where we can, any impact upon the residents. That we are pleased to do. But please don't penalize Home Depot because we just happen to be a big box operator. What if we just put in a whole bunch of little boxes and get the same square footage, and the same type of trip generation and you're going to have the same issues. Are we just going to say no you can't use your property even though it's zoned commercial? I don't think we want to go there, I don't think there's a factual basis to go there because in essence we are starting to talk about a moratorium. A moratorium may be something that will be talked about at some point in time and I'm sure your City Attorney and City staff will brief you about the criteria when you get there and what all that means, and then how you get out of that. But we are not there yet. And I can tell you, we're going to do our darnedest to see that Wickham Road doesn't get there. We are trying to be part of the solution so it doesn't get there. I mean, yes, we can talk about Viera, and yes we can talk about these other things. Maybe they add more trips, maybe they don't add more trips. We wish Viera well. This isn't an us versus them. We don't want it to be a City versus a County. We are already courting that and we wish we weren't. We would like to just serve one master, candidly, but unfortunately the way the permitting rules are, Brevard County controls that road and they are going to be heard from as far as that property permits; we will work with them, we'll resolve it. They'll come up with something that is either going to be the standard or isn't, or we will get to some sort of solution with them, I hope, if it's fair and reasonable. But as far as the City goes, I would just respectfully say to you, we meet your objective criteria. I don't, I have sympathy, and maybe that's not the right word. Folks have a right to object, but at the end of the day, is there any evidence to say that the Home Depot shouldn't come in? If you're saying that, in essence what you are saying, no peripheral development should be on this property. And I respectfully suggest that we shouldn't go there. The factual basis isn't there to do it.

CONTRERAS: This will close the Public Hearing portion of this particular item, number 17. Bringing this back to Council, before we break, what I'd like to do is go ahead and secure disclosures. Does anyone have disclosures on Council.

HAND: A Mrs. Freda Schafer called, she lives in that area, she is opposed to the shopping center because of the traffic and the environmental issues that are there. Mr. Hugh Evans spoke with me today regarding the zoning for that being commercial and saying that whether, just as Mr. Nohrr had mentioned, whether it's a large building such as Home Depot or whether it's small businesses, you're still going to have that traffic situation on Wickham Road. That's all.

PALMER: My only conversation regarding this and the first time I actually was really made aware of the development was at the MPO meeting and I received information of opposition from Commissioner Sue Carlson.

WALKER: I have no...

MEEHAN: Freda Schafer also called me, but she said, she told me she lives off of 192, but still is concerned because of traffic on Wickham.

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LaRUSSO: Ms. Schafer called me as well, too, but I did not return the call.

CONTRERAS: April 6, 05, conversation with Mr. Moynahan and contents was the Pineda Ridge Development and Home Depot. The Planning and Zoning meeting of April 7, site plan, Council, the end of the month to April which we are on-going as we speak. Also, April 11, 05, another conversation with Mr. Moynahan concerning the Home Depot and the discussion concerning Council, excuse me, Commissioner Carlson's office rescinding the concurrency that had been previously okayed. April 18, 05, conversation with Attorney Nohrr, spoke with Mr. Nohrr concerning the Home Depot as well as the agenda item that is appearing this evening and about the independent concurrency study by Renaissance that is in process, vis-a-vis the MPO. And about the north Wickham corridor and its associated problems. Same date, April 18, 05, met with Commissioner Carlson and City Manager, Dr. Schluckebier. Discussed concurrency, the MPO involvement, as well as the County driveway permit. April 24, 05, received letter from a Ms. Penne Funk in opposition to this Home Depot project. Received a call April 25, 05, from Mr. Bruce Mochwart in support of the Home Depot project. April 25, 05, received a message from a Mr. Gleason, president, Live Oak Homeowners' Association, and he'd left a message that they were not in favor of the Home Depot project.

GOUGELMAN: Mr. Mayor, I'm going to recommend that in the future for Public Hearings that the quasi-judicial disclosures be done at the beginning of the Public Hearing. If there is anybody in the audience that would care to offer evidence with regard to any of those telephone conversations or objections, I think you have to afford them an opportunity at this time.

CONTRERAS: Okay, that's fine. Also, Mr. Gougelman, relative to, we are going to take a break here, any further discussions. What advice do you have for Council relative to any further discussions with the public on this particular issue?

GOUGELMAN: Needless to say, because it is a quasi-judicial hearing, if they do have any discussions during the break, those should be disclosed when we come back.

CONTRERAS: Okay, thank you. At this particular time we will take a break for ten minutes. Thank you.

BREAK

CONTRERAS: Site plan approval and we have a recommendation for approval of SP-2004-10 subject to the findings and conditions contained in the Planning and Zoning Board memorandum. What is the pleasure of Council?

No immediate response...

PALMER: All right, for discussion I'm going to move for approval.

CONTRERAS: So, motion for approval, do I have a second.

MEEHAN: I second.

CONTRERAS: We have a second. Discussion.

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PALMER: After you.

MEEHAN: Well, number one, I think, considering that it is a commercial piece of property and what could go in there is a Wal-Mart Supermarket, when I think of Home Depot, that is not so much traffic oriented as other things that could go in there. Certainly I am for safety, and we do meet the concurrency of City staff. City staff has done a great job in doing all the research. So, that's my thoughts on that.

CONTRERAS: Okay, thank you. Any other discussion. Council Member Walker.

WALKER: I have the concerns that have been expressed. It is zoned as it is. Less desirable things could go in there, and yet I have the concern for the safety of the schools, the children and all the drivers who have to drive along there. I do think that a traffic light will help, but due to the zoning that's in place and all the information we have, even though I don't really want to do so, I have to support it, the motion.

HAND: Mr. Vice Chairman. I know what my heart tells me. My heart tells me no, forget it. And you know, I think that we better take a good hard look at what we are annexing up there for more commercial things to come on to Wickham Road. And, like I said, my heart tells me no, but legally, I don't think we have a leg to stand on. And I think we'd have a big lawsuit coming at the City of Melbourne if we do turn this down because they meet all the criteria. There's not one thing, with the exception of the cut that has to come through the County, but legally we can't offer them anything to deny the request.

PALMER: Well, Councilwoman Isenberg-Hand has just reiterated what I had to say and I will add that this is commercial property, it will be developed commercially and I appreciate that they are going to put in the traffic signal. The Live Oak residents have needed that from day one. And I also would reiterate that we need to take a careful look at any further annexations in that area because until we get the Pineda extension through there, it doesn't look like there's any relief coming and we hope that will offer relief. And I hope that this will offer relief to the south end of Wickham Road for all the traffic from people as far away as Viera traveling to 192 to Lowe's and Home Depot.

LaRUSSO: It's all been said.

CONTRERAS: Well, needless to say that this particular project is deep in the heart of my district and what has already been articulated by my fellow Council Members is that the City Code requirements have all been met. I believe that the significant issue has been the traffic and I know that the City Planning and Zoning and Development all have taken a look for months and months on this particular one issue. And interesting enough, the criteria that the City imposes on applicants is at the front end of these developments. So this is where the opportunity for the City's perspective is that we put a condition in place that they must receive concurrency from the County. The discussions that have been, you saw my, you heard my disclosures, I've been kind of knee deep into this one, in the sense that I live right off of Parkway. I travel up and down the north and south portion of Wickham daily, and it would be unfair to say that, oh well, that's not much traffic is it, well that's not true. And when we take a look at the numbers, they're just a hair below capacity. Capacity meaning 100%. And this is where the government entities kick in, if you will. The City, again, our concurrency is at the front end. The concurrency with the County is after

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the fact, and again, not to be a broken record, but again, nothing is going to happen until there is the concurrency or the driveway permits are issued or authorized by the County. So, having said that, again, my fellow Council Members reiterated that it meets City Code. And we've been through this before with other plans in the sense that if they were denied, as a matter of fact in the neighborhood to the north around Summerbrook, FP&L comes to mind in the last few years. The City was sued, we lost, and we wasted in effect, and I hate to use that term, but wasted in effect several thousands of tax payer dollars trying to defend that particular item when we really couldn't. So that's a problem that we as a Council have to take into account. Again, the tax payers' aspects. I do have a question concerning some of the conditions that were brought up, above and beyond, I believe.

PALMER: Mr. Vice Mayor, I didn't say that when I made the motion for approval, but I do want to include those additional conditions that Mr. Nohrr has agreed to, raising the grade level for the wall, and not blocking the trucks, cueing the trucks up over night and before daylight, and loading and unloading.

MEEHAN: Also the generator.

PALMER: And buffering the generator.

MEEHAN: Yeah, buffering the generator.

CONTRERAS: Right, so Mr. Nohrr, do you, your applicant concur with those additional conditions?

NOHRR: For the record we do.

CONTRERAS: I do have one more question of the City Attorney relative to the encroachment of the 25 foot landscape buffer. I thought I heard Attorney Nohrr mention something about that in relation to the six foot wall build up. About some need to encroach.

DITTMER: I believe what Mr. Nohrr referenced was that if the need is to add a berm to raise the elevation of the fence, that they're going to then need to move that wall off the property line. It is physically impossible for them to put a berm and a fence on the property line. So that fence, or wall, will actually slide inward. I'm not sure how many feet, if you've actually looked at it that far, but it'll probably need to come inward at least five feet to prepare the berm, the foundation for the wall, so that's what he was addressing. That will not have an effect on encroaching into the, it would also be landscaped in that 25 feet.

GOUGELMAN: Mr. Mayor, I think for the record if you all are going to impose some additional conditions, we need to make sure that the Council specifies the exact nature of those conditions. For example, let's take the trucks revving their engines or whatever, and not having that overnight. If a truck revs its engines before 10:00 at night, is that acceptable? If a truck revs its engines before midnight, is that acceptable? I think you see where I'm going. If you simply say don't rev your engines overnight, it is probably not enforceable because it's too vague as to what the owner/developer is being required to do. It may be, you may want to consult with the Manager or the Planning Director as to what the standards ought to be.

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WALKER: And ours.

MEEHAN: What I'm trying to avoid is a truck overnight, having this generator on because he has no access to electric and then you can hear that. So I'm trying to avoid the noise.

PALMER: We were talking about trucks that are parked there. We had this situation behind Rathmann, I believe, where delivery trucks would pull along the streets and sit there waiting for them to open up with their motors running and so forth and disturb the neighborhood.

MEEHAN: That's another issue, too.

PALMER: I was referring to the trucks coming in and parking overnight with their motors and so forth running to make constant noise overnight.

CONTRERAS: Sounds like there's two generator issues. One is the actual semi itself, and I believe that Attorney Nohrr alluded to also about the generator enclosure from, I believe Mr. Panik or Mr. Dixon. So there was an actual generator of the building itself. Is that correct, Mr. Nohrr?

NOHRR: That is correct. I did understand that you did not want overnight parking with the trucks because I guess with sleeper cabs and stuff. And that is what I understood was to be prohibited and we certainly...

MEEHAN: Yeah, when they come in early, there are areas they're allowed to spend the night with..., but that shouldn't be at Home Depot.

CONTRERAS: So we will yield to the City Manager or the Zoning Director.

SCHLUCKEBIER: Mr. Vice Mayor and Council Members what we would like to do is to bring, have the opportunity to work with the applicant and bring some language back for the Council to review down stream. But I'm not sure that you would.... He's conceptually agreed to the ideas and I think the Council expressed and offered those as additional conditions so that you have plenty of substance, not the specifics, but substantively the ideas of additional conditions in those three areas. That would give the applicant and City staff an opportunity to get things in there that make sense that are sustainable.

CONTRERAS: Is the applicant amenable to conferring with staff?

NOHRR: Yes.

CONTRERAS: We have a motion for approval of SP-2004-10 subject to the findings and conditions contained in the Planning and Zoning Board memorandum and to let's see, six inch (foot) wall, the land will be built up, no overnight semi truck parking, the generator enclosure and any of the requirements or fine-tunings associated with that will be conferred and agreed to with staff and the applicant. All those in favor please signify by saying aye.

All voted aye.

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CONTRERAS: I vote aye, all those opposed. (No response) Motion carried six to zero.