

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 23, 2005



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

1. Reverend Pastor Ronald Green, Higher Praise Family Worship 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
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

Absent: Loretta Isenberg-Hand Council Member, District 6 (out of town)

4. Proclamations and Presentations

Mayor Goode read and presented the proclamation, "Commodore John Barry Day," September 13, 2005, to Ed Reilly, Ancient Order of Hibernians in America.

5. Approval of Minutes - August 9, 2005 Regular Meeting

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

6. City Manager's Report – City Manager Jack Schluckebier reported on the following:

- In addition to the retirements noted in the report, Fire Battalion Chief Bill Dooley will retire the first week in September after 31 years of service. Ceremony plans have not been finalized.
- Frazier Engineering (engineering consultant) has determined that the height of the landfill at Florida Recyclers is excessive and exceeds the permit previously granted. This is in addition to other complaints that the City has filed in Circuit Court. The City has asked its special counsel to seek a temporary injunction in court on Wednesday, August 24 based on the new complaint.

7. Public Comments

Eric Ellebracht, 1948 Tyler Avenue, expressed his concerns with the recent appointment of

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Angela Bozorth as the Melbourne Police Department Public Information Specialist. He noted that she does not have a degree in journalism, is not a certified police officer, does not live in the City of Melbourne and is paid more than a certified law enforcement officer.

UNFINISHED BUSINESS

8. 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 establishing a public parking surcharge fee. (Applicant - City of Melbourne) (Postponed - 6/28/05 & 7/26/05)

Attorney Gougelman read the ordinance by title and Planning & Economic Development Director Cindy Dittmer reviewed the agenda report. Mayor Goode opened the public hearing.

Chris Romandetti, 705 South Harbor City Boulevard, recommended that Council apply the parking surcharge to the Downtown Melbourne and Eau Gallie Redevelopment Areas and possibly the Babcock Redevelopment Area. He pointed out that the areas zoned C-3 – the two downtown areas – do not have adequate parking. With regard to the applicability of the fee to all other areas, he suggested that be handled on a case-by-case basis. He informed Council that on his site, which is located in the City-wide area, staff required him to spend a quarter of a million dollars on additional parking. His plan provides for dedicated public parking to provide access to the proposed river walk area.

That concluded comments from the public.

Council Member Cheryl Palmer said that she believes the need for parking in Downtown Melbourne and Eau Gallie is undeniable. It is also undeniable that future conditional use requests for additional height will continue to impact the need for parking; therefore, she is comfortable imposing a fee in those two areas. She added that she is uncomfortable with adding a condition on a project that has already been approved. This would be overbearing on the City's part and she asked the City Attorney to comment.

Council Member Grace Walker agreed with Mrs. Palmer's comments.

Attorney Gougelman said that eliminating the City-wide area and possibly the Babcock Redevelopment Area, would probably strengthen the ordinance. The fee is being assessed due to the need for additional parking created by the impact of development. The need seems severe in the two downtown areas.

With regard to assessment and collection of the fee, the City may do that at any time. As mentioned before, the Key West case says that you can saddle a development with an impact fee after the building permit has been issued. This is a policy decision for Council.

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Mayor Goode said that his original intent on the development of this fee was to provide parking in the two downtown areas. He stated that he is willing to amend the ordinance to make it applicable to the Melbourne and Eau Gallie Redevelopment Areas only.

Council Member Kathy Meehan asked about the Babcock Redevelopment Area. Mayor Goode said that if there is a need in the future, the Babcock Area could be included in the fee.

Council Member Mark LaRusso asked for discussion on when the fee would be imposed. Mayor Goode said his thought was that the fee would be imposed at the time of site plan approval. However, if someone returns for an amended site plan, it would be fair game to say the fee would apply. Mr. LaRusso said he totally agrees that we are challenged for parking in the two downtown redevelopment areas. He stated that he would support an amendment to the ordinance.

Attorney Gougelman read revised language in the ordinance, which provides for establishment of the fee in the Downtown Melbourne and Downtown Eau Gallie Redevelopment Areas. The revision would remove the Babcock Redevelopment Area and the City-wide Area.

Vice Mayor Richard Contreras said that this is corrective action with regard to Downtown Melbourne and Eau Gallie. He added that he believes the City should take preventive action with the Babcock Area and the City-wide Area. He stressed the need to be proactive and include all four areas in the parking assessment.

Mrs. Walker said it might be prudent to consider the Babcock area.

Mrs. Palmer said she has a problem with gathering money before the fact. She noted that Council has to justify what it does to the public and the property owners. The City has absolute justification for Eau Gallie and Melbourne; however, she is not sure how to explain to her constituents why Babcock and the City-wide area were included.

Moved by Goode/Palmer to modify the ordinance in the package as described by the City Attorney to apply the parking surcharge fee to the Melbourne and Eau Gallie Redevelopment Areas.

A brief discussion followed on when the fee would be assessed. Attorney Gougelman recommended that Council take that issue next.

The question was called. Motion carried. Vice Mayor Contreras voted nay.

Attorney Gougelman pointed out that the ordinance, as written, provides that the fees must be paid prior to issuance of a building permit. Mayor Goode said his intent is that the fee be assessed at the time City Council approves the site plan.

Mr. Schluckebier said that if it is Council's intent not to load fees on people who have an approved site plan, then the ordinance should be amended to provide that approved

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plans are not subject to this fee, unless they require an amendment. He added that an amendment to an approved site plan would be a decision made by the applicant.

Mrs. Palmer agreed that an applicant could decide to go with their approved plan without this fee or go with a revised plan and be subject to this fee. Mayor Goode said the fee would be from adoption of the ordinance forward rather than being retroactive. Mr. LaRusso agreed and noted that some applicants have had pre-sales based on their knowledge of the costs; an additional surcharge could create failure.

A brief discussion followed regarding the Hynes development. Mr. Schluckebier said he understands that it is Council's intent to honor the current plan at the current pricing.

Attorney Gougelman read revised language, which provides that the fee shall not be applicable to any structure for which a conditional use for height has been approved prior to August 23, 2005, except in the event an applicant seeks an amendment to its approved site plan prior to or after August 23, 2005.

Mr. Gougelman added that if Dr. Hynes had never submitted a fourth amendment, he would be exempt from this fee. However, he has submitted a new plan that has not come before Council for a hearing. He would be captured by this fee.

Moved by Goode/LaRusso to accept the amendment as read by the City Attorney.  
Motion carried unanimously.

Moved by LaRusso/Palmer to approve Ordinance No. 2005-81, as amended. Motion  
carried unanimously.

Vice Mayor Contreras inquired about the status of reviewing any other fees related to the impact of height, including firefighting personnel, equipment, etc. The City Manager said that staff will look at all issues surrounding additional height and return with information in the next 60 days.

9. ORDINANCE NO. 2005-95 (A&V No. 284): (Second Reading/Public Hearing) An ordinance to abandon and vacate an easement running through the southeast corner of 1109 East New Haven Avenue (former SunTrust Bank property). (Owner - Crane Creek Partners, LLC) (First Reading - 8/09/05)

Attorney Gougelman read Ordinance No. 2005-95 by title. There were no disclosures by Council and no comments from the public.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-95. The roll call vote  
was:

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

Motion carried unanimously.

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10. ORDINANCE NO. 2005-96 (CU-2005-9/SP-2005-18) EV DAY SPA & HAIR SALON: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a day spa and hair salon on a 0.30-acre parcel zoned C-1A (Professional Offices & Services), located on the northeast corner of Airport Boulevard and Espanola Way. (Owner - Victor Gonzalez-Seda) (Applicant/Representative - David T. Menzel, MAI Architects Engineers, Inc.) (First Reading - 8/09/05)

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

Mrs. Palmer asked if the conditional use in the C-1A zone would include a medical office use. Mrs. Dittmer replied that medical offices are a permitted use in the C-1A zone (without a conditional use).

Moved by Walker/Meehan for approval of Ordinance No. 2005-96. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Contreras and Goode

Nay: Palmer

Motion carried.

11. ORDINANCE NO. 2005-97 (AR-2005-176), ORDINANCE NO. 2005-98 (CPA-2005-15), AND ORDINANCE NO. 2005-99 (Z-2005-1040) Y ENTERPRISES, LLC: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 2.96-acre parcel, located on the northwest corner of the intersection of Ellis Road and West Drive. (Owner/Applicant - Y Enterprises, LLC) (Representative - Steve Young) (P&Z Board - 7/21/05)
- a. Ordinance No. 2005-97/AR-2005-176: (Second Reading/Public Hearing) An ordinance providing for annexation of a 2.96-acre parcel. (First Reading - 8/09/05)
  - b. Ordinance No. 2005-98/CPA-2005-15: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Industrial on a 2.96-acre parcel. (First Reading – 8/09/05)
  - c. Ordinance No. 2005-99/Z-2005-1040: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of M-1 (Light Industrial) on a 2.96-acre parcel. (First Reading - 8/09/05)

Attorney Gougelman read Ordinance Nos. 2005-97, 2005-98 and 2005-99 by title. There were no disclosures by Council and no comments from the audience.

Moved by Palmer/Walker for approval of Ordinance No. 2005-97. The roll call vote was:

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

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Motion carried unanimously.

Moved by LaRusso/Contreras for approval of Ordinance No. 2005-98. The roll call vote was:

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

Motion carried unanimously.

Moved by Walker/Meehan for approval of Ordinance No. 2005-99. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for Pineapple Park shoreline restoration, Project No. I05124, Santa Cruz Construction, Merritt Island, FL - \$101,030; and transfer of \$106,081.50 from General Miscellaneous Construction to this project budget.

City Engineer Jenni Lamb briefed Council and responded to general questions about the project.

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

13. CONSENT AGENDA:

Mr. Schluckebier referenced the memorandum distributed that revises Item "h." The transfer amount will be revised from \$8,212.70 to \$8,171.05. There were no objections from Council.

Moved by LaRusso/Contreras for approval of the consent agenda (including the revision to "h."). Motion carried unanimously.

The consent agenda was approved as follows:

- a. Change Order No. 5 to construction contract for Babcock Street Realignment, Project No. 01610, Wm. Turnbaugh Construction, Inc., West Melbourne, FL - \$24,868.41.
- b. Approval of an agreement between the City of Melbourne and the Florida Department of Transportation for the City's subordination of sidewalk easements along the west side of South Harbor City Boulevard.

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- c. Approval of a six-month lease agreement between the City of Melbourne and NEXTEL for a temporary cell tower at the Police Department Communications Center on Babcock Street - \$1,500 per month lease revenue.
- d. Approval of a Right-of-Way Use Agreement with Christopher Homes, Inc. for a private driveway to be placed in the right-of-way of Catterton Drive on the north side of U.S. Highway 192.
- e. Purchase of an upgrade of the Automated Inspection Request system interface to support the MUNIS building permit module, includes new hardware, on-site installation, start up of the system, training, post installation support, and maintenance, Vetrol Data Systems, Vero Beach, FL - \$19,500.
- f. Purchase of two Chevrolet Impalas for the Police Department, Classic Chevrolet, Winter Park, FL - \$35,524 (contingent on implementation of Third Quarter Budget Review recommendations).
- g. Purchase of streetlight poles, arms, and fixtures, Electric Supply, Inc., Tampa, FL - \$32,934; Raybro Electric Supplies, Inc., Cocoa, FL - \$16,425; and Rexel (CES), Melbourne, FL - \$2,500.
- h. Transfer of ~~\$8,212.70~~ \$8,171.05\* from various CDBG completed projects to Demolition and Clearance to provide funding for demolition projects at 2817 Grant Street and 1106 Line Street.

\*Revised at the Council meeting.

- i. Transfer of \$33,000 from FY 2000 HOME Tenant Based Rental Assistance account to facilitate closeout of FY 2000 HOME grant and allocation of \$20,150.85 in recaptured funds to FY 2002 HOME Tenant Based Rental Assistance account.
- j. Resolution No. 1945: A resolution authorizing the City Manager to submit a grant application to the Florida Department of Environmental Protection for grant funding in the amount of \$200,000 through the Florida Recreation Development Assistance Program for Phase I improvements at Lipscomb Park.
- k. Resolution No. 1946: A resolution authorizing the City Manager to submit a grant application to the Florida Department of Environmental Protection for grant funding in the amount of \$200,000 through the Florida Recreation Development Assistance Program for Phase II improvements at Lipscomb Park.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

15. RESOLUTION NO. 1947: A resolution implementing FY 2004-2005 Third Quarter Budget Review recommendations.

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The City Attorney read Resolution No. 1947 by title.

Mrs. Palmer stated that she would not be able to support any reduction in the amount of boat/trailer parking at Front Street Park (project for improvements included in the third quarter review). Mayor Goode agreed and said that on the weekends the entire area surrounding Front Street Park has overflow trailer parking. Mr. Schluckebier said he would provide Council with a copy of the proposed design improvements.

Vice Mayor Contreras discussed the need for improvements to Parkway Drive at the railroad tracks. He discussed the condition of the roadway and said he is catching flak from his constituents. Following a brief discussion, the City Manager said he would determine if funding is available in the current year budget for this work.

Moved by Palmer/Contreras for approval of Resolution No. 1947. Motion carried unanimously.

16. PRELIMINARY PLAT APPROVAL (SD-2005-05) VERANDA PARK: (Public Hearing) A request for approval of a preliminary plat for a 114-lot single-family residential subdivision and a commercial tract on 76.5 acres zoned R-1AAA (Single-Family Residential) and M-1 (Light Industrial), located between Eau Gallie Boulevard and Aurora Road, west of Wickham Road, and east of John Rodes Boulevard. (Owner - Acopian Manufacturing Company, Inc.) (Applicant/Representative - The Coy Clark Company) (P&Z Board - 8/04/05)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to approve SD-2005-05, consisting of a three-sheet plan prepared by Lamb and Associates, Inc., Project Number 05-0203, with a signed and sealed date of 7/28/05, subject to the following conditions:

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

Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; 2) an increase of more than 10 lots; or 3) an additional entrance on either Aurora Road or Eau Gallie Boulevard.

- b. Per zoning approval (Ordinance No. 2005-61) condition “b”, Turtle Mound Road right-of-way must be extended from Aurora to Eau Gallie. A layout change may be necessary to meet this condition. The Engineering and Planning Departments will determine if the revised layout creates a “significant change”. The applicant must have ownership of the proposed right-of-way prior to construction plan approval.

- c. Improvements in the Turtle Mound Road right-of-way will be eligible for transportation impact fee credits if the road is constructed to collector road standards. The appraised land value for the deeded right-of-way may also be

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eligible for credits. The credits may be applied to both the single-family homes and the commercial tract.

- d. The Ridge Road right-of-way must be vacated through the City of Melbourne prior to construction plan approval.
- e. Proposed elevations of the subdivision must conform to adjacent property grades. Variation is subject to approval and may result in the addition of tracts and/or easements. Grade changes and transitions will be addressed during construction plan review.
- f. Appropriate environmental permits must be obtained as part of the construction plan review process.
- g. Only one building permit may be issued on the plat and one on the site plan prior to recordation of the final plat.
- h. Upon completion of the subdivision improvements, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly identify the flood zone designation/elevation of the property as a result of the improvements. Copies of the changes approved by FEMA shall be provided to the City of Melbourne Planning and Economic Development and Engineering Departments and Code Compliance Division.

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

Frances Baker, 277 Baker Road, said that Mr. Robb indicated at the Planning & Zoning Board meeting that he will provide additional oak trees along the Trimble Road right-of-way. She said it is her understanding that oak trees may not be planted in a right-of-way.

Continuing, she explained that there are two 25' rights-of-way. The 25' right-of-way to the south abuts her property and it has never been used. The County acquired the right-of-way prior to 1956 when she purchased the property; however, it has never been used.

Dorene Cesa, 1708 Sienna Drive, reported that the developer previously indicated that the minimum lot size would be 100' x 140' yet now she reads that it has been reduced to 100' x 120'. Regarding the easement on the east side that abuts Sienna Drive, she asked what would be in the easement.

Mayor Goode explained that typically an easement is used for maintenance, access, etc. He confirmed for Ms. Cesa that the developer would not be able to build in the 10' easement.

That concluded comments from the public.

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

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A brief discussion followed regarding the extension of Turtle Mound Road.

The question was called. Motion carried unanimously.

17. SITE PLAN APPROVAL (SP-2005-19) NIEMAN COMMERCE CENTER: (Public Hearing)  
A request for site plan approval to develop an industrial park on a 22.15±-acre site consisting of two parcels, 21.161 acres zoned M-1 (Light Industrial) and 0.991 acres zoned C-1A (Professional Offices & Services), located south of Laurie Street, east of the Florida East Coast Railroad, and west of Magnolia Avenue. (Owners - Robert & Rosemary Shoff) (Applicant/Representative - C. Douglas Engle) (P&Z Board - 8/04/05)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of SP-2005-19, consisting of a three-sheet plan prepared by Morgan & Associates Consulting Engineers, Inc., of Melbourne, Florida, with a stamped and sealed date of June 21, 2005, subject to the following conditions:

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

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; 2) an increase of more than five percent in the total square footage of the buildings; or 3) the addition of a driveway onto Magnolia Avenue.

- b. The applicant shall maintain a minimum 80-foot buffer between the proposed development and the adjacent single-family homes to the east.
- c. The applicant will limit the driveway access to the southernmost point adjacent to Magnolia Avenue.
- d. The applicant shall provide the City of Melbourne with a 30-foot wide drainage easement for the ditch located along the eastern boundary.
- e. The buildings shall be substantially consistent with the rendering submitted by the applicant.

Note: See motion for revision to conditions “c” and “f.”

Each Council Member acknowledged that they received a package from the residents of Magnolia Avenue/Almar Subdivision. Mr. Contreras added that he took the opportunity today to drive the property.

Attorney Cliff McClelland, representing the applicant, and Attorney Philip Fougerousse, representing the Magnolia Avenue property owners, introduced themselves.

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Mr. Fougrousse said that as legal counsel for the homeowners' association, he believes that the residents and the developer have struck a deal.

Mr. McClelland reported that his clients have agreed to move the retention pond from the point near the railroad tracks to the area behind the Magnolia Avenue residents to provide buffer; they have agreed to move the exit road farther south, if permissible by City staff; and they would have no objection if the City wants to provide a cul-de-sac on Magnolia Avenue. He stated that moving the retention pond and the road are under their control and they agree to change the site plan.

In response to Mr. Contreras, Mrs. Dittmer said she can't see an immediate problem with shifting the driveway south, as long as it meets Engineering Department approval.

Mrs. Palmer asked if the applicant would still provide the 85' buffer and all other setbacks as originally proposed if the retention pond is shifted. Mr. McClelland replied that they are going to try and be as practical as they can.

Steve Morgan, engineer of record and partner in the development, explained that shifting the retention area would result in building setbacks changing on the west side. On the east side they would be greater; he confirmed that the 85' will remain in effect.

Mr. Fougrousse said that the homeowners have been concerned about preserving their community. The development poses two threats – noise and traffic. He said that he believes traffic is still an issue. The residents took issue with the way the traffic survey was conducted and he would like to see a new survey to ascertain the current status. He added that this is an issue for future consideration.

Responding to Mr. Contreras, Attorney Fougrousse said he represents about 40 homeowners.

The Mayor opened public hearing.

David Bogenrief, 621 South Magnolia Avenue, said that the residents are pleased that the retention area will be moved; however, he added that it is huge and over-designed. He explained that the residents don't want overhead doors facing the back of buildings; Magnolia Avenue was never supposed to be a thoroughfare; the retention should meander around the trees; and the developer should provide a block wall rather than an opaque fence.

Peggy Snead, 738 Anita Drive, submitted a letter and picture from Charles Ceclre, 378 South Magnolia Avenue. Mr. Ceclre indicates that he is concerned about the traffic that will be generated on Magnolia Avenue and he would like more of a natural buffer between the existing homes and the proposed industrial area.

Continuing, Ms. Snead stated that Magnolia Avenue is a 30' residential road with an incredible amount of traffic. She said that the traffic issue is the City's problem and she would like the City to consider blocking off the road and routing traffic down Brevard Drive to

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Babcock Street or to U. S. 1. The project will introduce 1,200 commercial trips per day. The developer has agreed to increase the buffer and the residents have asked for a masonry wall. With those considerations, she can reluctantly agree; however, it breaks her heart to think about the wooded area being torn down.

Joanne Priaulx, 543 South Magnolia Avenue, said she shares the same concerns as Peggy Snead. The residents can't back out of their driveways now, yet this development will add 1,212 commercial vehicles per day.

Pat Poole, 805 East Palmetto Avenue, asked if the commercial vehicles will be able to load/unload at all hours. She pointed out that this is the type of development that was meant to be on this site in the first place; however, it is a residential street. She encouraged the developer and the residents to continue working together.

John Emery, 552 South Magnolia Avenue, referenced the developer's original plan to build residential on this property. He said that the residents in the area did not oppose residential, rather they wanted to work toward compromises. Mr. Emery stated that a commercial development located behind their homes will not enhance their quality of life or the value of their property.

In response to Mrs. Walker, Mr. Emery elaborated on the meeting that was conducted in his home to discuss the initial residential development.

That concluded comments from the public. Mayor Goode closed the public hearing.

Attorney McClelland and Mr. Morgan reviewed the material they submitted, which includes an application for site plan approval; final judgment (Boskind v. City of Melbourne); decision in City v. Boskind; traffic impact analysis prepared by Motorist Design of Merritt Island, Inc.; City Council Minutes of May 24, 2005; City staff recommendation to Planning & Zoning Board dated August 4, 2005; memorandum from Planning & Zoning Board to City Council dated August 5, 2005; memorandum from Planning and Economic Development Director to City Manager dated August 11, 2005; resume of Steven J. Morgan, P.E.; opinion of Stephen J. Morgan; resume of Douglas Engle; resume of traffic engineer; picture of site; and survey of site.

Mr. McClelland concluded by saying that the proposed development is in compliance with the City Code and the (Comprehensive Plan).

In response to Mrs. Meehan, Mr. Morgan said that this will be a condominium type development where someone may buy an individual unit and be a member of an association. There is a small door located in the rear of the units for fire safety. They would rather not install that door if it is not required. And, lighting will be located in front, unless the Code requires it to be in the back.

Mr. Morgan confirmed for Mr. LaRusso that there will be no overhead bays along the back of the building; no loading/unloading will face the residential area.

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Mr. LaRusso asked for additional information about traffic concurrency. Mr. Morgan said they have performed a traffic study. There is a great deal of cut-through traffic on Magnolia Avenue. The residents have asked Council to put in a cul-de-sac at the end of Magnolia Avenue and, as the developer, he would join in and support that. Mr. LaRusso said he would like to hear from Ms. Snead whether she is in agreement with the cul-de-sac.

Mrs. Palmer pointed out that Magnolia Avenue has a “no truck” sign. That road was not designed to carry trucks. She asked the developer to comment on how trucks will enter/leave the industrial development. Mr. Morgan said they anticipate using Nieman/Babcock rather than Magnolia Avenue.

Mrs. Palmer agreed that Magnolia Avenue is used as a cut-through; however, she commented that shortcuts are alternative routes and the City needs those. Mayor Goode said that a cul-de-sac should solve that problem. Mrs. Palmer disagreed and said that’s an issue that should be discussed, especially with the location of a public school, Brighthouse cable, Kelly Ford, the courthouse, etc. This is a little different than the average neighborhood.

Mrs. Walker said there seems to be a discrepancy in the traffic counts. The residents came up with a different figure than the applicant. Mr. McClelland said that the traffic consultant can discuss peak flow, etc.

Rhonda Pieper-Schmitz, Motorist Design of Merritt Island, Inc., traffic engineer, discussed the traffic study. She said that one spot is not selected for the traffic counts; there are adjustments, time of day for exact peak, etc. Volumes fluctuate throughout this roadway. She discussed the standard traffic engineering practice used to prepare the traffic study and concluded by saying this project will not change the level of service on the roadway.

Mrs. Walker said she is concerned about the difference in the counts done by the residents and the traffic consultant.

Ms. Pieper-Schmitz said she has not seen the residents’ numbers; however, she noted that her traffic counters have 10 years of experience. They have no involvement in the outcome and they use electronic count boards.

Mrs. Walker said it is not necessary to be a professional to see that those residential streets are not designed for trucks.

Ms. Pieper-Schmitz stated that the width and the capacity are available on the roadway.

Based on no objections from Council, Mayor Goode reopened the public hearing.

Mr. Fougousse returned to the podium and said that, although not contingent on this plan, the traffic problem should be looked at. Some of the residents are encouraged that Council is willing to entertain the idea of a cul-de-sac on this roadway.

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

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Mrs. Palmer said she made the motion because this property has long been zoned industrial. The owner tried unsuccessfully to explore other options. At this point, the developer is willing to move the retention pond and place the buildings much farther from the residential area. The City needs to address traffic in that area.

Mr. Contreras asked about the additional items the developer agreed to. The maker/seconded agreed that the Nieman Avenue driveway access will be moved farther south if permissible by the City (condition “c”); and the retention pond shall be shifted to the east side of the site plan while maintaining the current buffer and opaque fencing (condition “f”).

The question was called. The roll call vote was:

Aye: LaRusso, Meehan, Palmer, Contreras and Goode

Nay: Walker

Motion carried.

Recessed: 8:45 p.m.

Reconvened: 8:50 p.m.

18. ORDINANCE NO. 2005-100 (CU-2005-08/SP-2005-17) PRINCETON MINI-STORAGE, PHASE TWO: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a mini-storage facility on a 4.123-acre site zoned C-1 (Neighborhood Commercial), located on the west side of Dairy Road, north of Palm Bay Road, and south of Eber Boulevard. (Owner/Applicant - Princeton Florida Associates, LLC) (Representative - Robert Lee, PE, Lee Engineering, Inc.) (P&Z Board - 8/04/05)

Attorney Gougelman read Ordinance No. 2005-100 by title. Mrs. Dittmer briefed Council. There were no disclosures by Council. Rob Lee, the applicant’s representative, was present and available for questions.

Mrs. Palmer asked the distance from the property line to the adjacent residential zoning. Mr. Lee said there is a street to the north of this project and he believes they are setback 20’ from that line. Continuing, there is a roadway and then vacant land to the north. He added that this project is the next phase of the originally approved plan.

Moved by LaRusso/Contreras for approval of Ordinance No. 2005-100. Motion carried unanimously.

19. ORDINANCE NO. 2005-101 (CU-2005-05/SP-2005-10) GRAND MEADOWS C-STORE CARWASH ADDITION: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a carwash addition to an existing gas station/convenience store on a 1.38±-acre lot zoned C-2 (General Commercial), located on the west side of Wickham Road, north of Parkway Drive, and south of Post Road.

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(Owner/Applicant - Sarju Corporation) (Representative - Luke Miorelli, ME Construction, Inc.) (P&Z Board - 8/04/05)

The City Attorney read the ordinance by title. Mrs. Dittmer reviewed the agenda report. There were no disclosures by Council.

Mr. Contreras asked if a car wash is located less than half a mile away on the same side of the road. Mrs. Dittmer said yes and displayed the area on the map.

Mrs. Palmer asked if this requires an additional driveway on Grand Meadows Boulevard. Mrs. Dittmer replied yes and said it will be needed to provide an exit only turning movement on Grand Meadows Boulevard.

Luke Miorelli, engineer of record and applicant's representative, said that an accessory use is critical to the success of a gas station. He reported that the existing car wash on Wickham Road will be bulldozed when Pineda is realigned.

Mr. Contreras asked who owns the island, which is proposed to be reduced on the plan. Mr. Miorelli replied that he believes the City owns that island along with the landscaped island farther north. Mrs. Dittmer said she will determine who owns the landscape islands.

Jacqueline DeGaetano, 3785 Grand Meadows Boulevard, stated that she is opposed to this request. She noted that there are currently three car washes in the area; she does not know what the environmental impact will be to the Baymeadows Subdivision; runoff from the facility may adversely affect the retention pond; this is a hazardous, busy intersection; Grand Meadows/Wickham Road serves as a bus stop; and adding another cutout will be a disaster waiting to happen. She informed Council that the Baymeadows homeowners maintain the islands.

Vincent Germann, 3685 Kestrel Court, stated that he is opposed to the car wash and is further opposed to an additional driveway cut in Grand Meadows. He noted that it will probably be in line with one proposed by MARSOL Development. Mr. Germann explained that the gas station rents U-Haul trucks; the gas station has three entrances/exits; the property owner does not maintain the rear of his property; and the cement wall in the back hasn't been painted. He asked Council to vote no on soapsuds and additional traffic.

Mr. Miorelli confirmed for Mayor Goode that water from the car wash would be reclaimed; it would not run into the street. Mayor Goode asked Mr. Miorelli to inform the property owner about the complaints that have been noted about the property.

Mr. Contreras reviewed the plan and asked Mr. Miorelli if the additional driveway cut could be eliminated if the car wash was reversed. Mr. Miorelli replied no and pointed out parking spaces, the dumpster, etc. on the map. A brief discussion followed regarding the traffic movements on the property. Mrs. Dittmer said that our Traffic Engineer made a note about the need for the additional driveway cut.

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Attorney Gougelman discussed the previous lawsuit on this property. He said that Council will need to have strong expert testimony in order to turn down this request.

Mrs. Palmer said she would like to receive comments from the City's Traffic Engineer on this item. Additionally, she recommended that we determine who owns the landscape islands.

Mr. Schluckebier said that staff would be able to obtain additional information prior to second reading.

Moved by Palmer/Meehan for approval of Ordinance No. 2005-101 on first reading with direction to staff to provide additional information by second reading. Motion carried.  
Vice Mayor Contreras and Mayor Goode voted nay.

20. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Council Member Palmer referenced the recent oil spill that occurred on Sarno Road/Eau Gallie Boulevard and the cost for clean-up. No one seems to know where the oil came from and no one has claimed responsibility. Mrs. Palmer added that she has heard many complaints about solid waste flying off of trucks, trucks spilling liquids, etc. She said that the City needs to have a dialogue with Brevard County on the need for monitoring and accountability at the site.

Mr. Schluckebier said that the City will make an inquiry to determine if the County can ramp up enforcement and provide better monitoring on the site.

21. ADJOURNMENT

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

The meeting adjourned at 9:33 p.m.

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City Clerk – 9/1/2005

Approved by Council: September 13, 2005