

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 14, 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. Council Member Cheryl Palmer gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	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: Richard Contreras Vice Mayor, District 1 (out of town)

4. Proclamations and Presentations

Mayor Goode presented a proclamation recognizing Carl Schmidt, City of Melbourne Council Member 1958-1960, for his civic service; accepted by Mrs. Marjorie Schmidt and Mr. Schmidt's son, Rick. Mr. Schmidt passed away on May 31, 2005.

Additionally, the Mayor presented a proclamation declaring June 14, 2005 as "Flag Day" to Ed Palmer, Honor America, Inc.

5. Approval of Minutes - May 16, 2005 Special Meeting
May 24, 2005 Regular Meeting

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

6. City Manager's Report

No additions/no discussion.

7. Public Comments

Gary Assante, 2616 Kingsmill Avenue, referenced the negotiations between the City and the Police Benevolent Association. Mr. Assante said he feels the City Council has allowed the City Manager to break police solidarity over salary and pension issues. Additionally, he noted that Police Chief Don Carey has rejected him as a Police Department volunteer

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based on statements he (Mr. Assante) made in the Florida Today. Mr. Assante concluded by suggesting that Council sit with the City Manager during an open Council meeting and let him know that the police should be treated with dignity.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2005-40 (CPA-2004-33) TEXT AMENDMENT: (Second 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) (First Reading - 5/24/05)

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

Moved by Palmer/LaRusso for approval of Ordinance No. 2005-40. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. 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)
- a. Ordinance No. 2005-41/CPA-2004-23: (Second 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. (First Reading - 5/24/05)
- b. Ordinance No. 2005-42/Z-2004-1006: (Second 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. (First Reading - 5/24/05)

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

Moved by Walker/Meehan for approval of Ordinance No. 2005-41. The roll call vote was:

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

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Nay: None

Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-42. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. 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 and a Comprehensive Plan Amendment 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: (Second Reading/Public Hearing) An ordinance providing annexation of two parcels totaling 16.84± acres. (First Reading - 5/24/05)
 - b. Ordinance No. 2005-46/CPA-2004-26: (Second 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. (First Reading - 5/24/05)
 - 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 Ordinance Nos. 2005-45, 2005-46 and 2005-47 by title.

Mayor Goode reported that Ordinance No. 2005-47 was voted down by a 4-3 vote at the last Council meeting. He asked the City Attorney to give a brief explanation on how this ordinance is now back before Council on first reading.

Attorney Gougelman explained that the motion to approve Ordinance No. 2005-47 at the last meeting only received three aye votes. Under the City's Charter, four affirmative votes are required to take action. He added that in his opinion, the ordinance is in a state of limbo. The ordinance as constituted did not pass; however, it does not mean that the zoning proposal was defeated. He added that Council Member LaRusso expressed

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concern that the density was too high. And, that is the primary reason the ordinance did not pass. He confirmed that it is his legal opinion that, although the ordinance has not been passed, it has not been defeated.

In response to the Mayor, Attorney Gougelman confirmed that the applicant has changed his request from R-2 zoning with a density cap of eight units per acre to R-2 with a density cap of seven units per acre. The ordinance would need to be amended on first reading to reflect the density of seven units per acre.

Phil Nohrr, attorney representing the applicant, agreed with Attorney Gougelman's explanation. He stated that following the last meeting, they looked at the project and decided to reduce the number of units, which lowers the density to about 6.85 units per acre; they limited the units on the rear of the property to four unit buildings instead of six; they moved the buildings back on the property; and they increased the setback to 40' between the development and the person located directly behind this property who is opposed. Mr. Nohrr distributed a conceptual site plan to Council showing the changes.

Continuing, Mr. Nohrr referenced the petition signed by over 100 people from the adjacent Baymeadows Subdivision in support of the project. (Note: The petition was inadvertently included as part of the agenda package under Item #9 rather than Item #10.) He noted that 11 additional names have been added and distributed to Council prior to the meeting.

Mr. Nohrr informed Council that the property as zoned could generate 7,772 trips per day. The rezoning of the property would result in 609 daily trips. He concluded by stating that they have reduced the density; the property on the western portion won't go away and Council has the opportunity to cut the trip generation by better than 90%; the townhouse development will be two stories, which will be the same height as the neighbors on the other side; the townhomes will sell for approximately \$250,000 - \$350,000; and the units will be 1,250 – 1,850 s.f.

Mayor Goode asked Mr. Nohrr if he still wishes to proceed with the annexation if the zoning ordinance fails. Mr. Nohrr said yes and added that they would come in with commercial zoning on the entire parcel.

Mayor Goode opened the public hearing.

Kathleen Finnegan-Hiers, 3688 Kestrel Court, stated that an entirely commercial development won't flow with their neighborhood. She said that 114 homes and seven businesses want this item to pass. She added that they look forward to working with MARSOL Development.

Kelly Edelman, 3687 Kestrel Court, said she does not wish for the property to remain commercial. She stated that she supports residential zoning.

Jim Wilson, 3693 Kestrel Court, stated that he supports this development. The developer has proposed a plan that will enhance the current development and tie the two

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neighborhoods together. If the entrance is off Wickham Road, it would create separate neighborhoods. Mr. Wilson said that if the property remains commercial, there will be an increase in traffic on Grand Meadows Boulevard.

John Klein, 3676 Kestrel Court, referenced the petition opposed to this request previously submitted and distributed to Council. He commented that putting the two developments together would be a mistake. The entrance on Grand Meadows Boulevard barely handles the current traffic. A lower density development would still increase the number of trips. Additionally, an entrance/exit off Wickham Road would probably be acceptable to a lot of people.

Continuing, Mr. Klein said that he does not support the entrance/exit dumping into their development. He is against the zoning and, since he has a corner lot, he will have headlights from the new development 24 hours a day, seven days a week.

Robert Griswold, 3505 Cord Grass Court, said he thought this issue was over at the last meeting. Mr. Griswold stated that density remains the issue. He explained that he has an adjoining lot and asked Council to consider what it would be like to have this development in their backyard. And, he asked why a petition is acceptable at this time.

Laura Treffelsen, 4503 Cord Grass Court, said that her property backs up to this development. She said she would prefer residential; however, she takes issue with the density. Ms. Treffelsen questioned why the developer doesn't build single-family homes that would blend with the whole area. This would be better than a multi-family development looking into her backyard.

Mr. Nohrr returned to the podium and said that the City Code places time restrictions on a petition of objection, which relates to the supermajority vote rules. Perhaps a petition in support may be submitted at any time. Mr. Nohrr explained that a commercial development would conflict with residential. A restaurant would result in odors, dumpsters, etc. located to the rear of the property. When the site plan returns, they will have to address buffering. He stressed that they want to be a good neighbor. They have determined that a townhome development can be successfully marketed. They have reduced the density, increased the setbacks and are asking for a development that would result in a 90% reduction in traffic.

Council Member Kathy Meehan disclosed that Mr. Nohrr contacted her to discuss the reduced density and the petition in support. Council Member Mark LaRusso said that on June 8 Mr. Nohrr contacted him to discuss the same issues. He added that he did not reach any conclusions following that discussion.

Moved by Palmer/Hand for approval of Ordinance No. 2005-45. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

Moved by Hand/Palmer for approval of Ordinance No. 2005-46. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-47 as explained at this meeting with the reduction in density to seven units per acre.

Mr. LaRusso stated that he will support this ordinance based on the reduction in density. When the site plan is visited, he stated that he wants to see buffers, fencing, etc. Council Member Cheryl Palmer said she appreciates that this rezoning will result in fewer trips. This is good growth management and the developer has made concessions.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. 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: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Industrial. (First Reading - 5/24/05)
 - b. Ordinance No. 2005-52/Z-2004-1012: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of M-1 (Light Industrial). (First Reading - 5/24/05)

Attorney Gougelman read the ordinances by title. There were no disclosures by Council and no comments from the audience.

Moved by Walker/LaRusso for approval of Ordinance No. 2005-51. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by LaRusso/Walker for approval of Ordinance No. 2005-52. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. 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: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential. (First Reading - 5/24/05)
 - b. Ordinance No. 2005-54/Z-2004-1013: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate, one dwelling per acre). (First Reading - 5/24/05)

Attorney Gougelman read Ordinance No. 2005-53 and Ordinance No. 2005-54 by title. There were no disclosures by Council and no comments from the public.

Moved by LaRusso/Palmer for approval of Ordinance No. 2005-53. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-54. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

13. 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' Assoc., 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: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Industrial. (First Reading - 5/24/05)
- b. Ordinance No. 2005-56/Z-2004-1011: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of M-1 (Light Industrial). (First Reading - 5/24/05)

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

Moved by Walker/Meehan for approval of Ordinance No. 2005-55. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Palmer/Walker for approval of Ordinance No. 2005-56. The roll call vote was:

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

Nay: None

Motion carried unanimously.

14. 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)

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- a. Ordinance No. 2005-57/CPA-2004-31: (Second 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. (First Reading - 5/24/05)
- b. Ordinance No. 2005-58/Z-2004-1015: (Second 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). (First Reading - 5/24/05)

The City Attorney read the ordinances by title. There were no disclosures and no public comments.

Moved by LaRusso/Hand for approval of Ordinance No. 2005-57. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by LaRusso/Hand for approval of Ordinance No. 2005-58. The roll call vote was:

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

Nay: None

Motion carried unanimously.

15. 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: (Second Reading/Public Hearing) An ordinance providing annexation of a 72.25-acre parcel. (First Reading - 5/24/05)
 - b. Ordinance No. 2005-60/CPA-2004-32: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential. (First Reading - 5/24/05)

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- c. Ordinance No. 2005-61/Z-2004-1014: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of R-1AAA (Single-Family Residential). (First Reading - 5/24/05)

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

Moved by Hand/Walker for approval of Ordinance No. 2005-59. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Palmer/Meehan for approval of Ordinance No. 2005-60. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/Hand for approval of Ordinance No. 2005-61. The roll call vote was:

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

Nay: None

Motion carried unanimously.

16. ORDINANCE NO. 2005-62 (Z-2005-1023) LUCCA VILLAGE SUBDIVISION: (Second 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, 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) (First Reading - 5/24/05)

Attorney Gougelman read Ordinance No. 2005-62 by title. There were no disclosures by Council and no comments from the public.

Moved by Palmer/Hand for approval of Ordinance No. 2005-62. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

17. ORDINANCE NO. 2005-63 (CPA-2005-07) AND ORDINANCE NO. 2005-64 (Z-2005-1026) HIDDEN OAKS CONDOMINIUMS: Ordinances providing for a Comprehensive Plan Amendment and zoning change on a 1.3±-acre parcel, located on the north side of Sarno Road, east of 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: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use designation from Commercial to Medium Density Residential. (First Reading - 5/24/05)
- b. Ordinance No. 2005-64/Z-2005-1026: (Second 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). (First Reading - 5/24/05)

Attorney Gougelman read each ordinance by title. There were no disclosures and no comments.

Moved by Walker/Meehan for approval of Ordinance No. 2005-63. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Palmer/Walker for approval of Ordinance No. 2005-64. The roll call vote was:

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

Nay: None

Motion carried unanimously.

18. ORDINANCE NO. 2005-65 (LDR-2005-03/FOC-2005-03) BUILDING CODE: (Second Reading/Public Hearing) An ordinance amending Appendix D, Chapter 13, of the Code of Ordinances by providing for the adoption of the current editions, 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) (First Reading - 5/24/05)

The City Attorney read the ordinance by title. Mayor Goode opened the public hearing. There were no comments.

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Moved by Hand/LaRusso for approval of Ordinance No. 2005-65. The roll call vote was:

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

Nay: None

Motion carried unanimously.

19. ORDINANCE NO. 2005-66: (Second Reading/Public Hearing) 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) (First Reading - 5/24/05)

The City Attorney read Ordinance No. 2005-66 by title. There were no comments from the audience.

Moved by Hand/Meehan for approval of Ordinance No. 2005-66. The roll call vote was:

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

Nay: None

Motion carried unanimously.

20. ORDINANCE NO. 2005-67: (Second Reading/Public Hearing) An ordinance amending Chapter 32 of the Code of Ordinances, entitled Utilities, by providing for adjustments 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) (First Reading - 5/24/05)

The City Attorney read the ordinance by title. There were no comments from the audience.

Moved by Hand/Walker for approval of Ordinance No. 2005-67.

Mr. LaRusso said he would support this ordinance if the following items were removed: minimum charge of \$5.00 per occurrence applied to delinquent accounts and service initiation charge of \$20.00 for each utility account for customer requesting service at a new location.

No one indicated that they would second such an amendment to the ordinance.

Mr. Schluckebier confirmed for Council Member Grace Walker that the initiation charge will be the fee for setting up a new account; there will not be a credit in this amount on the first billing.

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Moved by Palmer/LaRusso to remove the increase in the sewer and water impact fees.

Mayor Goode stated that this would “gut” the ordinance.

The question was called on the amendment. The vote was:

Aye: LaRusso, Walker and Palmer

Nay: Meehan, Hand and Goode

Motion failed.

The question was called on the main motion. The roll call vote was:

Aye: Meehan, Walker, Hand and Goode

Nay: LaRusso and Palmer

Motion carried.

21. ORDINANCE NO. 2005-68: (Second Reading/Public Hearing) 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) (First Reading - 5/24/05)

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

Moved by Palmer/LaRusso for approval of Ordinance No. 2005-68. Motion carried unanimously.

Recessed: 7:50 p.m.
Reconvened: 8:00 p.m.

NEW BUSINESS

22. COUNCIL ACTION RE: Approval of Task Order No. 12 with Hazen and Sawyer, Ft. Pierce, FL - \$62,400 for the Pineda Causeway Water Main Replacement, Project No. 05347 and transfer of \$71,200 from the project for Refrigerant Upgrade at the Water Treatment Plant (05304) to establish a budget for this project.

City Engineer Howard Ralls reviewed the agenda report. The recommendation is for approval of Task Order No. 12 to the Hazen & Sawyer, P.C. contract in the amount of \$62,400 and approval of a transfer of \$71,200 from Refrigerant Upgrade at the WTP, Project 05304, to establish this project’s budget.

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

23. CONSENT AGENDA:

The City Manager reported that Mr. LaRusso asked that Item “j” be removed from the consent agenda and heard under Item #24.

Attorney Gougelman referenced the procedure for handling Code Enforcement liens (Resolution No. 1858) and said that if a Council Member wishes to proceed with a public hearing, the Mayor would need to poll Council to determine if four members would be interested in conducting a hearing. The item may be removed from the consent agenda; however, four Council Members would need to approve conducting a public hearing (at a future meeting).

Moved by Hand/LaRusso for approval of the consent agenda, Items “a” through “i.” Motion carried unanimously.

- a. Change Order No. 2 for D.B. Lee Wastewater Treatment Plant, Phase III Demolition, Project No. 04317, Cross Environmental Services, Inc., Crystal Springs, FL - \$47,806.
- b. Amendment to existing contract to provide Stormwater Consulting Services, Ennead, LLC, Tarpon Springs, FL - \$35,950 and transfer of \$29,765 from the Stormwater Master Plan project (779000) to other Professional Services (204200).
- c. Purchase of 19 single and four two-way countdown pedestrian signals for three intersections, Strawbridge Avenue/U.S. Highway 1, Strawbridge Avenue/Livingston Street, and Highway A1A/Paradise Boulevard, Project No. I05609, Traffic Control Devices, Altamonte Springs, FL - \$19,845.
- d. Purchase of traffic cabinets at the intersections of U.S. Highway 1/Eau Gallie Boulevard and U.S. Highway 1/Sarno Road, Project No. I04100, Naztech, Orlando, FL - \$17,620 and transfer of \$1,201 from Traffic Signal Preemption Program Project (751014) to this project budget.
- e. Authorization to seek grant funding for the construction of the Pineapple Pier.
- f. Purchase of an Elgin Crosswind J+ Street Sweeper, Environmental Products of Florida, Maitland, FL - \$137,800.
- g. Contract award for the removal of old flooring and installation of new ceramic tile at the Front Street Civic Center, Sherwin Williams, West Melbourne, FL - \$32,705 and transfer of \$2,705 from the McGrath Bleacher Replacement project (Index 771 034) to this project budget.

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- h. Purchase of a hydraulic submersible trash pump and power unit, Thompson Pump & Manufacturing Company, Inc., Port Orange, FL - \$20,625.
- i. Lien Rescission CE-04-104: Approval of request for lien reduction from \$34,000 to \$809.28 with the provision that the fine be paid within 15 days or the lien reverts back to the original amount. (Gerry Hadley - 811 Juanita Circle)

The following item was removed from the consent agenda and considered under Item #24:

- j. Lien Rescission CE-05-009: Denial of request for lien reduction from \$4,000 to \$0. (Craig Deligdish, Physician Management Corp. - 1415 S. Apollo Boulevard).

24. ITEMS REMOVED FROM THE CONSENT AGENDA

Lien Rescission CE-05-009: Denial of request for lien reduction from \$4,000 to \$0. (Craig Deligdish, Physician Management Corp. - 1415 S. Apollo Boulevard).

Mr. LaRusso said that Item "i" in the consent agenda is a lien reduction from \$34,000 to \$809. In the case of Physician Management Corporation, Dr. Deligdish put his trust in a contractor that no permit was needed. Physician Management Corporation is a good partner in our City and, given the lien reduction in Item "i" on the consent agenda, he would like to offer relief on this item as well.

Mrs. Palmer said that Physician Management Corporation would have to abide by our landscaping ordinance since they removed trees; however, she would support rescinding the lien.

A brief discussion followed regarding the Code Enforcement Board's order, which is to deny the request for the lien reduction. A motion to approve the order would result in the lien and fine remaining in place.

Mr. Schluckebier said that what distinguishes this case from the other is that at the time this was heard by the Code Board, there was neither compliance nor any indication that there would be compliance. The Code Board rarely recommends a full fine and Council should give that fact careful consideration.

Moved by LaRusso/Palmer to deny the recommended order.

Mr. LaRusso confirmed for Attorney Gougelman that the intent of his motion is to eliminate the lien and the fine.

With regard to the Council procedure on Code Board liens, Mr. Schluckebier said that a public hearing is probably not needed when there is action in favor of the applicant.

The question was called. The roll call vote was:

Aye: LaRusso and Palmer

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Nay: Meehan, Walker, Hand and Goode

Motion failed.

Moved by Goode/Meehan to adopt the recommended order (which would result in the lien and fine remaining in place). Motion carried 4-2. Council Members LaRusso and Palmer voted nay.

25. RESOLUTION NO. 1937: A resolution finding that a blighted area exists adjacent to the Downtown Melbourne Community Redevelopment District and declaring that the rehabilitation, conservation, redevelopment or combination thereof is necessary in the interest of public health, safety and welfare and establishing a community redevelopment agency to carry out the redevelopment purposes.

Attorney Gougelman read Resolution No. 1937 by title. Mrs. Dittmer briefed Council.

In response to the Mayor, Mrs. Dittmer said that the commercial area has potential for redevelopment. The remainder of the area is predominantly residential and the City does not wish to go into that area.

The City Manager noted that the actual changing of the boundaries and the amendment to the redevelopment plan will return in the form of an ordinance in the next four to six months.

Mrs. Meehan asked if she could vote on this item since she lives on Prospect Avenue. Attorney Gougelman replied yes.

Moved by Hand/Walker for approval of Resolution No. 1937. Motion carried. Mayor Goode voted nay.

Council Member Loretta Hand asked the Mayor why he voted nay. The Mayor said that the majority of the money is generated in one area although it is not spent in that area. He said he believes that at least a portion should be spent in the area that generates the majority of the money.

Mr. Schluckebier said that the Mayor has staff's commitment to remedy this situation.

26. SITE PLAN APPROVAL (SP-2005-04) LUCCA VILLAGE CONDOMINIUMS: (Public Hearing) A request for site plan approval to develop a 76-unit multi-family residential condominium development on 8.52± acres of the Lucca Village Subdivision zoned R-A (Residential Holding), 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., RK Engineering, Inc.) (P&Z Board - 5/05/05)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of the two-page site plan prepared by RK

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Engineering and Associates, Inc., with a signed and sealed date of 4/15/05, to develop a 76-unit condominium project in Tract A of the 25.25± acre Lucca Village Subdivision, 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 5% of the open space or vegetative areas on site; 2) an increase in the number of units proposed; or 3) an additional entrance on Eber Road.

- b. The proposed buildings shall be substantially consistent with the renderings submitted by the applicant.
- c. If Tract A is proposed to develop prior to the single-family residential portion of the subdivision, the applicant shall coordinate the required deceleration lane with the construction plan approval of this site plan, 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.
- d. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- e. Appropriate environmental permits must be obtained as part of the construction plan review process.
- f. Only one building permit may be issued on the site plan prior to recordation of the final plat for Lucca Village Subdivision.

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

Moved by Hand/Meehan for approval of the site plan (including the conditions). Motion carried unanimously.

27. SITE PLAN APPROVAL (SP-2005-05) EAU GALLIE BOULEVARD OFFICE PARK, PHASE 6 (FKA UNDERILL CONCEPTUAL OFFICE CAMPUS): (Public Hearing) A request for site plan approval for two restaurants on a 3.24-acre portion of a 15.77-acre, six-phase office/commercial park zone C-P (Commercial Parkway), located on the north side of Eau Gallie Boulevard, east of the intersection of Sarno Road and Trent House Drive. (Owners - Montreal, Ltd.) (Applicant - Eau Gallie Boulevard Development, LLC) (Representative - Matt Soyka, P.E., Soyka Engineering) (P&Z Board - 5/19/05)

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Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the three-sheet plan with a signed and sealed date of 5/12/05, by Matt Soyka, PE, Soyka Engineering and Associates, Inc., to provide for two restaurants on a 3.24-acre portion of an overall 15.77-acre, 6-phase office/commercial project with the following conditions:

- a. Any change to the site plan will require re-evaluation 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 5% of the open space or vegetative areas on site; 2) an increase by more than 5% in the size of the buildings.

- b. All hardwood trees, including scrub oaks shall be preserved unless located in a driveway, paved parking lot, building pads, or retention areas. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees.
- c. The applicant shall obtain appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission, if necessary.
- d. Within 30 days of City Council approval, the applicant shall provide an opaque buffer consisting of a six-foot opaque fence and associated landscaping along the entire north property line facing the adjacent residential lots from the Magnolia Lakes Subdivision.
- e. The buildings shall be substantially consistent with the renderings submitted by the applicant.

Mrs. Hand asked how far the property is located from I-95. Mrs. Dittmer showed the location on the map. Mrs. Hand asked what restaurants are planned for this location. Mrs. Dittmer said that the applicant has not disclosed that to staff, although they will be fairly large and probably not the fast food type.

Mayor Goode disclosed that Mr. Underill once showed him a plan for the restaurant Squid Lips. Although he was not aware of the location, that is a possibility since he owns one in Sebastian.

Matt Soyka, engineer representing the applicant, stated that one idea is to create a version of Squid Lips.

There were no further comments from the public.

Moved by Palmer/Hand for approval of the site plan (which includes the conditions).
Motion carried unanimously.

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28. SITE PLAN APPROVAL (SP-2005-11) PINEAPPLE RIDGE APARTMENTS: (Public Hearing) A request for site plan approval to develop a 204-unit multiple-family apartment complex on a 15.22-acre parcel zoned R-2 (One-, Two-, and Multiple-Family Residential), located on the south side of Eau Gallie Boulevard, east of Wickham Road. (Owner - Diamond Bay of Eau Gallie, LLC) (Applicant - Diamond Bay Builders) (Representative - Jake Wise, P.E., Construction Engineering Group) (P&Z Board - 5/19/05)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of a single-sheet plan with a signed and sealed date of 5/13/05 by Jake Wise, PE, Construction Engineering Group, Project Number 030101, to provide for a multiple-family residential apartment project with the following conditions:

- a. Any change to the site plan will require re-evaluation 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 5% of the open space or vegetative areas on site; 2) an increase by more than 12 units as shown on the site plan; or 3) a change in the building size, height, or setbacks, which exceeds the minimum setbacks required by Code.

- b. All hardwood trees, including scrub oaks of greater than four-inch caliper, shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees.

Initially, trees shall only be removed for driveways, drainage facilities, and paved parking spaces and aisles. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be identified by Code Enforcement personnel, and an evaluation shall be made to determine the possibility of saving hardwood trees including scrub oaks. Trees and scrub oaks to be preserved must be protected by barricades placed at the drip line during construction. All invasive non-native vegetation shall be removed from the site including along or within the wetlands areas and the drainage easement.

- c. The applicant shall obtain appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission to relocate or take any gopher tortoises. Should threatened or endangered species be found on the site after commencement of construction for which a permit has not been granted, the owner/applicant shall cease construction until the appropriate permits are obtained.
- d. The applicant shall convey the right-of-way to the City by Warranty Deed upon completion of the Holland Avenue extension acceptable to the City.

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- e. The applicant shall provide a continuous six-foot opaque buffer, including a six-foot fence along the west property line, and a combination of landscaping and the garage structures along the south and east sides of the project.

Mrs. Palmer asked why the land was cleared for so long without any activity on the site. Mrs. Dittmer said that this property is part of the overall plat and the roadway was required to be put in before any other activity. Mrs. Palmer said that there have been a lot of complaints from the neighbors.

Jake Wise, engineer representing the applicant, explained that the grading and existing vegetation provide an opportunity for them to save a great number of trees. The developer has offered to save or move every tree that is six inches or larger. If trees don't make it, they will be replaced by four-inch caliper trees. The traffic study has identified a Level of Service B before and after construction. And, the new plan provides for a few less units.

Mr. Wise explained the history of the development and noted that staff required Holland Avenue to be extended. This will allow a cut through from Sarno Road to Eau Gallie Boulevard. That extension is close to final approval/inspection. He explained that they started in May last year but lost time during the hurricane season. A further delay has been caused by Florida Power and Light. They paid FP&L last year to relocate three power poles and that work did not start until this year.

Mr. Wise said that the setbacks range from 2 ½ to 13 times the minimum requirements. They feel like they have done a good job with buffering. At the Planning & Zoning Board meeting, there was a lengthy discussion with the neighbors to the west about buffering. After that meeting, they met with the neighbors. The neighbors agreed to a fence and construction of a guardrail. A curve has been proposed in the roadway to slow traffic. Also, they plan to construct an eight-foot sidewalk on the east side of the road. The neighbors have now indicated that they are no longer happy with the plan. The developer has not been successful in any further discussions.

Mr. Wise said that they have agreed to install a fence along the entire western property line and an FDOT guardrail along the length of the straightaway – from pond to pond. The neighbors are concerned about noise, lights and safety. They believe the fence and guardrail address the safety concerns. Additionally, the road has a 25-mph speed limit. An opaque buffer is proposed all around the property that will block light. Additionally, the fence and landscaping will stop noise as well or better than a wall system.

The fence permit for the western property line was issued on May 19. It has not yet been installed because there is an ongoing discussion about where to locate the fence so that landscaping on either side could be maintained. The western property line contains FP&L wires overhead and Melbourne sewer gravity lines below; therefore, it will not be feasible to plant large trees. There is an existing 10' easement along the west property line dedicated to landscaping, public utilities and fencing. If a wall is determined to be necessary, they would have to modify the plan. The plat has been recorded; however, they would be happy to modify it to accommodate the desire of Council.

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Mr. Wise stated that his personal engineering opinion is that the wall would be overkill. A fence would deflect a vehicle; however, there could be dire consequences if someone hit the guardrail and then the wall. Mr. Wise said he is not comfortable installing the wall; however, the developer is willing to install one if dictated by Council and staff. The wall would run 270' between ponds.

Mrs. Walker asked the material of the fence. Mr. Wise said it will be pressure treated wood that is opaque. There is a relatively new fence off of Eau Gallie Boulevard and they would match that fence. In response to Mrs. Walker, Mr. Wise discussed the width of the roadway and the landscaping median.

Mrs. Palmer asked how close the roadway is to the existing houses. Mr. Wise said it is 16' from back of curb to the property line. Mrs. Palmer asked the timeline for installing the wall. Mr. Wise said probably two to four weeks.

Mrs. Palmer said she has received complaints from residents about sand. She asked where the sand is coming from and how he proposes to stop the neighboring residents from being sand blasted during construction. Mr. Wise said the areas that are exposed are being seeded and watered. He added that it takes time.

Mayor Goode called for disclosures. Mrs. Palmer said she has had several conversations with Verla Elliott about the previous project, which is related to this project.

Mayor Goode opened the public hearing.

Michael Lang, representing the developer, was present and available for questions.

Verla Elliott, 1269 Breeze lane, presented six letters from neighbors on Breeze Lane asking that she represent their views at this meeting. She stated that they met with the developer after the Planning & Zoning Board meeting. And, the plan that they were shown isn't the plan that has been presented at this meeting. The plan they were shown didn't include any apartments or parking spaces. She said that their houses are small with bedrooms along the back. The subject property is close and they are being affected by noise and lights from the new road.

Ms. Elliott stated that many of the residents are ill as a result of the blowing dirt for the past two years. Because of the location of the Holland Drive exit so close to their property, the residents don't feel that a wood fence with shrubbery will block the dirt and noise. They would like a block wall in place before they tear up any more dirt. A block wall would stand up better during a hurricane, stop trash and debris from blowing onto their property from the parking lot, and provide maximum protection from juveniles who would hop the fence.

Ms. Elliott concluded by saying that before the Planning and Zoning Board meeting, they sodded the retention ponds and curves; however, they haven't seeded the large curves yet. She added that the neighbors can tell when this will be an agenda item because they see activity on the property.

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Ann Horschel, 2669 Kefauver Street, said that there are three huge piles of sand on the east end of the property that have not been sodded. Traffic has increased from people taking a shortcut on Holland between Eau Gallie Boulevard and Sarno Road. The addition of 204 apartments will make the traffic problem worse. Ms. Horschel said her road is dead straight so they need a speed hump. Their neighborhood has a lot of children and there is no sidewalk on Holland Avenue at their end. Presently, there is only a drainage ditch between their property and the subject property. There is no way to deter the noise. She questioned whether a six-foot wall would provide any relief. And, she asked about the parking lot lights. Ms. Horschel recommended that these issues be addressed before final approval.

Lisa Meyer, 2668 Trammel Avenue, said her biggest concern relates to traffic. They have no sidewalk and people are already speeding through the neighborhood. When the road is opened it will turn their neighborhood into a raceway.

Mr. Wise said they have tried to accommodate the neighbors on all sides. They have proposed on their plan to restrict Holland to be an exit only with a gate. There is another main entrance onto Eau Gallie Boulevard. He repeated that they didn't want to extend the road; however, it was dictated by the City. They have tried to keep people off the roadway by using barricades but those have been moved. Once the road is officially open, there will be constant traffic. There are two large swales along the east and south. Their site has been designed to accommodate maintenance vehicles. Because of that, they can't put a fence or wall along this area. They are using garages and landscaping as a buffer.

Mr. Wise said that the road is not part of the approval tonight. The developer is willing to construct a wall for approximately 270' between the two ponds.

Mrs. Palmer asked if the developer would be willing to put the wall up before any further site clearing. Mr. Wise said yes with one exception. Lot 1 on the northwest corner could be cleared prior to the wall. He can't commit another group to no clearing. He is the engineer on that parcel as well and does not believe there are immediate plans to begin clearing.

Mrs. Palmer asked about the huge piles of sand. Mr. Wise confirmed that they are exposed and have not been seeded. He added that they would seed and water those piles.

Mrs. Palmer asked Mr. Wise to address parking lot lights. Mr. Wise discussed the buffering that is planned. And, he noted that the street lights installed by FP&L are not supposed to shine beyond the right-of-way. Because there are no sidewalks along the west side, there is less likelihood that those lights will shine on adjacent properties.

Mrs. Meehan asked if the wall would follow the curve on the west side. Mr. Wise said it would not; it would be 270' straight from pond to pond, six feet high from the existing grade.

Mrs. Hand said she would like to see a wall because wooden fences do not hold up.

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Moved by Palmer/Hand for approval with a new condition “f” that would require a six-foot concrete wall on the 270’ section on the west boundary of the property to be constructed before any other site improvements are made.

Mrs. Dittmer said that this should actually be an amendment to condition “e.”

The maker/seconder agreed that condition “e” will be revised to provide that in place of a six-foot opaque fence along the west property line, a six-foot wall will be constructed for a distance of 270’ prior to any other site improvements.

Attorney Gougelman added this would be along the boundary with Lots 4 – 7 of the Breeze Ridge Subdivision.

The question was called. Motion carried unanimously.

Mrs. Palmer recommended that the residents apply for a speed hump after the new roadway opens up.

29. ORDINANCE NO. 2005-69 (Z-2005-1031) AND ORDINANCE NO. 2005-70 (CU-2005-04/SP-2005-09) PALMS RIVERFRONT CONDOMINIUMS (FKA HIBISCUS RIVERFRONT CONDOMINIUMS): Ordinances providing for a zoning change and conditional use with site plan approval on property located on the east side of U.S. Highway 1, north of Hibiscus Boulevard. (Owner - Tricon Real Estate, Inc.) (Applicant - David T. Menzel, P.E., MAI Engineering, Inc.) (Representative - Philip Nohrr) (P&Z Board - 5/19/05)
- a. Ordinance No. 2005-69/Z-2005-1031: (First Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) to R-3 (Multiple-Family Dwelling) on a 0.4-acre portion of a 3.0±-acre property consisting of three parcels.
 - b. Ordinance No. 2005-70 (CU-2005-04/SP-2005-09): (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to construct an 85-foot high multiple-family condominium development at 23.3 units per acre on 3.0 acres.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval.

Phil Nohrr, attorney representing the applicant, reported that they previously obtained approval for 67 feet. They committed to a plan for additional height with perhaps more breezeway. They have been able to acquire the land to the south and are now returning with a new plan. Mr. Nohrr reviewed the two plans and said that the new plan provides for more height with an increase in breezeways. They plan to take down the old motel and the apartments. He added that there is a certain amount of illegal activity that occurs on those properties now.

Mr. Nohrr stated that at the Planning and Zoning Board meeting, the neighbors to the north expressed support. He added that the property currently has 78 motel or apartment

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units and this plan calls for a total of 70 units. Additionally, they agree to and will contribute towards a linear parkway. Mr. Nohrr concluded by saying that the plan calls for 70 high end units that will be 2,000 to 3,000 s.f. This will be a significant economic engine for the Downtown area and will clean up an area of U. S. 1.

Mr. LaRusso disclosed that he met with Mr. Menzel and the developer at Mr. Menzel's office in February. They showed him what they were proposing and he walked away with no conclusion.

There were no comments from the public.

Moved by LaRusso/Meehan for approval of Ordinance No. 2005-69.

Mr. LaRusso said he did not like the original plan. He gave the developer credit for returning with a plan that provides for increased breezeway and setbacks.

The question was called. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2005-70. Motion carried unanimously.

30. ORDINANCE NO. 2005-71 (AR-2005-170), ORDINANCE NO. 2005-72 (CPA-2005-08), AND ORDINANCE NO. 2005-73 (Z-2005-1027) RONNIE D. RICHARDS: Ordinances providing for annexation of 9.92 acres, and a Comprehensive Plan Amendment and establishing zoning on a 9.02-acre parcel, located on the west side of Dairy Road, south of the intersection of Dairy Road and Eber Boulevard. (Owner/Applicant - Ronnie D. Richards, Trustee) (Representative - Don Anthony) (P&Z Board - 5/19/05)
- a. Ordinance No. 2005-71/AR-2005-170: (First Reading/Public Hearing) An ordinance providing for annexation of a 9.92-acre parcel.
 - b. Ordinance No. 2005-72/CPA-2005-08: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Mixed Use Commercial/Low Density.
 - c. Ordinance No. 2005-73/Z-2005-1027: (First Reading/Public Hearing) An ordinance providing for a zoning designation of C-1 (Neighborhood Commercial).

Attorney Gougelman read the ordinances by title and Mrs. Dittmer briefed Council. She added that the agenda report should reflect a mixed use Commercial/Low Density Residential land use.

Dan Richards, applicant, reported that there is a question about the charter school and they are not positive about that at this time.

There were no disclosures by Council.

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Moved by Walker/LaRusso for approval of Ordinance No. 2005-71. Motion carried unanimously.

Moved by Palmer/Meehan for approval of Ordinance No. 2005-72. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2005-73. Motion carried unanimously.

31. ORDINANCE NO. 2005-74 (LDR-2005-04/FOC-2005-04) STORMWATER MANAGEMENT REGULATIONS: (First Reading/Public Hearing) An ordinance amending Chapter 27, Storm Water Management, by adopting the revisions recommended by the City Code Review Committee, Section 2. (Applicant - City of Melbourne) (P&Z Board - 5/19/05)

Attorney Gougelman read Ordinance No. 2005-74 by title.

Moved by Hand/Meehan for approval of Ordinance No. 2005-74. Motion carried unanimously.

32. ORDINANCE NO. 2005-75: (First Reading) An ordinance of the City of Melbourne, relating to Impact Fees; amending Appendix D, Chapter 10, Article I, Transportation Impact Fees; Article II, Recreation Impact Fee for New Development; and establishing Article III, to be entitled Public Facilities Impact Fee.

Note: A memorandum was distributed to Council from the City Manager, providing for the following change to the effective date (Section 16) of the ordinance:

SECTION 16. That this ordinance shall become effective immediately upon its adoption in accordance with the Charter of the City of Melbourne. However, customers who have received a building permit or applied for a building permit and said building permit application has been determined to be substantially complete and accepted by the City for review on or before June 14, 2005 may pay the impact fee in effect at the time the building permit was issued, provided said payment is made to the City on or before July 15, 2005.

From the agenda report: This ordinance implements the transportation, recreation, and public facilities impact fees recommended in the Municipal Services Impact Fee Report accepted by the City Council at its June 7, 2005 meeting. This Report was prepared by Public Resources Management Group and their sub-consultant, AVID Engineering.

The Planning and Zoning Board voted unanimously to approve the proposed impact fees at its June 2, 2005 meeting.

Attorney Gougelman read Ordinance No. 2005-75 by title.

Moved by Goode/Walker for approval of Ordinance No. 2005-75 (including the change to the effective date outlined by staff).

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Mr. LaRusso said that he does not want to see the impact fee program built entirely on the backs of businesses. He asked for a 20% reduction on the retail center and a sit down restaurant and noted that he can support everything else in the ordinance.

No members indicated that they would be willing to second such a motion.

The question was called. Motion carried 5-1. Mrs. Palmer voted nay.

33. ORDINANCE NO. 2005-76: (First Reading) An ordinance amending Chapter 23, Retirement and Pensions, Article V, Firefighters' Pension Plan; amending Section 23-79, finances and fund management.

Attorney Gougelman read Ordinance No. 2005-76 by title.

Moved by Hand/Palmer for approval of Ordinance No. 2005-76. Motion carried unanimously.

34. COUNCIL ACTION RE: Board Appointments

- a. Appointment of one member to the Building and Construction Advisory Committee

Mrs. Hand nominated Shea Shannon. Moved by Goode/Hand to close the nominations. Motion carried unanimously. Moved by Palmer/Hand to appoint Shea Shannon. Motion carried unanimously. (6/14/2005 through 5/26/2008, unexpired three-year term)

- b. Appointment of one member to the Dr. Martin Luther King, Jr. Naming Opportunities Committee

Mrs. Palmer said that she is appointing John Stem. Moved by Goode/Walker to close the nominations. Motion carried unanimously. Moved by Palmer/Walker to appoint John Stem. Motion carried unanimously.

35. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Council Member Mark LaRusso asked that the City Attorney obtain information from the Cities of Oviedo, Miami and Winter Park about their sexual predator ordinances. Council agreed that it would like to review the information.

Council Member Cheryl Palmer said that the City recently reviewed its contract with Kendall Towing. She said that it has come to her attention that the contractor is being investigated for theft by the Sheriff and the Melbourne Police Department. Mrs. Palmer asked Dr. Schluckebier to return with a report on any complaints the City has received about Kendall Towing.

Mrs. Palmer reported that she will be in North Carolina next week and, therefore, unable to attend her first Airport Authority meeting.

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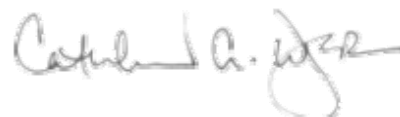
The City Manager discussed the County's new policy of regulating concurrency through its driveway permitting process. He noted that this is an awkward process. The City has gone out of its way to take a partnership approach with the County. We will continue to sort through the concurrency problems/issues through negotiation. If there is no action by the County with regard to upgrading its roads, the City may need to re-think its position.

Mr. Schluckebier referenced Council's policy that the Mayor would be the City's voting delegate at Florida League of Cities conferences. He noted that meeting usually occurs on the Saturday of the conference. Mayor Goode confirmed that he plans to attend this year's conference.

36. ADJOURNMENT

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

The meeting adjourned at 9:45 p.m.



City Clerk – 6/23/2005

Approved by Council: June 28, 2005