

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 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. Reverend Darice K.W. Dawson, Florida Tech Chapel, provided 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

Mayor Goode announced that Items 10 and 18 will be postponed until the November 14 City Council meeting.

4. Proclamations and Presentations

None.

5. Approval of Minutes – October 10, 2006 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier reported on the following items:

- Last week City utility workers discovered a cave-in of a sewer main located south of the area near Florida Tech where we previously had a substantial cave-in. This is located on the same line and was scheduled for replacement. The location is approximately 20 to 22 feet underground and the City does not have the safety equipment and expertise to work at that depth. The emergency work began Saturday and is being contracted. The cost is estimated to be \$60,000 to \$100,000.
- A recent newspaper article indicated that the Brevard Family of Housing has asked federal officials to investigate the possible theft of funds by several employees. The

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Brevard Family of Housing includes the Melbourne Housing Authority. The City Manager noted that the City Director of Finance has provided written confirmation that the City of Melbourne does not have overlapping funds with the Melbourne Housing Authority. Our oversight is not financial – it is programmatic and quite limited. The Mayor does appoint members to the authority pursuant to state statutes; however, that is the extent of our overlap.

Council Member Mark LaRusso referenced the landscaping and sidewalk work at the Eau Gallie Square. Mr. Schluckebier said we were hoping to receive existing contract pricing from one of two major contractors working in Melbourne. If we receive pricing information in the next week to 10 days, this item would appear on the first agenda in November.

Mr. LaRusso said he is trying to determine why it is taking so long for the remainder of the project to be completed. This has caused frustration with residents and merchants in the area. The City Manager said that it is his understanding that the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee just finalized its plans in the past 30 to 45 days. Staff would also like to finish work on the square; however, we do have to obtain competitive pricing.

Council Member Richard Contreras referenced the communication from Brevard County that indicates the Board of County Commissioners, at its October 10 meeting, decided not to participate with the City of Melbourne in a new Community Redevelopment Agency in the North Wickham Road area. He asked if the County offered a recommendation on improvements they plan to make to alleviate traffic problems on Wickham Road.

The City Manager replied no and added that they simply declined to participate and they look forward to working with the City on other solutions. Mr. Contreras recommended that we return to the County and ask for recommendations. The CRA was our recommendation. Mr. Contreras added that there is a moratorium on Wickham Road and it is unacceptable for us to leave our head in the sand.

Moved by Contreras/LaRusso to direct staff to ask the County Commissioners to provide recommendations on improving road deficiencies on Wickham Road and report to Council in a month. Motion carried unanimously.

Council Member Cheryl Palmer asked if we are ready to follow through if we ask the County for recommendations. Mr. Contreras replied that it would be prudent to review any and all recommendations rather than accept them carte blanche.

Following a brief discussion, the City Manager said that in the spirit of Mr. Contreras's suggestion, and given the fact that the District 4 County Commissioner will be changing in the next 30 days, we will ask the County to include Wickham Road capacity expansion in their near term priorities. And, we will ask them to facilitate this as a priority issue with the Metropolitan Planning Organization. Mr. Schluckebier said he does not believe that the Board of County Commissioners will provide a definitive answer; however, we do want to continue pursuing this issue.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Discussion continued. The question was called. Motion carried unanimously.

7. Public Comments

Miriam Kerrigan, 3862 Town Square Boulevard, representing Magnolia Village, reported that they have been in constant communication with the contractor, City Engineer, project director, etc. regarding the Eber Road widening project. The residents are eager to have their fence, electrical wiring and entrance sign replaced and cracked tile repaired in one of the units. The Eber Road project has been finished since January or February and they would like to have their items completed by November 16. Ms. Kerrigan added that family and friends are having difficulty locating them because of the missing sign.

City Engineer Jenni Lamb said that although the project looks complete there are at least 100 items remaining on a punch list. She reported that staff is in the process of obtaining quotes to have the fence repaired/replaced quickly. The Eber Road contractor will replace the electrical components.

Mr. Contreras suggested that the City create a temporary sign for the development. Following a brief discussion, Ms. Kerrigan said this would be acceptable. Ms. Lamb said that the City will provide temporary signage within the next three days.

Ms. Lamb confirmed for Council that based on the punch list items, the City is holding quite a bit of money from the project budget until the items have been completed.

Mayor Goode asked Council to consider Item 16 at this point. There were no objections. After Item 16 was considered, Council proceeded with the remainder of the agenda.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2006-101 TRANSPORTATION IMPACT FEES; ORDINANCE NO. 2006-99 CONCURRENCY; AND ORDINANCE NO. 2006-100 UTILITIES: Ordinances of the City of Melbourne, relating to Impact Fees, Concurrency, and payment of fees; amending Appendix D, Chapter 10, Article I and Chapter 3; and Chapter 32, Utilities.

a. Ordinance No. 2006-101 Transportation Impact Fees: (Second Reading/Public Hearing) An ordinance of the City of Melbourne, relating to Impact Fees; amending Appendix D, Chapter 10, Article I, Transportation Impact Fees. (First Reading – 10/10/06)

b. Ordinance No. 2006-99 Concurrency: (Second Reading/Public Hearing) An ordinance of the City of Melbourne, relating to Concurrency; amending Appendix D, Chapter 3, to require payment of a capacity reservation fee and revising the schedule for payment of impact fees. (First Reading – 10/10/06)

c. Ordinance No. 2006-100 Utilities: (Second Reading/Public Hearing) An ordinance of the City of Melbourne, amending Chapter 32, Utilities, relating to capacity reservation fees, payment of impact fees, extension fees in newly annexed areas, and limitations

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

on services and extensions (First Reading – 10/10/06)

City Attorney Paul Gougelman read the ordinances by title. Mayor Goode opened the public hearing. There were no comments.

Moved by Hand/Contreras for approval of Ordinance No. 2006-101. The roll call vote was:

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

Nay: Palmer

Motion carried.

Moved by Palmer/Walker for approval of Ordinance No. 2006-99. The roll call vote was:

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

Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2006-100. The roll call vote was:

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

Motion carried unanimously.

9. 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: (Second 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. (First Reading - 9/05/06)
 - b. Ordinance No. 2006-106 (CU-2006-04/SP-2006-08): (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow the construction of two, 149-foot 4-inch buildings on a 5.84-acre parcel. (First Reading - 9/05/06)
 - c. Developer's Agreement. (Postponed - 9/05/06) (To be considered by the City Council)
 - d. Developer's Agreement. (Postponed - 9/05/06) (To be considered by the City Council sitting as the Melbourne Downtown Community Redevelopment Agency)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Attorney Gougelman read Ordinance Nos. 2006-105 and 2006-106 by title. Later in the meeting, Vice Mayor Loretta Hand disclosed that she received a call from Dorothy Gaunce who supports this project. Mayor Goode opened the public hearing.

Dorothy Gaunce, 721 Walnut Drive, spoke in support of the request. She noted that the Downtown area would benefit from the employment of nurses, doctors, etc.

Pat Poole, 805 East Palmetto Avenue, stated that Crane Creek was supposed to be the dividing line on height. Everything south of the creek was proposed to be no higher than 80'. She expressed concern with the approval of two, 149' 4" buildings along with the minimum requirements being proposed for lot coverage, etc. She asked why the Council is granting so many concessions on this item. Mrs. Poole reminded Council that the Planning and Zoning Board recommended a maximum height of 120' on this development.

Ken Ward, Towne/Hynes, representing the applicant, thanked staff for the tremendous amount of work that went into this agreement. He reported that the developer's agreement outlines the process of the phased project. Some of the issues were very complicated and involved concurrency, impact fees, public access, timing and development of road improvements, phasing, construction of the footbridge across Crane Creek and setbacks.

Mr. Ward distributed a survey entitled "South Crane Creek Boardwalk/Footbridge Master Plan", which depicts two footbridges across Crane Creek. He explained that the survey was conducted after the last meeting and they now know the length across the creek and where the landing would be located. Mr. Ward reminded Council that Phase 1 includes the medical facility. He asked Council if there were any questions.

Mrs. Hand said that the developer's agreement refers to a "medical center." She commented that many things could go into a medical center, like an abortion clinic. Mrs. Hand asked if a back/spine center could be defined in the agreement.

Mr. Ward said that Dr. Hynes' back center is going to go into this building. With regard to defining it in the agreement, he questioned how the City Council would have the authority to regulate this issue. This issue was discussed at length with the City Attorney and he is not sure that a decision was reached on how to address the various issues. The site plan, which has been submitted, shows the building as a medical facility. Mr. Ward said he does not know whether it would be appropriate or legal to define back center in the developer's agreement; it would create more problems than it would solve.

Mrs. Hand said when the facility was first planned for the Causeway Center/Vues site, she was told it would be a back center. She stated that she wants this clarified because she would like for the back center to be constructed.

Mr. Ward replied that he doesn't think there is a problem saying that the back center would move to this facility.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Attorney Gougelman clarified that this issue was discussed during meetings, and it is inordinately complicated. He explained that the first issue involves defining a back center. The second issue is determining how long the property will be used for a back center. These are a few of the issues that did not get settled. The agreement provides that Phase 1 will consist of two floors of professional office/medical space 31,000 square feet per floor. Dr. Hynes would have to answer the question about what is intended for that space.

Mr. Ward pointed out that this is not a speculation venture for his company. Dr. Hynes is going into the space. The issue is how to incorporate this legally into the agreement.

Dr. Richard Hynes, applicant, said that the back center will be a multi disciplinary pain and surgery center. He reported that they have submitted a site plan; however, they don't believe the building will be ready by December 2007. He added that he has considered another site. He doesn't feel there is agreement on this development. And, he doesn't recall anyone asking the nearby Summit development to define a specific hotel or restaurant.

Dr. Hynes said that developers are being treated differently. He confirmed that he is putting a back center on Crane Creek and he will put in bricks and mortar in January if City staff will expedite the plan. He won't, however, guarantee this in writing. The plans show a back center, surgery center, diagnostic center, etc. The success of the South Crane Creek project depends on this. No one else will lease the space; they are taking the risk.

Continuing, Dr. Hynes said he is perplexed. He is trying to develop a project in a blighted zone. If this isn't a good idea – if people are not comfortable – then they should move on. This is a complex project and it is up to Council to decide whether or not it wants this project. They can't do any more. They have ironed out a thousand details and there is a limit to what can be done.

Mrs. Palmer said this project is different because the spine center has been touted as being a public benefit – a benefit Council should consider in granting additional height. She added that based on the history of the spine center, the City cannot have any confidence that the spine center will manifest. She asked Dr. Hynes why he would resist putting that in writing when it has been used as a persuasive tool for this project. She asked if perhaps the reason is he is planning to change the site plan, ownership of the building, or contents of the building.

Dr. Hynes pointed out that there were five litigations involved with the Vues project. Bob Brown sued the City, One Harbor Place sued everyone, his title company missed the trysting steps, etc. The plan was to build the back center on that site; however, everyone was against it. He noted that he even had to conduct a "shadow study." Dr. Hynes stated that he found a way to solve the traffic complaint by moving the commercial portion to Crane Creek. The market has changed and he does not believe that he waved the back center as a flag. Dr. Hynes asked why the back center has to be in a legal agreement when any commercial would be good for the South Crane Creek area.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Mrs. Palmer asked Dr. Hynes if he would be willing to withdraw the spine center as a public benefit.

Dr. Hynes said that the boardwalk is a much better public benefit than what the Summit is planning, which is 10' taller. He stressed that his development should stand on its own. He is taking the risk and can only do so because the back center will go into the space.

Mrs. Palmer said it is difficult giving concessions on height and setbacks knowing that Dr. Hynes may not be the player when the building is constructed. She added that Council must look at the potential for the site when granting a rezoning and conditional use. Dr. Hynes replied that no one else wants to build on this site.

Attorney Gougelman referenced the memorandum distributed to Council, which outlines the following changes to the developer's agreement (since the agenda package was distributed):

Revision 1: Reference to the location and size of the boat slips. Drawing will be included with the agreement prior to the agreement being recorded.

Revision 2: Reference to the east parcel. If the development does not occur during Phase 1 as planned, the property will continue to be zoned C-3. The developer's agreement provides that there will be setbacks from both roadways except from the Florida East Coast Railway.

Revision 3: Reference to the west parcel. If the development does not occur during Phase 3 as planned, the property will continue to be zoned C-3. The developer's agreement provides that there will be setbacks from both roadways except from the Florida East Coast Railway.

Revision 4: Relates to the east parcel and the construction of a lift station. The Planning and Economic Development Director and the City Engineer recommend this change.

Revision 5: Relates to the public parking surcharge fee. It widens the scope of what may or may not be used as a credit against the surcharge.

Mrs. Dittmer confirmed for Mrs. Palmer that if the plan changes substantially from the plan today, setbacks would be required from the road right-of-way, but not from the railway. Mrs. Palmer said she believes that a setback should also be required from the railway.

Mrs. Palmer referenced Revision 5 referenced by Attorney Gougelman. She said that the parking surcharge fee was supposed to pay for parking garages in the Downtown area. It will set a bad precedent if we start allowing trade-offs and deductions on that fee. Mrs. Palmer asked Council to remember when reviewing the agreement that the applicant may not be the person who builds this project.

Moved by Meehan/Hand for approval of Ordinance No. 2006-105. The roll call vote was:

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Aye: Contreras, LaRusso, Meehan and Hand

Nay: Walker, Palmer and Goode

Motion carried.

Moved by Meehan/Hand for approval of Ordinance No. 2006-106.

Mrs. Palmer said that the Planning and Zoning Board recommended a height of 120' and she would like to see this included in the ordinance. She explained that Council looked at the spine center as being a public benefit in exchange for the height. The spine center may or may not materialize and trade-offs are being proposed for the parking surcharge fee.

The maker/seconder confirmed that their intent is to approve the ordinance as written with two, 149' 4" buildings.

Mrs. Hand stated that she has been in favor of the back center from the beginning. She stated that she wants to take Dr. Hynes' word. And, the building would not be cost effective at a lower height. Mrs. Meehan agreed and added that she has confidence that Dr. Hynes will build this building.

The question was called. The roll call vote was:

Aye: Contreras, Meehan and Hand

Nay: LaRusso, Walker, Palmer and Goode

Motion failed.

Moved by Goode/Walker to reconsider and leave pending on the minutes.

Mrs. Meehan questioned the procedure. Attorney Gougelman stated that the motion to approve two, 149' buildings failed. The Mayor, who was on the prevailing side, made a motion to reconsider the vote by which the motion failed and leave pending. The entire issue will return on the next agenda.

By consensus, Council agreed to postpone the developer's agreement until the next meeting. Mrs. Palmer asked staff to continue tweaking the agreement. She said she is not sure if she is the only one concerned about issuing credits against the public parking surcharge fee. Mayor Goode replied that his vote is an indication of how he feels.

10. ORDINANCE NO. 2006-108 (AR-2006-206), ORDINANCE NO. 2006-109 (CPA-2006-28), AND ORDINANCE NO. 2006-110 (Z-2006-1086) HANNA HOMES (NORTHGATE): Ordinances providing for annexation of a 2.84-acre parcel and 0.22 acres of right-of-way; and a Comprehensive Plan Amendment and zoning designation for 2.84 acres, located north of Aurora Road, west of Wickham Road, and south of the Northgate Street right-of-

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

way. (Owner/Applicant - Hanna Homes Construction, Inc.) (Representatives - Scott Glaubitz, P.E. & Ana Saunders, P.E.)

- a. Ordinance No. 2006-108/AR-2006-206: (First Reading/Public Hearing) An ordinance providing for annexation of a 2.84-acre parcel and 0.22 acres of right-of-way. (Postponed - 10/10/06)
- b. Ordinance No. 2006-109/CPA-2006-28: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on a 2.84-acre parcel. (Postponed - 10/10/06)
- c. Ordinance No. 2006-110/Z-2006-1086: (First Reading/Public Hearing) An ordinance providing for a designation of R-2 (6) (One-, Two-, and Multiple Family Dwelling Medium Density with a cap of six units per acre) zoning on a 2.84-acre parcel. (Postponed - 10/10/06)

By consensus, Council postponed this item at the request of the applicant until the November 14 meeting to allow time for a meeting to be scheduled with area residents.

11. ORDINANCE NO. 2006-111 (Z-2006-1088) MJ DEVELOPMENTS, LLC: (Second Reading/Public Hearing) An ordinance changing the zoning from C-P (Commercial Parkway) to M-1 (Light Industrial) on a 2.68±-acre parcel, located south of Sarno Road, east of the State Street right-of-way, and west of Wickham Road. (Owners - Michael Scott & Jonathan Lowman) (Applicant - MJ Developments, LLC) (Representative - Michael Scott) (First Reading - 10/10/06)

Attorney Gougelman read Ordinance No. 2006-111 by title. There were no disclosures by Council and no comments during the public hearing.

Moved by Hand/Palmer for approval of Ordinance No. 2006-111. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for the D.B. Lee Reuse Interconnect, Project No. 33205, Maxwell Contracting, Inc., Cocoa, FL - \$1,370,000 and transfer of \$780,000 from the Ground Storage Tank Replacement budget, Project No. 30202 to this project budget.

City Engineer Jenni Lamb was present and available for questions.

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

13. COUNCIL ACTION RE: Contract award for construction of the Eau Gallie Pier at Pineapple Park, Project No. 14504, L.A. Construction Services, Inc., Merritt Island, FL - \$479,500.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Mrs. Lamb was available for questions.

Moved by LaRusso/Palmer for approval as recommended.

Mr. Contreras discussed his concerns about inadequate parking in the area. Mrs. Lamb said she would review those concerns.

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

14. CONSENT AGENDA:

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

- a. Supplement No. 304 to the Continuing Consultant's Contract for engineering services for provide a reuse production and distribution study for the Master Reuse Plan, Project No. 05340, Frazier Engineering, Inc., Melbourne, FL - \$48,000 and transfer of \$40,500 from the Water & Sewer Capital Improvement Miscellaneous project budget to this project budget.
- b. Approval of an additional railroad crossing to the blanket license agreement between the City of Melbourne and Florida East Coast Railway (FECR) dated March 5, 1997, which allows the City to construct and maintain water, sewer, and drainage pipe crossings across FECR right-of-way and authorization for the City Manager to execute the agreement.
- c. Approval of an agreement with the Florida Department of Transportation for the City's subordination of a stormwater maintenance agreement for 1055 Tortoise Cove and authorization for the City Manager to execute the agreement.
- d. Approval of a month-to-month lease contract for a 14-inch MWI self-priming centrifugal suction end pump, MWI Pump Rental, Deerfield Beach, FL - \$67,419.82 maximum annual cost.
- e. Blanket purchase order for annual legal and display advertisements in Florida Today, Cape Publications, Inc., Melbourne, FL - \$50,000.
- f. Contract award for annual auctioneer services, George Gideon Auctioneers, Inc., Zellwood, FL, at a fixed commission fee of ten percent of auction proceeds.
- g. Approval of employee compensation for August 30, 2006.
- h. Resolution No. 2008: A resolution providing for a change in the December 2006 regular meeting schedule; providing that City Council will conduct the one regular meeting on December 19, 2006.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

15. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

16. COUNCIL ACTION RE: Request by Honor America, Inc. for the City to provide funding for the liability insurance for the 2006 Veterans' Day Parade (requested by John Buckley, President, Honor America)

Note: This item was considered prior to Item #8.

From the agenda report: John Buckley, President of Honor America, has requested that the City of Melbourne provide the liability insurance for the 2006 Veterans' Day Parade. Council approved similar requests in 2003 and 2004 with the understanding that there would not be future requests. The 2005 request by Honor America was denied. City staff does not have the authority waive the requirement; therefore, this is a policy decision for City Council.

John Buckley reviewed his request and asked Council to include the liability insurance for the Veterans' Day parade with the City's policy. He added that two years ago the City reduced the funding for Honor America from \$12,000 per year to \$10,000. They appreciate the support they do receive; however, their costs are increasing.

Mr. Buckley reported that this year they hope to resume their television auction, which is one of their major fundraising events.

Mrs. Hand stated that this is the least the City can do to show respect for our veterans.

Moved by Hand/Contreras for take \$1,000 from General Fund Contingency to pay the insurance costs for the Veterans' Day parade.

The City Manager assured the Mayor that this action will not jeopardize the Contingency Fund.

The question was called. Motion carried unanimously.

17. PRELIMINARY PLAT APPROVAL (SD-2005-04) RIDGELAND COMMERCE PARK SUBDIVISION: (Public Hearing) A request for preliminary plat approval to allow development of a seven-lot subdivision on a 22.8±-acre parcel zoned M-1 (Light Industrial), located west of North Drive, north and south of Digital Light Drive, and south of Sarno Road. (Owner/Applicant - Ridgeland Park, LLC) (Representative - Richard Small) (P&Z Board - 10/05/06)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the three-sheet plan prepared by Bussen-Mayer Engineering Group, Project Number 348001, with a signed and sealed date of September 18, 2006, including the variance from the City Code to not require a wall along either side of Digital Light Drive, subject to the following conditions:

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

- a. Any change to the preliminary plat will require reevaluation by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the preliminary plat 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 or the City Council.

- b. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- c. Appropriate environmental permits must be obtained as part of the construction plan review process.
- d. Only one building permit may be issued on the plat prior to recordation of the final plat.
- e. The applicant is granted a variance from the City Code, Appendix D, Chapter 8, Section 8.6 (h), to not require a wall along either side of Digital Light Drive.
- f. The applicant shall construct the roadway extension of Digital Light Drive to meet all of the street, bikeway and sidewalk requirements of Appendix D, Chapter 8, Section 8.6 (b) (7), consistent with a collector roadway.
- g. The applicant shall coordinate the cross access and deceleration lanes required by the Planning and Engineering Departments, and the project shall be limited to three driveways on the north side of Digital Light Drive and one driveway on the south side of Digital Light Drive. The cross access easements shall be identified and properly referenced as part of the final plat.

Mrs. Dittmer confirmed for Mrs. Palmer that a portion of this property is located in the adult entertainment district. Mrs. Palmer asked if there are any plans to build an adult entertainment facility. Mrs. Dittmer replied that the applicant has not discussed any particular uses.

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

Moved by Contreras/LaRusso for approval of the preliminary plat subject to the findings and conditions. Motion carried unanimously.

Recessed: 7:56 p.m.
Reconvened: 8:02 p.m.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

18. ORDINANCE NO. 2006-112 (A&V NO. 265): (First Reading/Public Hearing) An ordinance vacating a 0.11-acre portion of right-of-way at the southeast corner of Circle Avenue South and Shull Avenue. (Applicant - Riverside, LLC)

By consensus, Council postponed this item at the request of staff until the November 14 Council meeting.

19. ORDINANCE NO. 2006-113 (CPA-2006-30) AND ORDINANCE NO. 2006-114 (Z-2006-1081) VERANDA PARK DEVELOPMENT: Ordinances providing for a Comprehensive Plan Amendment on a 1.96±-acre parcel and a zoning change on 8.57 acres, located north of Eau Gallie Boulevard and east of the Turtle Mound Road. (Owner/Applicant - Veranda Park Development Corp.) (Representative - Robert Robb) (P&Z Board - 10/05/06)

- a. Ordinance No. 2006-113/CPA-2006-30: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Suburban Estate Residential to Commercial on a 1.96±-acre parcel.
- b. Ordinance No. 2006-114/Z-2006-1081: (First Reading/Public Hearing) An ordinance changing the zoning from R-1AAA (Single-Family Residential) to C-1 (Neighborhood Commercial) on a 1.96±-acre parcel and from M-1 (Light Industrial) to C-1 (Neighborhood Commercial) on an additional 6.61 acres.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of these requests.

Mr. LaRusso recalled that the City promised the surrounding residents that this property would not change from Suburban Estate Residential. Mrs. Dittmer explained that this property does not abut any existing residential homes. It abuts what will be a church in the future. Eventually this property will abut its own residential development.

There were no disclosures by Council.

Robert Robb, Coy Clark Company, stated that their intent was always to continue commercial corridor along Eau Gallie Boulevard. This was included in all of their plans and, in every public meeting, this tract showed commercial.

Moved by Meehan/Contreras for approval of Ordinance No. 2006-113. Motion carried.
Council Member LaRusso voted nay.

Moved by Contreras/Meehan for approval of Ordinance No. 2006-114. Motion carried unanimously.

20. ORDINANCE NO. 2006-115 (Z-2006-1090AD/LDR-2005-03/FOC-2005-05): (First Reading/Public Hearing) An ordinance amending Article VI, Sections 2(A) and 2(L), Appendix B of the City Code, relating to the Adult Entertainment District and distances from

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

establishments selling alcoholic beverages on the premises, providing how distance requirements shall be calculated. (P&Z Board - 10/05/06)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer reviewed the agenda report.

Excerpt from the report: The proposed text amendment clarifies the 500-foot distance requirement between the adult entertainment district and establishments selling alcohol for consumption on premises. Specifically, the amendment defines a methodology for reviewing requests for consumption of alcohol on properties that have a portion of their property falling within 500 feet of the adult entertainment district. The amendment does not affect the distance between actual adult entertainment establishments and establishments selling alcohol. The Planning and Zoning Board voted unanimously to recommend approval of this request.

There were no comments from the public.

Mrs. Palmer said that Attorney Gougelman assured her that this ordinance will not water down our adult entertainment regulations. She said that making any changes to our regulations, which we so carefully crafted, makes her nervous.

Attorney Gougelman explained that there are two distance requirements relating to adult entertainment facilities and the adult entertainment district, and their separation from lounges and bars. Both are 500'. This change would allow a property that has a small portion of its lot intruding into the adult entertainment district to obtain a conditional use for a bar or lounge. A bar/lounge would still have to be 500' from an adult entertainment facility should one open up on the district. This ordinance is intended to make property in the area useable; therefore, it is not being viewed as watering down the regulations.

Moved by Walker/Palmer for approval of Ordinance No. 2006-115. Motion carried. Council Member Contreras voted nay.

21. ORDINANCE NO. 2006-116 (CU-2006-18) ZINDERELLA'S NIGHT CLUB: (First Reading/Public Hearing) An ordinance granting a conditional use to allow the sale and consumption of alcohol within an existing building on a 2.01±-acre parcel zoned M-1 (Light Industrial), located on the east side of Washburn Road, south of Sarno Road. (Owner/Applicant - C&K, LLC) (Representative - The Torpy Group, P.L.) (P&Z Board - 10/05/06)

Attorney Gougelman read Ordinance No. 2006-116 by title and Mrs. Dittmer briefed Council.

Excerpt from the agenda report: The building was previously used as an adult entertainment establishment. Shortly after the application was submitted to operate an adult entertainment establishment, the City reduced the size of the adult entertainment district. This site, being located outside the district, became non-conforming. The operator negotiated with the City Attorney and agreed to abandon its rights to continue operation of the non-conforming adult entertainment club. The club subsequently closed, and the building has been vacant for about six months. The owner of the property has continued to

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

maintain a claim that the property could still be used as a non-conforming adult entertainment club. The City Attorney has disagreed with the property owner.

At this time the applicant will need to relinquish any claim to continue the non-conforming adult entertainment use. This is because the sale or consumption of alcoholic beverages is not permitted within 500 feet of an adult entertainment establishment. Thus, a non-conforming adult entertainment establishment cannot legally co-exist on the same site as an establishment selling or permitting the consumption of alcoholic beverages. The applicant/property owner has volunteered to relinquish all claims to any right to continue the adult entertainment use. The City Attorney has indicated that if the City approves this application, and the property owner voluntarily stipulates to the relinquishment of any right to continue operation of a non-conforming adult entertainment club, this should resolve the issue in a manner acceptable to the preservation of everyone's rights and interests.

The Planning and Zoning Board voted unanimously to recommend approval of this request.

Mrs. Dittmer confirmed for Mrs. Palmer that one of the conditions in the ordinance provides that the applicant has voluntarily agreed to abandon any claims to continue and waive any future rights to operate an adult entertainment establishment on the property.

Attorney Gougelman added that in our Code, you cannot have a lounge within 500' of an adult entertainment facility. There is no way that Council could approve a lounge on the property if they continued to maintain that they would operate an adult entertainment business. That is probably why they agreed to waive their rights.

Laura Garcia, 2245 Westminster Avenue, Cocoa, representing Zinderella's, stated that she will be one of the managers of the business that intends to operate at this location. She stated that they have no intention of operating an adult entertainment establishment. This will be a family owned business and they plan to open a fondue club/lounge.

Richard Torpy, attorney representing the property owner, stated that this ordinance is intended to forever render the site with no ability to claim a right to an adult entertainment establishment. He added that the property owner, Mr. Kendall, went through a great expense to evict the previous tenant and they would like approval on this conditional use request.

Mrs. Palmer asked about the hours of operation.

Yasenia Lebron, Conservation Place, representing Zinderella's, said they are considering operating four days per week from 4:00 p.m. until 2:00 a.m.

Moved by LaRusso/Meehan for approval of Ordinance No. 2006-116. Motion carried. Vice Mayor Hand voted nay.

22. COUNCIL ACTION RE: Downtown on-street parking time limits.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

Mrs. Dittmer summarized the agenda report. On September 1, 2006, the Parking Advisory Committee (PAC) once again discussed the on street parking limits, due to concerns voiced by the Downtown retailers. A request was made by a group of retailers to reconsider the two-hour on-street parking regulation and revert to three hours for an interim period.

The PAC members discussed the request and voted three to one in favor of a recommendation to revert to the three-hour on street limit on a temporary basis. The PAC, as part of their recommendation, provided the following rationale to the Downtown CRA Advisory Committee:

- It is not the intention of the PAC to harm Downtown businesses, especially during their peak season.
- The reversal back to three-hour on-street parking should be considered temporary until the PAC and the City of Melbourne facilitate more surface parking, and provide measures that will help organize parking by utilizing the outlying public parking areas.
- The two-hour limitation for on street parking should be reestablished in the future, once the parking supply is increased. The on street parking areas should eventually be designated as the prime parking locations, with more restrictive time allowances.

On October 6, 2006 the Downtown Melbourne CRA Advisory Committee voted unanimously to recommend that City Council accept the proposal of the PAC, to revert to three-hour on-street parking.

Moved by Palmer/Hand to revert to a three-hour time limit for on-street parking in Downtown Melbourne until such time as additional public parking facilities are provided or further implementation of the Downtown Parking Study occurs. Motion carried unanimously.

23. COUNCIL ACTION RE: Board Appointments

- a. Appointment of one member to the Building and Construction Advisory Committee.

Note: Council received a memorandum from the City Clerk indicating that another member resigned from this committee; therefore, Council will need to appoint two members.

Mrs. Hand nominated Vaughn Holeman, and the nominations were closed without objection. Moved by Palmer/Hand to appoint Vaughn Holeman. Motion carried unanimously. Term: October 24, 2006 through May 26, 2007 (unexpired three-year term)

Mrs. Palmer nominated Dennis Bonny and the nominations were closed without objection. Moved by Hand/Walker to appoint Dennis Bonny. Motion carried unanimously. Term: October 24, 2006 through May 26, 2008 (unexpired three-year term)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 24, 2006

- b. Appointment of three regular members and one alternate member to the Citizens' Advisory Board.

Moved by Hand/Meehan to reappoint Pat Simpson and Eugene Lathrop as regular members; appoint first alternate Claudette Merchant as a regular member (to replace Ricardo Rangel); and postpone filling the alternate member seat to allow time for the City Clerk to solicit applications. Motion carried unanimously.

Terms: Pat Simpson and Eugene Lathrop November 12, 2006 through November 11, 2009. Claudette Merchant October 24, 2006 through November 11, 2009.

- c. Appointment of three members to the Golf Courses Advisory Board.

Moved by Meehan/Hand to reappoint Jack Bryant, John Francey and Gubbi Sachidanandan. Motion carried unanimously.

Terms: November 9, 2006 through November 9, 2009.

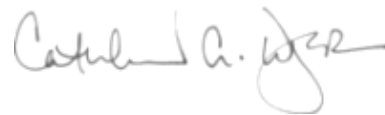
24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Palmer stated that she will miss Council Member Grace Walker and Vice Mayor Loretta Hand. She said that it has been a pleasure serving with them. Their demeanor has always been respectful and dignified.

25. ADJOURNMENT

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

The meeting adjourned at 8:35 p.m.



City Clerk – 11/6/2006

Approved by Council: _____