

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007



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. Pastor Jeff Godwin, Northside Presbyterian, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Richard Contreras	Council Member, District 1
	Kathy Meehan	Council Member, District 3
	John Thomas	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Joanne Corby	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Manager
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Deputy City Manager
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

Absent: Mark LaRusso Vice Mayor, District 2 (out of town)

4. Proclamations and Presentations

Mayor Goode presented a Certificate of Appreciation to Josh Humphries, Eagle Scout candidate, Boy Scout Troop 524, for planning, coordinating and implementing an Eagle Scout project that involved placement of 300 stormwater inlet markers along the Sarno Road corridor, which will assist the City in meeting its National Pollutant Discharge Elimination System permit requirements. Additionally, Mayor Goode provided Certificates of Appreciation to members of Boy Scout Troop 524 for their participation in Josh's Eagle Scout project.

Mayor Goode reported that the Beautification and Environmental Advisory Committee awarded the "We Noticed Award" to Dr. Ralph Zipper, 1208 South Harbor City Boulevard.

Mayor Goode presented the Florida League of Cities, John Scott Dailey Florida Institute of Government, Certificate of Completion to Council Member John Thomas for his successful completion of the 2007 Institute for Elected Municipal Officials.

5. Approval of Minutes – Regular Meeting – February 27, 2007

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

6. City Manager's Report

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

City Manager Jack Schluckebier reported on the following:

- City staff has not undertaken a full-scale review of the tax reform ideas being proposed by the Governor, House and Senate. The budget office will be providing a brief report in the next City Manager's Report. If Council desires, an item can be scheduled for a future meeting to devote more time to this issue. At this point, it is too early to say what action the City should take.
- Mayor Goode received notification from the Florida Puerto Rican/Hispanic Chamber of Commerce, Inc. that the City of Melbourne has been selected as the recipient of the Third Annual Don Juan Ponce de Leon Award for the Most Diversity Friendly City of the Year. A banquet will be held March 31, 2007. Staff will forward information to City Council. Council Members who may be interested in attending should contact the City Manager's Office.
- The University of Central Florida is under contract with the City to identify improvements to our Code Enforcement processes. Part of that review includes a public meeting that will be held on March 19 at 6:00 p.m. in the Council Chamber.

Council Member Joanne Corby reported that there have been several fatalities at the intersection of Laurie Street and U. S. 1. She asked staff to investigate the possibility of making Laurie Street in that area one-way heading west. The City Manager said he will ask the Traffic Engineer to review. A report should return in the next 30 to 60 days. Council Member Kathy Meehan asked that the Babcock Street Community Redevelopment Agency Advisory Committee be included in the review of any ideas or suggestions.

Mrs. Corby referenced the section of the City Manager's Activity Report relating to the demolition of structures. She asked if we are using these buildings for Fire Department training opportunities. Mr. Schluckebier said that he believes the demolitions outlined in the report are located on private property. City Attorney Paul Gougelman added that there may be a problem with indemnification for fire training located on private property.

Council Member John Thomas referenced the report on televising Council meetings. He said he would like to place the report on a future Council agenda.

Moved by Thomas/Meehan to place an item on the next available agenda to discuss the staff report on options.

Mayor Goode said he thought this was something we were going to do in the next budget cycle; the City is getting ready to be in a budget shortfall. The Legislature is tossing around ideas about tax reform and the City should wait and see what is going to happen.

Mr. Thomas said he would like to discuss the report. Mrs. Meehan agreed. Mayor Goode recommended that Council Members be prepared to identify a source of money.

Mrs. Corby said that the idea of televising meetings was brought up during the November 11 meeting. At that meeting it was discussed that staff would return with information within

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

60 days. She noted that we are 45 days late with that report, and it's time for this item to appear on the agenda. (Note: Council discussed televising Council meetings at the January 9, 2007 meeting. At that meeting, the City Manager indicated that staff would return in the next 60 days with information for Council consideration. The information was provided to Council within that 60-day period.)

The question was called. Motion carried unanimously.

7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2007-06 (CPA-2006-36) AND ORDINANCE NO. 2007-07 (Z-2006-1099) MICHAEL S. ULLIAN: (Second Reading/Public Hearing) Ordinances providing for a Comprehensive Plan Amendment changing the Future Land Use from Low Density Residential to Commercial/Low Density Residential and changing the zoning from R-1A (Single-Family Residential) to C-2 (General Commercial) on a 0.2±-acre parcel, located north of NASA Boulevard, west of Hickory Street, at the southern end of Wisteria Drive. (Owner/Applicant/Representative - Michael S. Ullian) (First Reading - 2/27/07)

Attorney Gougelman read Ordinance Nos. 2007-06 and 2007-07 by title. There were no disclosures by Council. The Mayor opened the public hearing.

Melinda Flora, 134 Honeysuckle Lane, stated that she was not aware this item was on the agenda. She asked Council to postpone the item to allow surrounding residents an opportunity to attend the Council meeting.

Mayor Goode informed Ms. Flora that residents living within 500' of the rezoning have been notified, and the public hearing has been advertised. The City has not heard from anyone who has been notified.

Ms. Flora said that the owner of the subject property does not live on the property; it is her understanding that the property is rented. She stressed that this is not the right location for this use, the residents would like for the property to remain residential and they are concerned about the commercial development having access to Wisteria Lane.

Council Member Cheryl Palmer pointed out that the zoning ordinance provides that there will be no vehicular access to the site from Wisteria Drive and the owner will be required to provide additional landscaping and buffering adjacent to the Wisteria Drive right-of-way.

Ms. Flora replied that the owner will have no choice but to use Wisteria Drive.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Planning and Economic Development Director Cindy Dittmer confirmed that there will be no access from Wisteria Drive. The commercial property will have to obtain a driveway permit from the Florida Department of Transportation to access NASA Boulevard.

Mike Ullian, applicant, said that the information presented by Ms. Flora is not correct; this is vacant land that will have no access through the subdivision. He stated that he has submitted a preliminary site plan, which shows no access to Wisteria Drive. And, there will be additional buffering and landscaping.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-06. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby and Goode

Motion carried unanimously.

Moved by Palmer/Thomas for approval of Ordinance No. 2007-07. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby and Goode

Motion carried unanimously.

9. ORDINANCE NO. 2007-10 (CU-2006-15/SP-2006-27) TBCOM PROPERTIES: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a 180-foot stealth communications facility and an associated equipment building on a 0.083±-acre portion of a 4.81±-acre parcel zoned I-1 (Institutional), located on the east side of Dairy Road, north of Florida Avenue, and south of Edgewood Drive. (Owner - VFW Post No. 4206; Raymond Pickard, Quartermaster of Melbourne VFW Post 4206) (Applicant/Representative - Sheryl L. Denan for TBCOM Properties, LLC) (First Reading - 2/27/07)

Attorney Gougelman read Ordinance No. 2007-10 by title. There were no disclosures by Council.

Mayor Goode opened the public hearing. Jim Campbell, T-Mobile, anchor tenant on the tower; Mary Solik, legal counsel for TBCOM; and Ray Pickard, representing the property owner, were present and available for questions.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-10. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Corby and Goode

Nay: Palmer

Motion carried.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

10. ORDINANCE NO. 2007-11 (CU-2006-19/SP-2006-37) THE LOFTS AT WAVERLY PLACE: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a building height of 120 feet for a mixed-use retail, condominium and public parking project on a 0.57±-acre parcel zoned C-3 (Central Business District), located on the southeast corner of Strawbridge Avenue and Waverly Place. (Owner/Developer - Legacy Southeast Investments) (Applicant - Peter Flotz) (Representative - Scott M. Glaubitz, P.E., PLS, BSE Consultants, Inc.) (First Reading - 2/27/07)

The City Attorney read the ordinance by title. Mayor Goode said if there are no questions of staff, he is going to open the public hearing. (Note: The Mayor did not call for disclosures prior to opening the public hearing. Later in the meeting, Mrs. Corby called a point of order and stated ~~said~~ that she had a disclosure to make under this agenda item. Attorney Gougelman recommended that Mrs. Corby supplement the record at the next meeting with her disclosure.)

For information: The agenda report contains a petition submitted by Mrs. Poole at the February 27 meeting signed by 86 people opposed to the conditional use and the site plan. Additionally, Council received an e-mail from Mark Herenden dated March 12 encouraging Council to vote yes on this item.

Laird Gann, Executive Director, Melbourne Main Street, said he needed to clear up confusion created today by two people who distributed fliers to merchants and customers in Downtown Melbourne. The flier recommends people attend this meeting to encourage the City Council to vote no on this item.

Mr. Gann said unfortunately the people who prepared the flier used the Melbourne Main Street logo. Melbourne Main Street did not authorize use of its logo. Continuing, Mr. Gann said that the vast majority of merchants in the Downtown area realize the value of a facility like The Lofts. The mix of residential/retail is the kind of catalyst needed to further redevelopment. It is erroneous to say that the majority of merchants oppose this development.

Janet Ellis Bruce, 368 Royal Palm Drive, Melbourne, said she would like to see a nice business or residential development on this property; however, she would like to be reassured that it stays within the height limit. Additionally, she would like to ensure that there will be enough parking spaces for the public, not just the residents. And, she does not want to see the alleys closed.

Mayor Goode said that the developer will provide an easement for an alley from Waverly Place towards the east to provide rear access to businesses facing New Haven Avenue. There will also be an alley beside the project located west of Grimaldi's. The applicant will deed (20) parking spaces on the ground floor to the City. Additionally, part of the fees the developer will pay will be used to purchase City parking nearby.

Pat Poole, 805 East Palmetto Avenue, discussed the history of redevelopment in Downtown Melbourne. She said that the residents in the redevelopment area who have

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

been paying taxes for 24 years, which contribute to the tax increment financing for the redevelopment fund, want to keep the building heights low.

Mrs. Poole questioned why more residents are needed Downtown when nine condominium developments have been approved. Trinity Towers is located Downtown and there are surrounding residents. Petitions have been submitted letting Council know how the businesses and surrounding owners feel. She reported that many of the business owners who lease property say they are going to have problems staying in business because there is not enough parking.

Mrs. Poole stated that most of the public parking on this project was lost so an alley could be provided to service Meg O'Malley's. Additionally, she expressed concern that the public was not allowed to speak on this item until February, yet the sale of the property began last August.

Mayor Goode informed Mrs. Poole that her time is up. Mrs. Poole continued speaking. Mayor Goode asked the Police Officer to remove Mrs. Poole. Council Member Joanne Corby made a motion to allow Mrs. Poole an extra minute. The Mayor replied that he has already asked to have Mrs. Poole removed. Mrs. Poole was escorted out of the Council Chamber by the Police Officer.

William Wade, Finders Keepers retail store, 809 East New Haven Avenue, informed Council that parking is so scarce Downtown that during the lunch period the restaurants are busy, but the stores are empty for an hour and a half. The same occurs during supertime.

Mr. Wade stated that the condominium owners will have guests, deliveries, etc. There will not be enough parking. He noted that the storeowners are telling him something different than what Laird Gann with Main Street is saying. He concluded by saying that it isn't just about parking and bringing in retail; it's also about taking care of the existing residents and businesses.

Eva Nagymihaly, 3413 Willowood Drive (unincorporated Brevard), reported that she was one of the two people distributing fliers today in Downtown Melbourne. She stated that they did not mean any harm or bad intent. They wanted the opinions of the citizens and the shop owners.

Ms. Nagymihaly stated that people do not want anything higher than 80'. She asked the people in the audience who are concerned about development higher than 80' to raise their hands. (Approximately 30 – 35 people raised their hands.) Continuing, she pointed out that there are no setbacks in the C-3 zoning district. There will be no grass, no trees, etc. She concluded by saying that if Council Members don't listen, they are not doing what they were elected to do.

Fred Malik, 812 East Strawbridge Avenue, stated that he works with Mr. Flotz and is available to answer questions about construction of the building.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Peter Flotz, representing The Lofts of Melbourne, LLC, stated that he is available for questions.

Mayor Goode closed the public hearing.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-11.

Council Member Cheryl Palmer said that this building can be built as a nice mixed use development and still be a catalyst for further redevelopment Downtown at the 80' height. She pointed out that, with the exception of the Mayor and Mrs. Meehan, the people who are in support of high-rise development are not long time residents of the City. Most supporters have come in to the City recently for the purpose of developing. She concluded by saying it is time Council listened to the long time residents of Melbourne who do not want buildings over 80' high.

Council Member Kathy Meehan said that Council also needs to listen to people who support development over the 80' limit. She heard from one tenant who leases space Downtown that did not sign the petition because of the way it was presented. Mrs. Meehan stated that there are lots of rumors Downtown.

Council Member Joanne Corby stated that this project is more about expectation, "What do we want and what do we expect from the City of Melbourne for the Downtown Area?" She added that we have a unique, diverse community. The City has to decide how to grow – to grow up or grow out. She said she is hearing everyone loud and clear; however, she would like everyone to consider sacrificing air space for land space.

The question was called. The roll call vote was:

Aye: Contreras, Meehan and Goode

Nay: Thomas, Palmer and Corby

Motion failed.

Moved by Mayor Goode to reconsider and leave pending.

**The following discussion occurred immediately after recess:**

Attorney Gougelman stated that during the break, a Council Member pointed out a procedural problem with Item 10 (The Lofts). The motion to approve failed by a 3-3 vote, which means the Council Members who voted nay were on the prevailing side. Mayor Goode was not on the prevailing side and under Robert's Rules of Order, a motion to reconsider and leave pending on the minutes may only be made by someone on the prevailing side. Therefore, the motion is not in order.

At this point, Mayor Goode withdrew his motion.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Continuing, Attorney Gougelman said that there is an incomplete action on this item. A motion was made to approve the ordinance, which grants a conditional use for a 120' tall building. That did not pass; however, there is no motion to defeat the ordinance. A Council Member could make a motion for a lesser conditional use or for the same conditional use, but with different conditions. To close the record, a motion is needed to deny the conditional use so the books are closed and the applicant can, if he chooses, go to court. Since the applicant has left the Council Chamber, the recommendation is to place this item on the next agenda.

Mayor Goode said he made the motion to reconsider and leave pending because one of our Council Members is not present and he thought there should be a full vote of Council.

Mrs. Palmer asked why Council can't vote on a motion to deny at this meeting. Attorney Gougelman replied that, theoretically Council could; however, the applicant is not here. They might make a pitch for something different.

Mrs. Palmer said that the idea this item should be voted on with a full Council should have been taken up before the question was called. She said she is not happy that this occurred and that the applicant has left the Chamber. She added that this same strategy has been used on other occasions to change the outcome and she doesn't appreciate it.

Attorney Gougelman said that the better procedure would be to hold off until the next meeting when the applicant will be present. The applicant would argue that he has a right to due process.

Mayor Goode said if there are no objections, this item will be postponed until the next meeting. Mrs. Palmer replied that she has an objection. Mayor Goode said that a motion to postpone would be in order since there is an objection.

Mrs. Corby asked if the motion made previously on this item will have to be re-made. Mr. Gougelman said that motion failed by a tie vote. Technically speaking, there is still some further action this Council could take – deny the conditional use, approve the conditional use for a lesser height or provide different conditions of approval. He added that if a motion to deny is made at this point, his sense is that it would fail by a 3-3 vote.

Discussion continued on the process.

Moved by Contreras/Meehan to postpone this item until the next meeting – not as a re-hearing – but for the purpose of furthering this discussion.

Mrs. Palmer stated that if this item is taken up at the next meeting for any type of action, Council needs to allow public input. If the applicant is going to provide input, the public should also be able to provide input.

Attorney Gougelman said that Council would be voting on Ordinance No. 2007-11. Council already voted not to approve, but the underlying application could be denied or approved in a different form.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mrs. Palmer pointed out that a member who was not on the prevailing side moved to postpone. Attorney Gougelman said postponement is not reconsideration. It is being placed on the next agenda to ensure that the applicant has notice. In the meantime, he will ask Vice Mayor LaRusso to review the record. It is Council's discretion whether to open this up for public hearing.

Mrs. Palmer asked the maker of the motion if he would consider allowing a public hearing on this item.

The maker/seconded agreed to conduct a public hearing on this item at the next meeting.

The question was called. Motion carried unanimously.

At this point, Council continued with Item 18.

11. ORDINANCE NO. 2007-12 WATER & SEWER BONDS: (Second Reading/Public Hearing) An ordinance restating the existing water and sewer bond Ordinance No. 2002-45 to eliminate deletion and addition references that are now effective in order to provide a consolidated document. (First Reading - 2/27/07)

The City Attorney read Ordinance No. 2007-12 by title. There were no comments during the public hearing.

Moved by Contreras/Goode for approval of Ordinance No. 2007-12. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby and Goode

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for design/build of the City Hall parking garage, Project No. 04105, Certified General Contractors, Inc., Melbourne, FL - \$5,652,126.29; an appropriation from General Fund - Legal Restrictions in the amount of \$993,141; an appropriation from W & S Prior Year Surplus in the amount of \$938,442; an appropriation from Downtown Melbourne Public Parking Surcharge Fee in the amount of \$325,530; and an appropriation from Prior Year Surplus – General Fund in the amount of \$37,652 to establish this project budget.

City Engineer Jenni Lamb reviewed the agenda report. She clarified that some of the agenda material indicates four stories and other material indicates five levels. With regard to parking structures, the term is levels, and this contract is for ground level parking with four elevated levels. The preliminary design estimates a total of 429 parking spaces. Two hundred and twenty five spaces will be allocated for City Hall purposes;

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

therefore, 204 spaces may be utilized as public parking for the Downtown Melbourne area.

Mayor Goode pointed out that The Lofts project that was just denied (Item 10) would have provided additional money for public parking. Mrs. Palmer called a Point of Order and noted that the Mayor called off further discussion on that item. Mrs. Corby also called a point of order and stated that the Mayor did not call for disclosures under Item 10 and she had disclosures to make.

Mrs. Meehan asked if this item can be approved without the money the City was going to receive from The Lofts project. Mr. Schluckebier stated that there is absolutely no funding from The Lofts project in the parking garage item precisely for that reason. It would have made a definite contract award contingent on financing that is not in our hands and that is not how the City does business. This item includes appropriated, available funds.

Moved by Meehan/Palmer for approval as recommended.

The City Manager pointed out that the Downtown Community Redevelopment Agency is not taking the debt on this item; the City is taking the debt. However, implicit in this item is the understanding that the CRA will be paying toward the cost/repayment of the debt for the parking garage.

Mrs. Corby referenced the \$938,442 appropriation from Water and Sewer Fund prior year surplus. She asked if this is bond money. Mrs. Lamb and Mr. Schluckebier replied no.

The question was called. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby and Goode

Motion carried unanimously.

13. COUNCIL ACTION RE: Approval of emergency repair of a failed 24-inch sewer main located on the south side of Country Club Road at Florida Tech, Project No. 30707, Derrico Construction, Melbourne, FL - \$336,240; purchase of materials, FEI-Melbourne Waterworks, Melbourne, FL - \$35,554; and appropriation of \$371,794 from Water & Sewer Prior Year Surplus to provide additional funding for this repair.

Utilities Engineer Michelle Shultz provided an overview for Council.

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

Moved by Contreras/Meehan to convene as the Babcock Street Community Redevelopment Agency for the next item. Motion carried unanimously.

14. COUNCIL ACTION RE: Supplement No. 320 to the Continuing Consultant's Contract to provide professional consulting services for the design, permitting, and construction

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

administration for the Babcock Street Widening, Phase II, from Laurie Street to U.S. Highway 1, Project No. 65005, Frazier Engineering, Inc., Melbourne, FL-\$59,700.

Mrs. Lamb briefed Council. This item also requires City Council approval; therefore, it has been included on the consent agenda.

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

Moved by Corby/Thomas to reconvene as the City Council. Motion carried unanimously.  
Moved by Contreras/Goode to convene as the Olde Eau Gallie Riverfront Community Redevelopment Agency for the next item. Motion carried unanimously.

15. COUNCIL ACTION RE: Contract award to provide landscaping and irrigation to the Eau Gallie Square, Project No. 10705, The Watauga Company, Titusville, FL - \$38,102.68.

Mrs. Lamb reviewed the agenda report. This item also requires City Council approval; therefore, it has been included on the consent agenda.

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

Moved by Contreras/Corby to reconvene as the City Council for the remaining agenda items. Motion carried unanimously.

16. CONSENT AGENDA:

(Council received a memorandum from the City Manager regarding Resolution No. 2027, Item "l." It will not be possible to provide an Attorney's Certificate of Title, which is a requirement of the grant application; therefore, the City will not be able to meet the March 30 grant application deadline. Staff is requesting that the item be withdrawn.)

Mayor Goode said that Item "l" has been withdrawn. Staff has provided additional information on Item "e"; therefore, it has been removed from the consent agenda. Additionally, Mrs. Corby has asked for Item "i" to be removed from the consent agenda.

Moved by Corby/Palmer for approval of the consent agenda, with the exception of Items "e", "i" and "l". Motion carried unanimously.

- a. Supplement No. 320 to the Continuing Consultant's Contract to provide professional consulting services for the design, permitting, and construction administration for the Babcock Street Widening, Phase II, from Laurie Street to U.S. Highway 1, Project No. 65005, Frazier Engineering, Inc., Melbourne, FL - \$59,700.
- b. Supplement No. 318 to the Continuing Consultant's Contract to provide professional consulting services for the design, permitting, and construction administration for a new administrative building at the Grant Street Wastewater

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Treatment Plant, Project No. 31407, Frazier Engineering, Inc., Melbourne, FL - \$44,275.

- c. Contract award to provide landscaping and irrigation to the Eau Gallie Square, Project No. 10705, The Watauga Company, Titusville, FL - \$38,102.68.
- d. Supplement No. 319 to the Continuing Consultant's Contract to perform a limited asbestos and lead-based paint survey and provide bidding and construction management services for the demolition of the North Water Treatment Plant Facility, Project No. 35105, Frazier Engineering, Inc., Melbourne, FL - \$19,000.

See Item 17 for action on "e."

- e. Approval of a 48-month lease agreement for 51 Police vehicles, Mears Motor Leasing, Orlando, FL - \$26,554.80/month, total cost of \$1,274,630.40; and purchase of 51 vehicles, Cindy Chevrolet, Wildwood, FL - \$30,764; Duval Ford, Jacksonville, FL - \$49,914; and Garber Chevrolet, Green Cove Springs, FL - \$1,101,343.
- f. Purchase of 36 Watch Guard DV1-OHCU overhead digital in-car video console units, delivered and installed at \$5,245/each and one DV1-MRU modular unit, delivered and installed at \$5,600, Watch Guard Video, Plano, TX - \$194,420.
- g. Purchase of four vehicles and equipment, Pierce Manufacturing, Appleton, WI - \$254,619; Thompson Pump & Manufacturing, Chesapeake, VA - \$66,000; and Maudlin International Trucks, Orlando, FL - \$109,393.25.
- h. Approval of blanket purchase orders for tire purchases, Gatto's Tire & Auto Service, Melbourne, FL - \$86,000; Boulevard Tire Center, Cocoa, FL - \$25,000; and Glenn's Tire, Melbourne, FL - \$3,500.

See Item 17 for action on "i."

- i. Annual contract award for wrecker services, Eau Gallie Towing & Recovery, Inc., Melbourne, FL - \$25,000.
- j. Disaster recovery service for critical MUNIS application software, Tyler Technologies, Inc., Falmouth, ME - \$21,463.07.
- k. Approval of a donation of \$2,500 from the Police Department Law Enforcement Trust Fund to Palm Bay High School for the Academy of Law & Public Safety Program.

Note: Item "l" was withdrawn.

- l. Resolution No. 2027: A resolution authorizing the City Manager to submit a grant application to the Florida Inland Navigation District for grant funding through the

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

2007-2008 Waterways Assistance Program in the amount of \$100,000 with the required match of \$100,000 to be provided by the Marine Resources Council for shoreline stabilization on the U.S. Highway 1 scenic corridor; and authorization for the City Manager to execute any documents related to the grant.

- m. Resolution No. 2028: A resolution authorizing City staff to proceed with three mail ballot annexation referenda in the Aurora Road enclave area.

17. ITEMS REMOVED FROM THE CONSENT AGENDA

- e. Approval of a 48-month lease agreement for 51 Police vehicles, Mears Motor Leasing, Orlando, FL - \$26,554.80/month, total cost of \$1,274,630.40; and purchase of 51 vehicles, Cindy Chevrolet, Wildwood, FL - \$30,764; Duval Ford, Jacksonville, FL - \$49,914; and Garber Chevrolet, Green Cove Springs, FL - \$1,101,343.

**Note: The total number of vehicles and various costs will change based on Council's action below (to substitute Impalas for Tahoes).**

The City Manager referenced the memorandum and revised lease purchase agreement distributed to Council. He pointed out that the changes are favorable for the City.

Director of Finance Michele Ennis explained that the basic terms of the lease agreement have not changed. The City's bond counsel reviewed the agreement and clarified details to protect the City's interest. Mears Motor Leasing agrees with the changes.

Council Member John Thomas referenced the lease vehicle list (Page 191 of the package) and asked the use of the five Tahoes.

Police Chief Don Carey replied that they are executive and canine vehicles. Deputy City Manager Amy Elliott clarified that the five vehicles are for Lieutenants who are Watch Commanders and the Lieutenant in charge of special teams.

Mr. Thomas asked if there was a reason we needed sport utility vehicles for Lieutenants. Chief Carey replied that the vehicles accommodate a disaster kit along with a defibrillator. Mrs. Corby pointed out that defibrillators aren't large and the Lieutenants should be driving the same vehicles as the Officers. The City Manager asked the Chief if it would cause him heartburn if the Tahoes were changes to Impalas, and Chief Carey replied no.

Discussion continued. Mrs. Elliott confirmed for Mr. Thomas that the Tahoe listed for the K-9 unit is on a separate line item and not included in the line item for five Tahoes. Council agreed that the K-9 unit needed a Tahoe.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mr. Thomas said on the line item listing five Tahoes, he would like to replace four of them with Impalas (for the Lieutenants). The Tahoe that will be assigned to the special teams should remain in that line.

Moved by Thomas/Palmer to approve the modified lease agreement and convert four Tahoes to four Impalas on the line item that lists five Tahoes.

Mr. Thomas asked if this action would result in enough savings to buy an additional Impala. The City Manager replied that the savings could accommodate one additional Impala.

The maker/seconder agreed that the motion includes purchasing one additional Impala.

Mrs. Palmer asked if we are taking this action to fill up a certain budgetary amount. The City Manager said if a vehicle is added to the total, we will be filling the budgetary amount. Mr. Thomas pointed out that this action will quicken the take home car plan. It will get one more officer a car ahead of schedule. The City Manager confirmed that the take home car plan approved by Council provided for a phase in. It will take three purchase cycles over two and one-half years to completely phase in.

The question was called. Motion carried unanimously.

Note: The above action will result in the last two items on the lease vehicle list to be revised as follows: One Chevrolet Tahoe (to be used by the Lieutenant in charge of special teams) and 41 Chevrolet Impalas. The total number of leased vehicles is increased from 51 to 52.

- i. Annual contract award for wrecker services, Eau Gallie Towing & Recovery, Inc., Melbourne, FL - \$25,000.

Mrs. Corby said she removed this item from the consent agenda because Council received a request from Alfred Agarie, ARA 24/Seven to speak. (ARA was the other bidder on this item.)

Alfred Agarie, ARA 24/Seven Auto Repairs and Towing Services, stated that he believes this bid award was unfairly decided. He explained that after submitting his bid he received a faxed letter on January 9 at noon, which indicated that he needed to provide an equipment list by 3:00 p.m. that day. He said he phoned an employee in Purchasing to let her know that he needed more time; however, he was told that she went home sick. The following morning he arrived with an equipment list and he provided her with a card from Lees Towing, the company that would be providing subcontractor services.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mr. Agarie described the difficulties he encountered in trying to speak to employees about this bid. On January 30 he received a letter that he was disqualified.

Public Works/Utilities Director Robert Klapproth explained that two bids were submitted for this contract. Both were considered non-responsive. The bid documents required a list of the subcontractor or subcontractors that would be used to tow the larger vehicles. Neither bidder provided this list. The Purchasing Division contacted both. Eau Gallie Towing responded by providing the list, ARA 24/Seven did not. ARA filed a bid protest. Mr. Agarie was represented by an attorney at the bid protest. At the time of the protest, ARA still had not provided the required subcontractor list. The bid protest committee listened to Mr. Agarie's attorney; however, the members felt that ARA had been provided two opportunities to provide the information and had yet to provide it.

Mrs. Palmer asked about the difficulties Mr. Agarie encountered in trying to get employees to respond to his calls. Mr. Klapproth replied that the employees involved do not recall the story the same way Mr. Agarie does.

Mr. Klapproth concluded by saying that the City still has not received the subcontractor list. Mr. Agarie simply provided Purchasing with a business card from Lees Towing.

Moved by Corby/Thomas to approve item "i" as recommended by staff. Motion carried unanimously.

Recessed: 8:09 p.m.

Reconvened: 8:20 p.m.

Note: See Item 10 for a discussion that occurred at this point about the action taken on The Lofts.

18. COUNCIL DISCUSSION RE: Annual report to City Council from City Boards.

**a. Architectural Review Board**

Chairman Tim Loomer introduced Vice Chairman Randy Thron. He provided an overview of the board's meeting schedule and duties.

The Architectural Review Board considers exterior changes to buildings and new construction located in the three redevelopment areas. The members consider design elements such as architectural character, roofline, façade, exterior lighting and exterior details. They like to see use of common elements such as colors, materials, details and orientation toward the public right-of-way. Mr. Loomer discussed the importance of a strong roofline, building color, awnings and signage.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

He concluded by saying that the board would like the following changes: include front yard fences in the architectural guidelines; continue support of the use being tied to the building rendering; and coordinate final building approval with the building rendering.

He noted that occasionally a project is built that does not resemble what was presented to the board. At the end of the project before final approval is given, staff should review the plans approved by the Architectural Review Board to ensure they match the construction. If not, the item should be turned over to Code Enforcement.

Mrs. Meehan asked for an example of the request to “include front yard fences.” Mr. Loomer said that the members would like to see the entire package, including the fence detail. Up until now, fences have been excluded from their package and they would like to see how a particular fence relates to the site. It’s similar to the board reviewing site plans – although they don’t have a say on site plans, they do provide an overview of the building and layout.

Mr. Loomer confirmed for Mrs. Corby that the members would like for Council to communicate to staff to make these changes to the operation of the Architectural Review Board.

**b. Beautification and Environmental Advisory Committee**

Chairman Betty Moore introduced the members from the committee who were present. She reported on the following: Arbor Day, the “We Noticed” Award program; evaluation of future landscape plans; beautification of retention ponds; creation of an educational web page; support being provided to the Melbourne Riverwalk Committee and the Brevard County Bicycle and Pedestrian Trails Coordinator. The members are currently developing uniform landscape entrances to coincide with Melbourne’s 120<sup>th</sup> Anniversary. Locations will include North U. S. 1, South U. S. 1 and the Eau Gallie Causeway. Mrs. Moore concluded by saying the board will be working on creating an Earth Day celebration in 2008 and environmental education. She thanked the City Council for its support.

**c. Citizens’ Advisory Board**

Chairman Pat Simpson introduced members from the board who were present. She discussed the purpose of the board and stated that they have a very diverse group with a composition that represents the City very well. Ms. Simpson reported on the following accomplishments: Analysis of Impediments to Fair Housing Report, SHIP Annual Performance Report and Hurricane Housing Recovery Program Annual Performance Report. Conducted public hearing for non-profits and others requesting CDBG and HOME funding. Recommendation of projects to be funded through CDBG and HOME funding. Review of the Local Housing Assistance Plan and recommendations for housing assistance strategies. Recommendations for changes to the Tenant Based Rental Assistance Program.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Ms. Simpson concluded by saying that the board members would like for the community to be more informed about the activities of the Citizens' Advisory Board. They would like the public to know that they are here to address neighborhood issues and to bring citizens' concerns to the City Council.

19. ORDINANCE NO. 2007-13 (Z-2006-1097) AND ORDINANCE NO. 2007-14 (CU-2006-20/SP-2006-38) HARBOR GARDENS CONDOMINIUMS: (First Reading/Public Hearing) Ordinances providing for a zoning change from C-2 (General Commercial) to C-1 (Neighborhood Commercial) on 0.33± acres, repealing Ordinance No. 2004-65, and granting a conditional use with site plan approval to allow development of a multiple-family 60-unit residential condominium project with five floors and one level of parking at a density of 20.25 units per acre and a building height of 60 feet on a 2.963±-acre parcel, located on the east side of U.S. Highway 1, across from Sarno Road. (Owner - Harbor Gardens, LLC) (Applicant/Representative - Vaheed B. Teimouri, P.E.) (P&Z Board - 2/01/07)

In addition to correspondence included in the agenda package, Council received the following correspondence from citizens opposed to the request: Letter dated March 6 from Ralph and Dot Johnson, 980 Whitmire Drive; letter dated March 7 from Bobby Bechtel; e-mail dated March 9 from Lisa Nupp, 1155 Mueller Lane; e-mail dated March 12 from Cindy Hines; and e-mail dated March 12 from Eileen Edmiston, 832 Indian River Drive.

Attorney Gougelman read Ordinance Nos. 2007-13 and 2007-14 by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of the rezoning and voted six to one to recommend denial of the conditional use. The board did not object to the residential use; however, the conditional use is for residential use and additional building height.

A petition against the request for additional building height was submitted by surrounding property owners after the Planning and Zoning Board meeting. City Code does not provide for an official petition process requiring a 6/7 vote for conditional use requests. Therefore, acreages and percentages have not been calculated. Mrs. Dittmer referenced the memorandum distributed to Council, which provides an update on the petition. The City received additional signatures and, as of this date, the petition represents 16 properties and six condominium unit owners located within the 500-foot radius, while the remainder of the signers are all located outside the 500-foot radius.

City staff recommends approval of Ordinance No. 2007-13 and Ordinance No. 2007-14, based upon the findings contained in the Planning and Zoning Board memorandum and the conditions outlined in Ordinance No. 2007-14.

Council Member Contreras made a motion to postpone this item until the March 27 meeting.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mayor Goode said he appreciates the gesture; however, many people in the audience have been waiting for an opportunity to speak. The public hearing should be held and then perhaps action could be taken at the next meeting.

Mrs. Corby asked the reason for making a motion to postpone. Mr. Contreras replied that we have a Council Member who is absent. Mrs. Corby commented that City functions don't stop because a member is absent. Mr. Contreras said that his motion is out of due respect and deference to a Council Member and that is usually what is accorded.

Mr. Contreras withdrew his motion.

Mrs. Palmer referenced the Planning and Zoning Board's recommendation for denial and asked why staff is recommending approval. Mrs. Dittmer replied that staff does not typically change its recommendation once an initial recommendation is made to the Planning and Zoning Board. This item went to the board with a recommendation for approval.

The City Manager added that staff reviewed the application to ensure it was consistent with the standards, including the breezeway requirements. Staff is not for or against height – staff ensures consistency with the standards.

Mayor Goode called for disclosures.

Mrs. Meehan said she met with Mr. Spira and Mr. Teimouri to discuss the additional height, landscaping, deceleration lane, etc. She received telephone messages from the following people asking her to vote no: Caroline Humphreys, Mrs. McLaughlin and Frank Craig. She received a request from Bob Reinecker to meet. Although they never met, she spoke to him and he indicated that he supports the project. She conducted a site visit on the property; however, there was not much to see because of the density of the trees.

Mrs. Palmer said she received messages from the following opposed to the request: Ms. Humphreys, Mrs. McLaughlin and two unidentified callers.

Mrs. Corby said she received a message from Caroline Humphreys indicating she is not in favor. Two unidentified callers opposed to the request left messages. And, she received a phone message from Dan Rocque indicating that he is neutral about the project.

Mr. Thomas said he received a call from Mora McGill who is opposed. Additionally, two unidentified callers opposed left messages.

Mr. Contreras stated that he declined a meeting with Jack Spira. Additionally, he received similar phone messages from people opposed to the project.

Mayor Goode advised that he typically does not speak to people prior to the first meeting on an issue.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mayor Goode asked for the people in the audience opposed to the project to raise their hands. Approximately 28 – 32 people raised their hands and indicated that they are opposed to the height (not to the condominium development). Additionally, approximately 16 – 20 people raised their hands in favor of the project.

Mayor Goode opened the public hearing.

Jack Spira, attorney representing Harbor Gardens, LLC, asked that staff's report and comments be incorporated into the record. He discussed the site along with the surrounding zoning and uses. Additionally, he narrated a slide presentation on the existing site, site layout and elevations. Mr. Spira pointed out that they could build smaller units within the 40' height; however, they would not be able to accomplish the architectural design.

Mr. Spira explained that much of the opposition is from the residential area east of the site across Elbow Creek. He informed Council that he has petitions from the Waterline Marina and two property owners immediately to the south of the project in favor of the project. Also, Eau Gallie Harbor Club is in favor. He stressed that most of the opposition is from behind (across the creek).

Mr. Spira displayed a slide showing the existing trees and what the vision would be like from across Elbow Creek. The trees will hide everything except for the top couple of floors. He stated that they have no intention of removing the trees. Next, he displayed pictures from Whitmire Drive (residential area located across Elbow Creek) facing the subject property. He pointed out that only the people located directly on the water will be able to see the subject building from the rear of their property. Using Google Earth, Mr. Spira showed the distances from the shoreline of the property to the nearest property across Elbow Creek. The distance is 298' from shoreline to shoreline. The distance from the subject building to the nearest residence is 440'.

Continuing, Mr. Spira said if the project were built within the height, the units would be small and they would have low ceilings. They have to have something to attract buyers in the current market. The height will allow higher ceilings, architectural design and will be more attractive for the area. The development will remove a blighted area that has been vacant for many years and will increase the tax base. The deceleration lane will make traffic safer. Also, this project will enable a left turn signal to be installed, which will make the traffic situation safer for the residents of Eau Gallie Harbor Club.

Mr. Spira concluded by saying they have complied with the breezeway requirements; the building will be higher, but it will take less ground space; they will provide 1,000 additional square feet of landscaping; they have established a good working relationship with the residents of the Eau Gallie Harbor Club; they will clear up a blighted area; they will preserve the trees and landscaping on the site; and the developers are all local.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

He submitted three pages of a petition to City Council signed by folks at 793, 817 and 973 U. S. 1 in support of the request. Mr. Spira asked to reserve time following the public hearing for rebuttal.

In response to Mrs. Palmer, Mr. Spira said that the breezeway on this plan is in the form of larger side setbacks.

Mrs. Palmer asked why someone would buy a waterfront condominium with a water view that will be blocked by trees. Mr. Spira replied that they would purchase because the trees are attractive and the marina is located nearby.

Mr. Spira said he would agree with adding a condition of approval that the large oak trees would not be removed.

Mrs. Corby asked for additional information on how the traffic would flow from the condominium to U. S. 1. Mr. Spira said that the Eau Gallie Harbor Club residents would like ingress at the south end of the subject property. He stated that they will work with all parties to reach a solution. Additionally, he noted that the subject property is now commercial. By changing from commercial to residential, they will have a negative traffic impact.

Charles Hoffmann, 876 Whitmire Drive, asked Council to consider the impact of the structure from the water level, not the grade level. He asked that the height remain at 40'.

Janice Hilmer, 764 Thomas Barbour Drive, displayed a cartoon from the Florida Today relating to growth. She expressed opposition to the project and stated that it will add more traffic to U. S. 1.

Nancy Reynolds, 834 Hawthorne Drive, agreed with the previous speakers' comments.

Brian LaLonde, 818 Whitmire Drive, stated that the residents are concerned about the view above the trees. He pointed out that the development located next door is below the trees. He distributed a map of the property with an "X" placed by property owners who are okay with the change in zoning but opposed to a height over 40'. He noted that there are no structures in the area above 40'. He commented that people located west of U. S. 1 are also concerned about the height.

Mr. LaLonde stated that the conditional use should be based on compatibility with adjacent properties. He said that the development will likely have a real height of 70 – 80' to allow for roof gables, etc. He stated that this height is not compatible with adjacent properties and is not consistent with surrounding buildings. If approved, future development will likely point to Harbor Gardens as the benchmark.

Continuing, Mr. LaLonde noted that the capacity on U. S. 1 is 53,000, yet currently 55,000 cars travel this roadway. He asked where the residents will get traffic relief and concluded by saying that the residents support the project at the 40' level.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mrs. Corby asked Mr. LaLonde if he believes the tattoo parlor is an eyesore. Mr. LaLonde replied that the tattoo parlor has not gone away. The developer purchased property two parcels away and switched sites with the tattoo parlor. With regard to the vacant property, he said that it is an eyesore from U. S. 1.

Mrs. Palmer asked Mr. LaLonde if he believes the trees will provide a screen. Mr. LaLonde said they won't provide much of a screen; there is no tree that will grow beyond 40 – 50'.

Attorney Gougelman asked Mr. LaLonde how he knows that there are no structures in the area above 40' in height. Mr. LaLonde replied that it is in the minutes from the last Planning and Zoning Board meeting.

Tricia LaLonde, 818 Whitmire Drive, stated that there are many reasons why a building on this property should be no higher than 40'. A 60-plus-foot building would not be visually appealing; the building would tower above the tree line; trees cannot grow tall enough to buffer the building; it will affect the panoramic view of the sky; the sun sets precisely where the condominium is proposed to be built; and the building will shadow Elbow Creek and her property. The proposed height increase will destroy the balance in the area, be visually invasive and will not fit into the surroundings. She asked Council to deny the conditional use for the height request.

Margaret Humphreys, 720 Thomas Barbour Drive, agreed with previous speakers, and clarified that they are not objecting to the condominium – they are objecting to the height.

Dennis Porter, 757 Whitmire Drive, said that everyone who travels U. S. 1 will be affected by this building. There is a terrible traffic problem on U. S. 1 and this development will not improve that situation. Mr. Porter informed Council that at the Planning and Zoning Board meeting, Mr. Spira said the people in this condominium would have a great view. Now he is saying they intend to save the trees. Mr. Porter added that he has been told the trees are hollies and they can't be cut down. He concluded by saying that they don't want 80' buildings in the harbor city.

Linda Janse, 749 Everglade Drive, questioned why we have regulations in place if we are going to continually approve variances.

Ralph Johnson, 980 Whitmire Drive, agreed with the points made by the previous speakers.

William Walker, 725 Coral Drive, said that the building height in the area has been established at 40'. Council has affirmed this with other development in the area. He added that he sees no circumstances to justify going above that height.

Gary Karschnick, 905 North Harbor City Boulevard, said that he is the president of the Eau Gallie Harbor Club Condominium Association located north of this property. He

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

stated that he represents 25 residents and one business, Waterline Marina. They are the closest residents to this project.

Mr. Karschnick explained that the residents listened to a presentation by Mr. LaLonde and Mr. Hoffmann prior to the Planning and Zoning Board meeting. Based on their presentation, the residents signed the petition. After the Planning Board meeting, the residents heard the arguments for added height from Mr. Spira. After listening to both sides, Eau Gallie Harbor Club has decided to support the additional height.

Continuing, he said that the area next door is a dump and this project would improve the area. It should also increase property values. Mr. Karschnick presented a petition signed by 27 condominium owners, representing 16 of the 25 units, in support of the Harbor Gardens Condominium project. He concluded by saying that the residents believe the southern entrance/exit is necessary and will help take some traffic away from the Sarno Road entrance. They would prefer a condominium with breezeways and additional landscaping as a neighbor. And, he noted that under the law, there is no guarantee to a "view."

Lisa Nupp, 1155 Mueller Lane, discussed the problems she saw in Ft. Lauderdale with condominium development. She added that a 60' building is looming whether the nearest property is 300 or 400 feet away.

David Bryant, 817 North Harbor City Boulevard, said he owns property south of the subject property and he is in support of the Harbor Gardens requested height increase. He noted that he is an engineer in the State of Florida and a general contractor. As an engineer, he said he recognizes that the way height is established is ridiculous; that is why there are so many ugly buildings. He urged Council to approve the building as depicted on the rendering.

Mrs. Palmer pointed out that Mr. Bryant is the owner of the proposed Casa Rio condominium development (located south of this site), which has been approved at 40'. She asked Mr. Bryant if he will approach City Council for additional height if Harbor Gardens is approved. Mr. Bryant said he would love the additional height for all the reasons that have been listed; however, he is not going after the same market. He added that he will have eight-foot ceilings and the building won't have a nice roof line.

Mayor Goode asked Mrs. Dittmer to explain how much higher this building could be built if it were built at the 40' height. Mrs. Dittmer established that the height is defined by Code; it is not determined by staff. There are exceptions to the structure height, which allow for elevator shafts, appurtenances, non-livable space, covering for mechanical equipment and architectural features. These items could add an additional eight feet, not an additional 20'.

Discussion followed about the architectural style. Mrs. Dittmer said that this project has a pitched gabled roof. The pitched roof is the average distance between the peak and the bottom edge. A structure with a severely pitched roof could go as high as 10' over; however, again, it won't be an additional 20' over with the architectural details.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Attorney Gougelman asked Mrs. Dittmer, from a planner's perspective, if the area on Whitmire Drive could be considered adjacent to this project. Mrs. Dittmer replied yes, that it could be; however, staff did not view the subdivision to the east as being adjacent.

Mrs. Corby asked if the building would accommodate 54 units if it remained at the 40' height.

Vaheed Teimouri, engineer for the project, said that the number of units would be the same; however, the building would be different. It would have to be wider and boxier. Building a project like that doesn't make sense; it would not be feasible nor would it be profitable.

Mr. Thomas asked if the 40' building could accommodate the same roof line. Mr. Teimouri said that the entire building design would have to change, including the removal of a floor and change in floor plan, façade and architectural style.

Continuing, Mr. Teimouri said that the gable end adds five feet to the building. A hip roof would result in a 55' building measured by Code.

Mr. Contreras pointed out that Council provided the guidance to City staff that if a building goes up, there has to be an offset with green space. Yet, now we are coming full circle and discussing a "box" concept. He noted that it boils down to the question, "What do you want the building to look like?"

William Klingsmith, partner in the development, said that he believes there is misinformation about their project. He displayed a notice that was stuffed into mailboxes in the area trying to get folks to the meeting by saying that the developer wants to build a 75 – 80' condominium towering over the harbor. Petition signatures were obtained with this type of misinformation.

Mr. Klingsmith pointed out that the Code allows for the conditional use process. In order to go higher, a development must provide breezeway. This development will provide for a 36% breezeway; the Code requires 35%. He reported that he followed the people who were gathering signatures on the petition. When he explained to business owners about the misinformation, the green space, etc., many felt that they were duped into signing the petition. Mr. Klingsmith read and presented a letter dated March 13 from Robert and Cathy Ripoll (793 North Harbor City Boulevard). The Ripolls indicate in the letter that they are extremely concerned over the tactics used to obtain signatures on the petition of opposition. They believe a deceptive campaign was waged by the area residents and, therefore, change their vote to support the development.

Mayor Goode asked what the highest point would be if the building were built at 60'. He added that people are speaking against a building height estimated to be 70 – 80'.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mr. Klinglesmith replied that by Code definition, the building would be 60'; however, the highest point would be approximately 70'. He added that there is also a possibility of submerging the parking completely, which would account for another five feet.

Discussion followed regarding a gabled roof, hip roof and submerged parking. Mr. Klinglesmith said that a hip roof would gain five feet and submerged parking would gain five feet. The building height, by Code, would be 50' and the highest point of the building would be about 57'.

Discussion followed regarding submerged parking and whether it could be designed to prevent flooding in a heavy storm. Mr. Teimouri replied that they would design to hurricane standards and the project would be able to handle the flooding from a major storm event over a 24-hour period.

Mrs. Palmer said that she would be comfortable if the applicant lowered the request by 10'.

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

Discussion continued on the Code height versus the actual height. Mr. Spira confirmed that they would agree to amend their petition by reducing the height request from 60' to 50'. The application would be for 50', which would allow for the top of the architectural features to be 57'.

Mayor Goode noted that the public hearing has been closed. He asked Mr. Contreras about his motion to postpone. Mr. Contreras said he would hope that anyone on Council would show respect to a member who is not present.

Attorney Gougelman reminded Council that in the last session of the Legislature a new law was adopted, which requires the reasons for the basis of denial to be given.

Mr. Contreras said he would like to allow Mr. LaRusso an opportunity to weigh in. Attorney Gougelman said if this item is postponed, he would ensure that Mr. LaRusso reviews the record.

Mr. Thomas said he agrees that Mr. LaRusso should be part of this discussion; therefore, he would support postponing the item. Mayor Goode agreed. He pointed out that the applicant has committed to changes and he would like to talk to some people in the area to see if they are agreeable.

Attorney Gougelman said if this item is going to be postponed, Council needs to determine if the public hearing is closed or whether additional evidence and testimony may be presented.

Mr. Contreras said he believes citizens should be able to weigh in at the next hearing. He asked for confirmation from the applicant on the three changes to the request.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Attorney Spira said that they agree with the following conditions/revisions: a) the large trees in the back shall not be removed; b) the application will be reduced from 60' to 50'; and c) a third entrance will be provided at the southern end of the property.

Mr. Contreras made a motion to postpone. From the audience, Mr. LaLonde called a point of order. He stated that the conditional use is tied to the drawings and site plan, yet verbal changes are being made to the application. Following discussion, Attorney Gougelman said that staff will ensure that drawings and plans are revised or that written changes are attached.

Mrs. Corby said that she is sorry Mr. LaRusso is not here; however, the request is before Council this evening. If the item doesn't pass, the applicant can make modifications and readdress the request.

Mayor Goode informed Council that if Council turns down this request, the applicant will have a six-month waiting period before he could reapply. There is a possibility that Council could waive the six-month waiting period. Mr. Contreras said he has no problem with a motion to deny the 60' height request; however, he would like to ensure that in two weeks the application (for a lesser height) could be considered. In the interim the applicant could adjust drawings and renderings.

Mrs. Palmer recommended that Council vote on the ordinance that is in the package. The six-month waiting period can be waived. She added that it seems irregular to change or postpone rather than voting the item up or down.

Mr. Spira asked Council to consider that a new application would require the applicant to go through the Planning and Zoning Board process. That is not reasonable. They would prefer two or four weeks to adjust the proposal.

Discussion continued.

Moved by Palmer/Corby to approve Ordinance No. 2007-13. Motion carried unanimously.

Moved by Palmer/Corby to follow the advice of the Planning and Zoning Board and deny Ordinance No. 2007-14 because of incompatibility with the surrounding area.

Mrs. Palmer said she agrees with the speakers that the project has to be visualized from the waterline. The area around Elbow Creek is an historical area; placing a 60 foot building on the bluff is out of proportion with everything else in the area; and it is not compatible. If this building goes up, others will follow. She concluded by saying that she believes they can apply for a beautiful project with a 40-foot height limit.

Mrs. Meehan said that incorporating a compact building design, as an alternative to land consumptive development, is a component of smart growth. Additionally, she does not believe that underground parking is an option in this location.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

The question was called. The roll call vote was:

Aye: Thomas, Palmer, Corby and Goode

Nay: Contreras and Meehan

Motion carried.

Moved by Goode/Corby to reconsider and hear the item in four weeks.

Mrs. Corby said she does not believe it would be fair for the applicant to have to go through the filing process.

Mayor Goode said that until he can talk to the people again, he does not know how he will vote.

Mrs. Corby said in lieu of what occurred the applicant will return with another proposal and she wants to ensure that we can waive the process and the fees. Mr. Schluckebier said he does not think there has been any action that directs the applicant to change the application.

Mayor Goode said that the applicant accepted three conditions and he is assuming they will return in four weeks with a new deal. In the meantime, he wants to talk to the people on Whitmire Drive to see if this proposal is suitable.

Mr. Thomas noted that this item is quasi-judicial and as such Council can't go out and check the pulse of the neighborhood. Attorney Gougelman said that Council may; however, there would have to be disclosure of who a member talked to and anything material learned during the discussions.

The question was called. Motion carried unanimously.

Moved by Corby/Goode to postpone Items 20, 21 and 22 until the March 27 meeting. Motion carried unanimously.

20. ORDINANCE NO. 2007-15 (FOC-2006-01): (Public Hearing) An ordinance amending Section 10-101, City Code, to provide for inclusion of the Community Policing Program in the Downtown Melbourne Redevelopment Plan. (P&Z Board - 3/01/07)
21. COUNCIL ACTION RE: Approval of a lease agreement with Brevard County for vacant property behind the Henegar Center for the purpose of creating additional public parking.
22. COUNCIL DISCUSSION RE: C-3 zoning issues. (Requested by Mayor Goode)
23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

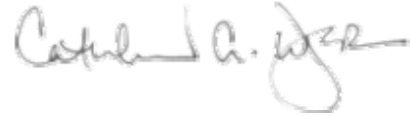
CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 13, 2007

Mrs. Corby asked staff to return with a follow-up report on the Strategic Planning Session conducted by City Council. Mr. Schluckebier said that staff will return with comments.

24. ADJOURNMENT

Moved by Corby/Thomas to adjourn. Motion carried unanimously.

The meeting adjourned at 11:02 p.m.



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City Clerk – 3/22/2007

Approved by Council: March 27, 2007 with revisions as noted to Item 10