

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 8, 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. Chaplain Bruno Malara, Lighthouse Assembly of God, 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 (arrived 6:40 p.m.)
	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 (arrived 7:05 p.m.)
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

Mayor Goode presented the following:

October Beautification Award to Applebee's, 3001 W. Eau Gallie Boulevard; accepted by Richard Raiter, Manager.

Certificate of Appreciation to the Space Coast Chapter AIA for its members' contribution to the Scenic Highway Beautification Project and their hard work and dedication to the Melbourne Riverwalk Project.

Residential Fire Safety Institute "2004 Life Safety Achievement Award" presented to the City of Melbourne Fire Department; accepted by Jim Carey, Deputy Fire Official.

5. Approval of Minutes - October 25, 2005 Regular Meeting

Moved by Hand/Meehan for approval of the October 25 minutes. Motion carried unanimously.

6. City Manager's Report

City Manager Jack Schluckebier reported:

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- The first evening class of the Citizens' Academy will be held November 9 and 16 at the Melbourne Auditorium.
- The contractor who will be installing the crosswalks in the Eau Gallie area will begin working within the next 30 days. We will have to renegotiate pricing as a result of Florida Department of Transportation requirements; however, staff expects pricing to be within acceptable levels.
- The Melbourne Housing Authority provided an update on the Silver Sands and Silver Palms development. The Authority is on the recommended list for hurricane funding, which might facilitate those plans.

Council Member Loretta Hand noted that Council Member Grace Walker will be recognized by the Florida League of Cities for her 20 years of public service as an elected official.

Mayor Goode referenced Item #18 and announced that the applicant has asked for the item to be remanded to the Planning and Zoning Board for consideration of a new plan. Therefore, a public hearing will not be conducted.

7. Public Comments

None.

8. Presentation to Council - A presentation from the Marine Resources Council regarding the Invasive Management Plan for the Indian River Lagoon National Scenic Byway.

Beth McMillen, Assistant Director, Marine Resources Council, distributed and reviewed the Invasive Management Plan for the Indian River Lagoon National Scenic Byway.

Council Member Mark LaRusso arrived at 6:40 p.m.

In response to Council Member Cheryl Palmer, Ms. McMillen said that if a person can document that they planted the mangroves on their property, they may trim, etc. However, if the mangroves are naturally occurring, they may not be disturbed.

Mrs. Palmer said she is concerned that the mangroves that have been planted along the causeways will become intrusive if left unchecked. They will eventually block physical and visual access to the river.

UNFINISHED BUSINESS

9. ORDINANCE NO. 2005-120, ORDINANCE NO. 2005-121, ORDINANCE NO. 2005-122, AND ORDINANCE NO. 2005-123 ZONING CODE UPDATE: Ordinances providing for revisions to the City of Melbourne Zoning Code. (P&Z Board – 9/01/05) (Workshop – 10/11/05)

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- a. Ordinance No. 2005-120/Z-2005-1043AD/LDR-2005-07/FOC-2005-07: (Second Reading/Public Hearing) An 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. (First Reading - 10/25/05)
- b. Ordinance No. 2005-121/LDR-2005-09/FOC-2005-09: (Second Reading/Public Hearing) An 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. (First Reading - 10/25/05)
- c. Ordinance No. 2005-122/LDR-2005-10/FOC-2005-10: (Second Reading/Public Hearing) An ordinance amending Chapter 20, "Offenses," by moving environmental standard controls, currently located in Appendix B, to Chapter 20. (First Reading - 10/25/05)
- d. Ordinance No. 2005-123/LDR-2005-13/FOC-2005-13: (Second Reading/Public Hearing) An 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. (First Reading - 10/25/05)

City Attorney Paul Gougelman read each ordinance by title. Council Member Grace Walker referenced the amendment that she would like to make to Ordinance No. 2005-120. Mayor Goode said that her amendment was distributed to Council prior to the meeting.

Moved by Walker/Palmer to amend Ordinance No. 2005-120 as requested.

At the request of Mrs. Walker, Attorney Gougelman read the amendment to Article IX, Section 1(D) regarding written protests. The amendment provides that after a petition has been submitted to City Council, no additional signatures may be added; anyone who wishes to remove their signature must appear before Council in person; and signatures may only be removed prior to the vote on second reading of the zoning/rezoning ordinance.

Mrs. Hand asked if this means that the 6/7 rule will remain in effect and Mayor Goode replied yes.

Mayor Goode questioned why someone would need to appear before Council to remove their name. He pointed out that a person doesn't have to appear before Council to add their name to a petition.

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Attorney Gougelman said that the amendment does three things. Once a petition has been submitted, names can't be added and signatures may only be removed prior to second reading. These two items comport with current City policy. The third change is new, which requires someone to appear before Council to remove their name from a petition. On one hand, this would allow Council to be assured that a person wants their name removed. However, on the other hand, it would aggravate a citizen to have to attend a Council meeting to remove their name. This is a policy decision for Council.

Mrs. Palmer asked how a person removes their name now. Attorney Gougelman said that we expect a written communication so we can compare signatures. Mrs. Palmer recommended that when petitions are distributed, signers be informed that they would have to appear before Council to remove their name. Planning & Economic Development Director Cindy Dittmer said that staff would have no control over that. Citizens distribute petitions on their own.

Council Member Kathy Meehan said she would prefer that a person not have to appear before Council to remove his/her name. Attorney Gougelman said that is the current procedure. Following a brief discussion, Mrs. Dittmer said that a person would need to remove their name prior to the vote on second reading to allow staff time to recalculate the petition. A petition could not be recalculated at a Council meeting.

Mrs. Walker said that she has heard from many people who said they were not aware of what they were signing. She added that she thought this would add clarification.

The question was called. The roll call vote was:

Aye: Walker

Nay: LaRusso, Meehan, Palmer, Hand, Contreras and Goode

Motion failed.

Mayor Goode opened the public hearing.

Pat Poole, 805 East Palmetto Avenue, said that often after people sign a petition, developers promise all kinds of things. People come in as late as the afternoon of the hearing. The petition process is the only recourse people have if they are opposed to a rezoning.

Mrs. Palmer asked for clarification. Attorney Gougelman said that two of the items in the amendment would codify an existing policy. The third point – on how to remove a name – is not existing policy. If Council wishes, the wording could be changed so that a person is not required to appear before Council to remove his/her name.

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Moved by Palmer/Walker to adopt the amendment but delete that portion of it that requires a citizen to attend a Council meeting to remove his/her name. Motion carried unanimously.

There were no further comments from the public.

Moved by Walker/Hand for approval of Ordinance No. 2005-120, as amended. The roll call vote was:

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

Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2005-121. The roll call vote was:

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

Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-122. The roll call vote was:

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

Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-123. The roll call vote was:

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

Motion carried unanimously.

10. COUNCIL DISCUSSION RE: Downtown Melbourne Parking Study, a discussion of recommendations and possible solutions. (Requested by Council - 10/25/05)

From the agenda report: At the October 25 meeting, this item was on the consent agenda and Council requested that it be placed on this agenda as a discussion item. Included in the package is a summary of the study that describes the short- and long-term parking management strategies that Lanier suggests for the future direction within Downtown Melbourne.

The Downtown Melbourne CRA Advisory Committee has implemented the first step by designating a subcommittee to look at the short term parking management objectives. This committee will consist of three Advisory Committee members and two Melbourne Main Street members. The subcommittee will bring recommendations to the Advisory Committee, who will then forward a formal recommendation to the CRA/City Council on the implementation of short- or long-term parking management strategies.

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Mrs. Hand said that her remarks remain the same. She stated that she believes Lanier prepared a good report; however, she does not agree with the installation of parking meters. Meters would be bad for the aesthetics along New Haven Avenue and would leave a bad impression. She noted that she understands that smaller communities use meters as a source of income. Additionally, she recommended that we push forward and get a parking garage in place as soon as possible. In the meantime, Downtown employees should be encouraged to park elsewhere. A park and ride, similar to what the hospital uses, is one suggestion.

Mayor Goode said that Council's acceptance of the report does not implement parking meters.

Mr. Schluckebier said that is correct. The action on the last agenda was for Council to accept the report. The report contained a number of recommendations and it suggested that an advisory committee review those recommendations. The report recognizes that there is a parking deficit, which will grow by about 100 spaces per year. Council has accepted that report with the full understanding that a committee would be appointed, wrestle with the issues, and report back to Council in the next 90 to 120 days.

Mrs. Palmer said she knows that the committee will study the report; however, if Council has an opinion, the committee should be aware of it up front. She stated that she would not vote for meters Downtown. She suggested two-hour parking to discourage people from parking in the same spot all day. She added that meters may discourage people from going Downtown.

Vice Mayor Contreras asked why a subcommittee should waste its time exploring meters if it is the consensus of Council that there should be no meters. He commented that he is also opposed to meters; therefore, this is a non-issue for the subcommittee. Lanier Parking Systems did a thorough job in its report. If employees are consuming a significant amount of parking in Downtown Melbourne, then it is a myth that there is insufficient parking at this time. The report further states that on an annual basis, the loss of potential earnings in the Downtown area is almost half a million dollars. The committee should focus on a short-term plan to get employees out of parking spaces. For the long-term solution, he commented that probably everyone agrees that a parking deck is needed.

Jack Ryals, Chairman, Downtown Melbourne Community Redevelopment Agency Advisory Committee, said that they are asking for authorization to study the report. He said that the input from Council is useful and recommendations will be returned to the advisory committee and then eventually to Council.

Mrs. Meehan said that the subcommittee and the advisory committee need to look 10 and 20 years down the road. Mr. Ryals replied that the short-term parking cannot be solved without a view to the long term solution.

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Mr. Contreras said that relative to the short term, the study identifies our own worst enemy – Downtown employees. He said that can be remedied by the City and business owners. Relative to direction, he stated that parking meters are off the table.

Mrs. Meehan said she would like for the subcommittee to investigate parking meters.

Moved by Contreras/Hand that parking meters are not an option for discussion by the subcommittee.

Mayor Goode stated that he has been a Downtown merchant for 40-plus years. He is Downtown every day and it riles him to see the same cars parked in the same spaces day after day. He noted that he is not proposing that parking meters be installed; however, he doesn't like the idea of taking the discussion off the table. That should not be removed until solutions are found.

Mrs. Hand pointed out that once parking meters are approved and in place, they will never be removed. The City will then have to deal with maintenance, hiring a meter reader, etc.

Mrs. Palmer said she does not believe that parking meters will solve the problem of a person parking in the same space all day. As long as someone has money, they will be able to feed the meter. The merchants need to solve the problem of employee parking and they shouldn't look to the rest of City to handle the problem.

Mrs. Meehan said she doesn't necessarily support meters; she would like for the subcommittee to look at the problem objectively.

The City Manager said that perhaps the maker of the motion could provide positive direction that Council wishes for this group to find some answers, other than meters. With respect to parking meters, he said that the City doesn't wish to get into the meter business. We asked an outside consultant for their opinion and this is one of their suggestions. With respect to Mrs. Hand's suggestion about park and ride, he said that a large employer has the ability to provide sanctions and direct where employees park. The Downtown area has several hundred employers. There may be a few isolated places where meters would provide the only tool to solve what might be an impossible situation.

The question was called. The roll call vote was:

Aye: LaRusso, Walker, Palmer, Hand and Contreras

Nay: Meehan and Goode

Motion carried.

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Jack Ryals said he has not heard anything he disagrees with; however, he would rather Council deny a recommendation later rather than removing options from the table now. The subcommittee has good members and he does not wish to tie their hands.

A brief discussion continued.

11. SITE PLAN APPROVAL (SP-2005-22) PRESTIGE READY MIX EXPANSION: (Public Hearing) A request for site plan approval to expand an existing concrete manufacturing 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) (Council Motion Pending - 10/25/05)

This item was heard at the October 25, 2005 Council meeting and left with a pending motion to reconsider. Council's first order of business will be to act on the following motion: "Moved by Contreras/LaRusso to reconsider and leave pending on the minutes."

Staff has added a condition to plant an additional 65-gallon tree every 25 linear feet, where abutting residential lots to the west, and a requirement that all vehicular use areas shall be paved. This site plan approval and various conditions respond to the concerns expressed by Monaco Estates residents. Site development work had been started and was the object of corrective Code Enforcement action for the past 12-16 months.

The Planning and Zoning Board voted unanimously to recommend approval of SP-2005-22, consisting of a 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 that 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.

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- 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.

City staff opinion regarding approval of the site plan has not been altered. However, given the neighborhood concerns and the contentious way this has been handled, Council may wish the applicant to be on record accepting two additional conditions:

- g. The Code Enforcement Board fine is acknowledged and accepted (no appeal).
- h. The vegetation requirement is a continuing condition, not just a one-time planting.

The question was called on the motion to reconsider. Motion carried unanimously.

Mayor Goode called for disclosures.

Mr. Contreras said he called Alan Dixon, Monaco Estates Homeowners' Association board member, on October 26 and made a recommendation that he contact the Council Member for this district, Mark LaRusso. He noted that today he and Attorney Nohrr left telephone messages for each other; however, they did not speak.

Mr. LaRusso said he spoke to Attorney Nohrr regarding this item, which brought him to no conclusion.

Mrs. Hand said that on October 27 she spoke with Priscilla Bianco regarding Prestige. Ms. Bianco said that she couldn't stand the conditions in the area any longer so she moved. On October 27 she spoke with Kathleen Rew who was not aware that the site plan was before Council. Ms. Rew said that cars are dirty from the dust and there is noise. Additionally, she spoke to Ms. Rew again today who said she was not aware of a homeowners meeting scheduled with Prestige.

Continuing, Mrs. Hand said she spoke with Scarlett Huber, Monaco Estates, who said that Prestige was working at 4:00 a.m. recently; they are supposed to stop at 10:00 p.m. The dust is bad, they are breathing cement dust, and she is not aware of any meeting that has been scheduled. She spoke with Kathryn Mochen who said she has hired an attorney; EPA has been to the site six or seven times; the dust is bad; she has a medical problem and uses oxygen; and she has received threatening telephone calls.

Mayor Goode asked about the homeowners being notified about the site plan. Planning & Economic Development Director Cindy Dittmer said there is no Code requirement for area residents to be notified about a site plan. Mayor Goode said for future reference, staff should take a look at that.

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Phil Nohrr, attorney representing Prestige, stated that his client is attempting to come into compliance and operate as they should under the laws and regulations. It is that attempt that spurred the site plan. There have been certain changes in the law regarding the wash-out for trucks and how materials are handled. In the past these activities were done closer to the residents. They have a permit from FDEP to do these activities in a more environmentally friendly way, farther away from the residents.

Attorney Nohrr said that the site plan does nothing but improve the situation on the site. Paving will be installed, which will address the dust. And, they have constructed an eight-foot wall. They are aware of staff's recommendation for trees and they will commit to doing that quickly. They are aware of the fine and are happy to waive their right to return and ask for the fine to be reduced.

Mr. Nohrr concluded by saying that the plant has been in this location for a long time. They are requesting Council's approval to move forward with the improvements. They have brought in new management and are trying to do a good job.

A brief discussion followed regarding the wash-out bins, FDEP approval and the dust. Mr. Nohrr said that the dust is a separate issue. It is the result of trucks being driven on an unpaved area.

Stuart Cullen, project engineer, discussed the differences between the two permits they received from FDEP. He noted that the site has never been out of compliance with the air permit. He agreed that there is "fugitive dust" as a result of trucks being driven on open grounds; however, the site plan requires those roads to be paved.

Mr. Contreras said that the site plan shows a couple of areas that deal with rock pile, lime rock, etc. He asked if these are covered and if they cause dust. Mr. Cullen replied that the existing conditions have rock piles, which is the former way of discharging excess materials. That material will go away and be stockpiled in a cleaner way with the new wash-out bins.

Mayor Goode asked how the raw material used to manufacture concrete – not the by-product – is handled. Mr. Cullen said that the material used to manufacture is kept in bins on the existing site. The bins are very well controlled and maintained; they do not produce dust.

Mayor Goode asked about recent activity on the site occurring at 4:00 a.m. Mr. Cullen apologized if there was activity occurring on the site that early. He commented that any activity on site outside of normal operating hours is conducted quietly. Lights are directed away from adjacent properties, etc.

Mrs. Hand said she does not know if noise levels have been taken lately; however, in the past this company has not been a good neighbor. They made promises to residents, and took their time putting up the wall. She asked how the neighbors will know if the truth is being told now.

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Mr. Cullen replied that every promise made has been followed through; however, a process had to be followed. The wall required a building permit and the remainder of the items that need to be done are within the proposed site plan. Mr. Cullen reported that the Code Compliance Division has indicated that noise is currently in compliance. He stressed that approval of the site plan is crucial to Prestige becoming a good neighbor.

Mrs. Hand asked how often noise studies will be conducted. Mr. Nohrr said they will be done within the City's regulations; whatever the City requires. He added that noise is an objective criterion they can respond to. Regarding activity occurring early morning, Mr. Nohrr said there are two other concrete plants adjacent to this plant.

Attorney Gougelman asked if the plant is currently operating under any consent order with a governmental agency.

Mr. Cullen said the FDEP generic permit requires all concrete plants to enter into a consent order. Beyond that, he is not aware of any other order.

Mr. Contreras said at the last meeting he suggested that a discussion occur with the neighbors. He asked if an attempt has been made or if a meeting has been scheduled. Mr. Nohrr said he has not made that attempt; however, he would be happy to do that.

Mrs. Meehan asked the hours of operation at this facility.

Bryan Moffit, Prestige Plant Manager, said it depends on their orders. Drivers come in at 6:00 a.m., but they will start at 4:00 or 5:00 a.m. to fill an order. Trucks leave the plant at 4:00 a.m. but they don't allow tankers to unload before 7:00 a.m. He added that they don't receive their product from the railroad.

Continuing, Mr. Moffit said after the last noise complaint was made, an inspector from the City determined that the noise was coming from an adjacent plant. Prestige uses switches on their trucks so the backup alarms don't beep. He stressed that they have not had a legitimate complaint in over a year.

Thomas Lang, Prestige Development Director, clarified that prior to dawn, the trucks use a strobe light when backing. After dawn, they switch to the backup (beep) alarm.

Mayor Goode opened the public hearing.

Scarlett Huber, 2872 Maderia Circle, stated that she lives behind the plant. She said that Prestige has made some improvements, but this past weekend at 11:00 p.m. on Saturday night they were cleaning out the drums of the machines. At 4:20 a.m. Sunday they were still working. Ms. Huber said when the police are called, the workers tell the police that they are subcontractors and they don't know anything about not working past 10:00 p.m. Or, they pretend to not speak English.

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Mr. Nohrr said that the Plant Manager indicated that the plant was locked up at 6:00 p.m. last Saturday night; therefore, they don't believe that noise was from Prestige.

Mrs. Huber said that the noise definitely occurred Saturday night/Sunday morning. She added that the incident with Hispanic workers occurred another time.

Mayor Goode asked if anyone was working on the equipment Saturday night. Ms. Huber said they were on the property on the south side of Lake Washington Road cleaning drums.

Mr. Contreras said this is becoming way too convoluted. There has been testimony about Hispanics, police called, the plant being shut down at 6:00 p.m., etc. He asked if the testimony covers the last two years.

Ms. Huber replied yes.

Mayor Goode said that is why he is trying to be specific about the geographic location. He wants to be sure that Ms. Huber's home overlooks one company, Prestige.

Mr. Moffit said the noise last Saturday night did not come from the Prestige plant. They have not cleaned drums for quite some time. The incident with the Mexicans occurred a few months ago. The workers were instructed to shut down at 10:00 p.m. but they did not.

Mayor Goode asked what is between Prestige and Ms. Huber's home. Mr. Moffit said a 400' wall. Ms. Huber would be able to hear the noise but not see where it was coming from. Mr. Moffit added that they have a maintenance yard on the south side of Lake Washington, which is a quarter mile from the Prestige plant. He stated that yard was also locked up last Saturday night.

That concluded comments from the public.

Mrs. Hand's motion for denial did not receive a second.

Moved by Meehan/LaRusso to approve the site plan with the conditions noted plus the two new conditions (related to the fine and the vegetation).

Mrs. Hand said she can't support the motion knowing what the residents have been through. Promises have been made and not kept; the quality of life in the neighborhood is being destroyed.

Mr. LaRusso asked how long this plant and the other two plants have been in existence and who approved the location of single-family next to a concrete plant. Mr. Nohrr replied that his client acquired Prestige five or six years ago; however, the plant existed long before that. He added that it was in place before the subdivision was built.

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Mr. LaRusso said that approval of the site plan is movement in a proactive way to improve the community. Prestige understands the ramifications if they don't come into compliance.

Mayor Goode suggested that Code Enforcement monitor – unannounced – all three plants to determine where the noise is coming from. He added that Ms. Huber is obviously hearing noise and the Code personnel should be listening to all three plants. Mrs. Meehan said she would like a report back to Council on the results, and Mr. LaRusso asked that the monitoring not be limited to just Saturday nights.

Mrs. Palmer said she is going to support the motion because the site plan represents improvements. She added that it is a wonderful suggestion to have a Code person make periodic checks.

Mr. Contreras stated that he is disappointed the applicant did not follow the recommendation he made two weeks ago and contact the neighbors. He asked the applicant to return at the next Council meeting under public comments and provide a status on contact with the neighbors.

Mr. Contreras asked staff to return with a recommendation on site plan notification of surrounding property owners. Mayor Goode agreed.

The question was called. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Palmer and Goode

Nay: Hand and Contreras

Motion carried.

12. ORDINANCE NO. 2005-124 (AR-2005-183) STRONG INVESTMENTS: (Second 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) (First Reading - 10/25/05)

The City Attorney read Ordinance No. 2005-124 by title. There were no comments from the public.

Moved by Palmer/Contreras for approval of Ordinance No. 2005-124. The roll call vote was:

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

Motion carried unanimously.

Mrs. Meehan left the Council Chamber.

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13. 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: 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: (Second Reading/Public Hearing) An ordinance providing for annexation of a 1.999±-acre parcel. (First Reading - 10/25/05)
- b. Ordinance No. 2005-126/CPA-2005-19: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential. (First Reading - 10/25/05)
- c. Ordinance No. 2005-127/Z-2005-1046: (Second 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). (First Reading - 10/25/05)

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

Moved by Hand/Walker for approval of Ordinance No. 2005-125. The roll call vote was:

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

Motion carried unanimously (six votes).

Moved by Walker/Contreras for approval of Ordinance No. 2005-126. The roll call vote was:

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

Motion carried unanimously (six votes).

Mrs. Meehan returned to the Council Chamber.

Moved by LaRusso/Palmer for approval of Ordinance No. 2005-127. The roll call vote was:

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

Motion carried unanimously.

Recessed: 8:24 p.m.

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Reconvened: 8:34 p.m.

14. 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 - 10/25/05)

From the agenda report: This item was postponed at the October 25 meeting to allow Council time for additional review and consideration of the rental agent provision and temporary emergency shelter provision.

As indicated in the Police Chief's communication, more staffing would be needed. These statements are not intended to read as "concerns" but rather "impacts." Also, a policy question remains for Council consideration as to clarification of the effect or intended meaning of the provision in Section 20-93 affecting rental agents and their responsibility in discovering background of people to whom they are renting. It is not clear whether the Council intends this burden to be placed on the rental agents or owners, although the ordinance as presently constituted would definitely have that outcome. Finally, it is also not apparent whether added shelter in Melbourne would be available to deal with Section 20-94 (emergency shelter) and whether the County's most recent practice regarding a separate shelter would be continued or is required under State law. However, City police provide on-site staffing to the shelter's location within the City limits.

At this time, unless Council wishes to revise the ordinance concerning these two provisions, a continued "go slow" approach is recommended. Irrespective of any action on this item, Council may wish to add this topic to the list of legislative concerns and priorities.

Mr. LaRusso stated that he doesn't want to wait for the Legislature to figure out how to fine tune or amend the current law. With regard to housing, offenders/predators already have to report for registration. Regarding temporary shelters, it has been determined since the last meeting that it is Sheriff Parker's policy that predators/offenders may not use shelters in the County. During Hurricane Wilma, the Sheriff provided shelter in Titusville. Mr. LaRusso asked the attorney if that provision were to be removed from the ordinance and an offender/predator showed up at a shelter during disaster, would they be separated.

Attorney Gougelman said he doesn't know how that would be handled. He added that Sheriff Parker's Chief Administrative Officer said that it is the Sheriff's policy – not state law – that a separate facility be maintained in Titusville for predators and offenders. The Sheriff may be on firm ground because under state law if you are on probation and convicted after 1993 then you may not reside within 1,000 feet of a place where children congregate. A shelter is a place where children congregate. Taken literally, predators and offenders would have to be in a separate facility.

Mr. LaRusso asked if providing a separate facility would be prudent on behalf of the City and Attorney Gougelman replied yes.

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Mr. LaRusso said that the scuttlebutt is that quite a few representatives and senators plan to bring this issue up during the next session to increase registration requirements. Therefore, he would like to proceed with the 2,000' buffer zone, remove Section 20-93 regarding rental agents, and retain Section 20-94 (emergency shelter).

Mayor Goode reported that he and the City Manager met today with two people from parole and probation who monitor sex offenders from the Pineda Causeway south in Brevard County. They learned the following during the meeting: most of the predators/offenders are met at their home monthly by a state paid employee; they are empowered to return someone to jail/prison if they violate the terms of their release; if the City increases the residency requirement to 2,000' they will not participate in the enforcement of that; and they pointed out a program that Palm Bay has where one officer is assigned to monitor and meet all the violators in the City of Palm Bay. Mayor Goode said that he supports having a program similar to Palm Bay's.

The City Manager stated that the Sheriff intends to continue providing a County-wide emergency facility to keep predators/offenders segregated from the general population. With respect to the meeting held with employees from corrections and probation, a couple of things came to light. The Department of Corrections arranges for and approves on behalf of the state a person's residential location subsequent to being released. If the state approves a residence at 1,000 feet, but our ordinance requires 2,000 feet, the City may have a difficult time enforcing that requirement. That is an implementation issue and the City may be without a means to enforce where people live. Right now the City is operating within the confines of the state law. The representatives from the state did not say that the City couldn't proceed; however, they made it clear that they would not play a part in enforcing any new restrictions. They were delighted to learn that the City was considering an additional registration requirement, and they almost encouraged that.

Continuing, Mr. Schluckebier said that he and the Mayor learned that there are a number of offenders/predators that have a status where they don't have to report to anyone. Therefore, if the City can encourage or require more frequent reporting, that is probably a good way to go. The corrections/probation employees were complimentary of the Palm Bay program. The City Manager added that he is not sure if Palm Bay's system is codified.

Mayor Goode elaborated on the enforcement conducted by the state on Halloween. He noted that his preference would be for everyone to stay in prison. However, if the City goes above and beyond the state's residency distance requirements, we may have to engage another counselor to keep us out of court.

The City Manager added that the additional registration would go a little further than Palm Bay. And, it would be enforceable.

Mrs. Palmer said she is confused. At the last meeting Council was told that the residency/distance was okay but the additional reporting was a problem. Now, Council is being told to hire a person whose specific job would be to monitor.

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Mr. Schluckebier said that staff was asked if registration would impose an additional cost and that answer is yes. Perhaps there was perception that because there would be additional cost that the City should not go in that direction. He added that Chief Carey did not say that.

Mrs. Palmer said she would appreciate another report laying out the new information in writing.

Mr. LaRusso stated that he would have appreciated this new information prior to the meeting. It conflicts with the last direction that the 2,000' residency requirement was good, but the increased registration was not good. Mrs. Palmer added that she thought the recommendation from the last meeting was to not have additional registration.

Mr. Schluckebier said there has been no recommendation on this item whatsoever, other than to say that this issue deserves a lot of study.

A brief discussion followed on what the state will and will not enforce and what the state's recommendation would be.

Mayor Goode said the people from corrections and probation made no recommendation. They simply provided an abundance of information; they will only enforce current state statutes; and they pointed out that Palm Bay has a good program. The Mayor commented that he would like to give Chief Carey money to hire someone and try an experimental program. This is based on information he and the City Manager learned today that some people come out of the system with no reporting requirements. The requirements depend on the sentencing judge. It is not always based on the severity of the crime. Therefore, he believes that hiring a police officer is the way to start.

Mr. LaRusso said he would like to see an officer put in place and have increased registration. He would like Melbourne to have an ordinance that provides no matter how you come out of the system, you have to register in Melbourne.

Discussion followed regarding the type of officer, his/her duties, and whether it would be a full time position in the beginning.

Mr. Schluckebier said that although this officer won't be compelled to deal with the effect of our ordinance immediately, there is a large pool of predators/offenders out there that this officer can be monitoring. He confirmed for Mrs. Palmer that there is a need to hire an additional person now.

Mrs. Meehan expressed support for hiring a police officer for this sole purpose.

Police Chief Don Carey said that the Police Department will do whatever Council directs. He noted that the officer would work closely with probation and parole within our borders. Additionally, they would participate in the County's task force.

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Following a brief discussion, Chief Carey described how officers are selected for specialized roles.

Discussion continued regarding authorizing the Chief to hire a new person. Mrs. Hand referenced the Police Chief's memorandum and said that this position would also require clerical assistance and office supplies. The City Manager said that the cost would be rolled into a quarterly budget review.

Following a series of motions, the following substitute motion was offered: Moved by LaRusso/Goode to hire a police officer and clerical support dedicated to monitoring predators/offenders; amend the Police Department budget during a quarterly budget review; and adopt Section 6 of the ordinance.

Mrs. Palmer said she would appreciate receiving information prior to a Council meeting. The Mayor said sometimes complicated issues evolve and one question leads to another. Mr. Schluckebier added that the Mayor's comments at a previous meeting about overlapping jurisdiction caused him some pause. This morning was the first opportunity available to meet with the folks from probation and parole.

The question was called. The roll call vote was:

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

Motion carried unanimously.

Attorney Gougelman recommended that staff revise the ordinance per Council's direction and place the item on the next agenda as a first reading. Council agreed.

NEW BUSINESS

15. COUNCIL ACTION RE: Request for authorization for the City Manager to negotiate a contract for Services During Construction for Surface Water Treatment Plant Improvements, Phase 2 and a Continuing Consultant's Contract for Engineering Services for Water Plant Services, Project No. 02303, Hazen and Sawyer, P.C., Ft. Pierce, FL.

City Engineer Jenni Lamb briefed Council. She noted that Hazen and Sawyer demonstrated extensive experience with the design, construction, and operation of potable water supply treatment systems and appurtenances including ozone disinfection technology. Additionally, this consultant has vast experience as resident engineer and inspector of multi-disciplinary plant construction oversight.

Mrs. Hand asked what type of experience Hazen and Sawyer has with ozone treatment. Ms. Lamb displayed a map showing the locations where Hazen and Sawyer has put ozone treatment plants into operation, including design and services during construction.

Albert Muniz, Vice President of Hazen and Sawyer, added that all the plants are doing very well. He noted that ozone treatment is one type of treatment; it helps with color and

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it is the process the City selected for this plant to advance our water treatment capabilities. He commented that this is a good process and it will improve water quality.

Moved by LaRusso/Contreras for approval as recommended. The roll call vote was:

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

Motion carried unanimously.

16. CONSENT AGENDA:

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

- a. Approval of a right-of-way use agreement with Sonesta Walk Homeowners' Association of Brevard County for construction of a private irrigation piping system in Luminary Circle and Radiant Way; and authorization for the City Manager to execute the agreement.
- b. Authorization for the City Manager to execute a development agreement with Oceanside Village to allow posting of a performance bond for the construction of a roadway from Eau Gallie Boulevard south to Oceanside Village.
- c. A request from Brevard County for a letter from Council in support of the countywide Fireworks Ordinance.
- d. Purchase of furniture for the Public Works Administration Building, Designers West Interiors, Melbourne, FL - \$27,956.17; and transfer of \$27,956.17 from Water & Sewer Contingency to this project budget.
- e. Purchase of 20 vehicles and five pieces of equipment, Maudlin International Trucks, Orlando, FL - \$97,937.25; Alamo Sales, Seguin, TX - \$99,625.88; Creel Tractor, Ft. Myers, FL - \$68,350; Duval Ford, Jacksonville, FL - \$313,157; Law Enforcement Supply, Miami, FL - \$39,904; Garber Chevrolet, Green Cove Springs, FL - \$45,309; and Florida Detroit Diesel, Orlando, FL - \$41,082.
- f. Contract award for the purchase of sodium hypochlorite, Odyssey Manufacturing Company, Tampa, FL - \$0.69/gallon, estimated annual cost of \$71,760.
- g. Purchase of 50 sets of personal protection equipment, Bennett Fire Products Company, Woodstock, GA - \$58,400.
- h. Purchase of 23,760 pounds of Magnafloc LT22Sdry Polymer, Fort Bend Services, Inc., Stafford, TX - \$1.85/pound, estimated annual cost of \$43,956.
- i. Purchase of 26,400 pounds of Hychem LC-214PWG Dry Polymer, LeahChem Industries, Inc., Titusville, FL - \$1.59/pound, estimated cost of \$41,976.

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- j. Purchase of licenses and maintenance of Novell software, Softchoice Corporation, Tampa, FL - \$37,517.51.
- k. Purchase of two Evolution 5200 Thermal Imaging Cameras with chargers, Ten-8 Fire Equipment, Inc., Bradenton, FL - \$17,838.
- l. Purchase of TNT rescue equipment, Fisher Scientific Company, Tampa, FL - \$15,552.60.
- m. Resolution No. 1957: A resolution authorizing the City Manager to execute a termination of public utility easement with U.S. Realty 87 Indian Harbor Associates.

17. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

18. CONDITIONAL USE REQUEST (CU-2005-11/SP-2005-20) HARBOR CITY MIXED USE (FKA CAUSEWAY CENTER, VUES): (Public Hearing) A request for a conditional use with site plan approval to allow an additional 117 feet in height to construct two 197-foot mixed-use retail and multiple-family condominium towers at 134 units per acre on a 2.16± acres zoned C-3 (Central Business District), located on the south side of Strawbridge Avenue, on the north side of New Haven Avenue and east of U.S. Highway 1. (Owner - Hynes Properties, LLC) (Applicant/Representative - David T. Menzel, P.E., MAI Engineering, Inc.) (P&Z Board - 10/20/05)

Note: Richard Hynes advised Council on November 4 that the site plan has been revised following meetings with the Planning and Zoning Board, staff and other City officials. He requested that Council remand the item back to the Planning and Zoning Board for further consideration.

For the record, Mayor Goode noted that the following people sent correspondence opposed to the site plan on the agenda: Gary Altpeter, Patty Goffinet and Cammie Donaldson.

Moved by Palmer/Hand to return this item to the Planning and Zoning Board for reconsideration. Motion carried unanimously.

Mrs. Palmer left the Council Chamber.

19. ORDINANCE NO. 2005-128 (ED-2005-04) ROCKWELL COLLINS, INC.: (First Reading) An ordinance granting an Ad Valorem Tax Exemption for a period of four years totaling an estimated \$21,219.56.

Attorney Gougelman read the ordinance by title.

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Moved by Contreras/Meehan for approval of Ordinance No. 2005-128. Motion carried unanimously (six votes).

Mrs. Palmer returned to the Council Chamber.

20. ORDINANCE NO. 2005-129 (Z-2005-1042) AND ORDINANCE NO. 2005-130 (CU-2005-12/SP-2005-12) GRANDVIEW CONDOMINIUMS: Ordinances providing for a zoning change and conditional use with site plan approval to construct a multiple-family condominium development on 8.15± acres, located on the west side of North Harbor City Boulevard, north of Parkway Drive. (Owner – Rivercrest III) (Applicant/Representative – David T. Menzel, P.E., MAI Engineering, Inc.) (P&Z Board – 10/20/05)
- a. Ordinance No. 2005-129/Z-2005-1042: (First Reading/Public Hearing) An ordinance changing the zoning from C-P (Commercial Parkway) and R-A (Residential Holding) to R-2 (One-, Two-, and Multiple-Family Residential).
 - b. Ordinance No. 2005-130/CU-2005-12/SP-2005-23): (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow an additional 27' 8" in height to construct a 67' 8" multiple-family condominium development, including two-story townhome style condominiums with 108 units at 13.25 units per acre.

The City Attorney read both ordinances by title and Mrs. Dittmer briefed Council. The Planning and Zoning Board voted 6 to 1 to recommend approval of both of these requests. Due to the concerns related to compatibility within the surrounding area and the location of the request, which is a considerable distance from any of the City's "urban" areas, City staff does not recommend approval of the conditional use request for additional building height.

Mayor Goode disclosed that he spoke to the applicant's representative today. Mr. LaRusso stated that he spoke with the applicant's representative today.

Phil Nohrr, attorney representing the applicant, stated that this is vacant land sandwiched between two medium density developments comparable in nature and size. Property to the north is developed at 15 units per acre and to the south is a multi-family development close to that density. The subject parcel, which includes a small parcel on the east side of U. S. 1, will be developed at an overall density of 12.5 units per acre.

Mr. Nohrr said that the parcel has challenges. The railroad is located to the west and they are attempting to move away from that and put the development farther to the east. The townhome concept is the result. They are trying to get as many units as they can towards U. S. 1. Locating a taller building on U. S. 1, which is six lanes with high traffic, does not have the same impact as if this were being developed on a local street. They don't believe aesthetics is an issue. The building will be setback 76' from the road. A portion of the property is zoned CP and they don't believe that putting commercial between two residential developments is the way to go. They are trying to capture the view.

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Mr. Nohrr concluded by saying that they won't impact any single-family developments. They talked to their neighbors to the north and south and they are fine with the proposed development. The higher end condo/townhome development will have a positive impact on this area. He added that in the past, Council has recommended that some sort of fencing or wall be placed between a development and the railroad tracks. He said they would be glad to do something like that on this development.

There were no comments from the public.

Moved by Contreras/Hand for approval of Ordinance No. 2005-129 with a condition that a wall will be constructed between the development and the railroad tracks. Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-130.

Mayor Goode asked if the applicant would be willing to title the parcel located on the east side of U. S. 1 to the City. The applicant, Bob Hereford, said yes as long as they would be able to retain a 20' walking easement.

The question was called. Motion carried. Mr. LaRusso voted nay.

21. COUNCIL ACTION RE: Proposed legislative priorities for the 2006 Legislative Session of the Florida Legislature.

Mrs. Hand asked if the priorities could include a request for the Legislative Delegation to take action regarding sexual predators. Mayor Goode recommended that Council add Item #8 as follows: "That the Legislative Delegation take a strong look at Florida's sexual predators law to see if improvements can be made during the upcoming session."

Moved by Contreras/LaRusso for approval, with the addition of Item #8. Motion carried unanimously.

22. COUNCIL ACTION RE: Appointment of Vice-Mayor for 2005-2006

Mrs. Walker nominated Mrs. Hand and Mrs. Meehan nominated Mr. LaRusso.

Moved by Walker/Palmer to close the nominations. Motion carried unanimously. The roll call vote was:

Hand: Walker, Palmer, Hand, Contreras and Goode

LaRusso: LaRusso and Meehan

Appointed: Loretta Hand

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23. COUNCIL ACTION RE: Appointment of three Council Members to the Melbourne Airport Authority

Moved by Walker/Hand to appoint Cheryl Palmer, Harry Goode and Richard Contreras to the Airport Authority. Motion carried unanimously. (12/ /2005 through 12/ /2007)

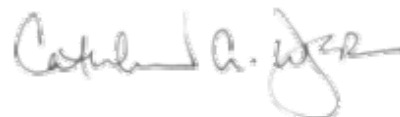
24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Vice Mayor Hand discussed her concerns with pedestrian safety in Melbourne. She asked that staff work on a safety program. The City Manager said he will ask the Police Department and Traffic Engineering Division to collaborate on a pedestrian safety program. Additionally, he said it might be a good time to talk to the Legislature about allowing the use of cameras at signalized intersections.

25. ADJOURNMENT

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

The meeting adjourned at 10:07 p.m.



City Clerk – 11/17/2005

Approved by Council: November 22, 2005