

CITY OF MELBOURNE, FLORIDA
MINUTES – WORKSHOP MEETING BEFORE CITY COUNCIL
OCTOBER 11, 2005



1. A workshop meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 6:00 p.m. by Mayor Harry C. Goode, Jr.

2. 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 (arrived at 6:03 p.m.)
	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	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

3. Presentation Re: Revisions to the City of Melbourne Zoning Codes

- a. Z-2005-1043AD/LDR-2005-07/FOC-2005-07: A proposed ordinance providing for the adoption of a new Appendix B, Zoning Code; providing for the establishment of general provisions, definitions, zoning map and districts, general district requirements and regulations, use standards, regulations for accessory and temporary uses and structures, non-conforming uses, lots, and structures; and establishing zoning applications and procedures, enforcement proceedings and penalties.
- b. LDR-2005-09/FOC-2005-09: A proposed ordinance amending Chapter 2, Article IV, Administration, by moving the regulations relating to the Planning & Zoning Board and Zoning Board of Adjustment, currently located in Appendix B, to Chapter 2.
- c. LDR-2005-10/FOC-2005-10: A proposed ordinance amending Chapter 20, "Offenses," by moving environmental standard controls, currently located in Appendix B, to Chapter 20.
- d. LDR-2005-13/FOC-2005-13: A proposed ordinance amending Appendix D, Chapter 9, Articles III, V, and XV, by moving visual screens and vision clearance triangles currently located in Appendix B, to Appendix D; amending Appendix D by amending visual screen requirements to prohibit landscaped materials as an option; and providing regulations for loading/unloading commercial vehicles when commercial/industrial property abuts residential property.

From the agenda report: The City hired Land Design Innovations (LDI) to assist with the rewrite of the Zoning Code. Staff identified major issues that needed to be updated, and input was gathered from the community during a public workshop. A draft of the Zoning Code, Appendix B, was distributed to City Council in August for review. Since that time,

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City staff has continued to refine the Code, and the Planning and Zoning Board reviewed the proposal at its August 18 and September 1 meetings. Three additional ordinances have been prepared, which relocate non-zoning codes from Appendix B to other Chapters of the City Code.

The Planning and Zoning Board unanimously voted to recommend approval of the four ordinances.

With regard to the Zoning Code, the Planning and Zoning Board recommended that the R-1B regulations be revised to require 55-foot wide lots, 7.5-foot wide side setbacks, and a minimum lot size of 6,000 square feet; and to remove the 10% open space requirement and limitation of four units per acre.

City staff is recommending that the R-1B regulations be revised to allow only 50% of the lots to be 50 feet wide, and the remaining 50% of the lots to be 65 feet wide. The 10% open space, the limitation of four units per acre, and the five-foot side yard setback would still apply.

City Manager Jack Schluckebier expressed appreciation to LDI for the work on the Zoning Code. He turned the presentation over to Planning & Economic Development Director Cindy Dittmer.

Mrs. Dittmer introduced Pat Tyjeski, Senior Planner with Land Design Innovations. Ms. Tyjeski reviewed the following information with Council:

The current Zoning Code, Appendix B, was adopted in 1972. There was a substantial amendment in 1983 and several small amendments have occurred since 1983. The purpose of the update was to improve readability, reorganize sections and update standards.

LDI was tasked with improving the conditional use criteria with regard to recent legal precedents; review the site plan review process (thresholds and board review); review possibility of establishing performance criteria for certain uses; un-pyramid the district regulations; and improve user friendliness.

The Zoning Code articles in the new Code will be I. General Provisions; II. Definitions; III. Establishment of Zoning Map and Districts; IV. General District Requirements; V. District Regulations; VI. Use Standards; VII. Accessory Uses and Structures; VIII. Non-Conforming Uses, Lots and Structures; IX. Zoning Applications and Procedures; and X. Enforcement Proceedings and Penalties.

The major changes include:

Article II. Definitions – Alphabetized, added new definitions, consolidated similar terms, cross-referenced similar terms, removed regulations and clarified/improved readability.

Article III. Establishment of Districts – Zoning districts implementing Future Land Use

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categories, purpose and description of districts, eliminated the EU district, combined the R-1AAA, R-1AA and R-1A districts (for description and purpose only), and eliminated provision allowing non-residential zoning to “sneak” into residential districts.

Article IV. General Requirements – General standards for all districts, exceptions, how to measure setbacks and height, how to identify building setbacks, how to calculate density, brought sections from other Articles, clarified language, added graphics, and moved waivers to development process and procedures section.

Regarding criteria for additional height, the goals are to preserve view to river, maintain character of established neighborhoods, and minimize blockage of air and light to adjacent properties and sidewalk area. The goals of the conditional use process are to preserve scenic view, maintain character of adjacent single-family residential zoning districts, minimize blockage of breeze and light to adjacent properties and sidewalk area, minimum lot size, minimum lot width, parking areas screened with landscaping, and prevent shadow upon any solar energy panel.

Article V. District Regulations – List of uses allowed per district, chart with dimensional standards, eliminated references to other districts (un-pyramid), created tables, planned development, planned development for mobile home parks, Eau Gallie overlay, criteria for additional height, and R-1B changes.

Article VI. Use Standards – Residential uses, non-residential uses, performance criteria, consolidated, and facilitate conditional use review.

Article VII. Accessory Uses/Structures – General standards for accessory uses and structures, standards for specific uses and structures, temporary uses, organized, clarified, consolidated and added graphics.

Article VIII. Non-Conforming – Types, modifications, condemnation, and brought in some sections from other Articles.

Article IX. Applications and Procedures – Notices and advertisements, building permits and certificates of occupancy, Zoning Code and map amendments, planned unit development, conditional uses, site plan review, variances, administrative waivers, moved reference to boards to Chapter 2, added criteria for conditional use review.

Article X. Enforcement, Proceedings, Penalties – Minimum requirements, complaints, and penalties/remedies.

Continuing, Ms. Tyjeski outlined the public participation on the new Zoning Code. A public workshop was held on March 15, staff review has been ongoing, a Planning & Zoning Board workshop was held August 1, and Planning & Zoning Board hearings were held August 18 and September 1. In addition to this Council workshop meeting (October 11), the Code will also be considered on October 25 and November 8.

That concluded Ms. Tyjeski’s presentation.

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Mayor Goode asked if the conditional use process for height will be allowed in the new Code. Ms. Tyjeski replied yes and added that there are maximums; however, height may be requested through the conditional use process.

Council Member Loretta Hand referenced the recommendation by the consultant to eliminate the 6/7 vote. She said that she would have a problem if this provision were removed from the Code. Ms. Tyjeski said that the vote requirement is part of the City's Charter; therefore, no changes have been made in the Zoning Code with regard to the 6/7 vote.

In response to Mrs. Hand, Mrs. Dittmer confirmed that no changes are being made to the courtesy notices.

Council Member Cheryl Palmer asked the reason for changing the PUD acreage from 20 acres to 10 acres. Mrs. Dittmer said that applicants for smaller parcels have been looking at the PUD concept. Because of the 20-acre limitation, they have not been able to use this. Although the acreage has changed to 10, the open space concepts would still be required.

Mrs. Palmer asked what zoning category applicants applied for when they could not use PUD. Mrs. Dittmer said in most cases they applied for R-1B. Mr. Schluckebier added that without the flexibility, some of the subdivisions have a cookie cutter design.

Council Member Grace Walker expressed concern with allowing 50% of the lots in the R-1B district to be 50' wide with the remaining being 65' wide. She said that this is crowding too much housing together. Mrs. Dittmer clarified that the current Zoning Code allows 100% of the lots in the R-1B district to be 50' wide. Mr. Schluckebier added that staff is recommending an improvement. This is the provision that the Planning and Zoning Board did not agree with.

In response to the Mayor, Mrs. Dittmer explained that nothing Council is reviewing at this meeting would affect platted lots of record. She reported that in August Council approved the transmittal of a text amendment to the Department of Community Affairs to provide that if you have three platted lots of record that are 50' wide in the R-1A zoning, you may not develop on each of those 50' lots. You may do that until the text amendment returns from DCA and is adopted by City ordinance.

Council Member Kathy Meehan asked how many times a developer or owner may come in with a site plan. Mrs. Dittmer replied as many times as they choose to pay the fee and submit. Attorney Gougelman added that if a plan is denied by Council, the applicant has to adhere to the six month reapplication rule. And, when they return with the application, it has to be different in some way from the previous application. In effect, an applicant may not get "two bites of the apple."

Vice Mayor Richard Contreras asked about the new language regarding loading/unloading on a commercial property located next to a residential property. Mrs.

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Dittmer said that has been included in the ordinance that amends Appendix D.

Mrs. Hand asked why the change was made that would allow the Planning and Zoning Board to approve smaller site plans without Council approval. Mrs. Dittmer said that the change relates to insignificant site plans on smaller property. This will help ease the burden on Council's agendas. Additionally, when a site plan is forwarded to Council, it is for approval of the fact that the plan meets the Code requirements. There aren't issues related to compatibility. She added that many cities have staff approval of all site plans.

Mr. Schluckebier referenced the 6/7 rule. He said that rule derived from a rule applicable throughout Florida 30, 40, or 50 years ago. He clarified that when there is a protest against a zoning change signed by the owners of 20% or more of the area within 500', the Charter requires a favorable vote of $\frac{3}{4}$ of the City Council. When that rule is applied to the size of Council, five members are not sufficient, so the next highest number is six out of seven.

Continuing, he noted that this merits discussion to determine whether Council wishes to retain this rule. In 1994-95 the Legislature adopted a whole new set of private property rights called the Bert Harris Act. This, along with the "6/7 rule", places Council between a rock and a hard place. The 6/7 rule gives 20% of the affected parties the right to impose a super, super majority rule – compared to private property rights the State of Florida has now ordained each city/county with. The City will not be able to achieve both interests in harmony.

Mr. Schluckebier said that staff's suggestion isn't to repeal the whole provision, although that is the cleanest recommendation that can be made. He asked Council to consider asking the voters to approve a lower threshold. Instead of the super, super majority of 6/7, perhaps a super majority of 5/7. And, instead of the threshold kicking in at 20%, perhaps a higher level of dissent. He concluded by saying that the City will be in battles over the conflicting provisions of these two rules. This is a position that we can't escape from and it will be a lawsuit generator.

Mrs. Hand recommended that the City challenge this. She added that we need to do whatever we can to protect our citizens.

Council Member Mark LaRusso asked how many lawsuits the City has been in concerning the 6/7 rule since the Bert Harris Act was adopted. Mr. Schluckebier said he is not aware of the number. Attorney Gougelman stated that the City has not been in any lawsuits as a result of the 6/7 rule since he has been here. He added that generally speaking, the 6/7 rule does not gel. If a zoning should take place, the City has been fortunate that the Council Members have made a decision to support the rezoning rather than blocking it with the 6/7 rule. He agreed that we are setting ourselves up to get locked into something at some point.

In response to the Mayor, Mr. Schluckebier said that Council would have to direct the City Attorney to return with an ordinance. And, it would ultimately have to be approved by the voters. He commented that staff is bringing this to Council's attention. We think it is at

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odds with good public policy for zoning and land issues.

Mr. LaRusso asked if any other cities have established a higher threshold than 20%. Mr. Schluckebier said none that he is aware of. Most have simply repealed the extraordinary vote required as the result of a petition.

Attorney Gougelman stated that there are three reasons why cities and counties no longer adhere to the super majority type of rule: 1) the Bert Harris Act, which lowers the threshold for proving a taking; 2) the Snyder decision, which changed permitting from being legislative in nature to quasi-judicial and 3) the era of the Comprehensive Plan and the determination cities and counties make about whether a proposal is consistent with its Comprehensive Plan.

Mayor Goode referenced the PUD requirements being changed from 20 acres to 10 acres. He asked if a developer would still be able to phase a project. Mrs. Dittmer replied that the change in acreage will not affect the phasing of a project. The Mayor asked for additional information on the change. Mrs. Dittmer explained that our large tracts have gone away and we have smaller 10- and 12-acre sites.

Mr. Schluckebier said that the City Attorney has some editorial changes that may be made to the four ordinances. The ordinances may look different at the next meeting; however, the concepts will not be materially altered. By consensus, Council agreed.

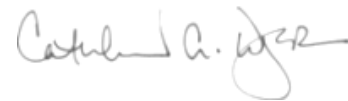
Mrs. Dittmer confirmed for Mr. Schluckebier that staff's version of the R-1B zoning district is in the proposed Zoning Code. The City Manager noted that this is the only material change from what the Planning & Zoning Board recommended.

By consensus, Council agreed to proceed with adoption of the ordinances.

4. Adjournment

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

The meeting adjourned 6:48 p.m.



City Clerk – 10/18/2005

Approved by Council: October 25, 2005