

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 24, 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 C. Goode, Jr.

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

Present:	Harry C. Goode, Jr.	Mayor
	Richard Contreras	Vice Mayor, District 1
	Mark LaRusso	Council Member, District 2
	Kathy Meehan	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Loretta Isenberg-Hand	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

Mayor Goode presented the following proclamations:

“Code Enforcement Officers Appreciation Week,” June 6-10; accepted by Code Compliance Inspectors Ben Rigsby, Terry Oliver, Matt Daszuta, and Joe Faletra.

“Management Week,” June 6-11, 2005; accepted by Jeff Eberts and Violet Smith, Florida Space Coast Council, National Management Association.

“National Garden Club,” June 5-11; accepted by Sandi Dix, President, Melbourne Garden Club.

The Mayor noted that The Savannahs at James Landing received the June Beautification Award.

Additionally, a five-year employment service pin was presented to Vice Mayor Richard Contreras.

5. Approval of Minutes - May 10, 2005 Regular Meeting

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

6. City Manager’s Report

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City Manager Jack Schluckebier referenced the memorandum distributed to Council and asked that an item be added to the consent agenda. The item relates to a mutual aid agreement between the City of Melbourne and the City of Vero Beach.

Moved by Walker/LaRusso to add Item 14 “e” to the agenda. Motion carried unanimously.

7. Public Comments

John Mutschler, 4565 Grand Meadows Boulevard, distributed a document dated February 29, 1996, entitled “Dedication of Grand Meadows Boulevard, Baymeadows Subdivision.” He stated that the dedication of the road provides perpetual access to and from all lands adjacent to said right-of-way. Mr. Mutschler commented that he does not know why the public access had to be granted other than to accommodate the developer. Further, he suggested that this could be considered contract zoning, which is illegal.

Mayor Goode said that Council will take this information under advisement.

Douglas Dixon, 2779 Caitlin Court, President of Live Oak Homeowners’ Association and Chairman of the newly formed North Melbourne Homeowners’ Alliance, stated that the residents feel there needs to be serious dialogue about road/traffic issues. They would like to be partners with the City in tackling growth issues. Mr. Dixon asked Council its plan in dealing with these issues.

Vice Mayor Contreras said that the City is waiting for updated capacity information and his intention is to ask for an agenda item on this subject. City Manager Jack Schluckebier confirmed that the City is obtaining updated concurrency information for all major roadways, which is expected in the next 30 days.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2005-32 (A&V No. 281): (Second Reading/Public Hearing) An ordinance vacating the southerly two feet of a 10-foot wide public utility and drainage easement along the north lot line of property located at 412 Rio Casa Drive. (Applicant - Dan & Lisa Cutler) (First Reading - 05/10/05)

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

Moved by Hand/Palmer for approval of Ordinance No. 2005-32. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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9. ORDINANCE NO. 2005-33 (AR-2005-171), ORDINANCE NO. 2005-34 (CPA-2005-09), AND ORDINANCE NO. 2005-35 (Z-2005-1028) EAST COAST REVIVAL CENTER CHURCH OF GOD: Ordinances providing for annexation of 5.75 acres and a Comprehensive Plan Amendment and zoning designation on 4.8 acres, located on the north side of Eau Gallie Boulevard, west of Wickham Road, and east of the intersection with Sarno Road. (Owner/Applicant - East Coast Revival Center Church of God) (Representative - Pastor Ken Hitte) (P&Z Board - 4/21/05)
- a. Ordinance No. 2005-33/AR-2005-171: (Second Reading/Public Hearing) An ordinance providing for annexation of a 5.75-acre parcel. (First Reading - 05/10/05)
- b. Ordinance No. 2005-34/CPA-2005-09: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial/Low Density Residential on a 4.8-acre parcel. (First Reading - 05/10/05)
- c. Ordinance No. 2005-35/Z-2005-1028: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of R-P (Residential/Professional) on a 4.8-acre parcel. (First Reading - 05/10/05)

Attorney Gougelman read Ordinance Nos. 2005-33, 2005-34, and 2005-35 by title. There were no disclosures by Council. Mayor Goode opened the public hearing.

Frances Baker, 277 Baker Road, spoke in support of the request.

Moved by Contreras/Walker for approval of Ordinance No. 2005-33. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by LaRusso/Palmer for approval of Ordinance No. 2005-34. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-35. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2005-36 (AR-2005-172), ORDINANCE NO. 2005-37 (CPA-2005-10), AND ORDINANCE NO. 2005-38 (Z-2005-1029) VENETIAN VILLAGE PHASE TWO: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 9.86-acre parcel, located on the south side of Madison Avenue, west of Dairy Road, and north of Palm Bay Road. (Owner - Group Four Investments, LLC) (Applicant - Venetian Village, LLC) (Representative - Jake T. Wise, P.E. or Ken Welsh)
- a. Ordinance No. 2005-36/AR-2005-172: (Second Reading/Public Hearing) An ordinance providing for annexation of a 9.86-acre parcel. (First Reading - 05/10/05)
 - b. Ordinance No. 2005-37/CPA-2005-10: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential on a 9.86-acre parcel. (First Reading - 05/10/05)
 - c. Ordinance No. 2005-38/Z-2005-1029: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre) on a 9.86-acre parcel. (First Reading - 05/10/05)

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

Moved by Meehan/Palmer for approval of Ordinance No. 2005-36. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/Contreras for approval of Ordinance No. 2005-37. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Palmer/Walker for approval of Ordinance No. 2005-38.

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Council Member Mark LaRusso said it seems as if more density is moving into this area. He added that he would favor a lower density on this project.

The question was called. The roll call vote was:

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

Nay: LaRusso

Motion carried.

11. ORDINANCE NO. 2005-39 (ED-2005-03) EDAK, INCORPORATED: (Second Reading/ Public Hearing) An ordinance granting an Ad Valorem Tax Exemption for a three-year period totaling \$17,208.06. (First Reading - 05/10/05)

Attorney Gougelman read Ordinance No. 2005-39 by title. There were no comments from the public.

Moved by LaRusso/Meehan for approval of Ordinance No. 2005-39. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for labor, materials, and incidentals required for CIPP reconstruction of Paradise Cay Apartments storm drains, Project No. C04901, Lanzo Lining Services, Inc., Deerfield Beach, FL - \$325,835.

City Engineer Howard Ralls briefed Council and reviewed the agenda report. Council Member Grace Walker asked if the City had experience with this contractor. Mr. Ralls said no; however, our consultant checked their qualifications.

Moved by LaRusso/Walker to approve the contract award for CIPP rehabilitation of Paradise Cay Apartments storm drains, Project C04901 to Lanzo Lining Services, Inc., Deerfield Beach, Florida in the amount of \$325,835. Motion carried unanimously.

13. COUNCIL ACTION RE: Contract award for the Forest Run Drive turn lane addition in the Wickham Forest Subdivision, Project No. I03613, APAC – Southeast, Inc., Melbourne, FL - \$125,452.58.

Mr. Ralls reviewed the agenda report.

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Moved by Contreras/Palmer for approval of the construction contract to APAC-Southeast, Inc. in the amount of \$125,452.58. Motion carried unanimously.

14. CONSENT AGENDA:

Moved by Hand/Meehan for approval of the consent agenda, Items “a – e.” Motion carried unanimously.

The consent agenda was approved as follows:

- a. Annual contract award for the purchase of Noveon/AF600 Reverse Osmosis antiscalant, Harn R/O Systems, Inc., Venice, FL - \$0.93/pound, total estimated annual cost of \$59,055.
- b. Request for authorization to provide a letter of support from the Mayor to the Florida Department of Law Enforcement Office of Criminal Justice Grants in support of a Byrne Grant proposal from the Brevard County Sheriff's Office for prisoner transportation/booking improvement and consumer fraud unit.
- c. Resolution No. 1934: A resolution adopting street names for private streets located in the Harvard II Apartment complex.
- d. Resolution No. 1935: A resolution adopting a street name for a private street located in the Island Walk Villas Condominium complex.

Added to the agenda:

- e. Mutual Aid Agreement between the City of Vero Beach and the City of Melbourne and authorization for the Mayor, City Manager and City Attorney to execute the documents.

15. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

16. RESOLUTION NO. 1936: A resolution implementing FY 2004-2005 Second Quarter Budget Review recommendations.

Moved by Palmer/Walker for approval of Resolution No. 1936. Motion carried unanimously.

17. COUNCIL DISCUSSION RE: (Public Hearing) Conditions relating to the approval of site plan for Home Depot (SP-2004-10). (Requested by Council Member Cheryl Palmer)

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From the agenda report: This item was requested by Council Member Palmer to reconsider the condition relating to the berm and the wall separating the proposed Home Depot from the residential area immediately adjacent on the west.

Mrs. Palmer said that when the site plan was approved, which included the condition regarding the berm and wall, it was her understanding that the berm would be constructed and then the wall would be built on top of the berm. She noted that Attorney Nohrr mentioned that they would have to encroach into the landscape area to build the berm. Mrs. Palmer said that she had to remind herself that hand gestures and sign language aren't included in the minutes. That's why she is not able to find the exact words in the minutes.

Mrs. Palmer asked that the final order be amended. Currently, the final order requires that fill be placed to bring a low area up to the level of the building. This would mean that the buffer would only be the six-foot wall. She would like a four-foot berm with a wall on top of that to bring the buffer up to a 10-foot height. The additional buffer would help block noise.

Mayor Goode asked if this pertained to one side of the property. Mrs. Palmer said this is for the west side of the property. Everyone agreed that the north side would have just the wall. The purpose of the berm is to block noise and provide a barrier for the residential area to the west.

Mr. Schluckebier said that staff addressed this issue with the developer. Planning & Economic Development Director Cindy Dittmer is prepared to discuss this with Council. Staff and the applicant have enhanced the previous condition. Mr. Schluckebier distributed a memorandum from Cindy Dittmer outlining a proposal on the wall/berm along the west property line and the wall along the north property line.

Mr. Contreras said that at the initial meeting, many ideas were discussed, including a build up of land; a six foot wall; an encroachment in the landscape area; an eight foot compacted berm; and a 14 foot wall. With regard to the eight-foot berm and six-foot wall, he said that a 14-foot wall is not logical. He asked that the experts on staff address this issue.

Mrs. Palmer quoted from Mrs. Dittmer's memo as follows: "The area along the western property line will contain a 36.82 foot wide landscape area and a berm and wall combination, which totals eight feet above the finished floor elevation of the proposed building, and which is 10 feet above the existing elevation of the adjacent Pineda Crossing property." Mrs. Palmer asked Mr. Nohrr if this would be possible.

Phil Nohrr, attorney representing the applicant, said yes. He added that they were committing to a two-foot berm and a six-foot wall; however, they can build the berm another two feet in order to reach the 10 feet. He noted that on the south portion of the site there is a large retention area and they weren't planning to raise this area; the berm will not be located in that area. On the west side they will make the berm four feet and the wall six feet for 10 feet above the floor elevation.

Mr. Nohrr confirmed for Mrs. Palmer that the area around the retention pond won't include

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driveways or areas for trucks to load/unload. Mrs. Palmer thanked Mr. Nohrr for his cooperation.

Mayor Goode asked Mr. Nohrr when this project would be considered by Brevard County. Mr. Nohrr replied this Thursday at 10:00 a.m.

Mayor Goode opened the public hearing.

John Panik, 3202 Lago Vista Drive, informed Council that on April 26 he suggested a total height of 14 feet. The residents want a 10-foot wall on top of a four-foot berm to block the noise. Additionally, they would like for this to extend past the retention pond on the entire west side.

Mr. Panik submitted a petition, which he said contains 135 signatures. The petition asks that Home Depot be required to build a 14-foot high berm/wall from its highest elevation between the development site and the Pineda Crossing property. He added that the finished grade of the Home Depot floor will be 35.5'. Mr. Panik discussed his previous conversations with Council Members about the wall/berm condition.

Continuing, Mr. Panik said he previously asked for an eight-foot high berm; however, Engineering Department staff indicated that would require 52 feet of property. Therefore, he would like a four-foot berm with a 10 foot wall on the north and west sides. He added that he's not worried about the cost and the expense for the developer because the developer should be a good neighbor and do what it takes to satisfy the homeowners.

David Schill, 3208 Lago Vista Drive, agreed with Mr. Panik's comments and request. He added that the 10-foot wall would provide safety for the residents. A six-foot wall can easily be jumped. Mr. Schill said that the residents have accepted that a Home Depot will be located on this property. And, their request will help avoid constant complaints about noise in the future.

That concluded comments from the public.

Mr. Nohrr said that the finished grade of the Home Depot site is actually 37 ½ feet; therefore, they would be two feet closer to the residents' request. Regarding the request for a 10-foot wall, he said it doesn't make sense to them to go higher.

Mr. Nohrr confirmed that on the west side they will provide a four-foot berm with a six-foot concrete wall above the finished elevation of the Home Depot site. On the north side the wall will be nine feet by the building and then eight feet towards the road.

Mrs. Palmer noted that Mrs. Dittmer's memorandum also notes that the applicant will be providing 40 additional hardwood trees beyond what is required that will have to be at least 10 feet high when planted.

Mrs. Palmer began to make a motion requiring a four-foot berm and a six-foot wall on the west side of the property. Mr. Panik returned to the podium and asked why Council is not

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requiring a 10-foot high wall. Mayor Goode said that is Council's prerogative, and he added that it will be 12 feet above the grade where Mr. Panik is located.

Moved by Palmer/Contreras that along the western property line a six-foot wall be constructed on a four-foot berm for a total of 10 feet above the finished floor elevation of the proposed building; the area along the west property line along the retention pond will contain an eight foot wall that will be six feet above the finished floor elevation of the proposed building; the area along the north property line abutting the wetland will contain a wall eight to nine feet, which will be six feet above the finished floor elevation of the proposed building; and the applicant will provide 40 additional hardwood trees on site that must be a minimum of 10 feet high at the time of planting.

Mrs. Palmer confirmed for the Mayor that, with the exception of the four-foot berm and six-foot wall, this mirrors the information in Mrs. Dittmer's memo. (Mrs. Dittmer's memo provides for a two-foot berm and a six-foot wall.)

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

18. ORDINANCE NO. 2005-40 (CPA-2004-33) TEXT AMENDMENT: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment to allow a text amendment to establish a new Suburban Estate Resident (SER) land use classification to the Future Land Use Element. (Applicant - City of Melbourne) (P&Z Board - 1/20/05)

Attorney Gougelman read Ordinance No. 2005-40 by title. Mrs. Dittmer briefed Council. The ordinance provides for a text amendment to the Comprehensive Plan to designate a new Future Land Use category of Suburban Estate Residential (SER), which would permit residential developments up to three units per acre. The Planning and Zoning Board voted unanimously to recommend approval.

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

Moved by LaRusso/Walker for approval of Ordinance No. 2005-40. Motion carried unanimously.

19. ORDINANCE NO. 2005-41 (CPA-2004-23) AND ORDINANCE NO. 2005-42 (Z-2004-1006) OAK HAMMOCK ESTATES: Ordinances providing for a Comprehensive Plan Amendment and zoning designation on a 43.0895-acre parcel, 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) (P&Z Board - 1/20/05)

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- a. Ordinance No. 2005-41/CPA-2004-23: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on a 43.0895-acre parcel.
- b. Ordinance No. 2005-42/Z-2004-1006: (First Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use, one dwelling unit per acre) for the 43.0895-acre parcel.

Attorney Gougelman read each ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures by Council and no comments from the public.

Moved by Contreras/Walker for approval of Ordinance No. 2005-41. Motion carried unanimously.

Moved by Meehan/Walker for approval of Ordinance No. 2005-42. Motion carried unanimously.

20. ORDINANCE NO. 2005-43 (CPA-2004-25), ORDINANCE NO. 2005-44 (Z-2004-1009, AND SITE PLAN APPROVAL (SP-2004-30) EVERGREEN VILLAGE (FKA MAGNOLIA AVENUE): Ordinances providing for a Comprehensive Plan Amendment and rezoning and site plan approval on a 22.15±-acre parcel, located south of Laurie Street, east of the FEC Railroad, and west of Magnolia Avenue. (Owner - Robert and Rosemary Shoff) (Applicant/Representative - C. Douglas Engle) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-43/CPA-2004-25: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Mixed-Use Industrial/Commercial to Low Density Residential.
 - b. Ordinance No. 2005-44/Z-2004-1009: (First Reading/Public Hearing) An ordinance changing the zoning from M-1 (Light Industrial) to R-2 (4) (One-, Two-, and Multiple-Family Dwelling District with a cap of four units per acre).
 - c. Site Plan Approval (SP-2004-30): (Public Hearing) A request for site plan approval to develop an 80-unit townhome condominium project at 3.6 units per acre.

The City Attorney read Ordinance No. 2005-43 and Ordinance No. 2005-44 by title. Mrs. Dittmer reviewed the agenda report. The Planning & Zoning Board discussed access to the site at several meetings. Access is proposed at the southernmost point because adequate right-of-way does not exist to the north for a secondary connection.

The Planning and Zoning Board voted four to two to recommend approval of CPA-2004-25 and five to one to recommend approval of Z-2004-1009 and SP-2004-30. The site plan consists of a three-sheet plan prepared by Morgan & Associates Consulting

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Engineers, Inc., of Melbourne, Florida, with a stamped and sealed date of February 25, 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) an increase of eight units or more; or 3) the addition of a driveway.

- b. The applicant shall maintain a minimum 80-foot undisturbed buffer between the proposed development and the adjacent single-family homes to the east.
- c. The applicant will limit the driveway access to the southernmost point adjacent to Magnolia Avenue.
- d. The buildings shall be substantially consistent with the rendering submitted by the applicant.

A petition from the surrounding property owners within 500 feet was submitted. Staff determined that 23.59% of the surrounding property owners are opposed. The City Code requires a 6/7 vote by Council at second reading when the percentage exceeds 20%.

Mayor Goode asked Mrs. Dittmer to provide examples of what could be built in an M-1 zone. Mrs. Dittmer said light manufacturing, automotive storage and repair, body shops, etc. She confirmed that a permitted use would not require approval from City Council.

Mr. LaRusso asked where the entrance would be. Mrs. Dittmer displayed the area on the map and noted that would be the entrance, regardless of what is developed on the site.

In response to Council Member Grace Walker, Mrs. Dittmer showed the location of the junior high school in relation to this property.

Mayor Goode read an e-mail from Brian Cutting (received after the agenda package was prepared), 688 Charles Drive, in support of the townhome development at this location.

Mayor Goode called for disclosures.

Council Member Kathy Meehan said she spoke to (Attorney) Cliff McClelland about the down-zoning from M-1 to allow condominiums. Peggy Snead called her a couple of times and dropped off a notebook containing information about the development.

Mrs. Walker said she received the notebook of information from Ms. Snead and she spoke to Attorney McClelland. She made no commitment to either on this item.

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Mr. LaRusso said he spoke to Peggy Snead and received the notebook. Also, he talked to Cliff McClelland. He noted that he neither offered nor formed an opinion about this item during the discussions.

Mrs. Palmer said she spoke with Peggy Snead on a couple of occasions and she received a notebook of information. She added that during each conversation Ms. Snead discussed her objection to the zoning change.

Mrs. Hand said she spoke to Cliff McClelland who explained the project. And, she received a notebook of information from Peggy Snead.

Mr. Contreras said he spoke to Cliff McClelland about land use and the requested down-zoning of the property for condominiums. He and Peggy Snead left messages for each other and he did receive the notebook of information from her.

Mayor Goode said he spoke with Cliff McClelland who explained the proposal for the property. Additionally, he received a notebook of information.

Cliff McClelland, attorney representing Evergreen Development, furnished a booklet of information for the record. He noted that it contains staff reports along with the resumes of the two principals involved with this development.

Attorney McClelland reported that the property has been zoned Industrial, and the request is to down-zone the property to allow the development of 80 townhome condominiums on the property.

Doug Engle, 504 North Harbor City Boulevard, stated that he has been in real estate for 32 years. He holds an MAI designation, has performed thousands of appraisals, and is qualified as an expert witness in court. Mr. Engle said that they plan to construct 80 townhouse units ranging in size from 1,700 s.f. to 2,500 s.f. The price range will probably be \$200,000 to \$300,000.

Continuing, Mr. Engle stated that he doesn't know how this project would have a negative impact on the existing neighborhood. The units will be bigger, newer and nicer. The development will be gated and the project will be setback to provide a buffer between this property and the Almar Subdivision. They designed the project thinking that they were going to please the neighbors.

Mrs. Walker asked Mr. Engle to describe the buffer. Mr. Engle said that they will have an 80' buffer from their property line to the clearing line. After taking the ditch and the maintenance road into consideration, the actual wooded buffer is 30 feet in depth.

Mr. Engle referenced the staff report on this project and stated that they will have one- and two-story units, all with a two-car garage.

Mrs. Palmer asked Mr. Engle if he attended any of the meetings that the homeowners held. Mr. Engle replied that after the Planning and Zoning Board meeting, the owners

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invited them to a meeting. He attended that and walked up and down Magnolia Avenue trying to speak to each resident. Mrs. Palmer asked Mr. Engle if he feels there is anything that could make this development palatable to the neighborhood.

Mr. Engle said that the residents have outlined a list of issues in a letter to Council. If the St. Johns River Water Management district allows them to have a smaller retention pond, they plan to shift the development to increase the buffer. Also, they don't have a problem with moving the recreation area and pool.

Mr. LaRusso asked Mr. Engle if he is the property owner. Mr. Engle said he is not. He noted, however, that the contract on the property is "hard."

Steve Morgan, 504 North Harbor City Boulevard, engineer of record, said that he is also a partner in this project. He noted that they concur with staff's comments and conclusions, and the project is in accordance with City ordinances. Mr. Morgan stated that they are in receipt of the list of issues from the homeowners. After one of the Planning and Zoning Board meetings, they met with four of the residents. The residents would like to increase the buffer and they are trying to reduce the size of the stormwater retention to accommodate this.

Mr. Morgan said that there has been a lot of talk about the pristine area. He noted that there is some nice habitat that will be maintained; however, there are homeless people living on the property. Mr. Morgan submitted photographs showing campsites on the property and stated that 20 – 30 people live on the property.

Continuing, Mr. Morgan addressed each issue outlined in the May 9 letter from the residents to the City Council as follows:

1. Place sound barrier along the railroad tracks. They are leaving a large, natural buffer along that area. In order to construct anything in that area, they would have to remove the buffer.
2. Implement traffic calming. It is their understanding from staff that a traffic study is being done and the City's consultant is developing traffic calming ideas. They are willing to participate in and join in that outcome.
3. Rotate buildings to the west to increase buffer. They are willing to do this.
4. Move clubhouse away from existing homes. They are willing to do this.
5. Increase landscaping at entrance. They are willing to do this.
6. Require tree survey. Staff has indicated that because a significant portion of the property will remain in its natural state, a tree survey would be unnecessary.
7. Provide public walk/bike path along east side of property. There is an existing ditch and roadway not contained in the easement. They would designate that easement for the City

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of Melbourne to maintain the canal. However, they don't believe that the City would want a bikepath in its maintenance area.

8. Implement the goals, objectives, etc. in the Conservation element of the Comprehensive Plan. They believe they are already doing this.

Mr. Morgan elaborated on his education and background in response to Mrs. Walker.

Attorney McClelland clarified for Council that Mr. Engle is probably an equitable owner of the property based on where they are in the contract.

Mayor Goode asked the applicants what their plans are if this item doesn't pass. Mr. Engle said that they have drawn up an alternate plan for an industrial park and they have every intention of meeting with staff tomorrow. He stressed that they can't afford to sit back.

Mayor Goode opened the public hearing.

Peggy Snead, 738 Anita Drive, asked the folks in the audience who are concerned to stand (approximately 8 – 10 people stood). She referenced the concerns that the residents have outlined along with the notebook of information provided to each Council Member. Ms. Snead said that they have been unsuccessful in reaching modifications with the developers. The residents feel the developers have misrepresented their views and at this point they have consulted with a mediator.

Continuing, Ms. Snead stated that none of the residents has mentioned that this is a "pristine" area. It has been overgrown for years and people are camping out with the implied consent of the owner. The owner simply needs to issue a notice of trespass.

Ms. Snead mentioned the court injunction on this property and said that the City has recently changed its interpretation of that injunction. The residents are also concerned with the threat of an industrial park. She added that there are two parcels – one is zoned M-1 and the second zoned C-1. If there is an effort to put in industrial, they would challenge placing industrial traffic on a two lane road across from a school.

Mrs. Walker asked if the school has commented on this development. Ms. Snead said that the principal of the school has been notified; however, they have not heard any comments.

Mrs. Palmer asked Ms. Snead how she feels about the project now that the developer has addressed each of their concerns. Ms. Snead replied that she is surprised at the appearance of concession. In previous talks there was no indication of compromise. Based on what was said, she thinks her neighbors would be more amenable to the project.

Mrs. Palmer asked Ms. Snead how this affects her position. Ms. Snead said that if a walkway was provided for the residents of the proposed area and the established area,

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with perhaps a footbridge across the canal at the end of the easement on Charles Drive and Laurie Street, that would go a long way in allaying their fears.

Mrs. Palmer said that the applicant talked about giving that area to the City. Ms. Snead said that a 1969 easement gave the City use of this property in perpetuity.

Attorney Gougelman referenced the applicant's package, which contains a right-of-way deed dated February 21, 1969 from the Boskinds to the City of Eau Gallie. He noted that the deed has a reverter clause. The deed is for right-of-way (a road) and if that is ever discontinued or abandoned as a public highway, then title reverts back to the individuals who conveyed it. To the best of his knowledge, there was never a road put in there. Whatever rights the City had may have been abandoned. Unless a court determines that the City has valid title, it would be on shaky ground; it's been 36 years.

Mr. Engle clarified that the right-of-way deed being referenced is not on their property, it runs along the north boundary line. He added that they are willing to give an easement to the City for the ditch and maintenance road.

Mrs. Palmer asked about an area for the public to walk through. Mr. Engle said their intent is to create a gated community. If they allow access, the remainder of the homeless in the area will walk through their project.

Ms. Snead said she feels that this property should never be developed and it should be turned over to the City as conservation land. There are not that many acres designated as conservation.

Carl Rupinski, 346 South Magnolia Avenue, said his property abuts this property. He stated that prior to this meeting the developers have not been willing to bend; however, it seems their tune has changed. Regarding the buffer zone, five residents who live on South Magnolia measured to see what type of buffer would be left. Between Anita and Denise from the back property line to the other side of the road, a 20-foot wide swatch of woods will be all that is left. Farther north towards Laurie, about 10 feet of woods will be left as a buffer. He added that he would like the buildings moved back to widen the buffer zone. Additionally, he stated that the noise from the trains will increase when the vegetation is removed during construction.

In response to the Mayor, Mr. Rupinski said there is virtually no noise from the trains now.

Mr. LaRusso asked if the buildings would act as a sound barrier. Mr. Rupinski said to a certain extent, but they will also act as a funnel.

Continuing, Mr. Rupinski said he is also concerned about traffic. He submitted an accident analysis he received from the Police Department, which shows the number of accidents that have occurred on Magnolia Avenue within a $\frac{3}{4}$ mile section. He noted that there is no traffic calming at all. Townhomes will add to the traffic and they are asking that the developer participate in traffic calming.

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Mr. Contreras stated that the applicants have acquiesced to that request.

David Bogenrief, 621 South Magnolia Avenue, stated that he is a professional engineer. He said that his hope is to negotiate something publicly with the applicants. Mr. Bogenrief stated that he took the same plan and rotated the buildings, created a larger buffer, and meandered the retention. Additionally, he noted that the threat of industrial doesn't make sense. Additionally, he pointed out that anything over five acres would require Council approval.

Pat Poole, 805 E. Palmetto Avenue, said that when people get so angry that a 6/7 vote is required, something isn't right. She added that she doesn't think that we have to worry about industrial because the property is not suited for that.

That concluded comments from the public.

Mr. Contreras asked if there is any difference in terms of buffering between industrial and residential. Mrs. Dittmer replied that this proposal exceeds what an industrial development would be required to provide.

Mrs. Hand asked the City Attorney to review the terms of the lawsuit. Attorney Gougelman explained that the opinion was issued in 1985 by the circuit court. There is really only one party that can enforce the court decision (that the property remain zoned industrial) and that is the owner of the property. Everyone who has ownership interest in the property – the property owners and the equitable/beneficial owners – is saying that they are not going to enforce the court order. They are abandoning their rights to that and are seeking a change to residential. Based on this, it is the City's position that the rezoning can proceed.

In response to Mr. Contreras, Mrs. Dittmer said that any commercial/industrial development over five acres would require Council approval.

Mrs. Palmer asked Mr. Engle if he plans to fence the property. Mr. Engle replied no. Mrs. Palmer said this would mean that vagrants could still enter the property. Mr. Engle replied that they could. Mrs. Palmer asked if it is still their position that the residents from Magnolia can't enter and have a walking path and Mr. Engle replied correct.

Mayor Goode asked why. Mr. Engle said that the gated community will protect the people living there. They don't have control over vagrants but they do have control over whether the property is opened up to the public. If they do this, then they might as well not put up a gate. He stated that they are not going to build the walkway.

Council Member Meehan's motion to approve Ordinance No. 2005-43 did not receive a second. Mayor Goode announced that the item is dead.

Recessed: 8:52 p.m.
Reconvened: 9:07 p.m.

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Attorney Gougelman asked Council to make a motion to deny the Comprehensive Plan ordinance if that is the intent.

Moved by Contreras/LaRusso to deny Ordinance No. 2005-43. Motion carried. Mrs. Meehan voted nay.

21. ORDINANCE NO. 2005-45 (AR-2004-165), ORDINANCE NO. 2005-46 (CPA-2004-26), AND ORDINANCE NO. 2005-47 (Z-2004-1010) MARSOL DEVELOPMENT COMPANY: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on two parcels totaling 16.84± acres, located west of Wickham Road, north of Parkway Drive, and south of Grand Meadows Boulevard. (Owners - TAL WIL Corporation) (Applicant/Representative - Mark Soliman, MARSOL Development Corporation) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-45/AR-2004-165: (First Reading/Public Hearing) An ordinance providing annexation of two parcels totaling 16.84± acres.
 - b. Ordinance No. 2005-46/CPA-2004-26: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on 5.530± acres located along Wickham Road and Medium Density Resident on the western 11.311± acres.
 - c. Ordinance No. 2005-47/Z-2004-1010: (First Reading/Public Hearing) An ordinance providing for a zoning designation of C-1 (Neighborhood Commercial) on 5.530± acres located along Wickham Road and R-2 (8) (One-, Two-, and Multiple-Family Residential with a cap of eight units per acre) on the western 11.311± acres.

Attorney Gougelman read each ordinance by title and Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of AR-2004-165, voted four to three to recommend approval of CPA-2004-26, and voted five to two to recommend approval of Z-2004-1010.

There were no disclosures by Council.

Mark Soliman, MARSOL Development Corporation, was present.

Robert Griswold, 3505 Cordgrass Court, Parkway Meadows, stated that he filed two petitions on this item – one against the Comprehensive Plan amendment and one against the zoning. He explained the difficulty in obtaining the County's signature on the petition for the property located to the east. He asked if this area was included in the 500-foot calculation.

Mayor Goode confirmed that the County property is included in the 500' radius. Mrs. Dittmer added that the petition reached 14.5% opposition.

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Continuing, Mr. Griswold said if the County had not been considered, he would have reached the 20% opposition. He stated that he is located on the border to the west. He asked Council to picture a five-unit building, two stories tall, with no buffer located behind him. He understands that the land will be developed; however, there is no other similar zoning occurring along Wickham Road north from Parkway. If the property is to be built, he asked that it be similar to the surrounding area. Mr. Griswold asked Council to consider the density of the development.

Jim Wilson, 3693 Kestrel Court, referenced and submitted a letter of support for the property from his neighbor, Kathleen Finnegan-Hiers.

Mr. Wilson stated that he supports the development. The plan that MARSOL put together indicates he has a willingness to accent the surrounding communities as opposed to being a detriment. A townhome development at eight units per acre is more desirable than an apartment complex. Additionally, Mr. Soliman has indicated that the townhomes will be sold for more than \$300,000 each. Currently, no single-family homes in his subdivision sell for that. He encouraged Council to vote for this request.

In response to Mr. LaRusso, Mr. Wilson pointed out on the map where he lives in relation to this property.

That concluded comments from the public.

Mr. Schluckebier said that as part of our joint planning agreement with the County, we routinely send the County development items that are near County property. He asked Mrs. Dittmer to comment. Mrs. Dittmer reported that the County was notified and we did not receive a response.

With regard to the petition, Mrs. Dittmer said that this information was provided to Council during the transmittal stage of the Comprehensive Plan.

Moved by Palmer/Walker for approval of Ordinance No. 2005-45. Motion carried unanimously.

Moved by Hand/Contreras for approval of Ordinance No. 2005-46. Motion carried unanimously.

Moved by Walker/Hand for approval of Ordinance No. 2005-47.

Mr. LaRusso stated that he is concerned with the density. He noted that Mr. Griswold backs up to the property and he is opposed. Mr. Wilson is beyond the 500-foot radius and he is in support. He stated that the density is too high.

Mrs. Palmer agreed and said she would like to see the density more compatible with the neighbors to the west.

The question was called. The roll call vote was:

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Aye: Walker, Hand and Goode

Nay: LaRusso, Meehan, Palmer and Contreras

Motion failed.

22. ORDINANCE NO. 2005-48 (AR-2005-174), ORDINANCE NO. 2005-49 (CPA-2004-27), AND ORDINANCE NO. 2005-50 (Z-2005-1035) VINCENT TARANTO: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 30-acre parcel, located between Riverside Drive and U.S. Highway A1A, south of the intersection of Eau Gallie Boulevard and U.S. Highway A1A, and north of Paradise Boulevard. (Owner/Applicant - Vincent and Marie Taranto) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-48/AR-2005-174: (First Reading/Public Hearing) An ordinance providing annexation of a 30-acre parcel.
 - b. Ordinance No. 2005-49/CPA-2004-27: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on 18 acres and Medium Density Residential on 12 acres.
 - c. Ordinance No. 2005-50/Z-2005-1035: (First Reading/Public Hearing) An ordinance providing for a zoning designation of R-2T (Planned Residential Development for Mobile Home Parks) on 10 acres, R-2 (7) (One-, Two-, and Multiple-Family Residential with a cap of seven units per acre) on two acres, and R-2 (3) (One-, Two-, and Multiple-Family Residential with a cap of three units per acre) on the vacant 18-acre parcel.

Attorney Gougelman read Ordinance Nos. 2005-48, 2005-49 and 2005-50 by title.

Mrs. Dittmer reviewed the agenda report. Several meetings have occurred between City staff, the applicant, and adjacent property owners to attempt to alleviate any concerns with the project. The Planning and Zoning Board had concerns related to the R-2 (3) zoning on the vacant 18-acre parcel, and whether single-family zoning with a platted subdivision would be more appropriate. A notice of intent to file a petition has been submitted by the surrounding property owners and is expected to contain 20% of the property owners.

The Planning and Zoning Board recommended approval of the requested annexation and Future Land Use, but recommended denial of the zoning. Subsequent to the Planning and Zoning Board Meeting, City staff further strengthened the language of conditions b. and c. to more fully describe the existing conditions related to the mobile home park and the draft deed restrictions for the vacant parcel.

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Mr. LaRusso referenced the property to the north located in the County and asked what the corresponding City zoning would be. Mrs. Dittmer said probably R-1AA since the lots are in the 80-foot range.

Mrs. Palmer referenced the information delivered to each Council Member from Mr. Taranto. Mrs. Dittmer said the information contains many of the concessions Mr. Taranto has discussed. In addition, he has dropped the number of homes from 47 to 44 with the reduction occurring along the Sanctuary property line.

Attorney Gougelman said that if this item passes, a recordable developer's agreement would return, which would contain the deed restrictions and concessions Mr. Taranto is making. He added that staff spent a significant amount of time with residents from the Sanctuary and Mr. Taranto to reach an acceptable development plan. He added that unfortunately a compromise was not reached.

Mayor Goode asked if there was any hope or if the item was deadlocked. Mr. Gougelman said that this application cries out for resolution. He said he has felt all along that there are changes and amendments that could have been made, but the parties could not come to agreement.

Mrs. Palmer asked if the applicant wished to be annexed into the City whether or not this item is approved. Mrs. Dittmer said he will need to annex to develop because of the City's water service.

Vince Taranto, applicant, displayed his property on the map and discussed his request. A mobile home park and duplexes currently exist on the two-acre parcel and the 10-acre parcel; both are retirement communities. The 10-acre parcel will never exceed 108 lots. The 18.51 acres has an entrance on Riverside Drive and R-2 zoning has been requested. The density has been lowered to 2.34 units per acre from the requested three units per acre.

Mr. Taranto said that the 18-acre parcel has caused the greatest response because the request is unusual. He explained that he wants to build a retirement community where a person will purchase their home and homesite, but all the surrounding property will be common area. He added that this has been done all over the state. If he tried to do this under the R-1AA zoning, he would have to plat the lots. Mr. Taranto stated that the requested 2.34 units per acre is lower than the density in the adjacent Sanctuary and Sand Pines Subdivisions.

Continuing, Mr. Taranto noted that a retirement community will have zero impact on schools with the trip counts being about 50 – 60% of a normal subdivision. He said that he understands that R-2 includes townhomes, apartments, rentals, etc.; however, he has agreed to a developer's agreement to make it ironclad that the only thing that will be developed on this property will be single-family detached homes built out of concrete block or concrete. He referenced the list and fact sheet that he has submitted to Mr. Gougelman's office – items that he would like included in the developer's agreement.

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Mr. Taranto discussed each item that he is prepared to include in a binding agreement. (The information is outlined in a letter dated May 19 to Paul Gougelman from Vincent Taranto, which has been included in the record.)

Mrs. Meehan asked if the homes will be one- or two-story. Mr. Taranto replied one- and two-story. He added that there will probably be three to four different models.

Mayor Goode asked if there are any multi-story homes in the section of the Sanctuary that abuts this property and Mr. Taranto replied yes.

Mr. LaRusso asked Mr. Taranto to discuss the villas area and the mobile home park. He asked Mr. Taranto how long he has owned these two areas. Mr. Taranto replied since late 1986. In response to Mr. LaRusso he confirmed that he has been the consistent owner and has never sold or repurchased the property.

Mr. LaRusso asked when permits were taken on the villas and Mr. Taranto replied about two years ago and for the recreation hall about three years ago. Mr. LaRusso said he heard that permits were pulled in 2002 for the villas and about the same time for the clubhouse.

Mr. LaRusso disclosed that he drove through Mr. Taranto's property on May 3, May 10, May 22 and May 24. He asked Mr. Taranto if he is the complete owner and manager of the villas and the mobile home park and Mr. Taranto replied that is correct.

Mayor Goode asked for Council to continue with disclosures.

Mr. Contreras said that on May 23 Mr. Taranto dropped of a package of information at his residence. The cover letter is dated May 19 and it contains Exhibits A through E. Also, today he spoke with Don McMillan concerning this project, specifically the annexation and rezoning.

Mr. LaRusso said that in addition to the site visits, he also received the packet of information from Mr. Taranto. He has received countless e-mails and telephone calls from citizens stating their displeasure with the annexation and the proposed zoning. On May 5 he attended the Planning and Zoning Board meeting and listened to Mr. Taranto's presentation. On May 15 he met with representatives from Sand Pines who stated their concerns; he left that meeting with no opinion. On May 16 he met with Mr. Taranto and his engineer in Attorney Gougelman's office and heard Mr. Taranto's side of the story.

Mr. LaRusso stated that his backyard abuts Mr. Taranto's 18 acres. He asked if he has an ethics issue on this item. Attorney Gougelman said that at Mr. LaRusso's request he looked at the question of whether there would be a voting conflict of interest on this item. There are four issues – the three ordinances on this agenda and the developer's agreement that would return on the next agenda. With regard to the annexation, Comprehensive Plan amendment and the zoning ordinance, Commission on Ethics staff confirmed what he thought, that there is no voting conflict of interest. Any claim would be considered remote and speculative.

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Mrs. Meehan said that Mr. Taranto called her a couple of times and she met with him last night. He delivered a packet of information.

Mayor Goode received the same material, which was delivered to him at City Hall from Mr. Taranto.

Mrs. Walker said that Mr. Taranto called her several times; however, they did not speak. He left a package of information at her door.

Mrs. Palmer said that Mr. Taranto left the same package at her house. He discussed and extolled the virtues of this development.

Mrs. Hand said that Mr. Taranto phoned and asked if he could deliver a package. She met him at the door and received the information.

Mr. LaRusso continued. In response to Mr. LaRusso, Mr. Taranto said that a homeowners' association and master homeowners' association would manage the common areas. A law firm will form the associations.

Mr. LaRusso read the requirements for R-2T zoning from the Zoning Code relating to minimum standards. He stated that when visiting the property he found the villas not finished after three or four years; abandoned washing machines; abandoned trailers; storage of bricks and building materials; overgrown lots; no consistency in trailer manufacturing; and skirting falling off and in disrepair. Mr. LaRusso said that if the same management style is applied to the 18-acre parcel, it could take up to 15 years for the project to be complete. Although Mr. Taranto has indicated that infrastructure would be developed in one year, his reservation to the timetable would be a delay caused by shortages in material, weather conditions or labor shortages. There is no way to verify material and labor shortages.

Mr. Taranto replied that Mr. LaRusso is wrong on the four years. Mr. LaRusso said his mistake, it has only been three years.

Mr. Taranto said they had to stop all work on new structures after the storms. Their first priority became putting everyone back into their homes. When you have older people in your parks you do what is important. He added that it has cost him money. And, the unfinished villas are not a hazard. He stressed that he has homeowners that need attention.

There was a brief discussion on whether there is a distinction on traffic trip information for a seniors only development versus a single-family development.

Mr. LaRusso stated that with Mr. Taranto's past history with the mobile home park he is not convinced that he will hold up his end of the bargain on the 18-acre parcel. He added that the construction entrance is a strong concern.

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Discussion continued.

Mayor Goode referenced the additional correspondence received on this item (after the package had been distributed) from Ron Sumners, 185 Sand Dollar Road, and Bob Moletteire, 762 Sanderling Drive, opposed to the item as requested.

Mr. Schluckebier noted that the Comprehensive Plan amendment was returned to the City with no comments from the State. This means that the City has a certain amount of time to approve the amendment. The applicant has asked the City to enter into a complicated binding developer's agreement and he is concerned that we will not be able to accomplish this within the timeframe. Mr. Schluckebier asked Mrs. Dittmer to comment.

Mrs. Dittmer stated that the City has 21 – 22 days to adopt the amendment on second reading. Attorney Gougelman added that the timeline is by State Statute.

Mr. Schluckebier said that it is unlikely we would be able to come to resolution on the issues that have been discussed. Therefore, he changed staff's recommendation to denial. Further, he asked that the applicant continue to work with the Planning and Economic Development Department and representatives from the Sanctuary Subdivision because clearly this property is going to be developed. We are close; however, he doesn't see this happening in the next 21 days.

Mayor Goode asked if any Council Members have the ambition to keep this issue alive. There was no response. Attorney Gougelman said that given the recommendation of the City Manager and the position of the City Council, perhaps the applicant might want to withdraw the item.

Mayor Goode stated that it looks evident that Council won't approve this at this time. There are only 21 days left to accomplish monumental things.

Mr. Taranto said that he will withdraw and will continue to work with staff and the Sanctuary homeowners. He added that he feels this is the best type of development for the property with the least amount of impact.

Mr. Contreras said that based on the comments made, it appears that Mr. Taranto needs to take care of what he has.

Mr. Taranto said he purposely stopped construction on the recreation hall because his son broke his neck. For almost a year he has been beaten up over the fact that the buildings are not finished. Stopping work did not hinder the park and it was not harmful. He had family matters to attend to and thankfully his son is walking today.

Bob Moletteire, 762 Sanderling Drive, stated that everyone has worked hard to reach agreement on this issue. He pointed out that the residents feel R-1AAA is the only guarantee they will have. Mr. Moletteire informed Council that Mr. Taranto

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misrepresented ownership on the villas property. He sold the property in 2001 and then it was later flipped back to him.

Mr. Taranto said that the villas were part of a tax free exchange. The property changed during the construction period to meet tax elements; however, it has been intact for 20 years.

Recessed: 10:31 p.m.
Reconvened: 10:35 p.m.

23. ORDINANCE NO. 2005-51 (CPA-2004-28) AND ORDINANCE NO. 2005-52 (Z-2004-1012) HARRIS CORPORATION/505 PARTNERS, INC.: Ordinances providing for a Comprehensive Plan Amendment and zoning designation on a 39.09-acre parcel, located on the east side of John Rodes Boulevard, north of Dow Road. (Owner - Harris Corporation and 505 Partners, Inc.) (Applicant - City of Melbourne) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-51/CPA-2004-28: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Industrial.
 - b. Ordinance No. 2005-52/Z-2004-1012: (First Reading/Public Hearing) An ordinance providing for a zoning designation of M-1 (Light Industrial).

Attorney Gougelman read Ordinance Nos. 2005-51 and 2005-52 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures by Council and no comments from the public.

Moved by Contreras/Palmer for approval of Ordinance No. 2005-51. Motion carried unanimously.

Moved by Walker/Hand for approval of Ordinance No. 2005-52. Motion carried unanimously.

24. ORDINANCE NO. 2005-53 (CPA-2004-29) AND ORDINANCE NO. 2005-54 (Z-2004-1013) PARKWAY DRIVE AREA D: Ordinances providing for a Comprehensive Plan Amendment and zoning designation on 90.31 acres, located between Parkway Drive and Pine Cone Road, along Turtle Mound Road, including properties adjacent to Connors Cove, Beth Lane and Hammock Trail. (Administrative request - City of Melbourne) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-53/CPA-2004-29: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential.

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- b. Ordinance No. 2005-54/Z-2004-1013: (First Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate, one dwelling per acre).

Attorney Gougelman read the title of both ordinances and Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the Comprehensive Plan amendment with the recommendation that Suburban Estate Residential be assigned in lieu of Low Density Residential future land use.

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

Moved by Walker/Meehan for approval of Ordinance No. 2005-53. Motion carried unanimously.

Moved by LaRusso/Hand for approval of Ordinance No. 2005-54. Motion carried unanimously.

25. ORDINANCE NO. 2005-55 (CPA-2004-30) AND ORDINANCE NO. 2005-56 (Z-2004-1011) DOW CENTRAL PARK INDUSTRIAL SUBDIVISION: Ordinances providing for a Comprehensive Plan Amendment and zoning designation on 24.39 acres, located on Stan Drive, north of Ellis Road, and east of John Rodes Boulevard. (Owners - Edward Gensen, Trustee; Dow Central Park Owners' Association, Inc.; Hamid Hafizi; Hendrickson Electric Service, Inc.; J & L Holdings of Brevard FL, Inc.; James O'Neill Construction, Inc.; MH of Brevard, Inc.; MS Thornton Enterprises; Earl E. Matthews; Michaels Project, Inc.; Michael P. Murphy; Jonathan W. Murray; Plastics USA, Inc.; RTS Development, Inc.; Michael Robinson; Trick Pro Motorsport, Inc.; Claude H. Vandiver; Glen Warner; Mel Wilt) (P&Z Board - 1/20/05)

- a. Ordinance No. 2005-55/CPA-2004-30: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Industrial.

- b. Ordinance No. 2005-56/Z-2004-1011: (First Reading/Public Hearing) An ordinance providing for a zoning designation of M-1 (Light Industrial).

Attorney Gougelman read each ordinance by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of CPA-2004-30 and Z-2004-1011.

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

Moved by Contreras/Walker for approval of Ordinance No. 2005-55. Motion carried unanimously.

Moved by Hand/LaRusso for approval of Ordinance No. 2005-56. Motion carried unanimously.

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26. ORDINANCE NO. 2005-57 (CPA-2004-31) AND ORDINANCE NO. 2005-58 (Z-2004-1015) HABITAT FOR HUMANITY OF SOUTH BREVARD: Ordinances providing for a Comprehensive Plan Amendment and zoning change on a 0.93±-acre parcel, located on the north side of Masterson Street, between Kennedy Street and Southland Avenue. (Owner - Antonio Levett) (Applicant/Representative - Joe Gassman, Habitat for Humanity of South Brevard, Inc.) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-57/CPA-2004-31: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use designation from Low Density Residential to Medium Density Residential.
- b. Ordinance No. 2005-58/Z-2004-1015: (First Reading/Public Hearing) An ordinance providing for a zoning change from R-2 (6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) to R-2 (11) (One-, Two-, and Multiple-Family Residential with a cap of 11 units per acre).

Attorney Gougelman read Ordinance No. 2005-57 and Ordinance No. 2005-58 by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of CPA-2004-31 and Z-2004-1015.

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

Joe Gassman, President/CEO, Habitat for Humanity, thanked the City for its continued partnership in revitalizing the Booker T. Washington neighborhood. He stated that the area residents are ecstatic about the removal of this eyesore in the community and the development of homeownership opportunities.

Moved by LaRusso/Palmer for approval of Ordinance No. 2005-57. Motion carried unanimously.

Moved by LaRusso/Walker for approval of Ordinance No. 2005-58. Motion carried unanimously.

27. ORDINANCE NO. 2005-59 (AR-2004-166), ORDINANCE NO. 2005-60 (CPA-2004-32), AND ORDINANCE NO. 2005-61 (Z-2004-1014) CLARK DEVELOPMENT COMPANY: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 72.25-acre parcel, located between Eau Gallie Boulevard and Aurora Road, west of Wickham Road, between Wickham Road and John Rodes Boulevard. (Owner - Acopian Technical Company, Inc.) (Applicant - Clark Development Corporation) (Representative - Philip Nohrr) (P&Z Board - 1/20/05)
- a. Ordinance No. 2005-59/AR-2004-166: (First Reading/Public Hearing) An ordinance providing annexation of a 72.25-acre parcel.

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- b. Ordinance No. 2005-60/CPA-2004-32: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential.
- c. Ordinance No. 2005-61/Z-2004-1014: (First Reading/Public Hearing) An ordinance providing for a zoning designation of R-1AAA (Single-Family Residential).

The City Attorney read the ordinances by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of AR-2004-166, CPA-2004-32, and Z-2004-1014, with a condition that the property owners within 500 feet be notified at the time of preliminary plat or site plan submittal.

Following the Planning and Zoning Board meeting, City staff recommended the addition of condition “b” to the zoning request, which has been added to Ordinance No. 2005-61:

- b. The applicant agrees to provide the necessary right-of-way for the Turtle Mound Road extension, between Eau Gallie Boulevard and Aurora Road, and will be eligible for impact fee credits as determined by the City Engineer.

There were no disclosures by Council.

Phil Nohrr, attorney representing the applicant, stated that they are requesting R-1AAA at a density of 1.7 units per acre. He added that this will be a high quality development, compatible with the neighbors.

Mr. Nohrr said that they have identified drainage issues, potentially coming from overflow. He said that the church located in the southeast corner adjacent to this property will give them permission to berm the property and redirect drainage from the east. The Aurora Woods neighbors will get a six-foot high fence and 10 feet of property on the development site will be left in a natural condition. Additionally, trees will be planted on the Aurora Woods side. The neighbors on the west will receive a six-foot high fence and drainage from that area will be moved east and then eventually to the master drainage system.

Mr. Nohrr said that although they will provide the right-of-way for Turtle Mound Road, he advised Council that there is a small link of approximately 200 feet missing. He concluded by saying that they will have a gated community and will maintain their own roads. The homes will be a minimum of 2,000 s.f.

Dorene Cesa, 1708 Sienna Drive, Aurora Woods Subdivision, said that she and her neighbors want a development that is compatible and responsible. She requested that the proposed development have half-acre lots and that more than 10 feet of buffer be provided. Additionally, she would like a preserve maintained in order to provide a home for wildlife.

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Roberta Inman, 1680 Anson Road, stated that her house was built towards the back of her property. She acknowledged that a fence will be constructed; however, she said she would like more of a buffer. Ms. Inman thanked the engineer for this project, Robert Robb, who met with the residents and indicated that they would provide for one-story homes behind her property. She stated that this will be better than having two-story homes looking down on the back of her property.

Mayor Goode asked Ms. Inman how far her home is from her back property line. Ms. Inman replied about 10 feet. She added that they did request more trees in the buffer area.

Attorney Nohrr approached the podium and said that Mr. Robb did not commit to one-story homes. He added that there is a 25' setback from the subject property. He noted that they have offered a fence between the two residential areas, which is not required by Code.

Mrs. Palmer asked how many units per acre could be developed on this property under the County's future land use. Mr. Nohrr replied that staff indicates 15; however, he believes that is doubtful. The consensus is that three units per acre is what you are seeing in that area. And, they are proposing about half that amount.

Moved by Palmer/Hand for approval of Ordinance No. 2005-59. Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-60. Motion carried unanimously.

Moved by Palmer/Walker for approval of Ordinance No. 2005-61. Motion carried unanimously.

Mayor Goode said that Council needs to decide if it wishes to continue with the agenda since it is after 11:00 p.m. By consensus, Council decided to continue.

28. ORDINANCE NO. 2005-62 (Z-2005-1023) AND PRELIMINARY PLAT APPROVAL (SD-2005-02) LUCCA VILLAGE SUBDIVISION: An ordinance providing for a zoning change on a 9.8±-acre parcel and preliminary plat approval to develop a residential subdivision on a 25.5-acre parcel, located on the south side of Eber Road, west of Babcock Street, and east of Dairy Road. (Owner/Applicant - DiPrima Holdings) (Representative - Rick Kern, P.E.) (P&Z Board - 5/05/05)

a. Ordinance No. 2005-62/Z-2005-1023: (First Reading/Public Hearing) An ordinance changing the zoning from R-A (Residential Holding) to R-2 (6) (One-, Two-, and Multiple-Family Dwelling with a cap of six units per acre) on a 9.8±-acre parcel.

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- b. Preliminary Plat Approval (SD-2005-02): (Public Hearing) A request for approval of a preliminary plat to develop a residential subdivision with 42 single-family lots and 76 townhome-style condominiums on a 25.5-acre parcel.

Attorney Gougelman read Ordinance No. 2005-62 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the preliminary plat as depicted on a single-sheet plan prepared by RK Engineering and Associates, Inc., with a signed and sealed date of 4/27/05, subject to the following conditions:

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

Any substantial change to the preliminary plat 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) an increase in the number of lots proposed; or 3) an additional entrance on Eber Road.

- b. Prior to construction plan approval, the applicant shall coordinate the required deceleration lane, in compliance with Appendix D, Chapter 8, Section 8.6 (b) (1) (e), which requires a deceleration lane for subdivisions that border on or contain a collector or an arterial street.
- 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. Appropriate environmental permits must be obtained as part of the construction plan review process.
- e. Only one building permit may be issued on the plat and one on the site plan prior to recordation of the final plat.

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

Moved by Contreras/Hand for approval of Ordinance No. 2005-62. Motion carried unanimously.

Moved by Hand/palmer for approval of the preliminary plat subject to the findings and conditions outlined in the agenda package. Motion carried unanimously.

29. ORDINANCE NO. 2005-63 (CPA-2005-07), ORDINANCE NO. 2005-64 (Z-2005-1026) AND SITE PLAN APPROVAL (SP-2005-08) HIDDEN OAKS CONDOMINIUMS: Ordinances providing for a Comprehensive Plan Amendment and zoning change and a site plan approval on a 1.3±-acre parcel, located on the north side of Sarno Road, east of

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Apollo Boulevard. (Owner/Applicant - Hidden Oaks Development of Melbourne, Inc.)
(Representative - Jack Spira, Esq.) (P&Z Board - 5/05/05)

- a. Ordinance No. 2005-63/CPA-2005-07: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use designation from Commercial to Medium Density Residential.
- b. Ordinance No. 2005-64/Z-2005-1026: (First Reading/Public Hearing) An ordinance providing for a zoning change from C-1A (Professional, Offices and Services) to R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre).
- c. Site Plan Approval (SP-2005-08): (Public Hearing) A request for site plan approval to allow the development of a 13-unit townhome condominium project.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the site plan as depicted on a single-sheet plan prepared by Outlaw & Jones Engineers, Inc., File Number 11/3143-1/PLN-PLT2, with a signed and sealed date of 4-24-05, subject to the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan 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) an increase in the number of units proposed; or 3) additional building height.
- b. The proposed buildings shall be substantially consistent with the rendering submitted by the applicant.
- 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.

There were no disclosures by Council.

In response to Mrs. Palmer, Mrs. Dittmer said that the proposal is for condominiums.

Patrick Fekany, 3600 Harbor City Boulevard, representing the applicant, confirmed that they plan to build 1,600 – 1,700 s.f. condominiums with a \$300,000 - \$350,000 price range.

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Mr. Fekany confirmed for Mrs. Palmer that the pool and amenities will be located in the rear of the property.

Moved by Palmer/Contreras for approval of Ordinance No. 2005-63. Motion carried unanimously.

Moved by Hand/Goode for approval of Ordinance No. 2005-64. Motion carried unanimously.

Moved by Contreras/Goode for approval of the site plan, subject to the findings and conditions outlined in the agenda report. Motion carried unanimously.

30. ORDINANCE NO. 2005-65 (LDR-2005-03/FOC-2005-03) BUILDING CODE: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 13, of the Code of Ordinances by providing for the adoption of the current edition, as mandated by the Florida Legislature, of the Florida Building Code and the Florida Residential Building Code, the Florida Existing Building Code, the National Electric Code, the Florida Plumbing Code, the Florida Mechanical Code, and the Florida Fuel Gas Code. (Applicant - City of Melbourne) (P&Z Board - 5/05/05)

The Planning and Zoning Board recommended approval of the change to the Land Development Regulations and found it to be consistent with the Melbourne Comprehensive Plan. The Building and Construction Advisory Committee also recommended approval and made a finding that the amendment would have minimal impact on housing affordability and for housing programs for affordable housing.

The Planning and Zoning Board and the Building and Construction Advisory Committee both voted unanimously to recommend approval of this request.

Attorney Gougelman read the ordinance by title.

Fire Chief Paul Forsberg said that the State Statutes require the adoption of the new building regulations.

Moved by Walker/Goode for approval of Ordinance No. 2005-65. Motion carried unanimously.

31. ORDINANCE NO. 2005-66: (First Reading) An ordinance amending Chapter 12 of the Code of Ordinances entitled Fire Prevention and Protection by providing for the adoption of the current edition, as mandated by the Florida Legislature, of the Florida Fire Prevention Code. (Applicant - City of Melbourne)

The Building and Construction Advisory Committee recommended approval at its April 3 meeting.

Attorney Gougelman read the ordinance by its title.

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Moved by Hand/LaRusso for approval of Ordinance No. 2005-66. Motion carried unanimously.

32. ORDINANCE NO. 2005-67: (First Reading) An ordinance amending Chapter 32 of the Code of Ordinances, entitled Utilities, by providing for increases in the water and sewer impact fees, adjustments to the current miscellaneous service charges, and the addition of guaranteed revenue charges for vacant property. (Applicant - City of Melbourne)

This is the first reading of an ordinance amending Chapter 32, Utilities, to implement the recommendations in the Water and Wastewater Impact Fees and Miscellaneous Service Fee Study accepted by City Council at their May 10, 2005 meeting. The most significant changes include:

- Residential deposits will be applied as credits to customer accounts after 12 consecutive months of good payment history; a minimum charge of \$5 per occurrence will be applied to delinquent accounts; the reconnection charge will be increased from \$29 to \$30; and a service initiation charge of \$20 will be assessed to each utility account for customers requesting service at a new location.
- At the request of the utility customer, service may be discontinued for a period of time not to exceed three months. The fee to turn-off the service will be \$20 per occurrence. Upon request of the utility customer to re-initiate the service, the fee will be \$20. If service is discontinued for a period in excess of three months, the account will be charged the monthly base rate for water and/or sewer service for each billing period extending beyond the third month.
- The proposed fee to reread a meter, upon request by the customer, is recommended to be reduced from \$29 to \$20 to more accurately reflect the cost of service. Meter test fees of \$30 for a ¾-inch meter, \$40 for a one-inch meter, and recovery of actual cost for larger meters, when meter testing is requested by the customer, are proposed. If it is determined that the meter was not registering water flow accurately, no meter test fee will be charged.
- Any check or bank draft returned to the customer due to insufficient funds will be subject to a returned check charge in accordance with State Statutes.
- Extension fees applicable to newly annexed areas that will be served by a water line extension will be assessed an extension fee of \$1,000 for a property with 100 feet or less of frontage. An additional \$500 will be assessed for every additional 50 feet of frontage.
- The water impact fee per Equivalent Residential Connection (ERC) will be increased from \$805 to \$1,340. Certain multi-family and mobile home units are considered less than one ERC and have been identified in detail in the proposed ordinance to reflect a fee less than \$1,340 per unit. Similarly, hotels and motels not individually metered, and housing for older persons (as defined by State Statutes) not having individual water connections, are considered as 0.75 ERC's per unit.

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- Commercial connection fees have been established for all commercial customers. For all commercial customers receiving water service through a meter size greater than 1½ inches, the water impact fees will be based on the greater of the schedule listed in the ordinance or the average dependable daily capacity of the development, identified by the applicant, verified for the applicant by a registered Florida Professional Engineer, and approved by the City.
- The annual \$50.00 fire sprinkler service charge will be eliminated.
- When service is terminated on a utility account, the City must continue to make service available to the property on a readiness-to-serve basis. To recover the fixed costs of holding the water capacity allocable to each property, the City will charge the property owner a monthly guaranteed revenue charge of \$6.50 per month per meter equivalent based on the meter in service at the time of account termination. If a property owner does not choose to pay this charge, he may relinquish his allocable water capacity at any time. In order to re-establish service at this location, a new impact fee would be assessed.
- The sewer impact fee will be increased from \$1,451 to \$1,900 for one ERC. Certain multifamily and mobile home units are considered less than one ERC and have been identified to reflect a fee less than \$1,900 per unit. Similarly, hotels and motels not individually metered, and housing for older persons (as defined by State Statutes) not having individual water connections, are considered as 0.75 ERC's per unit.
- To the extent that a utility account terminates sewer service from the City, the City must continue to make service available to the property on a readiness-to-serve basis. To recover the fixed costs of holding the sewer capacity allocable to each property, the City will charge the property owner a monthly guaranteed revenue charge of \$11 per month per meter equivalent based on the meter in service at the time of account termination. If a property owner does not choose to pay this charge, they may relinquish their allocable sewer capacity at any time. In order to re-establish service at this location, a new impact fee would be assessed.

Attorney Gougelman read Ordinance No. 2005-67 by title.

Director of Finance Michele Ennis reviewed the proposed changes to Chapter 32 of the City Code.

Mrs. Palmer referenced the provision where a property owner may choose to relinquish their allocable sewer capacity and then pay a new impact fee to re-establish service. She asked what would happen on a vacant home if someone then purchases the home. Mrs. Ennis replied that the impact fee would be paid at the time of purchase.

Mr. LaRusso expressed concern with a 66% increase in the water impact fee and 30% increase in the sewer impact fee. He asked why we have waited 10 years to review the fees.

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Mrs. Ennis said she applied the Consumer Price Index for the last 10 years and came within \$100 of the recommended water increase. Application of the CPI on the sewer showed that it was about \$2,200. The rate consultant recommended \$2,300; however, staff thought that was too much and recommended \$1,900. She added that the recommendation would be to review the impact fees more often.

Mr. LaRusso said we are hitting our constituents with the increases. A five dollar late fee will have an effect on some people and he can't agree with the increase.

Mrs. Ennis said that the fee is to encourage people to pay on time. People pay late by habit.

The Mayor noted that this ordinance will affect new customers, not existing customers. Mr. LaRusso replied that growth occurs from within. He added that he understands that these things have to happen; however, they should be spread out over a larger period of time rather than waiting 10 years and then "boom."

Mrs. Palmer referenced the guaranteed revenue charge of \$17.50 for water and sewer and asked how this would effect people who live here half the year. Mrs. Ennis explained that the fixed rate would not begin until after 12 months.

Mrs. Palmer asked about the effect on people who have been displaced. Mrs. Ennis said that administrative adjustments were made for people who were affected by the hurricanes. For example, security deposits were not required.

Mrs. Palmer stated that all these adjustments and penalties seem reasonable; however, the increase in impact fees is too much of a jump at one time. She added that she understands development needs to pay for itself; however, many of these new homes are being sold to people in our community and, because of that, she will vote nay.

Mr. Schluckebier said that staff will take that as direction to review the fees in three years. This is something that the consultant also recommended. He added that the capital facilities the City is required to build have changed in the past 10 years.

Mrs. Palmer added that the distribution is a fixed cost, but the City needs to look at ways to make the water plants more cost efficient, particularly in the area of single source suppliers.

Moved by Contreras/Goode to approve Ordinance No. 2005-67. Motion carried. Council Members LaRusso and Palmer voted nay.

33. ORDINANCE NO. 2005-68: (First Reading) An ordinance amending Chapter 2 of the Code of Ordinances, entitled "Administration," relating to boards and committees; providing regulations for the chairmanship of the City's quasi-judicial boards. (Concept approved by City Council - 3/22/05)

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Attorney Gougelman read the ordinance by its title. Mr. Schluckebier reviewed the agenda report.

Moved by Walker/Hand for approval of Ordinance No. 2005-68. Motion carried unanimously.

34. COUNCIL ACTION RE: Board Appointments

- a. Appointment of Council Member to the Melbourne Airport Authority to replace Council Member Mark LaRusso.

Mrs. Walker nominated Cheryl Palmer and Mrs. Hand nominated Richard Contreras. Moved by Walker/Goode to close the nominations. Motion carried unanimously.

Mr. LaRusso said that perception is reality and the perception of having two Grumman people on the Authority (Alan Doshier and Richard Contreras) is strong and sincere.

Mr. LaRusso voted for Mrs. Palmer. Mr. Contreras asked Attorney Gougelman to comment.

Attorney Gougelman said that at the request of Mr. Contreras, he looked into the issue as to whether or not it would be a violation of the State Code of Ethics for Messrs. Contreras and Doshier to serve on the Authority at the same time. He stated that it would not be a conflict; however, there would be a potential for conflict if the two individuals somehow entered in collusion. Both individuals would have to go far afield to violate the Code of Ethics.

Mr. LaRusso asked the procedure for changing his vote. Attorney Gougelman said that any member may change their vote on any issue before the final result is announced by the Mayor. Mr. LaRusso changed his vote to Richard Contreras.

The roll call vote was:

Contreras: LaRusso, Hand and Contreras

Palmer: Meehan, Walker, Palmer and Goode

Mrs. Walker said she has a problem with the perception of two people from Grumman serving on the Authority.

Appointed: Cheryl Palmer (May 24, 2005 – December 11, 2005, unexpired two-year term)

- b. Appointment of a fifth member to the Firefighters' Pension Plan Board of Trustees.

Moved by Meehan/Walker to appoint Tom Flamm. Motion carried unanimously. (June 10, 2005 through June 9, 2007)

- c. Appointment of members to the Dr. Martin Luther King, Jr. Naming Opportunities

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Committee.

Mrs. Palmer said that the person she wanted to serve has withdrawn from consideration. She added that she needs a few more days. The remainder of Council made the following appointments:

Reverend Hartford Lee appointed by the Mayor; Ed Williams appointed by Richard Contreras; Bob Moletteire appointed by Mark LaRusso; Joe McNeil appointed by Kathy Meehan; Bobby Bowen appointed by Grace Walker; James Teele appointed by Loretta Hand; and Walter West and Bruce Mochwart appointed by the City Manager.

Mrs. Meehan said she thought the Mayor was going to appoint Bennie Hopkins. Mayor Goode replied that Mr. Hopkins said he did not want to serve.

Moved by Hand/Walker to appoint the members (referenced above). Motion carried unanimously.

35. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

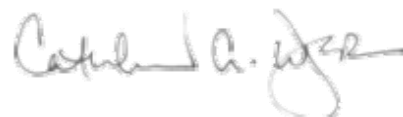
The City Manager distributed a memorandum to Council outlining the key dates for the adoption of the FY 2005-2006 budget. He asked Council to select a date between July 12 and July 14 to meet individually with staff. Additionally, July 19 is proposed as the workshop meeting date. If that date doesn't work, July 25 is the alternate workshop meeting date. (Note: subsequent to this meeting, the City Council selected July 25 as the budget workshop date.)

Mrs. Palmer said that Eau Gallie Towing and Recovery has asked when the six-month review will be performed on the City's towing contractor. Mr. Schluckebier said that a communication was recently sent to Council, which indicates that our experience with the current contractor has been satisfactory. Mrs. Palmer said that she has been provided information that may indicate there is a problem. Mr. Schluckebier said he would query staff.

Mayor and Council expressed no objection to Attorney Gougelman taking leave June 8 – 14.

36. ADJOURNMENT

Moved by Contreras/Palmer to adjourn. Motion carried unanimously. The meeting adjourned at midnight.



City Clerk – 6/2/2005

Approved by Council: June 14, 2005