

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
OCTOBER 25, 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 Darice Dawson, Florida Tech Protestant Campus Ministry, 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              | Deputy City Manager                      |
|          | Howard Ralls                | Deputy City Manager                      |
|          | Cindy Dittmer               | Planning & Economic Development Director |

4. Proclamations and Presentations

Mayor Goode presented a proclamation for “VFW Buddy Poppies Days,” November 4-7, 2005, to Chris Pilger, Quarter Master, VFW Post 3991.

5. Approval of Minutes - October 11, 2005 Workshop Meeting  
October 11, 2005 Regular Meeting

Moved by Hand/Walker for approval of the October 11 workshop minutes and the October 11 regular meeting minutes. Motion carried unanimously.

6. City Manager’s Report

Deputy City Manager Howard Ralls provided a brief report on the damage to City facilities caused by Hurricane Wilma. Mr. Ralls noted that the Pineapple Park Pier received significant damage; repair/replacement is estimated at \$100,000.

City Manager Jack Schluckebier commended City personnel, especially police, fire and public works/utilities for their response before, during and after the storm.

The City Manager noted that PEEK Traffic Corporation will be installing a red light camera at the intersection of Hibiscus Boulevard and Airport Boulevard at the end of this month. This is intended to be experimental; traffic citations will not be issued. A warning letter will be sent to the registered owners of vehicles that run red lights.

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Vice Mayor Richard Contreras said he thought the camera would be installed at U. S. 1 and Eau Gallie Boulevard because this would be the best location to collect statistical data. Following a brief discussion, Police Chief Don Carey noted that U. S. 1/Eau Gallie is a state controlled intersection. The vendor was not able to obtain approval from the state. Hibiscus/Airport was selected because it is a City maintained intersection.

Mr. Contreras said if the City received written correspondence from the vendor indicating that the state denied the request, he would like a copy. The City Manager said staff will check and, if the response is not in writing, we will double back and see if FDOT wishes to participate.

7. Public Comments

Cleave Frink, 3215 South Redwood Lane, discussed illegal activities that are occurring at area youth parks. He distributed information to Council along with photographs showing the condition of several parks. Mr. Frink asked the City to adopt an ordinance that would restrict the use of youth parks (area parks with playground equipment) to children age 12 and under.

Additionally, Mr. Frink asked that the Grant Street Community Center be named the “Joe Davis Community Center.” Mr. Davis is one of the founders of the Police Community Relations Council.

Council Member Cheryl Palmer said she would like to see more information on what it would take to restrict certain parks to children 12 and under. Mayor Goode said that staff will review both requests and report to Council.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2005-115 GARBAGE AND REFUSE: (Second Reading/Public Hearing) An ordinance amending Chapter 14, “Garbage and Refuse.” (Postponed - 10/11/05)

City Attorney Paul Gougelman read Ordinance No. 2005-115 by its title. There were no comments from the public.

Moved by Contreras/Walker for approval of Ordinance No. 2005-115. The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2005-116 (AR-2005-179) DEERWOOD TRAIL AND WILDERNESS LANE: (Second Reading/Public Hearing) An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation

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area, located north and south of Parkway Drive and Deerwood Trail, and west of Turtle Mound Road. (First Reading - 10/11/05)

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

Moved by Hand/Meehan for approval of Ordinance No. 2005-116. The roll call vote was:

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

Nay: Palmer

Motion carried.

10. ORDINANCE NO. 2005-117 (AR-2005-180) PINE CONE ROAD AND TURTLE MOUND ROAD: (Second Reading/Public Hearing) An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation area, located east and west of Pine Cone Road, south of Post Road, and north of Turtle Mound Road. (First Reading - 10/11/05)

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

Moved by LaRusso/Hand for approval of Ordinance No. 2005-117. The roll call vote was:

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

Nay: Palmer

Motion carried.

11. ORDINANCE NO. 2005-118 (AR-2005-178) ELDORADO WAY, MUSTANG ROAD AND LAKEMONT ROAD: (Second Reading/Public Hearing) An ordinance providing for a special election for an annexation mail ballot referendum for registered voters in the proposed annexation area, located south of Parkway Drive, west of Turtle Mound, and north of Lake Washington Road. (First Reading - 10/11/05)

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

Moved by LaRusso/Contreras for approval of Ordinance No. 2005-118. The roll call vote was:

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

Nay: Palmer

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Motion carried.

12. ORDINANCE NO. 2005-119 SEXUAL PREDATORS: (First Reading) An ordinance creating City Code Sections 20-90 through 20-95 relating to sexual offenders and sexual predators, providing residence prohibitions, penalties, and exceptions. (Postponed - 10/11/05)

From the agenda report: This item was postponed at the October 11 meeting to allow additional time to review information provided by the City Attorney. The delay also afforded the Police Department an opportunity to address expanded distance requirements and additional registration measures. The Police Chief has provided comments and input regarding staffing, response, burdens, and resource needs regarding the proposed ordinance as presently constituted.

The City Attorney has suggested a cautionary approach, if not outright delay, regarding this topic and any new local registration concept. The state and federal government seem poised to refine regulation at their levels, which might provide a more uniform framework. Brevard County Sheriff Jack Parker is also convening a task force of city police chiefs and staff to afford further review to this topic, as well as a more uniform approach.

As indicated in the Police Chief's communication, more staffing would be needed. Also, a policy question remains for Council consideration as to clarification of the effect or intended meaning of the provision in Section 20-93 relating to rental agents and their responsibility in discovering background of people to whom they are renting. Finally, it is not likely that adequate added staff or an added shelter would be available to deal with Section 20-94 (emergency shelter); therefore, this item should be more carefully reviewed or deleted. Pending the resolution of these issues and the "go slow" approach suggested by the Attorney, no recommendation is issued on this ordinance at this time.

Attorney Gougelman read Ordinance No. 2005-119 by title.

Moved by LaRusso/Contreras to remove this item from the table. Motion carried unanimously.

Council Member Mark LaRusso referenced the staff concern about Section 20-93 (property owners prohibited from renting real property to certain sexual violators). He asked if this provision is already in place by the state for the 1,000' requirement.

Attorney Gougelman said that under the state law, the 1,000' residency requirement is a condition of probation. The onus is placed on the released predator/offender to comply with the law. Mr. LaRusso asked if this means that a requirement to check a person's background is something that the City would implement rather than being a state requirement. Mr. Gougelman replied yes.

Mr. LaRusso said that during Hurricane Wilma, Brevard County Sheriff Jack Parker reported that predators and offenders could not use shelters located in schools. They

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were advised to seek alternatives or report to the jail in Titusville. Attorney Gougelman said that he researched the law this afternoon and was not able to find this provision; however, it does not mean that it does not exist. Mr. LaRusso asked if it would be prudent on our part to reach out to Sheriff Parker's office and determine where they found their information. Attorney Gougelman replied yes.

Mr. LaRusso asked Chief Carey to comment on his (the Chief's) memorandum, which notes "participation in the Brevard County Sexual Offender Task Force would be denied to Melbourne officers..." Council Member LaRusso concluded by commenting on the City's costs for enforcing this ordinance. He stated that the estimated \$75,000 cost is not significant compared to the total Police Department budget of \$18 million. He added that he has a hard time putting a dollar amount on the protection of a child. And, he pointed out that the biggest caution raised by staff has been the registration requirement and he feels that is the most important part of the ordinance.

Police Chief Don Carey referenced the County task force and said that if the City has its own ordinance, the County will not participate in its enforcement. Enforcement would be done exclusively by Melbourne.

Mr. LaRusso asked the Chief to provide additional information on how he arrived at the City costs of \$75,000. Chief Carey said he reviewed the ordinance and determined that enforcement would take the resources of a full time officer plus clerical support. The \$75,000 estimated cost would be for the first year. The effect of the ordinance would be cumulative and the workload would increase at some point to where personnel would have to be increased. The officer assigned would check on individuals, keep up with registration, ensure the GPS maps are updated and ensure that landlords don't knowingly rent to these individuals.

Mr. LaRusso asked if we are checking on rentals now. The Chief replied no and said that is a state probation issue.

Mayor Goode said he believes the City is going further than it ought to. The Melbourne Police Department is not set up financially to enforce this ordinance. Council just adopted the 2005-2006 budget and the \$75,000 was not included. He added that he believes we are going beyond our jurisdiction. The Mayor commented that no one wants these people to be residents of our community but unfortunately they are. He concluded by saying that the 2,000' distance requirement does not bother him; however, registration is one step further than City government should go.

Council Member Grace Walker agreed and said we are exceeding what the City should be doing when there are federal, state and county laws in place.

Council Member Cheryl Palmer said that although she supports this ordinance, she does not wish for the City to extend beyond state law and require so much of our local law enforcement. She recommended that the ordinance be postponed to allow time to determine if the Legislature is going to act quickly. The City would know if the Legislature were planning to put something into motion in the spring.

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Mr. LaRusso said his concern is that the state won't act quickly. He stated that there is a large outcry by our citizens that we need to do more. The steps taken so far are good first steps. And, the things being proposed in this ordinance are not silver bullets; they are intended to be preventive measures.

Mr. LaRusso said he would like to review the impact on rental agencies/landlords and he would like to know if there is a current provision in the law regarding temporary emergency shelters. He stressed that he still wants to work towards enhanced registration. He suggested that the ordinance be postponed for two more weeks before a vote is taken.

In response to Mrs. Palmer, Attorney Gougelman said he does not believe the state will participate in the City's 2,000' residency requirement. He noted that the state has all it can do to enforce the 1,000' restriction.

A brief discussion followed regarding the 2,000' residency requirement and the condition placed on violators/offenders as a condition of parole or probation.

Mayor Goode said he would like to know where the \$75,000 or \$80,000 will come from. Mr. LaRusso said funding will be contingent on the ordinance being adopted. Vice Mayor Richard Contreras pointed out that the City is more than willing to allot \$75,000 for part time security at the water plant. This ordinance will provide protection for all citizens and tapping into the contingency fund will be a small price to pay to protect those who are not able to protect themselves.

Moved by LaRusso/Contreras to postpone this item until the next (November 8) meeting.  
Motion carried unanimously.

13. ORDINANCE NO. 2005-120 (Z-2005-1043AD/LDR-2005-07/FOC-2005-07, ORDINANCE NO. 2005-121 (LDR-2005-09/FOC-2005-09), ORDINANCE NO. 2005-122 (LDR-2005-10/FOC-2005-10), AND ORDINANCE NO. 2005-123 (LDR-2005-13/FOC-2005-13) ZONING CODE UPDATE: Ordinances providing for revisions to the City of Melbourne Zoning Codes. (P&Z Board - 9/01/05)
- a. Ordinance No. 2005-120/Z-2005-1043AD/LDR-2005-07/FOC-2005-07: (First Reading/Public Hearing) An ordinance adopting a new Appendix B, Zoning Code, consisting of Articles I through X, establishing 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. (Workshop - 10/11/05)
- b. Ordinance No. 2005-121/LDR-2005-09/FOC-2005-09: (First Reading/Public Hearing) An ordinance amending Chapter 2, Article IV, Administration, providing for the regulations relating to the Planning & Zoning Board and Zoning Board of Adjustment, currently located in Appendix B, to be moved to Chapter 2. (Workshop -

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10/11/05)

- c. Ordinance No. 2005-122/LDR-2005-10/FOC-2005-10: (First Reading/Public Hearing) An ordinance amending Chapter 20, "Offenses," by providing for environmental standard controls. (Workshop - 10/11/05)
- d. Ordinance No. 2005-123/LDR-2005-13/FOC-2005-13: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 9, Articles III, V, and XV, regarding standards for walls and fences and parking and loading requirements; providing a requirement for visual clearance and screening and providing provisions for loading/unloading commercial vehicles when commercial/industrial property abuts residential property. (Workshop - 10/11/05)

Attorney Gougelman read each ordinance by title. (Planning & Economic Development Director Cindy Dittmer provided an overview on the ordinances at the October 11 workshop meeting.) Mayor Goode opened the public hearing.

Pat Poole, 805 East Palmetto Avenue, spoke in support of the 6/7-vote requirement (when a valid petition is received against a rezoning). She recommended that the ordinance be amended to prohibit people from being able to remove their names after the petition cut-off period. She said that developers tend to make promises, which result in people removing their names from a petition.

A brief discussion followed regarding the Code language. Mrs. Dittmer confirmed that there are no changes proposed in the section providing for the 6/7-vote. Any change would have to be approved by referendum.

That concluded comments from the public.

Moved by Palmer/Meehan for approval of Ordinance No. 2005-120. Motion carried unanimously.

Moved by Hand/Contreras for approval of Ordinance No. 2005-121. Motion carried unanimously.

Moved by Contreras/LaRusso for approval of Ordinance No. 2005-122. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2005-123. Motion carried unanimously.

NEW BUSINESS

- 14. COUNCIL ACTION RE: Contract award for street resurfacing, APAC-Southeast, Inc., Melbourne, FL - \$906,359.

City Engineer Jenni Lamb was available for questions.

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Moved by Hand/Goode for approval, as recommended.

Mr. Contreras said about a year ago a citizen provided Council with information on an alternative method of resurfacing. Deputy City Manager Howard Ralls said that the citizen did not provide information that their method meets Department of Transportation standards, and staff does not think that it does.

The question was called. Motion carried unanimously.

15. COUNCIL ACTION RE: Supplement No. 258 to the Continuing Consultant's Contract for a 16-inch reuse interconnect between Grant Street and D.B. Lee Wastewater Treatment Plants, Project No. 33205, Frazier Engineering, Inc., Melbourne, FL - \$98,000.

Ms. Lamb was available for questions.

Moved by Contreras/LaRusso for approval, as recommended. Motion carried unanimously.

16. COUNCIL ACTION RE: Approval of the Continuing Consultant's Contract for Professional Hydrogeologic Services with L.S. Sims and Associates, Inc., Rockledge, FL.

Ms. Lamb briefed Council.

Moved by Walker/Hand for approval, as recommended. Motion carried unanimously.

17. COUNCIL ACTION RE: Contract award for Cured in Place Pipe (CIPP) rehabilitation of storm drainpipes, Project No. I05613, Insituform Technologies, Inc., Jacksonville, FL - \$180,800.

Assistant Public Works/Utilities Director Harold Nantz was available for questions.

Moved by Palmer/Hand for approval, as recommended. Motion carried unanimously.

18. CONSENT AGENDA:

Council Member Loretta Hand asked for Items "a" and "k" to be removed from the consent agenda. Attorney Gougelman said that since Item "k" is being removed, Item "l" should also be removed. There were no objections from Council for removing Items "a", "k" and "l" from the consent agenda and considering them under agenda Item #19.

Moved by Contreras/Walker for approval of the consent agenda, Items "b" through "j." Motion carried unanimously.

- a. Approval of a Locally Funded Agreement with the Florida Department of Transportation for design engineering services for the Apollo Boulevard extension from Sarno Road to Eau Gallie Boulevard; authorization for the City Manager to

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execute the documents; and appropriation of \$362,500 from the Transportation Impact Fee fund to this project budget. (This item considered under Item #19.)

- b. Approval of an agreement with the Melbourne Airport Authority for fire protection services and authorization for the City Manager to execute the document.
- c. Contract award for the purchase of 20-2-20 mini fertilizer with Ronstar pre-emergent herbicide, Verdicon, Port Orange, FL - \$1,290/ton for bulk and \$1,300/ton for bagged, total annual cost of \$90,340.
- d. Contract award for annual MUNIS software support, Tyler Technologies, Inc., Falmouth, ME - \$85,650.
- e. Contract award for basic software maintenance for the Police Department, Compudyne - Public Safety and Justice, Inc., Fremont, CA - \$75,411.
- f. Contract award for a full-service fire protection program, SimplexGrinnell LP, Orlando, FL - \$49,161.08.
- g. Continuation of point-to-point T1 lines between various City locations, TelCove, Melbourne, FL - \$42,191.80.
- h. Contract award for annual operating system database administrative support, Tyler Technologies, Inc., Falmouth, ME - \$20,231.
- i. Approval of contract agreement with Waste Management, Inc. for solid waste services.
- j. Resolution No. 1956: A resolution providing for solid waste services rates as authorized by Section 14-46 of the City Code.

*Council will convene as the Melbourne Downtown Community Redevelopment Agency for the following item:*

- k. Acceptance of the Downtown Melbourne Parking Study. (This item considered under Item #19.)

*Council will reconvene for the following agenda items.*

- l. Acceptance of the Downtown Melbourne Parking Study. (This item considered under Item #19.)

19. ITEMS REMOVED FROM THE CONSENT AGENDA

- a. Approval of a Locally Funded Agreement with the Florida Department of Transportation for design engineering services for the Apollo Boulevard extension from Sarno Road to Eau Gallie Boulevard; authorization for the City Manager to

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execute the documents; and appropriation of \$362,500 from the Transportation Impact Fee fund to this project budget.

Mrs. Hand expressed support for this item and said that the City needs to take any action necessary to get this project completed.

Moved by Hand/Palmer for approval of Item “a.” The roll call vote was:

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

Motion carried unanimously.

Moved by Palmer/Walker to convene as the Melbourne Downtown Community Redevelopment Agency for the following item. Motion carried unanimously.

k. Acceptance of the Downtown Melbourne Parking Study.

Mrs. Hand said she believes that Lanier Parking Systems did a good job; however, she does not agree with the recommendation to install parking meters in the Downtown area. She noted that meters are a turn off for people. Additionally, the study shows that employees in the Downtown area are using parking spaces over a long period of time. She said she feels they need to find an area for employees to park and have a park and ride bus. This will free spaces for visitors. Mrs. Hand recommended that we push for early completion of a parking garage.

Council Member Kathy Meehan said it was her understanding that a committee would review the recommendations and return to Council with its findings.

Mayor Goode said that approval of the item on the agenda will not result in Council approving parking meters. The City Manager agreed and said that Council is simply being asked to accept a report. The report will not set in motion any changes. The CRA advisory committee has formed a sub committee (Parking Advisory Committee) composed of members from the advisory committee and Main Street. Any proposals would be forwarded to the City Council/CRA for consideration.

Mrs. Palmer said that accepting the report does not necessarily accept the recommendations or solutions. Mr. Schluckebier said that is correct.

Mr. Contreras said that he believes parking meters are unsightly and an annoyance. He said that Council’s sentiments should be transmitted to the subcommittee.

A brief discussion followed. Moved by Contreras/Palmer to place this item on the next agenda (November 8) to discuss in detail.

The question was called. Motion carried unanimously.

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Moved by Contreras/Walker to accept the Downtown Melbourne Parking Study. Motion carried unanimously.

Without objection, the CRA adjourned and the City Council reconvened for the following item.

I. Acceptance of the Downtown Melbourne Parking Study.

Moved by Contreras/LaRusso for approval of Item “I.” Motion carried unanimously.

Without objection, the City Council convened as the Olde Eau Gallie Riverfront Community Redevelopment Agency for the following item.

20. Approval of an agreement with the Rotary Club for construction of a pavilion at Eau Gallie Square.

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

Without objection, the City Council reconvened for the remainder of the agenda.

Recessed: 8:18 p.m.

Reconvened: 8:28 p.m.

21. SITE PLAN APPROVAL (SP-2005-26) CRANE CREEK LANDING: (Public Hearing) A request for site plan approval to develop a 32-unit, multiple-family condominium project on 2.62 acres at a density of 12.21 units per acre, zoned R-3 (15) (Multiple-family residential with a cap of 15 units per acre), located on the south side of Melbourne Avenue, west of Grant Place, and east of Goff Place. (Owner - Vistar) (Applicant/Representative - Dave Menzel, P.E., MAI Architects Engineers, Inc.) (P&Z Board - 10/06/05)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of the two-page site plan prepared by MAI Architecture Engineering Construction, Inc., Project No. 05-023, signed sealed, and dated September 28, 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 three units (10%); or 3) an increase in building height over 10% on any building.

b. Appropriate environmental permits must be obtained as part of the construction plan review process.

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- 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 where 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.

Mrs. Meehan questioned why this plan is before Council for approval since it has adhered to all City Codes. Mrs. Dittmer said that the current Zoning Code requires any multiple-family development over 20 units to come before City Council.

Mayor Goode pointed out that the property in this area was rezoned years ago to multiple-family. He noted that this is just the beginning – other properties in the area will develop in this manner.

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

Dave Menzel, representing the owners, agreed with staff's presentation. He stated that the project meets Code and site plan approval is required. He displayed a site layout plan and noted how the units will sit on the property.

Mrs. Meehan asked the selling price of the units. Mr. Menzel said he does not believe they have been priced yet; however, they will be around 2,200 s.f.

Pat Poole, 805 East Palmetto Avenue, stated that Melbourne Avenue is historic. She questioned the logic of having single-family zoning located next to multiple-family zoning.

That concluded comments from the public.

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

Mrs. Palmer said she does not see any legal reason to deny this request. The zoning is in place and, regretfully, she will vote aye. Mayor Goode repeated that this is just the beginning. Mr. LaRusso commented that he does not believe that Council can legally deny this.

The question was called. The roll call vote was:

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

Motion carried unanimously.

- 22. SITE PLAN APPROVAL (SP-2005-22) PRESTIGE READY MIX EXPANSION: (Public Hearing) A request for site plan approval to expand an existing concrete manufacturing

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plant on a 7.77±-acre site zoned M-2 (General Industrial), located at the north end of Avocado Avenue, north of Lake Washington Road, west of North Harbor City Boulevard, and east of Stewart Road. (Owner - Prestige AB Ready Mix, Inc.) (Applicant/Representative - Thomas Lang) (P&Z Board - 10/06/05)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the three-sheet plan prepared by Brown & Cullen, Inc., of Gainesville, Florida, with a stamped and sealed date of September 27, 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) any expansion which will increase impervious surface.

- b. The applicant shall maintain a minimum landscape buffer of 30 feet between the proposed development and the adjacent single-family homes to the west, as shown on the site plan. This buffer shall include the planting of one 65-gallon canopy tree for every 25 linear feet from Lot 53, Monaco Estates Phase 1 to Lot 41, Monaco Estates Phase 2, on the west side of the eight-foot masonry wall.
- c. The applicant will limit the driveway access to the southernmost point adjacent to Avocado Avenue.
- d. The applicant shall construct an eight-foot masonry wall along the eastern property line to screen the vehicular uses areas.
- e. All vehicular use areas shall be paved to City specifications, and all other open areas shall be sodded where permitted.
- f. The buildings shall be substantially consistent with the rendering submitted by the applicant.

Mrs. Meehan asked if one side of the block wall will include a stucco finish. Mrs. Dittmer said it will be a finished wall.

Mayor Goode called for disclosures. There were no disclosures by Council.

Stuart Cullen, attorney representing the applicant, said that this site plan will satisfy FDEP permit requirements and clean up some site issues with regard to Code Enforcement Board action.

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Mr. Contreras noted that the Code Enforcement Board fine of \$250 per day was capped at \$16,000 on July 27, 2005. He asked the disposition of that fine. Mr. Cullen said that they are required to obtain site plan approval, and they plan to pay the fine when they are through.

Mr. Contreras asked the expected completion date. Mr. Cullen said he believes all the significant requirements will be completed within a six-month period.

Mr. LaRusso said the agenda package contains a memorandum from the Code Compliance Administrator indicating that Prestige plans to ask the Code Board to reduce or rescind the fine.

Mr. Cullen said he may have misspoke – their plan is to pay the fine as determined by the Code Enforcement Board.

Attorney Gougelman clarified that the Code Board will make a determination in the form of a recommended order to City Council. The City Council will make the final determination to reduce or rescind the fine.

Mrs. Meehan asked the status of noise complaints.

Thomas Lang, construction development manager, Prestige Concrete, said that to the best of his knowledge, complaints have stopped since the wall was completed. Trucks are being parked on the railroad side of the property.

Council Member Grace Walker asked for a description of a “bin block” wall. Mr. Cullen said it is block made from returned concrete material. He added that the wall will be finished with stucco facing the residential area.

Continuing, Mr. Cullen said that since they started the bin block wall, neighbors in this area have said that the sound has almost completely disappeared.

Mr. Contreras said that he has had an opportunity in the past to meet with all the neighbors along the perimeter and there were noise issues. Additionally, he asked if the residue or air borne particulate problem has been resolved. Mr. Cullen said that on-site management is keeping the truck path watered down and ensuring that trucks go through at a slower speed. The site plan provides that the path will be paved. He stressed that on site maintenance and on site management have reduced many of the complaints.

Mr. Contreras asked if the management has changed. Mr. Cullen replied that on site management has not.

Mrs. Hand said that she has talked with some of the neighbors in the past and many indicated that they gave up because of so many broken promises by Prestige. It took forever to get the first wall constructed and the dust complaints are on going. She noted that she would like to believe what the representatives are saying, however, it is difficult. Mrs. Hand asked if the 65-gallon canopy trees will be installed as indicated.

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Mr. Lang replied absolutely and said that has to happen.

Mr. Cullen commented that it is his understanding that when the problems arose, there was slightly different site management. New site management has addressed the neighbors' concerns.

Mrs. Walker asked what kind of canopy trees will be planted. Mr. Cullen said per the requirements of the Land Development Code. They plan to discuss this with City staff to ensure the trees are appropriate.

That concluded comments from the public.

Moved by Meehan/Goode for approval of the site plan, subject to the findings and conditions in the agenda report.

Mrs. Hand said she is having a hard time with this item, especially knowing the past history and how long it has taken to resolve problems. People in the area paid a lot of money for their homes and they deserve a better quality of life.

The question was called. The roll call vote was:

Aye: Meehan, Palmer and Goode

Nay: LaRusso, Walker, Hand and Contreras

Motion failed.

Mayor Goode announced that based on the vote, the request is denied.

Mr. Lang said he is not sure what the process is from here. They received approval from the Planning and Zoning Board and a recommendation of approval from staff. They need site plan approval to meet the FDEP requirements.

Attorney Gougelman said that only a member from the prevailing side can move for reconsideration. He informed Mr. Lang that he must convince Council that what he is doing is consistent with public interest. Staff will be able to work with them on the reapplication process.

Following a brief discussion, Attorney Gougelman said that a motion to reconsider and leave pending on the minutes would reserve this issue until the next meeting.

Mr. Contreras said he believes that the site plan goes beyond simply addressing FDEP requirements. Mr. Gougelman said that is a question for the Planning staff.

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Mrs. Dittmer displayed the property on the overhead. She noted that they have expanded on their site without site plan approval. That is what initiated the Code Enforcement action.

Mr. Contreras said he will move to reconsider; however, his intentions are to communicate with the area homeowners to determine if they are satisfied.

Moved by Contreras/LaRusso to reconsider and leave pending on the minutes.

Note: This motion will be voted on at the November 8 meeting.

Mr. Cullen asked if there is anything they can provide prior to the next meeting. Mr. Contreras said his advice would be to communicate with the neighbors. They have been screaming for years and there is a lot of bad will with that neighborhood.

Mrs. Palmer said that if this is turned down at the next meeting, she would like to know what the options are for this site. Attorney Gougelman said there are a couple of alternatives: litigation with the applicant or the applicant may return with a new application.

23. ORDINANCE NO. 2005-124 (AR-2005-183) STRONG INVESTMENTS: (First Reading/Public Hearing) An ordinance providing for annexation of a 1.43-acre parcel located on the east side of Wickham Road, north of Post Road, between Forest Run Drive and Pebble Creek Street. (Owner/Applicant - Strong Investments, L.C.) (Representative - David Armstrong) (P&Z Board - 10/06/05)

Attorney Gougelman read the ordinance by title and Mrs. Dittmer briefed Council.

In response to Mr. LaRusso, Mrs. Dittmer said that the development has been permitted in the County to this point. It has been delayed a couple of years and the applicant needs City water to receive a certificate of occupancy.

There were no comments from the public.

Moved by Hand/Walker for approval of Ordinance No. 2005-124. Motion carried unanimously.

24. ORDINANCE NO. 2005-125 (AR-2005-184), ORDINANCE NO. 2005-126 (CPA-2005-19), AND ORDINANCE NO. 2005-127 (Z-2005-1046) BONITA BEACH, LLC: (First Readings/Public Hearings) Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation for a 1.999±-acre parcel located on the north side of Eau Gallie Boulevard, at the northeast corner of the intersection of Eau Gallie Boulevard and San Pedro Way. (Owner/Applicant - Bonita Beach, LLC) (Representative - G.E. Cantelou, III) (P&Z Board - 10/06/05)

- a. Ordinance No. 2005-125/AR-2005-184: (First Reading/Public Hearing) An ordinance providing for annexation of a 1.999±-acre parcel.

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- b. Ordinance No. 2005-126/CPA-2005-19: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential.
- c. Ordinance No. 2005-127/Z-2005-1046: (First Reading/Public Hearing) An ordinance providing for a zoning designation of R-2 (8) (One-, Two-, and Multiple-Family Residential with a cap of 8 units per acre).

The City Attorney read each ordinance by title and Mrs. Dittmer reviewed the agenda report.

Mrs. Palmer asked if the applicant wishes to be annexed if the property is not zoned residential. Mrs. Dittmer said staff did not pose that question. The property was residential previously since it was a mobile home park.

Bill Powell, Cantelou and Powell, was available to answer questions. He asked Council for a favorable vote.

Mr. LaRusso said that this property is located in his district and he intends to fully support the request. The mobile homes are gone and he is enjoying seeing proactive development.

That concluded comments from the audience.

Moved by Walker/Meehan for approval of Ordinance No. 2005-125. Motion carried unanimously.

Moved by Hand/LaRusso for approval of Ordinance No. 2005-126. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2005-127. Motion carried unanimously.

- 25. COUNCIL ACTION RE: Request by Honor America, Inc. for the City to provide funding for the liability insurance requirement for the 2005 Veteran's Day Parade and "Red, White and Blue" Festival Veteran's Day Weekend (requested by Franck Kaiser, Honor America President)

From the agenda report: Franck Kaiser, President of Honor America, has requested that the City of Melbourne provide funding for the liability insurance for the 2005 Veteran's Day Parade and "Red, White and Blue" Festival Veteran's Day Weekend. Honor America has made a similar request for the past two years. (Note: during the discussion, the City Manager clarified that the requests for the past two years have been for liability insurance for the parade only at an approximate cost of \$700 - \$800.)

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Council agreed to cover the cost of the insurance for the last two years; however, last year, Council agreed that Honor America should fund the insurance from the City's annual grant to Honor America. Honor America's insurance agent has indicated the cost to provide insurance for this event could be as much as \$10,000.

For information, the City Council approved a \$10,000 grant to Honor America for 2005-2006.

The applicant was not present.

Mayor Goode referenced the minutes from 2003 and 2004 where Honor America indicated that they would not make future requests for funding. The 2005-2006 budget has been finalized, including funding for non-profit groups. Honor America is asking for what could amount to \$13,000 (after police costs). The Mayor expressed concern that the applicant did not attend the Council meeting and he does not intend to vote for this item.

Mr. Schluckebier said that the Mayor indicated a possible \$13,000 cost because the City Clerk's Office has been verbally notified that Honor America would like police costs included. He added that on a planning scale of one to ten, this event is at a "one."

Mr. LaRusso thanked the City Manager for clarifying the agenda report (that the applicant has not asked for this amount of funding for the past two years). He noted that this is the first year they plan to hold a festival after the Veterans Day parade. Their intent is to enhance the museum and bring a greater awareness of their vision.

Mrs. Meehan pointed out that the 2005-2006 budget provides \$10,000 for Honor America. Mr. Schluckebier said that award is for organizational assistance, not for this festival. This is a separate request.

Moved by LaRusso/Contreras to approve the request for insurance in an amount yet to be determined.

Mr. Schluckebier said that Honor America's insurance agent said that the liability insurance would not be less than \$10,000. We do not yet have a firm number.

Mayor Goode said that \$10,000 is already in the budget for Honor America. This additional funding would result in a total donation of about \$23,000. He stated that this is bad public policy.

Mrs. Palmer said that Honor America understands the process that has been in place for several years for making funding requests at the same time as other non-profit organizations. She said that in spite of her deep respect for the people on the board of Honor America, the citizens of Melbourne expect Council to be more responsible with the budget.

The question was called. The roll call vote was:

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Aye: LaRusso, Hand and Contreras

Nay: Meehan, Walker, Palmer and Goode

Motion failed.

26. COUNCIL ACTION RE: Board Appointments

- a. Appointment of one regular member and one alternate member to the Babcock Street Community Redevelopment Agency Advisory Committee.

The Mayor called for nominations for the regular member seat. Mrs. Hand nominated Larry Wuensch and Mr. Contreras nominated alternate member Nancy Garmer. Moved by Hand/Goode to close the nominations. Motion carried unanimously. The roll call vote was:

Wuensch: Hand and Goode

Garmer: LaRusso, Meehan, Walker, Palmer and Contreras

Nancy Garmer appointed as a regular member (10/25/2005 – 5/3/2007, unexpired two-year term).

The Mayor called for nominations for an alternate member seat. Mrs. Hand nominated Larry Wuensch. Moved by Contreras/Goode to close the nominations. Motion carried unanimously. Moved by Goode/Palmer to appoint Larry Wuensch. Motion carried unanimously. (10/25/2005 – 6/7/2007, unexpired two-year term)

The Mayor called for nominations for the second alternate seat. Mrs. Palmer nominated Neil Long. Moved by LaRusso/Walker to close the nominations. Motion carried unanimously. Moved by Goode/Walker to appoint Neil Long. Motion carried unanimously. (10/25/2005 – 6/7/2007, unexpired two-year term)

- b. Appointment of two members-at-large to the Beautification and Environmental Advisory Committee

Moved by Contreras/Hand to reappoint Alexis Johnsten and Patty Goffinet. Motion carried unanimously. (11/10/2005 – 11/9/2008)

- c. Appointment of one regular member and one alternate member to the Code Enforcement Board.

Moved by Palmer/Contreras to accept Mr. Reisner's resignation as a regular member. Motion carried unanimously. Moved by Contreras/Palmer to appoint Karen Garavaglia as a regular member. Motion carried unanimously. Moved by Goode/Walker to appoint Robert Reisner as an alternate member. Motion carried unanimously.

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(Karen Garavaglia will serve an unexpired, three-year term from 10/25/2005 through 10/14/2008. Robert Reisner will serve an unexpired, three-year term from 10/25/2005 through 7/8/2008.)

d. Appointment of two members to the Golf Courses Advisory Board

Mr. LaRusso noted that following the recent increase in golf rates, the City Council asked for a two-year recovery plan from Leisure Services Director Mary Ann Bowman. He said that the September 14 Golf Courses Advisory Board minutes indicate that Ms. Bowman provided a marketing and advertisement presentation. During the meeting, board member William McCarty responded that the “City will get nothing for that amount (money spent on marketing), therefore it would be money down the drain.”

Mr. LaRusso stressed that the City is trying to improve the courses and regain its foothold. Changes are necessary. He concluded by saying that is the reason he is nominating Jeffrey William as a regular member.

Moved by Palmer/LaRusso to close the nominations. Motion carried unanimously.  
Moved by LaRusso/Contreras to appoint Jeffrey William. Motion carried unanimously.  
(11/9/2005 – 11/8/2008)

Moved by Palmer/Hand to reappoint Jim Cates. Motion carried unanimously. (11/9/2005 – 11/8/2008)

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Eddie Taylor, Lipscomb Street Park Association, thanked Council for its support of Lipscomb Park over the years. He noted that this is a nice, family park where children play. He referenced the comments made by Mr. Frink under agenda Item #7 and said that the entire area should not be blanketed as being drug infested.

Following a brief discussion, Council asked for an agenda item regarding the hiring of a federal lobbyist.

Mr. Contreras thanked staff for its work on the improvements to Parkway Drive at the railroad tracks.

Council Member Cheryl Palmer asked for an update on Ramshur Towers and the relocation of its residents. The City Manager said he will ask the Housing Authority to provide a written update.

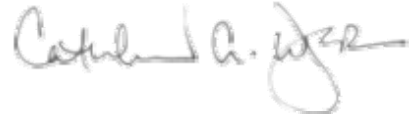
Mrs. Palmer referenced the recent opening of Sindarellaz. The City Manager said he would be happy to discuss detailed information individually with Council Members.

28. ADJOURNMENT

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

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The meeting adjourned at 9:52 p.m.



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City Clerk – 11/3/2005

Approved by Council: November 8, 2005