

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 5, 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 7:12 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
	Amy W. Elliott	Deputy City Manager
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes - August 22, 2006 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier referenced the letter from Kathleen Watt, President/Board of Directors, Seven Seas Cruising Association, indicating that the City has a "restrictive policy regarding the anchoring of boats and that a new ordinance allows boats to anchor for 72 hours in a 30 day period." Additionally, members of the association have begun writing e-mails about the same subject. The City Manager stated that the City has not recently changed its Code nor has it changed its enforcement. We would like for the Association to continue its annual conference in our City, and Leisure Services Director Mary Ann Bowman will communicate that to the organization in the next 24 hours. He noted that it is true we have a 72-hour limit; however, we do not apply that limit outside of our City's jurisdiction. Members of the Seven Seas Cruising Association who attend the annual meeting in Melbourne have been successfully anchoring outside of the City's jurisdiction for the past 10 years.

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Additionally, Mr. Schluckebier referenced the recent article in the FLORIDA TODAY regarding the Daily Bread's expansion. There are two errors in that article. First, it noted that plans to expand the Daily Bread surfaced last spring, but were bogged down in City Hall and face months of delay. Mr. Schluckebier clarified that ideas were discussed last year; however, the City received Daily Bread's proposal in the last 30 days.

Second, the article notes that the City Manager has warned that a legal battle could ensue. The implication is that the City may be taking legal action regarding the Daily Bread and that is not the case. Mr. Schluckebier said that the specific caution he provided to Council last spring was that in view of the Daily Bread announcing they had legal counsel prior to making application, Council should be cautious about taking a public position.

Regarding the Seven Seas Cruising Association, Council Member Cheryl Palmer said she would like information on whether any of the boats were boarded. She added that she has been told that boats anchored in City waters for less than 48 hours are boarded and warnings are issued. The City Manager said he will determine the Police Department's protocol and return with a report.

7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2006-89 (CU-2006-01/SP-2006-01) THE SUMMIT AT MELBOURNE PLACE: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a building height of 159'-4" for a mixed-use hotel, retail, restaurant, and condominium project on a 3.05±-acre parcel zoned C-3 (Central Business), located on the south side of New Haven Avenue, north of Melbourne Avenue and west of Harbor City Boulevard. (Owner - Crane Creek Partners, LLC) (Applicant/Representative - Brandon Lurie, The Richard-Brandon Company, Developer; David T. Menzel, P.E., MAI Engineering, Inc.) (First Reading - 8/22/06)

Mayor Goode stated that at the August 22 meeting, he read a memorandum from staff indicating that the Architectural Review Board and the Downtown Community Redevelopment Agency Advisory Committee reviewed and recommended approval of the project. The Mayor said that this was simply a report, not a letter of support from staff about the project.

City Attorney Paul Gougelman read Ordinance No. 2006-89 by title. There were no disclosures by Council. The Mayor opened the public hearing.

Pat Poole, 805 East Palmetto Avenue, stated that people in Melbourne are concerned about height. She referenced the petition she previously submitted (containing approximately 200 signatures) signed by people opposed to high-rises in the Downtown area. Mrs. Poole said that development, taxes and money should not be the goals of the City. She asked Council to listen to the community, not the developers, and deny this request.

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Phil Nohrr, attorney representing the applicant, replied that this developer is trying to bring a quality project to Downtown Melbourne. The project has the height; however, it also has the support of nearby residents and business owners. This project will accomplish connectivity between New Haven Avenue and Melbourne Avenue; the land located on the south side of Melbourne Avenue will be deeded for public benefit; and they will create 14 spaces of additional parking. Mr. Nohrr noted that this project will create additional tax revenue, but that does not suggest that they are trying to buy their way into the City of Melbourne.

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

Moved by Hand/Meehan for approval of Ordinance No. 2006-89. The roll call vote was:

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

Nay: Palmer

Motion carried.

9. ORDINANCE NO. 2006-91 (CPA-2006-24) AND ORDINANCE NO. 2006-92 (Z-2006-1082) SUTTON PROPERTIES: Ordinances providing for a Comprehensive Plan Amendment and rezoning on a 1.89±-acre parcel, located on the north and south side of Prospect Avenue, west of Irwin Street and east of South Harbor City Boulevard. (Owner/Applicant - Fred E. Sutton, Sutton Properties, LLC) (Representative - Clifton A. McClelland, McClelland, Jones, Lyons, & Lacey, L.C.)
- a. Ordinance No. 2006-91/CPA-2006-24: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial to Commercial/High Density Residential on a 1.89±-acre parcel. (First Reading - 8/22/06)
 - b. Ordinance No. 2006-92/Z-2006-1082: (Second Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) to C-3 (Central Business District) on a 1.89±-acre parcel. (First Reading - 8/22/06)

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

Clifton McClelland, attorney representing the applicant, was present and available for questions. He stated that they agree with the staff report and recommendation.

Attorney Gougelman said it is his understanding that the applicant has voluntarily agreed, by covenant, to limit the height to 80'. Mr. McClelland replied yes.

Attorney Gougelman confirmed for Mrs. Palmer that he believes such a covenant would be enforceable.

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Moved by Meehan/Hand for approval of Ordinance No. 2006-91. The roll call vote was:

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

Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2006-92. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2006-93 (CPA-2006-25) SOUTH CRANE CREEK MIXED USE: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial and Commercial/Medium Density Residential to Commercial/High Density Residential on a 5.840±-acre parcel. (Owner - Hynes Properties, LLC) (Applicant/Representative - David T. Menzel, MAI Architects Engineers, Inc.) (First Reading - 8/22/06)

Attorney Gougelman read Ordinance No. 2006-93 by title. The Mayor opened the public hearing.

Ken Ward and David Menzel, representing the owner and applicant, were present and available for questions.

Attorney Gougelman pointed out that the property is being changed to permit high density residential. He asked Planning & Economic Development Director Cindy Dittmer if high density residential can occur if height is limited to 80' and Mrs. Dittmer replied yes.

Mayor Goode referenced additional correspondence distributed on this item: 1) Letter dated September 4, 2006 from Ross Herbert, Commodore, Melbourne Yacht Club, in support; 2) Letter dated September 5, 2006 from Chris Bentley, East Coast Orthotics, in support; and 3) Letter dated September 5 from Mark Blair, Crane Creek Fisheries, in support.

Moved by Hand/Meehan for approval of Ordinance No. 2006-93. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2006-94 (CPA-2006-27) AND ORDINANCE NO. 2006-95 (Z-2006-1085) TRICON PLAZA SOUTH: Ordinances providing for a Comprehensive Plan Amendment and rezoning on a 2.4±-acre parcel, located on the south side of Line Street, east of South Harbor City Boulevard and west of Melwood Drive. (Owner - Tricon Real Estate, Inc.) (Applicant/Representative - David T. Menzel, MAI Architects Engineers, Inc.)

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- a. Ordinance No. 2006-94/CPA-2006-27: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial (0.05± acres) and Commercial/Medium Density Residential (2.35± acres) to Commercial/High Density Residential on the entire 2.4±-acre parcel. (First Reading - 8/22/06)
- b. Ordinance No. 2006-95/Z-2006-1085: (Second Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) (0.05± acres) and from C-1 (Neighborhood Commercial) (2.35± acres) to C-3 (Central Business District) on the entire 2.4±-acre parcel. (First Reading - 8/22/06)

Attorney Gougelman read Ordinance Nos. 2006-94 and 2006-95 by title. There were no disclosures by Council and no comments during the public hearing.

Moved by Meehan/Walker for approval of Ordinance No. 2006-94. The roll call vote was:

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

Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2006-95. The roll call vote was:

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

Motion carried unanimously.

12. ORDINANCE NO. 2006-96 (CPA-2006-26) LINCOLN AVENUE: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial to mixed-use Commercial/Medium Density Residential on a 1.6±-acre parcel, located on the north side of Lincoln Avenue, west of Waverly Place and east of Livingston Street. (Applicant - City of Melbourne) (First Reading - 8/22/06)

The City Attorney read the ordinance by title. The public hearing was opened and closed with no comments.

Moved by Meehan/Contreras for approval of Ordinance No. 2006-96. The roll call vote was:

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

Motion carried unanimously.

13. ORDINANCE NO. 2006-97 (CU-2006-12) ST. JOHN'S EPISCOPAL CHURCH DAY SCHOOL: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow a day school within the existing St. John's Episcopal Church at 610 Young Street, zoned R-2 (One-, Two-, and Multiple-Family Residential). (Owner - St. John's Episcopal Church) (Applicant/Representative - Paul Burlison) (First Reading - 8/22/06)

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Attorney Gougelman read the ordinance by title. From the agenda report: Based on the discussion and motion that occurred at the August 22 Council meeting, City staff met with the applicant and agreed to amend condition “c” as follows:

- c. Student drop-off/pick-up for the school shall utilize the existing, paved off-street parking in front of the church along Young Street. The applicant shall provide any necessary improvements to the sidewalk to meet the City Building Code requirements for ADA to connect to the proposed school.

The ordinance has been revised to reflect this change.

The Mayor noted that Reverend Eric Turner was present and available for questions. There were no comments during the public hearing.

Moved by LaRusso/Palmer for approval of Ordinance No. 2006-97. The roll call vote was:

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

Motion carried unanimously.

- 14. ORDINANCE NO. 2006-98 (A&V NO. 298): (Second Reading/Public Hearing) An ordinance to abandon and vacate an alley and right-of-way easement located east of U.S. 1 between Strawbridge Avenue and New Haven Avenue within the Block 18 of Grove Block Subdivision (also known as Strawbridge Subdivision) for Towne Hynes of Melbourne, LLC; Spanish Trace, Inc.; and Nannie Lee's Strawberry Mansion, Inc. (First Reading - 8/22/06)

Attorney Gougelman read Ordinance No. 2006-98 by title. There were no disclosures by Council. The Mayor opened the public hearing.

Pat Poole, 805 East Palmetto Avenue, stated that this alleyway has been used as a thoroughfare by cars and pedestrians. She said if it is not currently being used, then someone has blocked it. Mrs. Poole discussed her concerns with the removal of the trysting steps on the same property.

Ken Ward, representing the applicant, briefed Council on the request. He confirmed that all adjoining property owners have signed the application.

Attorney Gougelman asked the purpose of the easement. City Engineer Jenni Lamb explained it is for utilities. She added that there may be a request by the applicant to abandon and vacate the easement in the future. Mr. Ward added that he understands that an easement needs to be retained over the utilities.

Attorney Gougelman recommended that Section 2 of the ordinance be revised to indicate that the easement shall be for the purpose of utilities including, but not limited to, cable television.

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Moved by LaRusso/Walker for approval of Ordinance No. 2006-98 with the revision to Section 2 as indicated by the City Attorney. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

15. COUNCIL ACTION RE: Contract award for the purchase of a liquid oxygen system for the John A. Buckley Surface Water Treatment Plant, Phase 2 Improvements, Project No. 30102, Chart, Inc., New Prague, MN - \$276,815; approval of appropriation of \$100,000 from 2004 Bond Interest Proceeds; and rejection of bid for liquid oxygen product from Air Liquide Industrial, Orlando, FL.

City Engineer Jenni Lamb was available for questions. From the agenda report: Bids for this were opened on July 27, 2006. Three bids were received for the equipment only and ranged from \$275,325 to \$767,000. The low bid for the equipment was submitted by Chart, Inc., New Prague, Minnesota. Air Liquide Industrial, Orlando, Florida submitted the only bid for the liquid oxygen product for \$95.40 per ton. Since the liquid oxygen product will not be needed for another eight to twelve months, staff is recommending the single product bid be rejected and be re-advertised.

Moved by Hand/LaRusso to approve the equipment purchase from Chart, Inc., New Prague, MN, for Liquid Oxygen System in the amount of \$276,815 for the John A. Buckley Surface Water Treatment Plant (SWTP) Phase 2 Improvements, Project 30102 (02303); and an appropriation of \$100,000 from Unappropriated 2004 Bond Interest Proceeds.

Mrs. Palmer asked if we will be placing ourselves in a situation with equipment that requires a single source product. Mrs. Lamb replied no and said that we will not be faced with one supplier on this equipment.

The question was called. Motion carried unanimously.

Moved by Contreras/LaRusso to reject the liquid oxygen product bid from Air Liquide Industrial, Orlando, FL. Motion carried unanimously.

16. COUNCIL ACTION RE: Change Order No. 1 to the Lift Station 43 upgrade construction contract for the Lift Station 55 renovation, Project No. 30605, Jobear/Warden Construction, Palm Bay, FL - \$159,564 and approval of a 90-day contract extension.

Mrs. Lamb briefed Council and reviewed the agenda report.

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

17. CONSENT AGENDA:

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Moved by Hand/Contreras for approval of the consent agenda as recommended. Motion carried unanimously.

- a. Contract award for the purchase and installation of two 800-amp breakers for the John A. Buckley Surface Water Treatment Plant, RingPower Corporation, Orlando, FL - \$33,965.
- b. Supplement No. 299 to the Continuing Consultant's Contract for engineering services to provide design and construction administration for the Eau Gallie Civic Center flat roof and gym roof overlay, Project No. 10906, Frazier Engineering, Inc., Melbourne, FL - \$28,400.
- c. Approval of a transfer of license agreement from APT Tampa/Orlando, Inc. to T-Mobile South LLC; renewal of the license agreement for an additional five-year term ending May 31, 2012; and authorization for the City Manager to execute the documents.
- d. Approval of an agreement between the City of Melbourne and the Board of County Commissioners of Brevard County to provide billing and collection of sanitary sewer service charges for County customers located within the City's water system service area at a rate of \$1.41 per account per month.
- e. Authorization for the continued retention of C. Allen Watts of the Cobb & Cole law firm, Daytona Beach, FL for legal and expert witness services in an amount not to exceed \$70,000.
- f. Approval of an agreement between the City of Melbourne and the Technological Research and Development Authority for a Community Development Block Grant award in the amount of \$250,000 for the TRDA Business Innovation Center at 1050 West NASA Boulevard; approval of the Covenant of Purpose, Use, and Ownership, subject to final form approval by the City Attorney; and authorization for the City Manager to execute the documents and take all other actions to implement the project.
- g. Mortar joint and brick repair at Police Administration building, Elite Stucco, Inc., Malabar, FL - \$58,100.
- h. Purchase of 23,760 pounds of Magnafloc LT22S Polymer, CIBA Specialty Chemical Corporation, Suffolk, VA - \$1.94/pound (delivered); total estimated cost through August 14, 2007 of \$46,094.40.
- i. Purchase of eight Orion Badger® Radix® hand held data collectors, Badger Meter, Inc., Milwaukee, WI - \$34,800.
- j. Approval of a one-year contract extension to provide the Employee Assistance Program to full-time employees, The Allen Group, Longwood, FL - \$1.59/month/employee; estimated annual cost of \$18,793.80.

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- k. Approval of HOME Program budget adjustments to allocate \$22,090.02 in HOME recaptured funds.
- l. Approval of the selection of the new exterior paint color for the Melbourne Auditorium.
- m. Approval of a transfer of \$45,427 from Water & Sewer Contingency to the Water Distribution Division budget to provide funding for emergency waterline repair on Swift Street.
- n. Approval of Capital Improvement Project (CIP) budget transfers in the amounts of \$4,000 from Fee Avenue Fencing to Fee Avenue Tennis and \$53,000 from General CIP Addition Streets, Signs, & Parks Building Project (10X06) to Public Facilities Addition Streets, Signs, & Parks Building Project (90106); and corresponding adjustments to General Fund transfer to CIP accounts for \$53,000.
- o. Resolution No. 1998: A resolution authorizing the City Manager to submit a grant application to Cintas for four Automatic External Defibrillators for Police Department patrol vehicles.

18. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

19. SITE PLAN APPROVAL (SP-2006-02) CRANE CREEK VISTAS: (Public Hearing) A request for site plan approval to allow a 26-unit, multiple-family condominium project at a density of 11.5 units per acre on a 2.26±-acre parcel zoned R-3 (15) (One-, Two- and Multiple-Family Residential with a cap of 15 units per acre), located on the south side of Melbourne Avenue, west of Vernon Place, and east of Waverly Place. (Owner/Applicant - Crane Creek Development, LLC) (Representative - Jake Wise, P.E., CEG Engineering, Inc.) (P&Z Board - 8/17/06)

Planning & Economic Development Director Cindy Dittmer reviewed the request. The Planning and Zoning Board voted unanimously to approve the site plan, consisting of a single-sheet plan prepared by CEG Engineering, Inc., of Melbourne, Florida, Project No. 050114, with a signed and sealed date of August 11, 2006, 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 as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.

- b. Appropriate environmental permits must be obtained as part of the construction plan review process; however, development within the wetland located at the southeast corner of the property will be prohibited.

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- c. All 15 hardwood trees as depicted on the plan shall be preserved and, in addition, buildings and parking/drive aisles shall be shifted when possible to preserve other hardwood trees, as determined during construction plan review.
- d. The proposed building shall be substantially consistent with the rendering submitted by the applicant.
- e. The applicant must receive Architectural Review Board approval prior to construction plan approval.

Note: See Council action for change to condition “d.”

The Mayor disclosed that he spoke with the applicant (Steve Watters), who is his next-door neighbor.

Pat Poole, 805 East Palmetto Avenue, spoke in opposition to the request and expressed concern that five houses would be destroyed to make room for condominiums.

Erin Jackson, representing the applicant, submitted a packet of renderings entitled “Crane Creek Vistas.” Ms. Jackson said that this will be a great product in the redevelopment area and she agrees with staff’s recommendation.

In response to Mr. LaRusso, Ms. Jackson elaborated on her experience and the experience of CEG Engineering, Inc.

Mayor Goode closed the public hearing.

Moved by Meehan/Hand for approval of the site plan, subject to the findings and conditions outlined.

Mrs. Palmer said that she is not happy with the thought of more condominiums; however, this project seems to be at a height and to a scale that people in the City are content with. Because of that she will support the motion for approval. She added that away from the Downtown area, people are saying that the Downtown area will be filled with condominiums and what we loved about the area will be destroyed. She noted that this plan is not destructive, it is a good scale, attractive, and in keeping with something people want to see.

Mrs. Dittmer confirmed for Mr. Contreras that Council could tie the site plan to the renderings submitted by Ms. Jackson at this meeting.

Mr. LaRusso referenced the R-3 zoning. Mayor Goode said that it has been in place since the 1950s and allows up to 15 units per acre. Mr. LaRusso pointed out that this project proposes a density of 11.5 units per acre on zoning that has been in place for 50 years.

Regarding the renderings, Ms. Jackson said they are based on the architectural designs submitted to the City of Melbourne. She said she does not believe there would be a problem with the renderings representing the architectural drawings.

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Steve Watters, 107 East Melbourne Avenue, stated that the rendering was done by his architect who prepared the site plan. He confirmed that it will be a Key West style building. Mr. Watters commented that he lives on Melbourne Avenue and he is trying to do the right thing as a resident.

Attorney Gougelman suggested that the submittal become part of the site plan and record. (The applicant nodded yes from the audience.)

The maker/seconder agreed that the renderings submitted at this meeting will become part of the site plan.

The question was called. Motion carried unanimously.

20. ORDINANCE NO. 2006-102 (A&V NO. 287): (First Reading/Public Hearing) An ordinance to abandon and vacate a 60-foot wide public utility easement retained over the right-of-way formerly known as Girard Avenue, more commonly known as 1433 South Harbor City Boulevard. (Applicant - Meridian Riverfront Development, LLC)

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

Mrs. Palmer asked if they plan to move the utilities. Ms. Lamb replied that they will be relocating the utilities that exist in the easement and will be providing new easements. A waterline and storm water pipe are located in the easement.

Dave Menzel, representing the applicant, said that this request will provide for a clean-up of the site. They are providing a 30' easement on the south side of the property to accommodate the relocated waterline and storm water pipe.

Moved by Hand/Walker for approval of Ordinance No. 2006-102. Motion carried unanimously.

21. ORDINANCE NO. 2006-103 (A&V NO. 300): (First Reading/Public Hearing) An ordinance to abandon and vacate the easterly three feet of a 10-foot wide drainage easement at 520 Creston Court. (Applicants - Raquel & Reginald Rodriguez)

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

Moved by LaRusso/Contreras for approval of Ordinance No. 2006-103. Motion carried unanimously.

22. ORDINANCE NO. 2006-104 (CU-2006-17) IMAGO GALLERY: (First Reading/Public Hearing) An ordinance granting a conditional use to allow beer and wine sales within an existing building on a 0.26±-acre parcel zoned C-3 (Central Business District), located on the south side of East New Haven Avenue, west of Grant Place. (Owner - Hynes Properties, LLC) (Applicant/Representative - Ella Mae & Mark Baker) (P&Z Board - 8/17/06)

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Attorney Gougelman read Ordinance No. 2006-104 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval.

There were no disclosures by Council and the public hearing was opened and closed with no comments.

Moved by Palmer/Meehan for approval of Ordinance No. 2006-104. Motion carried unanimously.

Recessed: 8:24 p.m.
Reconvened: 8:28 p.m.

23. ORDINANCE NO. 2006-105 (Z-2006-1062) AND ORDINANCE NO. 2006-106 (CU-2006-04/SP-2006-08) SOUTH CRANE CREEK MIXED USE: Ordinances providing for a change in zoning from C-2 (General Commercial) to C-3 (Central Business District) and granting a conditional use for additional building height with site plan approval to allow the construction of two buildings, on a 5.84-acre parcel, located south of Crane Creek, west of U.S. Highway 1, and north of Prospect Avenue. (Owner - Hynes Properties, LLC) (Applicant/Representative - David T. Menzel, P.E., MAI Engineering, Inc.) (P&Z Board - 7/06/06)
- a. Ordinance No. 2006-105/Z-2006-1062: (First Reading/Public Hearing) An ordinance providing for a change in zoning C-2 (General Commercial) to C-3 (Central Business District) on a 5.84-acre parcel.
 - b. Ordinance No. 2006-106 (CU-2006-04/SP-2006-08): (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow the construction of two, 149'-4" buildings on a 5.84-acre parcel.
 - c. Developer's Agreement.

The City Attorney read both ordinances by title.

Mrs. Dittmer briefed Council. The property is located within the newly expanded Downtown Melbourne Community Redevelopment Area. The applicant is also proposing to construct two 149'-4" buildings in three phases, containing a mixture of medical offices, offices, a restaurant, a hotel, and timeshare units. A total of 606 parking spaces is provided in surface and garage parking areas. The first phase, to be constructed immediately, will only include the medical offices and associated parking. If the pending request to change the future land use to Commercial/High Density Residential is approved by City Council, the applicant intends to convert the timeshare units to full-time condominium units. (Note: The request was approved. See Ordinance No. 2006-93 on this same agenda.)

Based upon the requested rezoning to C-3, the project could be built to 80 feet in height. Therefore, the applicant is requesting an additional 69'-4" inches in height. On March 28, 2006, City Council adopted a policy that limits the ability of City staff to recommend approval of building height requests exceeding 50% of the permitted height. However, this request

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was submitted to the City on February 15, 2006. City staff did not make a recommendation regarding the conditional use request to the Planning and Zoning Board but did provide conditions of approval in the event that the Planning and Zoning Board desired to recommend approval to City Council.

The Planning and Zoning Board had a very lengthy discussion regarding the requests. There were some concerns regarding timing of construction of the project and potential changes to the site plan. In the end, the Planning and Zoning Board voted 4/3 to recommend approval of the conditional use request to allow a building height of 120 feet in consideration of the new guidance from City Council, and also changed some of the conditions proposed by City staff. The changes added one additional year to each time frame for build-out and removed a condition requiring the construction of a boardwalk along the edge of Crane Creek. One of the conditions related to the public parking surcharge fee, which was changed to allow the fee to be paid concurrent with requests for Phase 2 or Phase 3.

After the Planning and Zoning Board meeting, City staff met with the applicants and discussed the need for a developer's agreement to address the applicants' concerns regarding infrastructure capacity reservations and timing of the construction of the project. This is especially the case given the recent experience of this applicant relating to the number of site plans reviewed and the conditional use agreement specifying a significantly longer period of time to completion. City staff had recommended the creation of a developer's agreement back in May to address these issues but at that time the applicant declined the necessity to have one prepared. The applicant first delivered a proposed draft developer's agreement to the City on August 2. Due to the short timeframe prior to the August 22 agenda submittal date of August 10, the typical review timeframe of a developer's agreement, and the many other project reviews underway, City staff was unable to complete a review of the agreement in time to place the project on the August 22 City Council agenda. If the Council ultimately approves special consideration for development proposed by the developer, it will have to determine their level of "vesting," if any, prior to changes in Codes. A workshop on this matter is scheduled for September 14, 2006.

The applicant's proposed developer's agreement contains the following items:

- a. A description of the project and phasing.
- b. An agreement to maintain the property during construction.
- c. An allowance to "reserve/vest" utility capacity for the entire project past the one year period and without the payment of a capacity reservation fee (10% of impact fees) until the capacity is required for another development, at which time the applicant could choose to pay 100% of the impact fees to reserve their ability to construct the project.
- d. An agreement to pay the public parking surcharge fee at permitting of Phase 2 and Phase 3.

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- e. An agreement to provide a public access easement along the south shoreline of Crane Creek only after the City has constructed a boardwalk and a footbridge across the creek at the City's sole expense. Credits for transportation impact fees would be provided to the applicant for the easement as well.
- f. An agreement that if the Future Land Use designation is changed to allow a residential component, it would not be considered a substantial change which would require re-approval by City Council.
- g. Other standard conditions related to off-site road improvements, lighting, and other approval requirements.

City staff has concerns related to several of the issues within the agreement, specifically, c. and e. The principal concern is related to the ability of a project to not be required to "reserve/vest" infrastructure capacity. When a site plan is approved, it is with the requirement that concurrency has been issued stating that available infrastructure capacity exists. If the project is allowed to let this concurrency lapse at some future date, it would invalidate the concurrency approval and thus invalidate the site plan approval. This request is also contrary to the general intent of the growth management regulations and would result in a new temporary vesting of concurrency subject to a case-by-case complicated re-analysis of subsequent projects.

The applicant also has claimed that there should be some sort of relief from the proposed 10% capacity reservation fee for projects within a CRA and staff agrees that an additional year may be a reasonable allowance for high quality, unique projects within a CRA. However, proper growth management and pending legislation of the City, as well as internal guidance, provides that a project of this size be required to make a commitment by providing some amount of upfront payment of capacity reservation fees. Additionally, agreement could not be made at this time on the provision of a public access easement and construction of a boardwalk and footbridge. Staff considers these critical components of the "south riverfront" redevelopment.

City staff believes that redevelopment of this property, in a mixed use manner as proposed, is vital to assist with the revitalization of the CRA expansion area and is supportive of the request to rezone to C-3. However, based upon the concerns with the developer's agreement regarding infrastructure capacity, the recent board discussions related to the potential desire to maintain lower building heights within the expansion area, the conclusion that the proposed building height of 149'-4" is considered out of scale for the neighborhood and out of character for the area due to its location south of Crane Creek in an area held to a maximum height of 80 feet, City staff recommends denial of the conditional use request. However, staff does note that some and perhaps all of these issues could be addressed through a developer's agreement. It is important to point out that the applicant desired that the Council definitely decide these issues absent such an agreement.

The Planning and Zoning Board voted five to two for approval of the rezoning request and voted four to three to approve the conditional use request for a building height of 120 feet with the conditions contained in the Planning and Zoning Board Memorandum.

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City staff recommends approval of the rezoning request and denial of the conditional use developer's agreement. For City Council consideration, Ordinance No. 2006-106, which provides for the conditional use, contains the original conditions proposed by staff.

Mrs. Hand referenced the date of submittal for this project (February 15, 2006) and the date Council adopted the policy limiting the ability of City staff to recommend height (March 28, 2006). She said that since the applicant made this submittal prior to the policy, she feels some consideration should be given in granting additional height. She would like to grant the amount of height requested.

Mr. Schluckebier said that the City Council reserves the right to make that determination. The policy adopted by City Council provides direction to staff on making recommendations. Until Council regulates height by ordinance or some permanent instrument, this is completely a Council decision.

Mayor Goode pointed out that two other applicants agreed to an 80' height limitation south of Crane Creek and Summit Place on the north side of the creek was just approved at over 159'. The subject applicant is requesting over 149' on the south side of Crane Creek. He said that he is faced with a dilemma on this issue.

Attorney Gougelman said that he would like to ask Mrs. Dittmer some questions. He explained that although it may sound like he is arguing for denial, he is not. In response to Attorney Gougelman, Mrs. Dittmer provided her educational and professional background, which outlines her planning expertise. Attorney Gougelman stated that Mrs. Dittmer is the Department Director for Planning & Economic Development. She is an expert witness, an expert in planning, and provides Council with good, solid advice. He noted that Mrs. Dittmer and her department recommended approval of the rezoning, yet recommended denial of the conditional use. He asked her to explain why.

Mrs. Dittmer said that the proposed height of over 149' is viewed to be out of character for the area south of Crane Creek. The former CRA has buildings that exceed 100'. Crane Creek has acted as a barrier in the past. There may be one building south of the creek that is three stories. The character of the area is not conducive at this time for a height of 149'. Additionally, the Planning and Zoning Board and Council have discussed height in the expanded CRA. Eighty feet seems to be what she is hearing from both boards.

Attorney Gougelman said that two other large parcels are on this agenda where the City asked the developers to agree to a height limitation of 80'. Mrs. Dittmer said that is correct and confirmed that a conditional use request would have allowed height beyond the 80'.

Mr. Gougelman said that Crane Creek is being looked at as the dividing line. He said this is consistent with case law. Mrs. Dittmer is saying that she and the planning staff have used the creek as a central line of demarcation. It is much wider than a roadway and acts as the break point. Approvals for height over 80' have been granted north of that line; however, south of that line the City has been careful to restrict height to 80'. Attorney Gougelman asked Mrs. Dittmer if, in her professional opinion, the decision to restrict height to 80' is

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consistent with the Comprehensive Plan. Mrs. Dittmer replied yes and added that the policies are outlined in the staff memorandum.

Attorney Gougelman said that the rule is 80' south of the creek; however, planning is not static. Planning changes as circumstances change. He added that there has to be some demonstration of benefit to the community for this project to be considered with height that exceeds 80'. This project becomes more important from a legal standpoint because it is the first in a series of dominoes. Case law supports using major geographic points as a point of change. He stressed to Council that this will be one of the more important planning decisions that Council will have to make. It will determine what Council wants for the community and what we will see on the south side of the creek.

Mrs. Hand asked what could be more worthy than a back center for the community. She again discussed the date of submittal versus the date of Council's policy and said that Council has to be fair. She added that in the past Council has simply been site specific on these issues.

Attorney Gougelman replied that from a planning perspective, staff has recommended denial of height above 80'. Council has an important policy decision to make and Council has to decide if a back center is the proper level of public benefit to deviate from the rule.

Mrs. Hand said that the City wants to develop that corridor and now we have someone willing to put their money into a project that will enhance U. S. 1. She noted that right now the area doesn't look too swift.

Mayor Goode said that a few months ago Council was going site specific and two or three buildings were approved in the neighborhood of 160'. Then Council said that the height ought to be reduced and we instructed staff not to recommend anything higher than 120'. That is an arbitrary number that Council set; however, Council needs to determine how soon it wishes to change that arbitrary number. He added that there has to be some consistency for a period of time.

Attorney Gougelman explained that the developer's agreement drafted by the applicant was not fully reviewed by staff. There was not time and there is not enough staff. That is another reason the developer's agreement is not being recommended.

The City Manager said that staff also has concerns about concurrency in that agreement. Whenever someone asks to vary from Code, it is incumbent on staff to be clear as to the terms. We informed the developer repeatedly that the concurrency issues requested are outside of our Code and what state law requires; therefore, we could not recommend approval as proposed. Mr. Schluckebier said he does not vary from that decision. The idea is being circulated that we are delaying this so we can charge higher rates or fees, and that is balderdash. City staff likes this project and we want development, but we don't want to see the City hamstrung on these important policies.

Mr. LaRusso referenced the two developments south of Crane Creek that agreed to a height limit of 80'. He asked if they requested additional height. Attorney Gougelman said

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that in discussions with the applicants, staff has taken the lead to set the benchmark during conversations and applicants voluntarily jumped on the bandwagon.

Mr. LaRusso referenced the comment that additional height on this project should be based on a public benefit. He asked if the public access easement and construction of a boardwalk and footbridge would provide a sufficient amount of public benefit to allow Council to accommodate the height request. Attorney Gougelman said the applicant would be the proper person to speak about the public benefit of this project.

Mayor Goode pointed out that the idea is for the City to pay for the boardwalk and footbridge.

Mr. LaRusso said that the next issues revolve around concurrency and fees. He said that the whole issue seems to be focusing on height; however, if Council considers the additional height, there has to be a public benefit.

Mrs. Meehan disclosed that she met with neighbors from South Melbourne, including Hazel Buggs, and learned that they are supportive of this project and would like to see it completed as soon as possible.

Mrs. Meehan stated that one public benefit would be the payment of the (public parking surcharge fee).

Mrs. Walker said that in addition to the City Code, we have a qualified City Attorney, City Manager and Planning Director. She said that Council needs to listen to what is being said and not grant something just because someone wants it.

Mr. Contreras said that a couple of weeks ago Council discussed the idea of an overlay district with restrictions. However, this is the first time he has heard that Crane Creek is the barrier on height. He added the following comments: there are probably other applications in process that were submitted prior to Council's policy on height; each site has been viewed on a site specific basis by Council; he's not sure how staff can recommend denial of a developer's agreement when it has not been fully reviewed; with regard to impact fees and concurrency, a workshop has been scheduled; and it appears that the developer is willing to yield to an easement at the point the City starts building a boardwalk and footbridge. Mr. Contreras concluded by saying he would like to know the cost of this project.

Mrs. Hand disclosed that she spoke with Mr. Ward and Dr. Hynes on Thursday. They discussed height, the project, the impact fees and the developer's agreement.

In addition to the disclosure above (meeting with neighbors in South Melbourne), Mrs. Meehan met with Dr. Hynes to discuss the project, the building and the developer's agreement.

Mr. LaRusso said that on August 29 Bob Hynes called his office; however, he could not find the time to meet with him. On September 1 he participated in a conference call with Ken Ward and Dave Menzel. He noted that he did all the listening and they did all the talking.

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Mr. Contreras said he received a call on August 28 from Bob Hynes regarding this project and the impact fees. On August 29 he spoke with Dr. Hynes regarding the phasing of the project and the developer's agreement.

Mayor Goode said he had breakfast with Bob Hynes; however, they didn't discuss the project.

Mayor Goode opened the public hearing.

Ken Ward, representing Towne Realty and Hynes Development, referenced the letters of support that were submitted as part of the Comprehensive Plan amendment (reference agenda Item #10). He noted that those letters of support should also be included with this item. Mr. Ward said that the City contemplated a partnership when it created the CRA and expanded the boundaries based on the blight study. He said they are here to accept and participate in the City's offer. They have studied the City's report, met with staff, the neighbors and businesses in the Downtown area, and they feel their project meets all of the established criteria. The redevelopment plan talks about incorporating the harbor back into the "Harbor City" and that is what this plan proposes.

Mayor Goode said that he is looking for a project that will consist of bricks and mortar rather than a vision.

Dave Menzel, representing the applicant, reported that this project was approved by the Planning and Zoning Board and the CRA Advisory Committee gave its unanimous approval. He displayed the property on the map, showed photographs of the existing site, and reviewed the different phases.

Phase one is important – it will be a state of the art, two-story orthopaedic spine center/medical building. Phase two will provide additional parking, restaurant, hotel and living units; and phase three would be residential living units. Mr. Menzel displayed slides showing the exterior of all three phases. The footbridge is planned as part of phase three.

Continuing, Mr. Menzel noted that the medical center is estimated to be a \$12 - \$15 million facility. Additionally, he pointed out that the buildings in all three phases will cover only 44% of the 5.8-acre site. This project will employ approximately 100 and see 30,000 people through its doors annually. This project will kick off the expanded CRA.

Responding to the Mayor, Mr. Menzel said that the medical building will be located on the southeast corner near U. S. 1. The Mayor asked about ingress/egress off of U. S. 1 for Dr. Hynes' patients. Mr. Menzel said they plan to use the traffic light on Prospect Avenue.

Mrs. Palmer referenced the footbridge and noted that it is actually proposed to be funded by the City. Mr. Menzel said it will be a "team effort."

In response to Mrs. Palmer, Mr. Menzel said that the actual elevation of the project will be 10' lower than the Summit development (proposed for the north side of Crane Creek).

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Mrs. Palmer said that the spine center seems to be the carrot on the stick to get Council to see the public benefit. She said she does not know how the City can compel Dr. Hynes to build the spine center.

Mr. Ward returned to the podium and read excerpts from the findings and statements made by the Planning and Zoning Board. He added that they learned about the 80' height limitation on Friday when they received a copy of the staff report. This is after having been in a number of meetings with City staff.

Mayor Goode said he takes exception to that comment because Mr. Ward has been in the audience on several occasions when Council discussed a limit on heights in the area south of Crane Creek.

Mr. Ward asked Council to determine if this is a viable project in the Downtown area. He noted that all the other issues – concurrency, impact fees and reservation fees – should be left to the workshop meeting. If Council determines that the height should be less than proposed, they have to make decisions. He asked Council to approve the rezoning and conditional use/site plan. And, between now and the workshop meeting and second reading of the ordinances, they can work with staff towards an amicable solution on the developer's agreement.

In response to Mr. Contreras, Mr. Ward said that the medical facility will cost approximately \$12 - \$15 million. All three phases are estimated at \$100 - \$120 million.

The City Manager said that staff still believes this is a quality project; however, there are reservations and issues. He asked if there is an estimate of the pedestrian bridge that the City is somehow partnering on. If there is, staff would like specificity with that.

Mr. Ward said the footbridge was incorporated into the Downtown Redevelopment Plan. They disagreed about the 10' easement across their property for public access as part of phase one. He added that their idea is that funds generated from their project would allow the footbridge to be added as a Capital Improvement Project.

Mrs. Palmer said that the proposed developer's agreement provides that the boardwalk not be constructed until the footbridge and boardwalk on the north side of the creek are completed by the City. Then after that, they would limit access to the public at their whim. The access could be closed in the evening or when the owner so desires. She stated that if the access should be considered a public benefit in exchange for height on the conditional use, there should be a limit when that benefit can be shut down or controlled.

A brief discussion followed regarding the Vues development.

Mr. Ward said that Council Members must first decide if they like the project. Then they can address all of the other issues. He repeated that they can't discuss these items until they know the height of the building. Mrs. Palmer suggested that the public benefit be taken out of the equation during consideration. She said we don't know if we have a bridge, the cost,

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who will pay, the timeline, etc. She said what we do know is that the footbridge and access will be an amenity for the people who reside on Dr. Hynes' property.

Attorney Gougelman said that the applicant demanded to go forward with the public hearing, although staff had not had time to adequately review the developer's agreement. The applicant has a right to a public hearing and staff had no choice but to accommodate that. Staff is not able to recommend the agreement in its current form.

Mr. Contreras asked Mr. Ward to elaborate on access to the footbridge. Mr. Ward said that the same language was copied from the bluff memorial walkway that is part of the Vues development. If there are problems in the evenings, etc., they would like the ability to shut down access. Mr. Contreras said he understands having limitations based on crime issues.

Mrs. Palmer said that the developer's agreement talks about a medical center, but doesn't commit to a spine center.

Michael Melhado, property owner and business owner in the Downtown area and member of the CRA Advisory Committee, stated that he is in support of the project and the vision of the project. This is an important mixed use project. He pointed out that the trade-off for height will be beneficial to the public if they don't build out 100% on the property. There should be consideration when a developer plans to cover only 44% of the site. Mr. Melhado added that it is important to have the pedestrian connectivity with Downtown Melbourne. He encouraged staff to work with the applicant on concurrency, phasing, and the footbridge.

Charles Jackson, 2630 South Harbor City Boulevard, representing the Allen Chapel AME Church, stated that the Church owns property across the street. Mr. Jackson stated that the members of the Church are all for this project. They have been waiting on a project in this area. As a businessperson, Mr. Jackson said he would also like to see this project happen. There is nothing new about having businesses south of Crane Creek. Prior to the 1960s all the automobile dealerships were located south of Crane Creek. They just need for business to return. People in the area are looking forward to the area being enhanced.

Pat Poole, 805 East Palmetto Avenue, said that when the Causeway Center (now known as the Vues) started it was supposed to have a medical building and spine center. But now that project has turned into condominiums. She agreed that there is no guarantee that there will be a spine center with this project. Mrs. Poole recommended that Council stay with the 80' height limitation south of Crane Creek.

Robert Foreman, 2415 South Harbor City Boulevard, discussed his background and stated that the proposed development is not considered a high-rise or skyscraper, rather it is a low-rise. Mr. Foreman said that his business and livelihood sit on U. S. 1. He knows that the only way to rid the area of drugs and crime is to redevelop. He asked Council to allow this development.

Responding to Mrs. Meehan, Mr. Foreman said he will provide any member of Council with a lawnchair. They can sit behind his building and get propositioned every day.

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Mrs. Palmer clarified that Council is not considering not redeveloping. Council is discussing how to plan the area rather than helter skelter allowing developers to make that determination. Council must decide what is appropriate for our City.

Laird Gann, Executive Director, Melbourne Main Street, echoed the comments made by Mike Melhado.

Mr. Ward read from the City's redevelopment plan (prepared by Bob Gray), which indicates that the area south of Crane Creek be developed as a high density, mixed use area; that horizontal development be allowed for residential development; and that the historic footbridge be rebuilt. He said that is what they are trying to accomplish with this development. He asked Council to agree in concept and allow time for the conditions to be worked out. He added that they agree with most of the conditions.

Mrs. Hand said that the Planning and Zoning Board recommended 120'. She asked if they would agree to that. Mr. Ward said that their project has been designed based on 149'-4".

Mr. Contreras asked how much risk is involved with a \$100 - \$120 million project. Mr. Ward said that phase one is not viewed as being as risky as phases two and three.

Mr. LaRusso referenced the hotel proposed for phase two and asked Mr. Ward if they believe the Downtown area can sustain another hotel. Mr. Ward said part of Dr. Hynes' vision includes an outpatient facility. The hotel would serve his patients. Additionally, they are considering collegiate education on the weekends.

Mr. LaRusso said that Council has issue with the footbridge being semi-public. He asked if they would consider having the walkway/bridge open 24 hours a day, seven days a week and noted that this would be a huge public benefit.

Mr. Ward said they would consider that when those improvements get built; this is a phased project. At the appropriate time, it should be open 24/7. Mr. LaRusso said he doesn't disagree because he does not envision people walking across the bridge to visit the spine center.

Mr. LaRusso asked Mr. Ward if they are asking for the City to pay for the footbridge. Mr. Ward said they are asking the City to add the project to its Capital Improvement Program to be paid for with tax increment financing dollars generated from their development.

Mr. LaRusso asked Mr. Ward if they would consider paying for part of the bridge as part of the developer's agreement. Mr. Ward said they would consider that; however it has to be worked into the phasing of the project. He added that it is their position that the tax increment financing dollars would be a substantial contribution from them.

Mr. LaRusso pointed out that the phasing is estimated to be as long as 10 years. Mr. Schluckebier agreed and said it is substantially longer than what the City Code calls for.

A brief discussion continued.

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Mayor Goode closed the public hearing.

Recessed: 10:19 p.m.
Reconvened: 10:25 p.m.

Moved by Hand/Meehan for approval of Ordinance No. 2006-105.

Mrs. Palmer said that once the rezoning is approved, the City's hands will be tied. There is always the threat in the C-3 zone that if height is not allowed, a developer will build lot line to lot line without a breezeway and green space.

Attorney Gougelman said that if Council doesn't like the idea of height and C-3 zoning, then perhaps the earlier decision on the Comprehensive Plan amendment should be reconsidered.

Mrs. Hand pointed out that this developer wants 149'-4" – they do not want to build to the lot line. Mrs. Palmer said her concern is how can the rezoning be approved without also approving a zero setback.

Attorney Gougelman said that when Council determines what the majority wants, then it will become clear on what ordinances should be adopted.

A brief discussion followed regarding postponing the item and whether or not this developer would build to the lot line. Mr. Contreras said that the developer has not presented a site plan showing road to road development and logically, if this plan is approved, that is not what they would construct.

Moved by Walker/Goode to postpone this item until October 10 to allow staff more time to study the developer's agreement and return with recommendations.

A brief discussion followed.

The roll call vote was:

Aye: Walker, Palmer and Goode

Nay: Contreras, LaRusso, Meehan and Hand

Motion failed.

Mrs. Palmer made a motion to reconsider the action taken on the Comprehensive Plan amendment ordinance and leave pending on the minutes. Mayor Goode stated that motion is not in order because there is a main motion on the floor.

Mrs. Palmer said that Council needs to determine the height it wants for this area of the CRA. The City's hands will be tied if C-3 zoning is granted before that determination is

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made. If Council wants 149' or 160', then it is a moot point. The rezoning ordinance at this point is a bargaining chip.

The question was called. The roll call vote was:

Aye: Contreras, LaRusso, Meehan, Hand and Goode

Nay: Walker and Palmer

Motion carried.

Moved by Hand/Meehan for approval of Ordinance No. 2006-106 with the height of 149'-4".

Mrs. Palmer stated that this is crunch time. She said she believes this is a beautiful development; however, she does not approve of the height. She noted that Council has the responsibility to look at the future with the expertise of our City planners and decide what is best for our community. This project can be built at a lower height. And, the spine center may never materialize. Dr. Hynes may not be associated with the property. Council needs to leave personalities, the walkway, the footbridge, etc. out of the issue and decide what is best for this area of the City. She asked Council not to base its decision on who they spoke with last week because that person may not be involved once this is passed.

Mrs. Meehan said she is basing her decision on the time Dr. Hynes submitted his proposal versus when Council adopted its new policy. She said that these requests should be considered on a project by project basis. The City finally has a developer who has the guts to make an investment in South Melbourne and we need to do whatever we can to make that happen.

Mr. LaRusso said that Council has heard from people who work and live in South Melbourne. He added that since the Summit and Vues projects were approved, he has received five pieces of correspondence against height. He said that height might be the buzz around town, but not with the folks he is speaking with. He added that it is the loud minority that attends Council meetings.

Mrs. Walker said that she agrees with Mrs. Palmer's comments.

Mrs. Palmer asked the maker/seconded to add work towards a binding developer's agreement as part of this approval.

Mrs. Hand said she does not want to make that part of the motion.

Following a brief discussion, Attorney Gougelman said that by passing the Comprehensive Plan amendment and the C-3 zoning, Council has walked substantially down the road of giving the applicants exactly what they want in the form they want it. He asked what will be left for staff to negotiate with.

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The City Manager reminded Council that Ordinance No. 2006-106 contains a development schedule that is not agreeable to this developer. At some point, the development issues have to be intertwined.

A brief discussion followed regarding postponing this item to allow time to work on the developer's agreement.

Moved by Palmer/Walker to postpone this item until October 10 to allow time to work on the developer's agreement. (Note: After the maker/seconded agreed to include language requiring the applicant and staff to work towards a binding developer's agreement, this motion was abandoned.)

By Council policy, Council voted to continue the meeting past 11:00 p.m. Moved by Hand/Meehan to complete this item and the stormwater item (25 and 26). Motion carried unanimously. The Mayor noted that also by policy, the remainder of the agenda would be taken up next Tuesday. (Note: See Council action immediately following Item 26. Council decided to finish the agenda at this meeting.)

Council returned to the discussion on the motion to postpone. Mr. Ward said they would stipulate that if the ordinances are approved on first reading, between now and the completion of the workshop meeting, they will work with staff on the developer's agreement.

The maker/seconded of the motion agreed to include language which requires the applicant and staff to work towards a binding developer's agreement as part of the approval of the ordinance. The roll call vote was:

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

Nay: Palmer

Motion carried.

Moved by Goode/LaRusso to schedule second reading of the ordinances for October 10. Motion carried unanimously.

The City Manager noted that staff needs guidance on the developer's agreement. He suggested that the September 19 agenda contain a Council discussion item to allow Council to provide direction at that point.

Mrs. Palmer asked that Council be provided with general information about how much money the City has expended in the Redevelopment Area for infrastructure to accommodate new development and how much has been returned in tax revenue.

24. RESOLUTION NO. 1999: A resolution implementing additional FY 2005-2006 Third Quarter Budget Review recommendations for the Airport Authority.

Attorney Gougelman read Resolution No. 1999 by title.

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Moved by Goode/Palmer for approval of Resolution No. 1999. Motion carried unanimously.

25. RESOLUTION NO. 2000 STORMWATER UTILITY BUDGET: (Public Hearing) A resolution to adopt an annual stormwater utility budget for the fiscal year beginning October 1, 2006.

The City Attorney read the resolution by title. The City Engineer was available for questions. The public hearing was opened and closed with no comments.

Moved by Contreras/LaRusso for approval of Resolution No. 2000. Motion carried unanimously.

26. RESOLUTION NO. 2001 CERTIFICATION OF STORMWATER ASSESSMENT ROLL: A resolution certifying the Stormwater Utility Assessment Roll.

The City Attorney read Resolution No. 2001 by title.

Moved by Hand/LaRusso for approval of Resolution No. 2001. Motion carried unanimously.

At this point, and by consensus, Council decided to extend the meeting to finish the agenda. They returned to Item 24 and then proceeded with Items 27 through 30.

27. COUNCIL ACTION RE: Pay adjustments for non-union employees.

Deputy City Manager Amy Elliott briefed Council. Funding is provided in the City's FY 2006-2007 budget for salary improvements for non-union employees. The following adjustments are proposed to be effective with the first paychecks in October:

- a. Increase salaries and wages across the board by 3.0%.
- b. Space the steps throughout the non-union salary schedules by 2.5%.
- c. Provide a step increase in accordance with the City's Step Pay Plan.
- d. Increase the special pay positions of part-time employees so they are consistent with their counterpart full-time positions.
- e. Adjust the City Manager and City Attorney salaries consistent with other non-union employees

Additionally, in an effort to mitigate some of the health insurance costs borne by employees, the following adjustments are proposed for non-union employees effective April 1, 2007 (when the new insurance enrollment period begins):

- a. City will pay 100% of individual employee coverage for both HMO Plans and will pay an amount towards individual PPO Plan coverage at the same premium as the HMO Enhanced Plan.

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- b. City will increase its contribution from 50% to 75% towards dependent coverage for the HMO Standard Plan.

Staff is further evaluating a proposal to pay employees a monthly amount if they decline health insurance coverage and can demonstrate they have such coverage through another plan. The plan details and amount would be brought back to Council for approval as part of the health insurance renewal early next year. Such a proposal could be offered without delay to non-union employees, but would first need to be negotiated with the various union groups, although we do not expect this to be problematic.

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

28. COUNCIL ACTION RE: Appointment of seven regular members and two alternate members to the Historic Preservation Board.

Mr. LaRusso said that someone waited all evening to speak on this item (Carol Poole, Brevard Heritage Council); however, she left after believing Council would postpone action on this item until next Tuesday. The Mayor replied that Council does not take public input on board appointments.

Moved by Walker/LaRusso to appoint the members recommended by the Historic Preservation Officer.

Note: The Historic Preservation Officer reviewed the applications and made the following recommendation:

Regular members: William Awodey, Diane Barile, Ann Raley Flotte, Peter Flotz, James Jackson, Mark Mohler, and Charles Poe. Alternate members: Teresa Bryant and Betty Preece.

Mrs. Hand said she received a telephone call today; however, she does not want to embarrass anyone. She recommended that David Hatchett replace James Jackson.

Mr. LaRusso said that the consultant went through a length review process and he would like to stay with the recommendation.

A brief discussion followed regarding a telephone call that Mrs. Hand received. Mrs. Hand noted that the caller would not identify herself. Mrs. Hand said the call left her wondering if there was any truth to what was said.

Mr. LaRusso asked the Mayor to comment on his policy regarding anonymous calls and letters. Mayor Goode said they go "right in the can."

The question was called. The roll call vote was:

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

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Nay: Hand

Motion carried.

Mrs. Hand said she voted nay because she has reservations.

29. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

30. ADJOURNMENT

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

The meeting adjourned at 11:25 p.m.



Deputy City Clerk – 9/13/2006

Approved by Council: _____