

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005



A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 6:30 p.m. by Mayor Harry C. Goode, Jr.

1. Council Member Grace Walker gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Mayor Goode presented a proclamation for “Melbourne Firefighter Appreciation Month,” August 2005, to Katie Bobin, District Director, Muscular Dystrophy Association, and Melbourne Firefighter Tom Morissette.

5. Approval of Minutes - July 12, 2005 Regular Meeting

Moved by Hand/Walker for approval of the minutes. Motion carried unanimously.

6. City Manager’s Report

City Manager Jack Schluckebier referenced the suggestion by Council Member Mark LaRusso that students from Melbourne high schools be provided an opportunity to participate on various City boards. If there are no objections from Council, he said he would send letters to the principals and solicit input/interest in the fall from students at the junior and senior level. The process would involve an application and, rather than serving in an official role, the students could have an ex officio role.

With regard to the failure of the gravity sewer line in the vicinity of Florida Tech, the City entered into an emergency agreement with Insituform. The City sought competitive pricing before entering into the agreement.

Council Member Loretta Hand discussed the Melbourne fireworks display and asked if any consideration had been given to shooting the fireworks from a barge in the river.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Following a brief discussion, Fire Chief Paul Forsberg said that the same congestion would occur along the river near the barge site as it does now at Front Street. The Mayor asked Mrs. Hand if she was suggesting that the barge be mobile. She replied yes and noted that this would allow people to view the fireworks from the entire length of U. S. 1.

Mr. LaRusso said that students serving on City boards would be a test program. It would afford students with an aptitude toward government to participate in the community. He added that he would like to try this for a year.

Mayor Goode asked what committees would be involved. Mr. LaRusso said he would consult with Dr. Schluckebier; however, his reaction is that they would not serve on any of the quasi-judicial boards. Mayor Goode agreed and said that a couple of our boards could be a problem.

7. Public Comments

Pat Poole, 805 E. Palmetto Avenue, discussed her concerns with the South Brevard Senior Center as it relates to the Brevard County Parks and Recreation Referendum passed in November 2000. She noted that the County brochure in support of the referendum listed the senior center cost as \$491,640. However, a decision has now been made to move the center to Airport property. The lease payments will cost approximately \$1.9 million over a 30-year period. She asked Council to petition Brevard County to name the center the “Melbourne Senior Center.”

Moved by Palmer/Walker to request the County Commission to consider naming the senior center the “Melbourne Senior Center.” Motion carried unanimously.

UNFINISHED BUSINESS

8. a. ORDINANCE NO. 2005-81 (LDR-2005-01/FOC-2005-01) PARKING REGULATIONS: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 9, Parking Regulations, amending land use type and off-street parking ratio requirements; establishing a downtown parking trust fund and providing for a fee in lieu of; and amending the procedure for calculating the required number of spaces and minimum standards of design of off-street parking areas. (Applicant - City of Melbourne) (Postponed - 6/28/05)
- b. Discussion of public parking surcharge alternatives.

From the agenda report: This item was postponed at the June 28, 2005 Council meeting. The initial ordinance was discussed at the April 26, 2005 City Council meeting, where concerns were raised regarding the 10-foot wide parking spaces that are assigned and in an enclosed garage. A subsequent ordinance was presented at the June 28 meeting without the 10-foot spaces. At that meeting, several Council Members voiced support for the 10-foot wide spaces within enclosed, assigned parking structures as originally proposed in April.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Ordinance No. 2005-81 provides for the following:

- A limitation on the total number of spaces that a project may purchase through the Downtown Parking Trust Fund.
- A change to several categories of parking criteria.
- A requirement for multiple-family residential developments to provide visitor parking if all parking is enclosed or assigned.
- An allowance for multiple-family developments utilizing enclosed garage spaces to utilize tandem parking if restricted to the resident.
- A regulation clarifying the required dimension of a parking space in an enclosed garage when support columns exist.
- An allowance for 10-foot wide parking spaces for residential uses if provided in enclosed and assigned garages (this is included in version “A” of the ordinance, not in version “B”).

The Planning and Zoning Board unanimously recommended approval of the initial ordinance (version “A”). The Building and Construction Advisory Committee voted four to one to recommend approval, and staff previously recommended approval of version “A.” Based on the fact that Council did not approve this proposal by majority, the matter is now a policy issue for Council consideration. The recommendation is to approve either version “A” or “B.”

Discussion at the June 28 meeting also included direction to staff to amend the ordinance to provide a requirement that applicants requesting building height pay into a parking fund. Although not included in the two ordinances in the agenda package, staff has proposed two options. Direction would be needed from Council as to preference for either option one or two or some combination. Either option, once selected, would need to be advertised as an ordinance amending Appendix B of the City Code and reviewed by the Planning and Zoning Board. It could be considered a pending ordinance based upon Council’s direction.

Option One is to create an overlay district for the Community Redevelopment Areas. The parking surcharge would be determined by the amount and type of development on each additional floor over the permitted height. Option One would only apply to building height requests in the redevelopment areas.

Option Two would apply City-wide and would require payment into the parking fund for additional building height requests over the permitted height in the C-1, C-2, C-3, R-2 or R-3 zoning districts, based upon each additional foot of height requested.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

The public parking surcharge per space for both options is based upon the fee recently established by Council resolution of \$12,168. Either of these options will require further refinement.

Attorney Gougelman read Ordinance No. 2005-81 by title and noted that versions “A” and “B” have the same title. Planning & Economic Development Director Cindy Dittmer reviewed the agenda report.

Mayor Goode asked Mrs. Dittmer if the parking surcharge provisions could be included in Ordinance No. 2005-81. Mrs. Dittmer replied that the ordinance provides for an amendment to Appendix D of the Code; however, the parking surcharge regulations would fall under the Zoning Code, Appendix B. The surcharge would be an overlay in the supplementary regulations or in the conditional use section.

Mr. Schluckebier added that the City Attorney has advised in the past that if Council gives specific enough direction for a regulation, it could be considered pending legislation. Staff would prepare the ordinance for consideration through the regular approval process, but the regulations could become effective as early as this evening.

Mayor Goode stated that speed is of the essence; requests for tall buildings will be submitted to Council soon. Whether the regulations apply to the redevelopment areas or City-wide, he noted that he doesn’t have a strong feeling either way.

Mrs. Hand referenced Ordinance No. 2005-81 and said that she is a stickler for the 11’ wide spaces. Mr. Schluckebier said in that case, Mrs. Hand should support version “B.” He added that this is clearly a policy decision for Council. Mrs. Hand said that a person paying \$500,000 to one million dollars for a condominium should not have a 10’ wide space where their car can get dented. This is too tight of an area and the regulation does not provide a good, quality of life.

Regarding the parking surcharge, Vice Mayor Contreras said he would support the regulations being applied City-wide. Otherwise, developers may stay on the outskirts of the redevelopment areas to avoid the fee.

Mayor Goode said that going City-wide would make it difficult to determine where to build the parking garage.

In response to Mrs. Palmer, Mrs. Dittmer reviewed the differences between Option 1 and Option 2 with the parking surcharge (height) regulations. Mr. Schluckebier added that the options look at this in two completely different ways. He said the problem is that we don’t have sufficient parking in our commercial districts. As Council gives away things that are deemed to be a private benefit, there is some sense that there should be a commensurate public responsibility.

Council returned to the discussion on parking space width. Responding to Mr. LaRusso, Mrs. Dittmer said that, based on the people she has talked with, Melbourne has the

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

widest parking spaces. Mrs. Meehan said she has been in other cities with 10' wide spaces and it doesn't seem to be a problem.

Mayor Goode opened the public hearing.

Chris Romandetti, 705 South Harbor City Boulevard, said that about 453 people have inquired about a unit in his development. He conducted a survey with these people and determined that 78% agreed with 10' wide parking spaces; however, 98% agreed with 10' wide spaces and the addition of a 10' x 10' storage unit. Mr. Romandetti reported that the change to 10' wide spaces could save him \$800,000 and it is his intention to offer something in return to the residents – like a storage unit.

With regard to the parking fund, Mr. Romandetti said that he would not make the proposal "per floor" because then you would have to define "floor." He said that the price should be \$2,000 for each foot over the approved height plus one dollar for each square foot that is developed/occupied over the approved height. As an example, a person who receives 10 extra feet in height and develops 30,000 s.f. in that additional area, would be charged a fee of \$50,000. This would allow a developer to budget and determine whether the return on investment warrants the cost going up.

Following a brief discussion, Mr. Romandetti said that the money collected could be used for training firefighters on taller buildings, repeater units to assist with radio communications, life safety items, etc. He added that Council is really discussing an impact fee on taller buildings.

Moved by Meehan/LaRusso for approval of Ordinance No. 2005-81, version "A."

Moved by Goode/Walker to amend the motion to provide for an impact fee to go into a fund (four funds) depending on where the building is located – Downtown Melbourne Redevelopment Area, Downtown Eau Gallie Redevelopment Area, Babcock Redevelopment Area, and all other areas outside the three redevelopment areas – at \$2,000 per (vertical) foot plus a dollar per square foot for anything over the prescribed height for that zoning district. It would be a general application fee with the use of the money to be determined by the City. (This motion was withdrawn.)

Mayor Goode said he wants the amendment included in this ordinance because some of these high-rises will be making application very soon.

Mrs. Palmer said that Mr. Romandetti's formula talks about one dollar per square foot of developed area. She asked what would happen if the area remained empty or is used for extra parking area. Mayor Goode said it would apply to anything over the legal height prescribed by that zoning district. Mr. Schluckebier said that resolves the question because he does not believe there would be too many parking facilities located above the ninth or tenth floor.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Mrs. Palmer said she is concerned that this would provide a guarantee to someone for additional height. The Mayor and Council Members LaRusso and Meehan said that such a fee would not guarantee a conditional use with height.

Mr. Contreras said he appreciates that the amendment is not specifically tied to parking; however, as buildings go higher, the City should consider equipment needs, firefighters, ladder trucks, etc. He added that this fund should pay for those items.

Mrs. Hand said that she is concerned about the safety hazards associated with taller buildings. Mayor Goode replied that Council may never approve another building over 80'; however, he knows that there are a couple of buildings on the drawing board that are 197'.

Mrs. Hand stated that this ordinance should not apply to any development that is on the drawing board. Mr. Contreras asked the attorney to comment on whether this ordinance would apply to developments in the pipeline.

Attorney Gougelman said that generally speaking a new regulation would not be made applicable to anything currently in the pipeline. However, there is an exception to an impact fee. An impact fee could be made applicable to all projects in the pipeline. He cited the City of Key West as an example and said that their water and sewer impact fees applied to projects that were already in design.

Mayor Goode clarified that his amendment is for an impact fee.

Continuing, Attorney Gougelman said that the fee needs to be specific. Council can't say that it is for parking, fire equipment, etc. At some point in the adoption process, there will have to be a basis established for the fee. There has to be a rational relationship between the amount being charged and the purpose for which it is being charged.

Mayor Goode said that we could create a nexus if the fee is used for parking and firefighting necessities. Attorney Gougelman said that is getting closer. A brief discussion continued.

Mrs. Hand said she does not want to see any of this tied to an ordinance that provides for 10' wide spaces. If that is the case, then she will have to vote nay.

Mrs. Palmer said that she thought the original dollar amount discussed was fair and equitable for additional parking. Mr. Schluckebier agreed that fire equipment is a different issue that staff hasn't given any consideration to. That would be an entirely different formula.

Attorney Gougelman said that if Council adopts something this evening, it would still be his recommendation that staff spend time verifying the fee. We may find that the fee needs to be a little higher.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Discussion continued about fire equipment for high-rise buildings, whether a matrix should be prepared for height versus impact, etc. Mayor Goode said he would like to keep it simple.

The maker/seconded withdrew the amendment.

Moved by Goode/Walker to amend the motion to create a parking impact fee for four areas of the City – the three redevelopment areas plus all areas outside of a redevelopment area – at \$2,000 per each additional foot over the height allowed in that zoning district plus one dollar per square foot of floor space.

Mr. LaRusso asked if this would apply to commercial and residential. The Mayor replied whatever and added that it would apply anytime there is an exception for height higher than what the Code calls for. Mrs. Palmer said that this sounds harsh for people going up from 40’.

The question was called on the amendment. Motion carried. Mrs. Hand voted nay.

Moved by Hand/Goode to amend the motion to go back to 11’ wide spaces (which would be version “B” of Ordinance No. 2005-81). The roll call vote was:

Aye: Hand and Goode

Nay: LaRusso, Meehan, Walker, Palmer and Contreras

Motion failed.

The question was called on the main motion, as amended.

Mrs. Palmer asked if the trust fund established for the fourth area (all areas outside of a redevelopment area) would be used within a redevelopment area. Mr. Schluckebier replied no.

The roll call vote was:

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

Nay: Hand

Motion carried.

9. ORDINANCE NO. 2005-82 (A&V No. 283): (Second Reading/Public Hearing) An ordinance vacating two portions of the 10-foot wide utility easement along the south and west side of Tract “A” of the plat of Sonesta Walk Subdivision. (Applicant - David Barrin, President, Sonesta Walk Subdivision Homeowners’ Association) (First Reading - 7/12/05)

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Attorney Gougelman read Ordinance No. 2005-82 by title. There were no disclosures from Council and no comments from the public.

Moved by LaRusso/Meehan to approve Ordinance No. 2005-82. Motion carried unanimously.

10. ORDINANCE NO. 2005-83 (AR-2005-173), ORDINANCE NO. 2005-84 (CPA-2005-11), ORDINANCE NO. 2005-85 (Z-2005-1030), AND ORDINANCE NO. 2005-86 (CU-2005-10, WAL-MART NEIGHBORHOOD MARKET AND MURPHY OIL: Ordinances providing for annexation, a Comprehensive Plan Amendment, zoning designation, and a conditional use permit on a 9.17-acre parcel located at the southwest corner of Wickham Road and Post Road. (Owner/Applicant - Wal-Mart Stores East, LP) (Representative - Kimley-Horn and Associates, Inc.) (P&Z Board - 6/16/05)
- a. Ordinance No. 2005-83/AR-2005-173: (Second Reading/Public Hearing) An ordinance providing for annexation of 10.857 acres (a 9.17-acre parcel plus a 1.687-acre adjacent Post Road right-of-way). (First Reading - 7/12/05)
  - b. Ordinance No. 2005-84/CPA-2005-11: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on 9.17 acres. (First Reading - 7/12/05)
  - c. Ordinance No. 2005-85/Z-2005-1030: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of C-1 (Neighborhood Commercial) on 8.02 acres and C-2 (General Commercial) on 1.15 acres. (First Reading - 7/12/05)
  - d. Ordinance No. 2005-86/CU-2005-10: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow a gas station on a 1.15-acre out-parcel at the northeast corner of the Wal-Mart site. (First Reading - 7/12/05)

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

John Tuite, 3980 St. Armens Circle, President, East Bay Plantation Homeowners' Association, reported that some of the residents who live near Wal-Mart continue to have nighttime noise problems. He added that the residents have given approval to provide an easement to the County for construction of a sidewalk in front of the subdivision.

Idell Lepeska, 3966 St. Armens Circle, said she lives approximately 50' from the loading dock of Wal-Mart. She reported that the noise has abated some, but it has not completely stopped.

Mayor Goode noted that Wal-Mart is not in the City yet. He assured the residents that the City would monitor the noise.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Ms. Lepeska said she hopes that Code Enforcement will take care of the problem. She said that the manager of Wal-Mart has been helpful; however, he can't be on site 24 hours a day. Ms. Lepeska recommended that Wal-Mart put up a barrier from 10:00 p.m. until 6:00 a.m. so that trucks can't access the loading dock.

Fred Maine, Wal-Mart store manager, reported that trucks have attempted to deliver outside of the delivery hours; however, the store does not allow this. The Wal-Mart dispatcher no longer dispatches trucks during those times. The problem seems to be with independent drivers. If neighbors are still experiencing noise from trucks after 10:00 p.m. it is because trucks pull up, ring the bell and then are told to leave. He stressed that trucks have not been unloaded outside of the restricted hours.

Mayor Goode asked how many deliveries the store receives a week. Mr. Maine replied six to seven per day. He added that they have stopped using the compactor after 10:00 p.m. Mr. Maine stated that although they are doing everything reasonable to keep the noise down, he does not know if the situation will ever be 100%.

Mayor Goode asked if this is a unique situation. Mr. Maine replied that quite a few stores have restricted delivery status.

Mr. Contreras said it seems as if the warehouse would act as the "gatekeeper" and inform the independent drivers about the restricted delivery hours. Mr. Maine said that the warehouse provides the drivers the information; that is why he refuses their deliveries.

Mr. LaRusso said that there are many ways to resolve this issue with independent drivers, up to and including imposing a fine for drivers that break the City's ordinance.

Mrs. Meehan asked if there is any way to prevent trucks from accessing the driveway after 10:00 p.m. Mr. Maine said that they are currently looking into installing a chain with signage.

The Mayor and City Council thanked Mr. Maine for all his efforts in addressing this issue.

Moved by Palmer/Walker for approval of Ordinance No. 2005-83. The roll call vote was:

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

Motion carried unanimously.

Moved by Contreras/Palmer for approval of Ordinance No. 2005-84. The roll call vote was:

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

Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Moved by Walker/LaRusso for approval of Ordinance No. 2005-85. The roll call vote was:

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

Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2005-86. The roll call vote was:

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

Nay: Hand

Motion carried.

11. ORDINANCE NO. 2005-87: (Second Reading/Public Hearing) An ordinance amending Chapter 32, Utilities, repealing Section 32-7.1, interest on deposits, and amending Section 32-6, to allow deposits to be held in non-interest bearing accounts. (First Reading - 7/12/05)

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

Moved by Hand/Walker for approval of Ordinance No. 2005-87. The roll call vote was:

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

Motion carried unanimously.

12. ORDINANCE NO. 2005-88: (Second Reading/Public Hearing) An ordinance repealing Ordinance No. 89-18, which provided for the opt-out of Brevard County's collection of emergency services facilities expansion impact fees within the City of Melbourne. (First Reading - 7/12/05)

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

Moved by Contreras/LaRusso for approval of Ordinance No. 2005-88. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

13. CONSENT AGENDA:

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

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

The consent agenda was approved as follows:

- a. Purchase of a Wachs “Pow-R-Drive II” portable valve operator and a Wachs hydraulic pipe cutter with accessories, E.H. Wachs, Wheeling, IL - \$18,243.25.
- b. Request for approval of Memorandum of Understanding between Brevard County and the cities of Melbourne, Palm Bay, Titusville, and Cocoa regarding the allocation of State Hurricane Housing Recovery funds.
- c. Request for approval to provide computer connectivity between the Fire Stations and City Hall at an estimated cost of \$31,272 and appropriation of \$4,500 EMS Trust revenue to the EMS Division budget for this purpose; purchase of networking equipment, Insight Public Sector, Tallahassee, FL - \$16,067.40; and installation of T1 lines and monthly service for six months, Telcove, Inc., Melbourne, FL - \$15,204.
- d. Request from St. John’s River Water Management District for funding participation in the 2006 Water Conservation Public Awareness Campaign - \$7,000.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

15. PRELIMINARY PLAT APPROVAL (SD-2005-03) THIRD ADDITION TO CROWN HEIGHTS SUBDIVISION: (Public Hearing) A request for preliminary plat approval to develop a residential subdivision with 16 single-family lots on 3.47± acres zoned PUD (Planned Unit Development) (6) with a Low density Residential Future Land Use, located on the south side of Pirate Lane, west of Lipscomb Street, and east of Babcock Street. (Owner/Applicant - Eagle Lake Two Development Company) (Representative - Matthew Soyka, P.E., Soyka Engineering, Inc.) (P&Z Board - 7/07/05)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the single-sheet plan prepared by William Mott Land Surveying of Melbourne, Florida, with a signed and sealed date of June 21, 2005, 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; or 2) an increase in the number of lots proposed.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

- b. 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.
- c. Appropriate environmental permits must be obtained as part of the construction plan review process.
- d. Only one building permit may be issued on the plat prior to recordation of the final plat.

There were no comments from the public.

Moved by Palmer/Contreras for approval of the preliminary plat as recommended. Motion carried unanimously. (Six votes – Council Member Meehan was absent from the Council Chamber.)

Mrs. Meehan returned to the Council Chamber.

16. SITE PLAN APPROVAL (SP-2005-03) PARKWAY PLACE APARTMENTS: (Public Hearing) A request for site plan approval to develop a 216-unit multiple-family apartment project on a 14.73-acre parcel zoned R-2 (15) (One-, Two-, and Multiple-Family Residential with a cap of 15 units per acre), located on the southeast corner of Parkway Drive and Wickham Road. (Owner - Steven Schiff, Melbourne Plaza) (Applicant - The Richmond Group of Florida, Inc.) (Representative - Philip F. Nohrr, Attorney) (P&Z Board - 7/07/05)

Mrs. Dittmer briefed Council. She pointed out that the Planning and Economic Development memorandum in the package indicates that in 2004 the property was rezoned to R-2 (15) by the adoption of Ordinance No. 2004-34. She said that this history note should be corrected to reflect Ordinance No. 2004-11 (Z-2003-971).

The Planning and Zoning Board voted unanimously to recommend approval of the two-page site plan prepared by Cantelou Powell Inc., Project No. 04-057, signed, sealed, and dated June 30, 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 in more than four units; or 3) the addition of any access driveways to the project from Parkway Drive or Wickham Road.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

- b. Appropriate environmental permits must be obtained as part of the construction plan review process.
- c. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- d. The proposed building shall be substantially consistent with the rendering submitted by the applicant.
- e. The applicant shall provide the necessary right-of-way on Wickham Road and at the intersection with Parkway Drive, and construct a dedicated right turn lane and a transitional lane onto Parkway Drive, if permitted by Brevard County. The details of the right-of-way shall be mutually approved during the construction plan review process, and impact fee credits may be given for the contribution of the land, engineering design, and actual construction costs as determined by the City Engineer.

With regard to condition “e”, Mrs. Dittmer said that the preliminary design is being reviewed by staff.

In response to Mr. LaRusso, Mrs. Dittmer pointed out the location of the wetland on the property.

Mr. Contreras asked about the sidewalk east of the drainage system. Mrs. Dittmer said that they will most likely have to pipe the swale to accommodate the connection to the sidewalk/crosswalk.

Mrs. Walker asked about the gopher tortoises. Mrs. Dittmer said that the applicant will be required to obtain state permitting.

Phil Nohrr, attorney representing the applicant, stated that they will be piping the ditch on the north side of Parkway Drive. He reported that they will have two tot lots, wading pool, standard pool, and clubhouse; they will have two- and three-bedroom units; they concur with all stipulations; they believe they can put in the right turn lane without any additional right-of-way; and they meet/exceed all of the City’s objective criteria. Regarding traffic, Mr. Nohrr said that they have worked with County and City staff on compliance. Their only ingress/egress will be on Parkway Drive.

Mr. Contreras said that another apartment complex is located to the east. He asked for assurance that the traffic flow would not be impeded going west towards Wickham Road.

Pete Cantelou, Cantelou & Powell, Inc. (Engineering, Surveying and Planning), 1400 Sarno Road, displayed the area on the map and confirmed that the far east turn lane will accommodate the residents of this complex. There will be a deceleration lane taper and stacking lanes.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Mayor Goode called for disclosures.

Mr. LaRusso said that he visited the property on July 23; however, he did not reach any conclusions. Mr. Contreras said that on July 25 he talked to Phil Nohr and discussed the right turn lane from Wickham Road onto Parkway Drive and the signalization discussed previously on Weston Drive/Wickham Road.

Mayor Goode opened the public hearing. There were no comments and he closed the public hearing.

Mr. LaRusso stated that he is concerned about the density and the wetlands.

Moved by Contreras/Walker for approval of the site plan as recommended.

Mr. LaRusso said he would like feedback from other Council Members about his concerns. Mayor Goode said that the Council Member who represents that district moved for approval; therefore, he thinks that this is fine.

Mrs. Palmer stated that she is surprised that the Council Member who wanted a moratorium down the street agrees with the density on this project. Although the density is within the legal parameters, it is at the absolute top of what it could be. Therefore, she does not believe she is going to vote for this.

Mr. Contreras said that Council should consider a workshop to look at vacant property or property that has the potential to be redeveloped and look at the zoning associated with it. Mr. LaRusso agreed.

Moved by LaRusso/Contreras to amend the motion to provide that the City Engineer not waive any impact fees associated with the turn lane. (Motion withdrawn.)

Attorney Gougelman said that the City Code lays out the specific formula and method for calculating fees. It also provides a methodology by which credits may be awarded. Under the ordinance the City Engineer has been assigned the authority to make decisions and determine credits. Therefore, the condition is consistent with the City's Code and it ought to be honored.

The maker/second withdrew the motion.

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

Aye: Meehan, Walker, Hand, and Contreras

Nay: LaRusso, Palmer and Goode

Motion carried.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Recessed: 8:45 p.m.  
Reconvened: 8:55 p.m.

17. ORDINANCE NO. 2005-89 (Z-2005-1037) ALBERT BROOMFIELD, JR.: (First Reading/Public Hearing) An ordinance changing the zoning from C-C-1 (Neighborhood Commercial with a conditional use to develop apartments) to R-1A (Single-Family Residential) on a 0.52±-acre parcel, located on the northeast corner of Lipscomb Street and Church Street. (Owner/Applicant - Albert Broomfield, Jr.) (Representative - Kenneth Broomfield) (P&Z Board - 7/07/05)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer briefed Council and reported that the Planning and Zoning Board voted unanimously to recommend approval of this request.

There were no disclosures by Council. The applicant was present and available for questions. Mayor Goode opened the public hearing.

Otis Milton, 4652 Crew Circle, asked if he should be concerned about height with this request. He is concerned about expansion and believes that we need caps.

Mayor Goode explained that this is a rezoning request and the applicant has not requested a conditional use for height. The property will be zoned Single-Family Residential.

Moved by Hand/Palmer for approval of Ordinance No. 2005-89. Motion carried unanimously.

18. ORDINANCE NO. 2005-90 (CPA-2005-13) AND ORDINANCE NO. 2005-91 (CU-2005-07/SP-2005-13) SILVER PALMS: (First Reading/Public Hearing) Ordinances providing for a Comprehensive Plan Amendment on 5.55 acres and a conditional use with site plan approval on a 3-acre portion of the parcel, located on the south side of University Boulevard, west of Lipscomb Street and east of Babcock Street. (Owner/Applicant - Melbourne Housing Authority) (Representative - John Zwick, RA, Architects in Association with Rood & Zwick) (P&Z Board - 7/07/05)

- a. Ordinance No. 2005-90/CPA-2005-13: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial to Commercial/Medium Density Residential.
- b. Ordinance No. 2005-91/CU-2005-07/SP-2005-13: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to develop 30 residential units on a 3-acre portion of a 5.5-acre parcel zoned C-1 (Neighborhood Commercial).

Attorney Gougelman read Ordinance Nos. 2005-90 and 2005-91 by title. The Planning and Zoning Board voted unanimously to recommend approval of this request.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Mrs. Hand asked for additional information about the scrub jays.

John Zwick, representing the applicant, said that they will be looking for a take permit. The owner will pay funds into an environmental fund to buy environmentally sensitive land.

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

Moved by Palmer/Goode for approval of Ordinance No. 2005-90. Motion carried unanimously.

Moved by Walker/Contreras for approval of Ordinance No. 2005-91. Motion carried unanimously.

19. ORDINANCE NO. 2005-92 (Z-2005-1033) AND PRELIMINARY PLAT APPROVAL (SD-2005-07) TREASURE KEY SUBDIVISION: An ordinance providing for a change in zoning and preliminary plat approval on a 9.475±-acre parcel, located on the east side of Dairy Road, north of Florida Avenue, and south of Edgewood Drive. (Owner - Robert L. Leichtenberg) (Applicant - AAVANTI Building Development, Inc.) (Representative - Mark D. Petroni) (P&Z Board - 7/07/05)
- a. Ordinance No. 2005-92/Z-2005-1033: (First Reading/Public Hearing) An ordinance changing the zoning from R-1A (Single Family Residential) to R-2 (6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) on a 9.475±-acre parcel.
  - b. Preliminary Plat Approval SD-2005-07: (Public Hearing) A request for preliminary plat approval to develop a residential townhome subdivision with 50 lots at an overall density of 5.27 units per acre on a 9.475±-acre parcel.

Attorney Gougelman read the ordinance by title.

From the agenda report: The Planning and Zoning Board voted four to three to recommend denial of the rezoning request based upon concerns from the adjacent property owners regarding drainage, sewer connection, tree preservation and compatibility with single-family uses. Issues related to drainage, sewer, and tree preservation will be handled during construction plan review, and the development will meet all City Code requirements.

Adjacent property owners have submitted a letter indicating intent to file a petition against the rezoning. This could affect the vote during the second reading of the ordinance.

Mrs. Dittmer briefed Council. She said that the applicant has distributed supplemental information, which addresses the drainage easement. She reported that a petition was submitted this afternoon. It will be calculated by staff and if it exceeds 20%, it will come into play during second reading of the ordinance (requiring a 6/7 vote).

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

The recommendation from staff is for approval.

Mr. LaRusso asked how many homes per acre can be built in the R-1A zone after roads and amenities are constructed. Mrs. Dittmer said depending on the design layout, probably four units per acre.

Mayor Goode called for disclosures.

Mrs. Meehan said that she spoke with Mr. Petroni on July 12. He discussed the rezoning and the Key West style townhomes.

Mr. LaRusso said he spoke with Mr. Petroni on July 12. Mr. Petroni was astounded that drainage issues came up at the Planning & Zoning Board meeting. Mr. LaRusso added that Mr. Petroni indicated that he would be a good partner in the neighborhood.

Mrs. Palmer said Mr. Petroni discussed the style of the buildings and the product with her. Mrs. Walker said she had a similar conversation with Mr. Petroni.

Mr. Contreras said that on July 12 Mr. Petroni left him a message. On July 25 he spoke with Mr. Petroni about the style of the development, the rezoning, action at the Planning and Zoning Board meeting and the Forest Creek homeowners' association issues and concessions.

Mayor Goode said that Mr. Petroni built the most expensive subdivision on the mainland in the City of Melbourne – Canary Isles Subdivision. He added that the development is a first class operation and he intends to support this request.

David Larkin, attorney representing AAVANTI Building Development and Robert Leichtenberg, said that the property is under contract for purchase and sale (from Leichtenberg to Petroni). He reported that Mr. Petroni met with the Forest Creek homeowners before the Planning and Zoning Board meeting. The item was postponed and he met with staff to address the concerns that were raised. He met with the Forest Creek homeowners again to discuss concessions.

Mr. Larkin said that Mr. Petroni developed Bimini Bay in Palm Bay. The item on this agenda will be the same development. This is not a standard multi-family development. It is single-family platted lots – not condominiums.

Mr. Larkin reviewed the additional information that was distributed to Council prior to the meeting. He discussed the following: the site plan; aerial of the property; the product; the style of development; the City Code as it relates to a rezoning; existing R-2 property in the City; impact on surrounding property; need/justification for the change; issues/concerns presented at the Planning and Zoning Board meeting; traffic on Dairy Road; stormwater drainage/retention; density; setbacks and green space; sewer capacity and connections; and drainage canals and ponds. The information also clarifies the issue relating to the 48-foot drainage easement granted to Brevard County

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Continuing, Mr. Larkin stated that this property does not drain into the Forest Creek retention pond. A large portion of stormwater will be retained on site and provide green space; drainage not on site will reach the Brevard County drainage structure. Four homes in Forest Creek will be affected; however, they will be buffered by a 45' easement. Mr. Larkin pointed out that Mr. Leichtenberg also lives in Forest Creek.

With regard to environmental concerns, there are no issues on this property. An environmental study was performed and they have received clearance on scrub jays. As a concession, Mr. Petroni has agreed not to build a two-story dwelling on Lot 34, which is the closest to Forest Creek. There is a waiting list for Treasure Key and the price will range from \$300,000 to \$400,000.

Mrs. Hand asked for additional information about the fencing. Mr. Larkin said it will be a six-foot high PVC fence that will be maintained by the homeowners' association. This type of fencing survived fairly well during the hurricanes.

Mrs. Walker asked if the development will be filled higher than the adjacent subdivision. Mr. Larkin said that the property will have to have fill; however, drainage/outfall of stormwater to adjacent property would not be allowed.

Mark Petroni, 2609 Canary Isles Drive, applicant, said that the property will have to be filled depending on the crown of the roads and the finished floor elevation. He added that they will meet the City Codes.

Mr. Contreras asked if this development will wrap around an existing trailer on the property. Mr. Petroni said that the property owner on Dairy Road moved his truck/trailer onto the subject property to hide it from Code Enforcement. He added that the property owner is not opposed to this development.

David DeCrosta, 1123 Spring Oak Drive, agreed that Mr. Petroni builds a great product. Mr. DeCrosta said he is concerned about the sewage and stormwater drainage. He discussed two previous developments – one single-family and one commercial – that were denied sewage connection into the Forest Creek sewage line. He said that the residents of Forest Creek have not had problems and they don't want this development to cause problems. Mr. DeCrosta recommended that this development use a lift station and connect .6 mile on Florida Avenue.

Mr. DeCrosta submitted three photographs showing the retention in Forest Creek. As of June 11 of this year the water is up to the top of the structure as a result of the rain. He asked that the City be cautious in reviewing the developer's drainage plans. He noted that the developer plans to drain to a County drainage structure, which is where the three Forest Creek lakes drain to.

Mr. DeCrosta asked why the developer does not build a single-family development. Multi-family will start a precedent in this area. When he moved into Forest Creek, he checked the surrounding zoning to ensure it was single-family. He added that he was not expecting a change.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Jonathan Franklin, 1100 Spring Oak Drive, said that the property owner on Dairy Road, Hearndon, whose property this development will wrap around, has signed the petition in opposition to this development. Additionally the VFW located to the south of the property has signed the petition along with 35 of the 38 homes in Forest Creek located within 500' of this development.

Continuing, Mr. Franklin said he is opposed because the surrounding area is single-family. Changing from R-1A to R-2 will allow the lot size to go down. With R-1A zoning, this property could accommodate 32 homes at best as opposed to 50 with R-2 zoning. Mr. Franklin asked the City Council to follow the recommendation of denial from the Planning and Zoning Board.

Robert Leichtenberg, 882 Wood Creek Drive, property owner, stated that he is an MAI (Member of the Appraisal Institute) appraiser and has been admitted as an expert witness in many states. He informed Council that density is not the number of houses; it is the number of people. Ten four-bedroom houses would have a significantly different impact than 10 one-bedroom houses. If this request is not approved, the backup development is a tract home development. Each house would have five or six residents. He noted that he has had legitimate offers from every major tract builder.

Mr. Leichtenberg said he took Mr. Petroni's offer because he (Mr. Leichtenberg) lives in Forest Creek; the proposal provides for semi-attached houses designed for young professionals and adults near retirement age; the population of the development will be around 110; 32 tract homes would accommodate about 160 people; there won't be a lot of children; they will have private streets and the community will be gated; and the School Board will benefit although it won't be impacted.

Mr. Leichtenberg said he attended the Forest Creek homeowners meeting. About 20-25 people were in attendance. Only two people objected and nobody on the board would make a motion to object. After hearing the facts, he asked why anyone would vote against this project. Regarding the concerns about sewer connection, he said that hook up by this development will enhance the sewer. He added that the residents' proposal would require a lift station. Mr. Leichtenberg concluded by asking Council to vote for this project.

Mr. LaRusso asked Mr. Leichtenberg if he has done work for Mr. Petroni in the past. Mr. Leichtenberg replied no and added that he never met Mr. Petroni prior to signing the contract.

Mayor Goode closed the public hearing.

Mrs. Dittmer confirmed for Mr. Contreras that Engineering and Utilities have reviewed the proposal for sewer connection and have no concerns.

Mrs. Hand asked how long ago the property was zoned R-1A. Mrs. Dittmer replied approximately four – six years ago.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Moved by Palmer/Meehan for approval of Ordinance No. 2005-92 based on the recommendation of staff.

Mrs. Walker stated that she has concerns about the drainage. She is adjacent to Canary Isles and that property drains onto her property. Mrs. Dittmer noted that condition “d” specifically relates to elevation of property in order to address drainage. Staff will address those concerns during review. Mrs. Walker said she will vote for this; however, she has concerns.

Mrs. Hand said that in the past Council zoned the property R-1A based on a good vision for the future. Therefore, she would like for the property to remain single-family.

The question was called. The roll call vote was:

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

Nay: Hand and Contreras

Motion carried.

Council delayed taking action on the preliminary plat until the next meeting.

20. ORDINANCE NO. 2005-93 (Z-2005-1038) RJP DEVELOPMENT: (First Reading/Public Hearing) An ordinance changing the zoning from M-1 (Light Industrial) to M-2 (General Industrial) on a 1.51-acre portion of a 39.415±-acre parcel, located between John Rodes Boulevard and North Drive, north of Dow Road. (Owner - Hubert C. Normile, Jr.) (Applicant - RJP Development Corporation) (Representative - Jake T. Wise) (P&Z Board - 7/07/05)

This item was withdrawn by the applicant.

21. ORDINANCE NO. 2005-94 (ED-2005-03) SPACE COAST TRUSS, INC.: (First Reading) An ordinance granting an Ad Valorem Tax Exemption for a three-year period totaling \$104,474.43.

Based on the withdrawal of the rezoning ordinance on this property (agenda Item #20), no action was taken/required on this item.

22. COUNCIL ACTION RE: Board appointments

- a. Appointment of three regular members to the Building Board of Adjustment and Appeals

Moved by Hand/Goode to appoint Clayton Bennett as a regular member to the engineer seat. Motion carried unanimously. (7/28/2005 – 7/27/2009)

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JULY 26, 2005

Moved by Goode/Palmer to reappoint Richard Ott and Cris Patterson as regular members.  
Motion carried unanimously. (7/28/2005 – 7/27/2009)

- b. Appointment of one member-at-large to the Beautification and Environmental Advisory Committee

Mrs. Walker nominated Ronald Mitchell. Moved by Goode/Walker to close the nominations.  
Motion carried unanimously.

Moved by Goode/Walker to appoint Ronald Mitchell. Motion carried unanimously.  
(7/26/2005 – 11/9/2008 (unexpired term, plus three-year term)

- c. Appointment of one alternate member to the Melbourne Downtown Community Redevelopment Agency Advisory Committee

Mrs. Hand nominated Nora Jo Rees. Moved by Goode/Palmer to close the nominations.  
Motion carried unanimously. Moved by Goode/Walker to appoint Nora Jo Rees. Motion  
carried unanimously. (7/27/2005 – 7/26/2008, 3-year term)

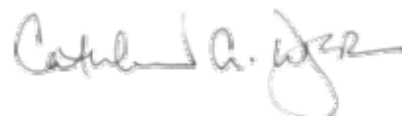
23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Vice Mayor Contreras discussed the idea of conducting a workshop meeting to discuss growth management, zoning, density, etc. Several Council Members said they did not believe there was a need. The City Manager said that Council might want to discuss these issues when the special meeting is conducted to review the changes to the Zoning Code. The Zoning Code is expected to go before Council in the next 30 – 45 days.

24. ADJOURNMENT

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

The meeting adjourned at 10:17 p.m.



---

City Clerk – 8/4/2005

Approved by Council: August 9, 2005