

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 8, 2006



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

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

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

4. Proclamations and Presentations

None.

5. Approval of Minutes - July 24, 2006 Special Meeting
July 25, 2006 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier reported that Vice Mayor Loretta Hand requested consent items "l" and "m" be removed from the agenda.

7. Public Comments

Terry Dashiells, owner of The Jewelry Doctor, 1454 Highland Avenue, referenced the special activity permit issued to the Brevard Museum of Art and Science for the recent "Surf! Art! Party!" event. He said that he was not informed prior to the street being closed and when he returned to his store later in the day he found that a group of skateboarders who were part of the event/exhibit connected to the electricity outside of his building.

Mayor Goode said he is not able to address the use of electricity by one of the exhibits; however, he does know that the event was highly publicized. The Mayor added that staff will work with the applicant to ensure better dialogue in the future.

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UNFINISHED BUSINESS

8. ORDINANCE NO. 2006-45 (CU-2005-19/SP-2004-19) PARKWAY COMMONS, PHASE ONE: (First Reading/Public Hearing) An ordinance granting a conditional use to allow a multi-family residential development on 19.21+ acres zoned C-P (Commercial Parkway), in conjunction with the adjacent 5.57± acres zoned R-2 (One-, Two- and Multiple-Family Residential), for a total of 24.78± acres at a density of 6.7± units per acre and site plan approval on the Phase 1 portion (24.78 acres) of the overall 30.1±-acre property, located on the north side of Parkway Drive, West of Wickham Road. (Owner/Applicant - Wickham Corporate, LLC) (Representative - Brad Smith, Brad Smith Associates, Inc.) (Postponed - 7/25/06)

Attorney Gougelman read Ordinance No. 2006-45 by title. Planning and Economic Development Director Cindy Dittmer briefed Council. During the Planning and Zoning Board meeting, several residents expressed concerns related to increased traffic in the area, drainage and flooding, and the proposed size of the undisturbed portion of the 200-foot buffer. Several Planning and Zoning Board members expressed concern about traffic concurrency issues on Wickham Road.

City staff met with the applicant to review additional information provided by the applicant regarding the existing elevations and the stormwater design of the Parkway Meadows Subdivision. This is not information typically required at this stage of plan review; however, the applicant is attempting to resolve the concerns of the residents regarding drainage.

Based upon additional information provided by the applicant, condition “d” in the ordinance has been revised to read:

- d. A minimum 30 foot buffer shall be provided and maintained between the Parkway Meadows Subdivision and the proposed project including a minimum of one tree per 30 feet planted along the west side of a berm, a drainage conveyance swale along Lots 16-22 of Parkway Meadows Subdivision and a six foot opaque fence installed along the western property line of the project.

The recommendation is for approval of the ordinance, including the revision to condition “d.”

Mayor Goode called for disclosures. Council Member Richard Contreras said he received a message from Carmen Glasser (3217 Parkplace Court) who informed him about a web site dedicated to this development. He also received a message from Cathy Jones (3453 Saddle Brook Drive) regarding the Parkway Commons development.

The Mayor opened the public hearing.

Phil Nohrr, attorney representing the applicant, referenced the packet of information distributed to Council detailing information about the request. Mr. Nohrr stated that Brad Smith, Brad Smith Associates, Inc., and Scott Nickle, Bussen-Mayer Engineering Group,

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Inc., are available for questions. He added that their written statements are included in the packet.

Mr. Nohrr noted that the site plan provides for a step down in intensity. Once developed the property will transition from commercial to single-family. Mr. Nohrr pointed out that if this request is defeated, the land can be developed at a greater intensity than what is being proposed and would probably be less compatible.

Attorney Nohrr reviewed each exhibit in the packet as follows:

1. Site plan. The plan provides a 200' buffer on the western portion, which is subject to a conservation easement from a 1992 ordinance. The property next door (Crossings at Baymeadows) is developed at 6.9 units per acre. One of the conditions requires Parkway Commons to connect to the Crossings. The Crossings development is the same as this development although Crossings provides for a 50' buffer for the single-family development to the west. The subject development provides for a 200' buffer. The subject development will have to provide a deceleration/right turn lane on Parkway Drive. Additionally, this request meets all concurrency and objective criteria in the City Code.
2. Zoning Exhibit. The request relates to the property that is 580' in depth that currently has Commercial Parkway zoning. They are requesting a conditional use for residential. The 200' buffer area to the north is zoned R-2 (One-, Two-, and Multiple-Family). And, the zoning pattern clearly shows R-2 in the area.
3. Ordinance No. 89-60. This ordinance shows that until 1989 the property was zoned R-2. In 1989 most of the property was rezoned to Commercial Parkway.
4. Ordinance No. 92-24. This is the ordinance that established the conservation easement. The ordinance provides that the easement "...shall limit use of the property to only stormwater retention facilities and/or wetland vegetative mitigation and wildlife management areas..." The site plan provides that this area will be used for retention.
5. Letter dated July 20, 2006 from Scott Nickle, Director of Engineering, Bussen-Mayer Engineering Group, Inc. This letter details the drainage in the area. Normally a project doesn't get into this much detail at this stage; however, after meeting with the residents and hearing their concerns, the applicant felt he needed to have a better understanding of drainage in the area. The survey shows that the rear yards of several lots in Parkway Meadows drain toward and into the subject property.

Based on the current situation, they are required by St. Johns River Water Management District and the City to either accept the Parkway Meadows runoff into their stormwater lake or provide conveyance of the runoff into a publicly maintained drainage system. They have concluded that they will need to construct a drainage swale between the east property line of Parkway Meadows and the proposed stormwater lake and direct the Parkway Meadows runoff to the existing ditch along

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the north side of Parkway Drive. The applicant believes that this would be a significant improvement for the (Parkway Meadows) subdivision. Although the final drainage calculations have not been done, they believe this will offer relief to what exists in the area.

6. Cross Section of Parkway Meadows.
7. Letter dated July 24, 2006 from Brad Smith, Brad Smith Associates, Inc., plus three renderings. The letter indicates that Mr. Smith reviewed the ordinance that provided for the conservation easement, the Conservation Element of the Comprehensive Plan and the Planning and Zoning Board's May 4, 2006 recommendation for approval of the request. Mr. Smith has stated that the proposed use of the conservation area is an acceptable use.
8. Topographic survey by William Mott Land Surveying. This survey shows the elevations and flow of water.
9. Geotechnical Report by Universal Engineering Sciences.
10. Site Plan and Minutes for Crossings at Baymeadows. This is the neighbor to the north. The site plan shows the 50' setback, density at 6.9 units per acre, and connectivity of the road.
11. Comparative Trip Generation Technical Memorandum dated July 31, 2006 from Lassiter Transportation Group, Inc. The traffic impact study shows that the current zoning can produce 12,000 daily trips. The proposed zoning would generate approximately 1,000 daily trips.

Mr. Nohrr noted that they realize they can't get this number on Wickham Road today; however, if the property remains commercial, it will eventually develop. The requested zoning is significantly less intense.

12. Conditional Use Review by Brad Smith dated August 1, 2006. Mr. Smith reviewed the criteria in the Code and it is his opinion that the proposed development is consistent.

Mr. Nohrr concluded by saying that the criteria used for approval of the Crossings development to the north should be used with the subject request. The project is the same, but the buffers are greater and the landscaping requirements are greater. A six-foot opaque fence will be installed along the western property line, followed by heavy landscaping, and then the retention pond. This will provide a minimum buffer of 200' between any proposed buildings and the rear lot line of Parkway Meadows Subdivision.

In response to Council Member Grace Walker, Mr. Nohrr elaborated on the proposed swale that will take the runoff from the Parkway Meadows property. The runoff will eventually make its way to a system in Wickham Park. Mrs. Walker said that she has a problem with

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swales. Her house is adjacent to a swale, which has created flooding problems for her home. She noted that she can't approve this request based on her experience

Mr. Nohrr said that the proposal was developed from an engineering point of view. He added that they would be happy to provide any further engineering. Mr. Nohrr asked Mrs. Walker not to penalize this request because of the conveyance system. The system has been determined by the regulatory agencies. It will be their responsibility to keep the swale clean and the developer will be entirely responsible for the system.

Discussion continued. Mr. Nohrr pointed out that the Parkway Meadows residents will be buffered from the swale system. He added that maintenance of the system could be added as a condition.

Mr. Nohrr confirmed for Vice Mayor Hand that this project should not (negatively) impact the drainage system in Wickham Park. Mrs. Hand asked about external sidewalks and Mr. Nohrr replied that by Code they will have to provide a sidewalk along Parkway Drive. There will also be sidewalks within the development.

Council Member Kathy Meehan asked for details about the opaque fence. Mr. Nohrr said they have not made that decision; however, the fence will be aesthetically pleasing and finished on both sides.

Council Member Mark LaRusso referenced the Boundary and Topographic Survey. He noted that a massive piece of wetlands – over two acres – will be impacted.

Scott Nickle, Bussen-Mayor Engineering Group, Inc., said that it will be partially mitigated and a portion will be turned into a stormwater pond. They will go through proper permitting with SJRWMD.

In response to Council Member Cheryl Palmer, Mr. Nickle elaborated on the proposed swale system. He reported that the swale will be separate from the subject property's stormwater system. The swale will be designed to take care of the overflow from Parkway Meadows. It will provide relief rather than an impound for the water. The SJRWMD will require them to maintain the swale as part of their permit.

Note: In addition to the correspondence included in the agenda package, Mayor and Council received an e-mail from Ed Hotz, 3447 Saddle Brook Drive, who is concerned, especially about flooding, with the Parkway Commons development. Mayor Goode read Mr. Hotz's correspondence into the record.

The Mayor opened the public hearing.

Mark Soliman, 6935 North Wickham Road, representing the Crossings at Baymeadows, stated that he believes this is the best proposal for the property.

Carol Isaacson, 3445 Saddle Brook Drive, said that she lives adjacent to the subject property. She noted that her only concern is that development of the property will result in

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flooding where they have never had flooding before. She noted that the developer is adamant that their property will be higher than the Parkway Meadows property. Ms. Isaacson commented that she does not believe mother nature has read any of the ordinances – water flows down hill and Parkway Meadows will be impacted if their pond is allowed to be placed as close as they are proposing.

Ms. Isaacson reported that after a small storm, water stands at the corner of Parkway Drive where the CVS Pharmacy is located. And, the ditch along Parkway is always overgrown. Vegetation outpaces the maintenance schedule.

Mr. Contreras asked how the request relates to the existing water that stands at the corner of Parkway. Ms. Isaacson said that they plan to move the water from the development eventually to Wickham Park. The water will go in that direction and if there is standing water now, additional water won't go anywhere.

Mr. Contreras said he is trying to determine if piping the water away is a better solution. Ms. Isaacson said the homeowners feel that once the development is in and they experience flooding, it will be too late.

Cathy Jones, 3453 Saddle Brook Drive, stated that the residents are against the current plan and their main concern is about flooding. She added that they are also concerned about new development that will disturb the wetlands. She asked how they will prove where the water came from when their property floods. Ms. Jones said that another issue is increased traffic. The widening of Wickham Road won't be done for another 10 years. She asked that Council take the residents' concerns into account and asked that the project be delayed until traffic on Wickham Road is addressed.

Ms. Jones submitted a petition (containing 228 signatures) signed by residents "concerned that the new development will severely impact Parkway Meadows, which has a history of flooding, and concerned about traffic."

Richard Isaacson, 3445 Saddle Brook Drive, stated that his assignment was to read the petition; however, it has been read.

Pat Poole, 805 East Palmetto Avenue, referenced the 2002 request on this property for rezoning when Council voted unanimously to deny. She pointed out that the same applicants have reapplied. Mrs. Poole stated that this project does not belong on this property; wetlands should not be developed.

David Glasser, 3217 Parkplace Court, stated that his main concerns relate to drainage and the traffic on Wickham Road. There are no plans to widen Wickham Road for 10 years. Mr. Glasser said he would be supportive of commercial because it would not have an impact in the mornings when people are driving to work. Additionally, he noted that there is a freeze on schools in the area and he is concerned that when his son reaches school age, he will be shipped off to a school far away. Additionally, there is a lot of wildlife in the area of the wetlands, and a six foot fence will not screen a two-story development.

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Mr. Glasser reported that the engineer, Scott Nickle, looked at the drainage system behind his house and noted that it is not being maintained properly by Parkway Meadows. He asked how the new development will take on this system when his own development can't handle it now. (See clarification on this from Mr. Nickle below.)

Mr. Contreras pointed out that the applicant has indicated that a commercial development would generate 12,000 trips as opposed to 1,000 trips. Mr. Glasser replied that is okay because it won't be at peak hours. Additionally, commercial is more restrictive on the hours of operation. Following a brief discussion, Mr. Glasser added that it is his understanding that a big box store can't be built on this site. He stressed that he definitely supports commercial as opposed to residential – residential would generate constant noise behind his home.

Carmen Glasser, 3217 Parkplace Court, referenced the web site that has been created about the proposed development. She referenced the previous conversation and said that the small area between her home and the neighbors is not what is contributing to the flooding. She asked that this issue not be overblown. Ms. Glasser referenced her correspondence from April and asked Council to take the residents' concerns into account.

Mr. Contreras referenced the area where the retention pond will be located. He asked how many of the homeowners immediately adjacent are actually opposed. Cathy Jones displayed a diagram of the petition and stated that everyone adjacent to the retention pond signed the petition.

Steven Cummings, 3218 Parkplace Court, said he is concerned about flooding. He pointed out his house on the aerial and said during Hurricane Wilma last year the retention pond stopped accepting water about three-fourths of the way through the storm. He stressed that he is concerned about where the water will go.

Attorney Nohrr said that the speakers have indicated that they are concerned about flooding – not that they have flooding at this time. He noted that he is concerned about the standards that Council will hold this development to. The standard has been set and the property cannot be developed in such a manner that it impacts the neighbors. Those are the rules and every developer has to comply.

Mr. Nohrr added that their stormwater system will be designed so that the neighbors to the west will not be flooded. Although final calculations have not been done, they have identified areas they believe will assist Parkway Meadows with regard to drainage. They will not impact Parkway Meadows and if they do, they will be held accountable.

Mr. Nohrr referenced the speaker who said he preferred commercial. The traffic information that has been provided shows that commercial will generate 1,100 trips during peak hours and the proposed development will generate 100 trips during peak hours. The numbers work massively in their favor either way. The proposed development is a much less traffic generator.

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Mr. Nohrr concluded by saying that they have tried to reach out to the folks in Parkway Meadows. He added that the engineer has informed him that the swale system cannot be wet – it will be a dry system. There will not be standing water in the system.

In response to Mr. Contreras, Mr. Nickle described how the swale would operate. He clarified that they would not maintain the Parkway Meadows system; they would maintain their proposed swale system.

Mrs. Palmer asked if this development would be required to take the Parkway Meadows overflow if it were developed as commercial. Mr. Nickle replied yes.

That concluded comments from the public.

Moved by Meehan/Contreras to approve Ordinance No. 2006-45.

Mrs. Meehan said that she feels this property is going to be developed and she would rather have residential than commercial. Additionally, she has confidence in the SJRWMD requirements.

Mrs. Palmer stated that she would rather have residential behind her house as well. She noted that she is worried that the City is making a mistake by rezoning commercial into residential. Commercial zoning is supposed to serve the residential areas and we are rapidly losing commercial areas. New residents will generate new traffic and commercial development will draw in residents who are already using the roadway. The flooding issues are valid and whatever water is on the property now is not indicative of the average rainfall. For these reasons she stated that she cannot support this request.

Mr. Contreras asked if this property has been involved in litigation before. Attorney Gougelman said he does not believe that it was. Attorney Nohrr added that he is not aware of recent litigation; it never came up during his discussions with the owner.

Mr. Contreras said this is not the first time this parcel has been before Council. Mr. Nohrr replied that this property has been before Council in one form or another at least two or three other occasions. The City Council approved changes in 1989 and 1992.

Mr. Contreras stated that he has heard comments from the residents that they wish something would be built on the property to remove the brush fire threat. He said he is trying to determine what is best for the adjacent homeowners. Commercial Parkway zoning is more intensive than what is being proposed and there is typically not a 200' buffer on site plans. The other conditions, including the decel/right turn lane, fencing, swale, etc., are also pluses. Commercial development brings a host of additional issues and there could be drainage issues regardless of whether this is commercial or residential.

Mr. Contreras said he appreciates everyone's due diligence; however, he believes residential is far better than commercial/retail.

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Mr. LaRusso asked if this project would meet concurrency if it stayed commercial. Mrs. Dittmer said that this is Phase One. Phases Two and Three are on hold pending traffic concurrency becoming available on Wickham Road north of Post Road. For the segment south, there is adequate capacity at this time. If this property were all commercial it would not meet concurrency today; however, City and County staff are working on ways to address concurrency and capacity and at some future date it would meet concurrency.

A brief discussion followed regarding the applicant's future plans if this proposal is denied.

Mr. Contreras asked for the people in the audience who support commercial/retail to raise their hands. (Approximately six to eight people raised their hands.) Mr. Contreras asked the same question for those who support residential development. (The same number raised their hands.)

Attorney Gougelman said that Mrs. Poole passed a note to him, which indicates there was litigation on this property in the 1980s.

Mrs. Meehan said that a residential development would be less intensive than a commercial development. She commented that residential located next to commercial generates many complaints.

Mrs. Palmer asked for further information about Commercial Parkway zoning. Mrs. Dittmer said it can be used for a variety of retail and fairly intensive commercial uses. She confirmed that Commercial Parkway would support a "big box" development.

Mr. LaRusso stated that he is not supportive of changing our commercial property to residential and he doesn't intend to support this request.

Responding to Mr. Contreras, Mrs. Dittmer provided examples of what could be built on C-P zoning, including retail, office, lab research, light manufacturing, employment centers, etc. Retail of any size could be considered, including a Wal Mart.

Mrs. Walker stated that she feels there is no satisfactory way to handle the drainage, traffic and wildlife on the property.

Mrs. Hand said she also agrees with the remarks that have been made about traffic and possible flooding.

Mayor Goode stated that the motion is for approval of the ordinance, which includes the revision to condition "d." The question was called. The roll call vote was:

Aye: Meehan

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

Motion failed.

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Moved by Goode/Meehan to reconsider this item and leave pending on the minutes.

Mayor Goode said this is a parliamentary procedure, which means Council can look at this again some time. Attorney Gougelman explained that the motion to reconsider would have to be voted on at the next meeting. He added that if the motion to reconsider is voted down, he would like Council to consider a motion to deny so a final decision is on the record and the applicant can move forward.

Recessed: 8:37 p.m.
Reconvened: 8:47 p.m.

9. ORDINANCE NO. 2006-76 (AR-2006-199), ORDINANCE NO. 2006-77 (CPA-2006-09), AND ORDINANCE NO. 2006-78 (Z-2006-1068) COMMUNITY TRAILER PARK, INC.: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation for an 8.243-acre parcel, located on the south side of Eau Gallie Boulevard, east Unity Drive, between Riverside Drive and Hwy. A1A. (Owner/Applicant – Community Trailer Park, Inc.) (Representative – Philip R. Nohrr, Esq.)
- a. Ordinance No. 2006-76/AR-2006-199: (Second Reading/Public Hearing) An ordinance providing for annexation of an 8.243-acre parcel. (First Reading - 7/25/06)
 - b. Ordinance No. 2006-77/CPA-2006-09: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial/Medium Density Residential on an 8.243-acre parcel. (First Reading - 7/25/06)
 - c. Ordinance No. 2006-78/Z-2006-1068: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre) on an 8.243-acre parcel. (First Reading - 7/25/06)

Attorney Gougelman read each ordinance by title. There were no disclosures by Council.

Phil Nohrr, attorney representing the applicant, was present and available for questions.

Pat Poole, 805 East Palmetto Avenue, referenced the comments she made at the last meeting and said she obtained her information from the Planning and Zoning staff memorandum. Mrs. Poole stated that the staff memorandum indicates that this development is a non-conforming use in the County; the applicant petitioned the County and the County said they would have to contact the City.

Mayor Goode closed the public hearing.

Moved by LaRusso/Meehan for approval of Ordinance No. 2006-76. The roll call vote was:

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

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Nay: Hand

Motion carried.

Moved by Contreras/Meehan for approval of Ordinance No. 2006-77. The roll call vote was:

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

Nay: Hand

Motion carried.

Moved by LaRusso/Contreras for approval of Ordinance No. 2006-78. The roll call vote was:

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

Nay: Hand

Motion carried.

10. ORDINANCE NO. 2006-79 (Z-2006-1069AD) LAND DEVELOPMENT CODE (LDR-2006-01/FOC-2006-03): (Second Reading/Public Hearing) An ordinance amending Chapter 2 of the City Code, entitled "Administration", as it relates to the Zoning Board of Adjustment; providing for procedures and limitations to interpret the Airport Zoning Code, Appendix A, Zoning Code, Appendix B, and the Land Development Code, Appendix D; amending Appendix B, Zoning Code, by revising definitions, clarifying sections and removing context, type-setting, or other scrivener's errors made during the adoption of the new Zoning Code; and amending Appendix D, Land Development Code, as it relates to the size of text on preliminary and final plats. (Applicant - City of Melbourne) (First Reading - 7/25/06)

Attorney Gougelman read Ordinance No. 2006-79 by title. He explained that this is essentially a "glitch" ordinance, which corrects items that were left out or incorrectly codified. He noted that he asked Attorney Michael Kahn to discuss the relationship of alcohol to adult entertainment establishments.

Mayor Goode opened the public hearing.

Michael Kahn, special counsel to the City of Melbourne, informed City Council that he will create and tender a record to the City relating to the distance requirement of establishments that sell alcohol to adult entertainment establishments. The City's Code calls for 500'. He noted that the record contains studies, ordinances and cases that talk a lot about adult entertainment. But within those studies and cases there are multiple references to several features. He stressed that the proximity between adult entertainment and the sale of alcohol matters. The secondary effects are an essential part of all legislation regarding first amendment related issues. The secondary effects are the adverse or deleterious effects of an adult entertainment environment – the real estate market, health environment of the

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citizenry, police calls and crime environment. Mr. Kahn stated that this is the first amendment side of the equation.

The other side, which relates to the establishments that sell alcohol, is somewhat easier. Under the police power traditionally accorded to city/county governments – under the 21st Amendment – the City of Melbourne can regulate the time, place and manner of the sale of alcohol.

Mr. Kahn referenced the following cases as part of the record that support the City of Melbourne being able to specify the time, place and circumstances where liquor may be sold or dispensed:

California v. LaRue 409 U.S 109, 93 S. Ct. 390 (1972)
New York State Liquor Authority v. Bellanca 452 U.S. 714, 101 S. Ct. 2599 (1981)
City of Newport Kentucky v. Iacobucci 479 U.S. 92, 107 S. Ct. 383 (1986)

Continuing, Mr. Kahn said that the following ordinances make a finding of fact that the sale or consumption of alcoholic beverages with adult entertainment activities are a potential health, safety and risk to those persons attending those establishments: Manatee County, Florida ordinance and the Seminole County, Florida ordinance.

Additionally, there are a number of different studies that support this. The common sense effects of the proximity of alcohol to adult entertainment can also be entertained by the City according to Ramirez v. Pugh 379 F. 3d 122 (2004). Therefore, the City can act to ban the consumption of alcohol on an adult entertainment site pursuant to the adult entertainment first amendment case law. The City can act to regulate the time, place and manner of consumption of alcohol under the 21st Amendment. Common sense and the adverse secondary effects of the proximity of adult entertainment to alcohol say that the City can also consider distance requirements.

The City Manager said that staff is going the extra step of reloading the history as to why these requirements are in our Code. The distance requirements are not here accidentally; they are here intentionally and with purpose.

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

Moved by Hand/Walker for approval of Ordinance No. 2006-79. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2006-80 (CU-2006-07/SP-2006-20) NEIL & EDA PEITHMAN: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a single-station hair salon addition to an existing single-family home on a 0.26-acre parcel zoned R-P (Residential Professional), located on the north side of Strawbridge

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Avenue, west of McQuaid Street, and east of Hickory Street. (Owner/Applicant - Neil S. Peithman) (Representative - Lymari Merheb, P.E.) (First Reading - 7/25/06)

The City Attorney read Ordinance No. 2006-80 by title. There were no disclosures by Council and no comments from the public.

Moved by Meehan/Palmer for approval of Ordinance No. 2006-80. The roll call vote was:

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

Motion carried unanimously.

12. ORDINANCE NO. 2006-81 (CU-2006-09/SP-2006-13) DAIRY & EBER C-STORE: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a 13,621 sq. ft. retail project including a 4,434 sq. ft. convenience store with 16 fueling station on a 2.8±-acre parcel, located on the southwest corner of the intersection of Dairy Road and Eber Boulevard. (Owner - Frowzar LLP) (Applicant - Petro Management, Inc.) (Representative - Luke Miorelli, P.E., ME Construction, Inc.) (First Reading - 7/25/06)

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

Luke Miorelli, engineer representing the applicant, was present and available for questions.

Dale Davis, 1612 Mitchell Street, #2, stated that he is opposed to this request. He reported that he walked the property and he believes there are watershed issues that will impact the City. Mr. Davis discussed the number of gas stations in the area and asked the benefit of having another station within a mile and a half of six other stations. He concluded by saying he doesn't believe this fits the area.

That concluded comments and Mayor Goode closed the public hearing.

Moved by Palmer/Meehan for approval of Ordinance No. 2006-81.

Mr. LaRusso said he voted nay last time for the very reasons mentioned by the speaker and he doesn't intend to support the motion.

The question was called. The roll call vote was:

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

Nay: LaRusso

Motion carried.

13. ORDINANCE NO. 2006-82 (AR-2006-201), ORDINANCE NO. 2006-83 (CPA-2006-11), AND ORDINANCE NO. 2006-84 (Z-2006-1071) AMSOUTH BANK: Ordinances providing

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for annexation, a Comprehensive Plan Amendment, and zoning designation for a 2.7-acre portion of a 9.17-acre parcel, located at the southwest corner of Wickham Road and Post Road. (Owner/Applicant – AmSouth Bank) (Representative – John Rawson) (P&Z Board – 7/06/06)

- a. Ordinance No. 2006-82/AR-2006-201: (Second Reading/Public Hearing) An ordinance providing for annexation of a 2.7-acre portion of a 9.17-acre parcel. (First Reading - 7/25/06)
- b. Ordinance No. 2006-83/CPA-2006-11: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on a 2.7-acre portion of a 9.17-acre parcel. (First Reading – 7/25/06)
- c. Ordinance No. 2006-84/Z-2006-1071: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of C-1 (Neighborhood Commercial) on a 2.7-acre portion of a 9.17-acre parcel. (First Reading - 7/25/06)

Attorney Gougelman read Ordinance Nos. 2006-82, 2006-83 and 2006-84 by title. There were no disclosures by Council and no comments from the public.

Moved by Hand/Meehan for approval of Ordinance No. 2006-82. The roll call vote was:

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

Motion carried unanimously.

Moved by Walker/Hand for approval of Ordinance No. 2006-83. The roll call vote was:

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

Motion carried unanimously.

Moved by Palmer/Meehan for approval of Ordinance No. 2006-84. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

14. COUNCIL ACTION RE: Approval of the contract for sale and purchase of City-owned Lots 12 and 13 in Block 32 of Camps Plat of Melbourne to Lofts of Melbourne, LLC in the amount of \$1,555,739.

From the agenda report: City staff was approached by a developer who was in the process of acquiring the lot on the corner of Waverly and Strawbridge and who was interested in

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obtaining air rights over the City's parking lot in order to construct a condominium building. However, a direct property sale was found to be a much more effective approach in that it provides a better way to define the value of the property.

The developer proposes to purchase two City lots, construct a 53-unit condominium building over the three-lot site, and then deed back parking spaces on the ground-level floor of the building.

The proposed sale was evaluated using two different approaches. The first evaluation considered the developer's offer of \$1,260,000 per a certified appraisal value combined with the return of parking spaces after the building is completed. The second evaluation considered a land value of \$1,590,000 as suggested by the City's consultants, but with the returned parking spaces being applied as a credit. Both evaluations included the return on City money at a 7% rate since the developer proposes payments over time, and also the value of parking spaces. There was not a great difference between the two.

The proposed contract addresses the second approach establishing a sale price of \$1,346,640, and providing for payment of \$134,664 at closing, plus four subsequent payments of \$340,575, \$359,500, \$359,500, and \$359,500 for total payments including interest of \$1,555,739. This is the purchase price in the contract. Site factors include the provision for public access to abutting properties and a return of 20 public parking spaces.

The developer must obtain site plan approval and approval of any associated conditional uses. Either party may opt out of the proposed sale if the conditions and approvals are not achieved.

Mr. Schluckebier reported that Deputy City Manager Howard Ralls has been working with the purchaser. Staff is being careful at this stage to have an objective arms length transaction between the buyer and the seller and not involving the City in a regulatory way. This is simply one land owner trying to deal with a potential purchaser; however, there are City issues that overlay. The proposed development has not yet received Planning and Zoning staff review and we are not at the site plan stage. The purchaser is at a point where he needs Council to consider the request.

Mayor Goode said that people have signed up to speak; however, he does not intend to go through a public hearing. Moved by Palmer/LaRusso to allow people an opportunity to speak. The roll call vote was:

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

Nay: Contreras and Goode

Motion carried.

Mr. Ralls reported that seven or eight months ago, Peter Flotz approached the City with this idea. There are currently 34 spaces in the lot. A row of parking would have to be eliminated to create a drive aisle for access to the rear of the adjacent properties. This

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would reduce the number of spaces that the City will receive to 20. The City intends to utilize revenue from the sale to purchase land and build parking elsewhere. In the interim, we contacted the property owner on the southwest corner of Waverly Place and New Haven Avenue who would lease the City spaces during construction. Mr. Ralls reviewed the arrangements outlined in the agenda report.

The recommendation is for approval of the sale of Lots 12 and 13 in Block 32 of Camp's Plat of Melbourne for a total price of \$1,555,739 under the conditions defined in the Contract for Sale and Purchase of Property, subject to final form approval by the City Attorney.

Peter Flotz, 503 Fifth Avenue, principal with the Lofts of Melbourne, the proposed purchaser, displayed a picture of the site as it exists today. He clarified one comment made by Mr. Ralls and said that they would pay \$150,000 within 10 days of signing the contract rather than at closing.

Mr. Flotz displayed a rendering of the project. He explained that the access aisle proposed for the adjacent businesses would be 15' tall. They would have an obligation to obtain easements to create an alley. If they cannot create an alley, the City is not obliged to sell the property. He noted that the key to this arrangement is solving the problem of servicing the businesses. If we are going to have a vibrant and effective Downtown, we need to address service issues through the alley.

Mr. Flotz reviewed the elevations and summarized the details of the financial transaction.

Mayor Goode said he was on Council when One Harbor Place was approved without access for a dumpster. He stressed that access needs to be addressed.

Anna M. Cook, 405 East Melbourne Avenue, said that she is one of the two owners of property occupied by Meg O'Malleys directly behind the municipal parking lot. Ms. Cook reported that she has been involved in Downtown Melbourne since 1978 and she has always been in favor of what she believes is a plus. Ms. Cook stated that she feels this project is a plus.

Continuing, Ms. Cook agreed that access to her building must be addressed. The restaurant receives deliveries from large trucks. And, she is also concerned about parking. If this proposal will allow the City to build additional parking in Downtown Melbourne, then we should go for it. She stressed that the Downtown area can't continue to grow and develop if there isn't enough parking.

Pat Poole, 805 East Palmetto Avenue, said that seven Council Members should not make this decision. She recommended that a referendum be held on this subject.

Mayor Goode closed the public hearing.

Mrs. Meehan said that she met with Peter Flotz, who discussed the particulars about the contract. Mayor Goode said that many months ago he and the City Manager met with Mr. Flotz about this idea. That is when he (the Mayor) brought up the issue of dumpsters and

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service vehicles. Mr. LaRusso said that Mr. Flotz left a message at his office; however, he did not return his call. Mr. Contreras said he had a message from Mr. Flotz with an offer to meet; however, he did not.

Moved by Meehan/Hand to approve as recommended.

Mr. LaRusso referenced the 7% rate of return on the City's money. He noted that prime is currently 8.25%. Mr. Ralls replied that the City is currently earning 5.25%; therefore, he and the Director of Finance felt that 7% would be a good rate.

Mr. LaRusso said he spoke with representatives from two banks who indicated that if everything is perfect a person may receive prime – but never below prime. He noted that if we carry the note he wants our citizens to get every dime. Otherwise the City should make a clean sale.

A brief discussion followed regarding the terms. Mr. LaRusso pointed out that this is all based on the applicant obtaining an approval for a 120' height; that is what gives the land its value. He noted that there are a couple of other challenges with the arrangement. Although he supports a vibrant Downtown, he is not crazy about being a mortgage company.

Mayor Goode said that we are really loaning the property during construction and then the City will get the spaces back.

Mr. Flotz confirmed for Mr. LaRusso that the \$300,000 letter of credit guarantees delivery of spaces. That clause may be clumsily worded, but the idea is to guarantee that they will give the spaces back to the City.

Attorney Gougelman elaborated on the three pieces of security in the purchase and sale. The mortgage and both letters of credit are cross-defaulted.

Mr. LaRusso said that he is having difficulty with holding the mortgage. Additionally, consideration needs to be given to whether we want a 120' tower on this property.

Mrs. Palmer said that she doesn't agree with selling a parking lot that belongs to the people of the City. She questioned selling a Downtown parking lot to someone who wants to build a high-rise when we have a parking problem. She stated that she doesn't think this is right and she doesn't think it is appropriate. She recommended that the applicant go to the private sector to buy property.

Mrs. Meehan stated that she supports this transaction. The Parking Advisory Committee is discussing a parking garage in the area of Vernon Place. There is currently not enough parking behind Megs and Heart Strings; therefore, moving the majority of parking to Vernon Place would be conducive for Downtown. She stressed that we need this for Downtown Melbourne.

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Mrs. Walker said that she shares the concerns raised by Council Members LaRusso and Palmer. The interest rate is appalling, and she doesn't agree with not receiving any funds at the time of contract signing.

Mr. Contreras said that the façade, parking, etc. is reminiscent of a structure built in historic Downtown Charleston, and that arrangement has not been detrimental to Charleston. He commented that he was concerned that we were only getting 20 spaces back; however, he would support the arrangement if we specifically earmarked the funds to go towards the expense of constructing parking in Downtown Melbourne.

The maker/seconder agreed that the motion includes a condition that the funds go towards the expense of constructing parking in Downtown Melbourne.

Moved by LaRusso/Walker to amend the motion by increasing the interest to 8.25%.

Mr. Flotz said if 8.25% is the rate for the term of the loan, then he would accept that. Mr. LaRusso agreed that it is for the term of the loan.

The question was called on the amendment. Motion carried unanimously.

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

Aye: Contreras, Meehan, Hand and Goode

Nay: LaRusso, Walker, and Palmer

Motion carried.

15. COUNCIL ACTION RE: Purchase of a carbon dioxide feed system and services for the John A. Buckley Surface Water Treatment Plant, Phase 2 Improvements, Project No. 30102, TOMCO₂ Equipment Company, Loganville, GA - \$305,000.

City Engineer Jenni Lamb briefed Council.

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

16. CONSENT AGENDA:

Mayor Goode noted that items "l" and "m" were removed from the consent agenda at the request of Vice Mayor Hand.

Moved by Hand/LaRusso for approval of items "a – k." Motion carried unanimously.

- a. Amendment No. 5 to the agreement with Outlaw & Jones Engineers, Inc. dated July 14, 1993 for waterline improvements in the Olde Eau Gallie area, Project No. 32305, Partial Segment V, in the amount of \$49,318.

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- b. An agreement with the Florida Department of Transportation for subordination of the City of Melbourne's interest in a sidewalk agreement along the north side of Eau Gallie Boulevard, west of John Rodes Boulevard and authorization for the City Manager to execute the agreement.
- c. Contract award to "piggyback" the Gainesville Regional Utilities Sanitary Sewer Manhole Rehabilitation contract, Dallas 1 Construction and Development, Inc., Thonotosassa, FL – at specified unit prices; total cost not to exceed \$120,000.
- d. Contract award to "piggyback" the City of Delray Beach Sanitary Sewer Manhole Rehabilitation contract, Chaz Equipment Company, Wellington, FL – at specified unit prices; total cost not to exceed \$75,000.
- e. Contract award for annual diesel generator maintenance and repair services, Atlantic Tower Services, Inc., Orlando, FL – at specified unit bid prices; estimated annual cost of \$59,074.
- f. Approval of a two-year contract extension for sampling and monitoring services associated with the Joe Mullins Reverse Osmosis Treatment Plant concentrate discharge, Flowers Chemical Laboratories, Inc., Altamonte Springs, FL - \$41,190/year.
- g. Purchase of a PVC centrifugal exhaust fan and accessories, Duvall Division Met-Pro Corporation, Owosso, MI - \$24,900.
- h. Purchase of seven Stalker® II moving directional radar devices, Applied Concepts, Inc., Plano, TX - \$2,295/each; for a total delivered cost of \$15,470.
- i. Approval of an increase to the 2005-2006 SHIP Revenue and Expenditure budgets in the amount of \$91,230.92.
- j. Approval of a request from St. Johns River Water Management District for funding participation in the 2007 Water Conservation Public Awareness Campaign - \$7,000.
- k. Resolution No. 1993: A resolution amending Resolution No. 1992, authorizing the City Manager to negotiate an Interlocal Service Boundary Agreement with Brevard County.
- l. Resolution No. 1994: A resolution in opposition to the proposed Brevard County "Save Brevard" Charter amendment to Article 5, relating to management of the issuance of building permits. (This item was removed from the consent agenda.)
- m. Resolution No. 1995: A resolution in opposition to the proposed Brevard County "Save Brevard" Charter amendment to Article 9, relating to exclusive methods for approving voluntary annexations. (This item was removed from the consent agenda.)

Recessed: 10:05

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Reconvened: 10:10

17. ITEMS REMOVED FROM THE CONSENT AGENDA

- i. Resolution No. 1994: A resolution in opposition to the proposed Brevard County “Save Brevard” Charter amendment to Article 5, relating to management of the issuance of building permits.
- m. Resolution No. 1995: A resolution in opposition to the proposed Brevard County “Save Brevard” Charter amendment to Article 9, relating to exclusive methods for approving voluntary annexations.

Mrs. Hand said she wanted to know the outcome of the meeting with the County Commission yesterday and she thought Council should have some explanation on both resolutions.

Mr. Schluckebier said that unfortunately the County did not have that meeting yesterday; they postponed it until an indefinite future. There are some folks who believe that the Commission, by not taking action, has taken action. Based on the County’s charter language, the proposals are now with the three-attorney panel. If that panel says that the amendments pass muster, the next step in the process is to take this to the voters.

Our City Attorney has done quite a review, although the County gave us only three business days to provide input. City Attorney Gougelman has provided seven or eight central arguments as to why we don’t think the amendments pass muster. The resolutions were prepared based on staff’s sense that Council does not feel our home rule should be totally violated by the County. Mr. Schluckebier added that there may be legal initiatives taken by the cities to protect their interests.

Mayor Goode said he met with a County Commissioner last week about this issue and was told “unfortunately this is not Melbourne’s fault...but Melbourne is going out with the rest of them.”

Moved by LaRusso/Walker for approval of Resolution No. 1994. Motion carried unanimously.

Moved by Hand/LaRusso for approval of Resolution No. 1995. Motion carried unanimously.

18. ORDINANCE NO. 2006-85 (AR-2006-203) THIRREL ALTMAN: (First Reading/Public Hearing) An ordinance providing for annexation of a 38-acre parcel, located at the northeast corner of Ellis Road and John Rodes Boulevard. (Owner/Applicant - Thirrel Altman) (P&Z Board - 7/20/06)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer briefed Council. A portion of the property currently contains a charter school and is contiguous to the City limits to the north and east. The Planning and Zoning Board voted unanimously to recommend approval of this request.

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Mrs. Palmer said that at some point the National Guard stored military equipment on or near this property. She asked if there are any environmental issues. Mrs. Dittmer said that the applicant has not indicated this. She added that a charter school currently occupies the property.

The public hearing was opened and closed with no comments.

Moved by Walker/Hand for approval of Ordinance No. 2006-85. Motion carried unanimously.

19. ORDINANCE NO. 2006-86 (AR-2006-204) CONFAB CORPORATION: (First Reading/Public Hearing) An ordinance providing for annexation of a 15.64±-acre parcel, and the adjacent 0.547-acre right-of-way, located at the northwest corner of Ellis Road and John Rodes Boulevard. (Owner - Confab Corporation) (Applicant - Renate Jackson) (P&Z Board - 7/20/06)

Mr. Gougelman read the ordinance by title and Mrs. Dittmer briefed Council. The property is currently vacant. The Planning and Zoning Board voted unanimously to recommend approval of this request.

There were no comments from the public.

Moved by Contreras/Meehan for approval of Ordinance No. 2006-86. Motion carried unanimously.

20. ORDINANCE NO. 2006-87 (AR-2006-205) CITY OF MELBOURNE: (First Reading/Public Hearing) An ordinance providing for annexation of a 2.07-acre parcel and the adjacent 0.456-acre right-of-way, located at the northwest corner of Ellis Road and John Rodes Boulevard. (Applicant - City of Melbourne) (P&Z Board - 7/20/06)

Attorney Gougelman read Ordinance No. 2006-87 by title. Mrs. Dittmer reviewed the agenda report and stated that the property contains an airport beacon. The Planning and Zoning Board voted unanimously to recommend approval of this request.

Mrs. Dittmer confirmed for Mrs. Palmer that no other uses are planned for the property beyond the current use.

The public hearing was opened and closed with no comments.

Moved by Walker/LaRusso for approval of Ordinance No. 2006-87. Motion carried unanimously.

21. ORDINANCE NO. 2006-88 (AR-2006-200) ROBERT & EVA MAE COCHRAN: (First Reading/Public Hearing) An ordinance providing for annexation of a 16.184±-acre parcel and the adjacent 1.96-acre, 72-foot wide Crane Creek Drainage District L-15 Canal right-of-way, located at the southwest corner of Ellis Road and John Rodes Boulevard.

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(Owners/Applicants - Robert & Eva Mae Cochran) (Representative - Phil Nohrr) (P&Z Board - 7/20/06)

The City Attorney read Ordinance No. 2006-88 by title. Mrs. Dittmer provided an overview and noted that the property is currently vacant. The Planning and Zoning Board voted unanimously to recommend approval of this request.

Phil Nohrr, attorney representing the applicant, agreed with the staff report. He added that they want City services and will eventually develop the property.

Mayor Goode closed the public hearing.

Moved by Meehan/Hand for approval of Ordinance No. 2006-88. Motion carried unanimously.

22. RESOLUTION NO. 1996: (Public Hearing) A resolution authorizing transmittal of 14 major Comprehensive Plan Amendments to the Department of Community Affairs. (P&Z Board - 7/20/06)
- a. CPA-2006-01 (Burton Commercial/East/West Drive): A Comprehensive Plan Amendment designating a Future Land Use of Industrial on a 29.4-acre parcel, located on both sides of West Drive and the west side of East Drive, north of Ellis Road, and south of Dow Road. (Owners/Applicants – Alfred B. Osterhout, Kirk Campaignha, Hugh M. Evans Jr., Martha E. Donahoe, Louis D. Kipp, and Vaughn Development, LLC) (Representative – City of Melbourne)
 - b. CPA-2006-05 (Robert L. Burns, Jr.): A Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential (SER) on a 100-acre parcel, located adjacent to Jones Road, north of Eau Gallie Boulevard, and west of I-95. (Owner/Applicant/Representative - Robert L. Burns, Jr.)
 - c. CPA-2006-10 (Robert and Eva Cochran): A Comprehensive Plan Amendment designating a Future Land Use of Medium Density on a 16.184-acre parcel, located at the southwest corner of Ellis Road and John Rodes Boulevard. (Owners/Applicants – Robert & Eva Cochran) (Representative – Philip Nohrr)
 - d. CPA-2006-12 (Hazelwood Drive): A Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on 14 parcels consisting of approximately 3.93 acres, located on Hazelwood Drive, west of Stewart Road, south of Lake Washington Road and north of Aurora Road. (Owner/Applicant/Representative – City of Melbourne)
 - e. CPA-2006-13 (Harlock Road and Country Road Area): A Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential (3 units per acre) on approximately 147 acres of developed residential properties, located adjacent to Country Road and Harlock Road in the Lake Washington area east of I-95 and south of Post Road. (Owner/Applicant/Representative – City of Melbourne)

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- f. CPA-2006-14 (Post Road and Turtle Mound Road Area): A Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential (3 units per acre) on 63 acres of residentially developed property, located south of Post Road, east of Turtle Mound Road, and west of Pinecone Road. (Owner/Applicant/Representative – City of Melbourne)
- g. CPA-2006-16 (Robert L. Cochran, Jr.): A Comprehensive Plan Amendment designating a Future Land Use of mixed use Commercial/Medium Density Residential on a 64±-acre parcel, located west of Wickham Road, north of Ellis Road, and south of Sarno Road. (Owner/Applicant – Robert L. Cochran, Jr.) (Representative – Philip Nohrr)
- h. CPA-2006-17 (M-135 LLC, Finkelstein): A Comprehensive Plan Amendment designating a Future Land Use of Commercial/Industrial on 36 acres and Medium Density Residential on the remaining 134 acres, located west of I-95 and south of Eau Gallie Boulevard. (Owners – M135, LLC) (Applicant/Representative – Scott Glaubitz)
- i. CPA-2006-18 (Preston Pointe): A Comprehensive Plan Amendment changing the Future Land Use from Commercial to mixed-use Commercial/Medium Density Residential on a 16.37-acre parcel, located on the east side of Wickham Road, south of Business Center Boulevard. (Owner – Southern Investment Group, LLLP) (Applicant – Chester W. Wendrzyk, P.E., PBS & J) (Representative – Philip Nohrr)
- j. CPA-2006-19 (Brockerman/Platt): A Comprehensive Plan Amendment designating a Future Land Use of mixed-use Commercial/Medium Density Residential on a 29.57-acre parcel, located on the north side of U.S. Hwy. 192, west of I-95. (Owners – John S. E. Platt & Frank Brockerman) (Applicants/Representatives - Scott Glaubitz and/or Philip Nohrr)
- k. CPA-2006-20 (CONFAB): A Comprehensive Plan Amendment designating a Future Land Use of Industrial on a 15.64-acre parcel, located on the west side of John Rodes Boulevard, north of Ellis Road and south of Dow Road. (Owner – Confab Corporation) (Applicant – Renate Jackson)
- l. CPA-2006-21 (City of Melbourne): A Comprehensive Plan Amendment designating a Future Land Use of Industrial on a 2.07-acre parcel, located at the northwest corner of the intersection of Ellis Road and John Rodes Boulevard. (Owner/Applicant/Representative – City of Melbourne)
- m. CPA-2006-22 (Text Amendment): A Comprehensive Plan Amendment amending the Future Land Use element of the Comprehensive Plan to correct a grammatical error and update the community redevelopment areas. (Owner/Applicant/Representative – City of Melbourne)

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- n. CPA-2006-23 (Altman): A Comprehensive Plan Amendment designating a Future Land Use of mixed-use Commercial/Industrial on a 38-acre parcel, located at the northeast corner of the intersection of Ellis Road and John Rodes Boulevard. (Owner/Applicant - Thirrel A. Altman)

Note: Council received the following additional correspondence related to CPA-2006-18 (Preston Pointe). Letter dated August 1, 2006 from Don Simms, President, Falcon Realty and Development Corporation, opposed to allowing residential next to industrial. Letter dated August 2, 2006 from Frederick Sandor, President, Circle Redmont, Inc., opposed to allowing industrial next to commercial.

Mrs. Dittmer explained that this is a request to transmit the Comprehensive Plan amendments to the Department of Community Affairs (DCA). There are 13 proposed map amendments and one text amendment. These requests are only for Comprehensive Plan amendments and do not involve any actions on annexation, zoning, or development plans.

Once the Department of Community Affairs has reviewed the proposed amendments, ordinances for the Comprehensive Plan amendment, zonings, and any development plans will be brought forward to City Council for approval.

The Planning and Zoning Board recommended approval for all proposed amendments with the exception of CPA-2006-17 (Finkelstein), which they recommended denial due to concerns by adjacent property owners.

Mrs. Dittmer added that a comment letter was received from Brevard County staff on August 7 regarding CPA-2006-17 (Finkelstein). The County staff is concerned with the compatibility of the proposed residential future land use and zoning with the surrounding industrial uses and current industrial land use designations.

With regard to CPA-2006-18 (Preston Pointe), a petition against the change was submitted which puts the total property ownership within 500 feet over the 20% threshold, thus enacting the 20% rule. The 6/7 vote would go into effect during second reading of the ordinance after review by the Department of Community Affairs.

Mr. Schluckebier said that in accordance with our agreement with the County we provide notice. The County should have given us notice of objection a month or so ago. We heard nothing until Friday last week after the item went to the Planning and Zoning Board. He added that we might have looked differently at the item had we heard from the County earlier.

The Mayor opened the public hearing.

Phil Nohrr was available for questions on items CPA-2006-10 and CPA-2006-16.

The following spoke on CPA-2006-17:

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Scott Glaubitz, BSE Consultants, representing the applicant, stated that staff recommended approval of the request to process the land use application and forward the item to DCA to see what DCA thinks about this land becoming part of the City. Assuming DCA finds favorably, they would submit an application for annexation and zoning.

Mr. Glaubitz said that there are some County residents who believe that this is a bad idea. The Planning and Zoning Board recommended denial; however, the board chairman did not allow him an opportunity to return for rebuttal. The concerns that are being raised relate to traffic and drainage, which are concurrency issues. Compatibility will probably be the major issue. They recognize the industrial use in the area; however, they also recognize the merits of buffering. They would be located 1,100' from the nearest use.

Mr. Glaubitz concluded by saying he believes mixed use would be compatible if done appropriately. He asked Council to approve transmitting the item to DCA.

Mr. Schluckebier clarified that we would look to DCA for their objections, reviews and comments about the future land use on the property – not about whether the property should annex. Annexation is a separate issue not connected to this transmittal.

Chuck Griffin, representing Brevard Truss, Inc., stated that this area is all zoned industrial. He noted that they don't oppose the annexation; however, they do oppose bringing residential uses within 1,100' of a burn facility. They do not believe this is appropriate.

Kathy Peebles, representing Brevard Excavating and Land Clearing, Robert Connors Paving, and others, stated that they do not believe residential belongs in this area. She informed Council that in the 1980s they moved to this area where no one lived and they do not want houses in the area.

Mrs. Palmer asked if the City is in effect giving a thumbs up to these items by agreeing to transmit to DCA. Attorney Gougelman said you have to look at the entire process. As a decision making body, Council is trying to gather as much information as possible before making a final decision. In a sense Council is giving a thumbs up. A public hearing will be held and the item will be forwarded to DCA for comments. DCA will return with its report and then another public hearing will be held. If Council believes that this is an outrageous request, then it has the right to turn down the item and not forward it to DCA.

The following spoke on item CPA2006-18:

Phil Nohrr, attorney representing the applicant, stated that they would like to go for a mixed land use. When they get into the zoning, they know they have to address the concerns of the folks to the east in the County. He pointed out that residential is located to the south. Mixed use will allow more flexibility. He concluded by saying that the engineer and the owner are in the audience.

John Panik, Panik's Electronics, said that all of the property owners in the Wickham Business Center oppose having residential next to commercial/industrial property. Placing

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residential next to commercial will result in problems and the area should remain a business center.

Don Simms, Falcon Realty and Development Corporation, Business Center Boulevard, said that this item should not be transmitted to DCA. He referenced the petitions that were submitted. Mr. Simms said that he is a strong believer in private property rights; however, he is amazed that the Planning and Zoning Board recommended approval of placing residential next to industrial property. Future residents will say that the industrial area is destroying their way of life. Since it will take a supermajority to approve this on second reading, he said that he sees no reason to transmit the item.

Scott McLachlan, stated that he is located east of the subject property. They have a lighted truck dock and placing a three-story apartment building next to a lighted dock with all night security lights is not a good idea. Mr. McLachlan recommended that the area stay commercial.

Mr. Nohrr reminded Council that they are not talking about zoning. He pointed out that directly below them is the Live Oak Subdivision that was built after the business park. If Council accepts the statements by the previous speakers, then clearly that subdivision should not be there. They exist nicely. He repeated that this is the transmittal phase.

Mrs. Palmer said that the City needs commercial; we can't turn the entire City into residential. When we move residential adjacent to industrial property, particularly the most intrusive industrial with regard to odor, lighting, noise, etc., we are doing a disservice to the commercial entities and an injustice to the people who will move into the residential area. A City Council in the future will have to deal with all the problems of seriously incompatible land uses.

Mayor Goode referenced Council's policy and said that it is after 11:00 p.m. Moved by Palmer/LaRusso to continue the meeting past 11:00 p.m. and finish the agenda. Motion carried unanimously.

Moved by Palmer/Hand to remove item "g", CPA-2006-16, from the transmittal. The roll call vote was:

Aye: Contreras, LaRusso, Walker, Palmer and Hand

Nay: Meehan and Goode

Motion carried.

Moved by Palmer/Hand to remove item "h", CPA-2006-17, from the transmittal. Motion carried. (Mrs. Meehan voted nay.)

Moved by Palmer/Walker to remove item "i", CPA-2006-18, from the transmittal. Motion carried. (Council Members LaRusso and Meehan voted nay.)

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Moved by Palmer/Hand to approve Resolution No. 1996 with the removal of items “g,” “h,” and “i.” Motion carried unanimously.

23. RESOLUTION NO. 1997: A resolution implementing FY 2005-2006 Third Quarter Budget Review recommendations.

Attorney Gougelman read Resolution No. 1997 by title.

Moved by Meehan/LaRusso for approval of Resolution No. 1997.

Mrs. Palmer said she does not want to move forward with hiring a marine patrol officer in next year's budget. Mr. LaRusso said that this is a grant position. Mr. Schluckebier said that the grant is for a two-year period; however, the clock began running on June 1. It took staff time to finalize the internal paperwork. He confirmed for Mrs. Palmer that this is reflected in the budget as an additional position.

The question was called. Motion carried unanimously.

24. COUNCIL ACTION RE: Authorization for the City Manager and the City Attorney to negotiate a contract with consulting attorneys Mark Miller, of Gray Robinson, and Daniel Mandelker, of Washington University Law School, to provide recommendations for a revision to the City of Melbourne Sign Code, at a billing rate of \$235/hour, not to exceed \$40,000, including expenses.

Moved by LaRusso/Meehan for approval of the retention of Mark Miller of Gray Robinson law firm and Professor Daniel Mandelker of Washington University to revise the Melbourne sign code at a project cost not to exceed \$40,000, including the consulting attorneys' expenses. Motion carried unanimously.

25. COUNCIL ACTION RE: Board Appointments

- a. Appointment of three regular members to the Code Enforcement Board.

Moved by Palmer/Meehan to reappoint Lorna King (realtor seat), Dave Kaufmann (architect seat), and Bruce Mochwart (member-at-large seat). Motion carried unanimously.

Terms: Lorna King and Dave Kaufman (10/15/2006 – 10/14/2009) and Bruce Mochwart (8/28/2006 – 8/27/2009)

- b. Appointment of two resident members to the Police Officers' Retirement Trust Fund Board of Trustees.

Mrs. Hand nominated Elinor Burns and Mr. LaRusso nominated Scott Olson. Moved by Goode/Palmer to appoint Elinor Burns and Scott Olson. Motion carried unanimously.

Terms: Elinor Burns (10/1/2006 – 9/30/2008) and Scott Olson (8/8/2006 – 9/30/2008; unexpired term plus full two-year term)

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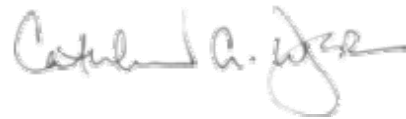
26. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

City Clerk Cathy Wysor provided an overview of the travel packet for Council Members attending the Florida League of Cities Conference in Jacksonville.

27. ADJOURNMENT

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

The meeting adjourned at 11:13 p.m.



City Clerk – 8/17/2006

Approved by Council: _____