

# The City of Melbourne



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## City Council Meeting - March 27, 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 K. L. Frink, St. James Missionary Baptist Church, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Mark LaRusso	Vice Mayor, District 2
	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: Richard Contreras Council Member, District 1 (out of town)

### 4. Proclamations and Presentations

Mayor Goode presented that following proclamations:

“Water Conservation Month,” April 2007; accepted by Jennifer Wilster, City of Melbourne Environmental Community Outreach Manager.

“National Volunteer Month,” April 2007; accepted by Willa Cox, President, and members of the Melbourne Woman’s Club.

Additionally, the Mayor wished Mrs. Pat Poole happy birthday and happy anniversary.

### 5. Approval of Minutes – Regular Meeting – March 13, 2007

City Clerk Cathy Wysor reported that Council Member Joanne Corby requested the following revisions (noted by double underline) to Item 10, The Lofts:

Page 5, first paragraph revised to read:

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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 disclosures to make under this agenda item. Attorney Gougelman recommended that Mrs. Corby supplement the record at the next meeting with her disclosure.)

Page 7, sixth paragraph revised to read:

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.

Additionally, Mrs. Corby requested the following revision (noted by double underline) to Item 12, City Hall Parking Garage:

Page 10, first paragraph revised to read:

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.

Moved by Corby/Thomas for approval of the March 13, 2007 minutes with the noted revisions. Motion carried unanimously.

6. City Manager’s Report

City Manager Jack Schluckebier elaborated on the property tax reform issue. There are two reports in the written material that describe the issue. Staff feels it is an elusive topic because the Legislature won’t be taking final action for five or six weeks. The Florida League of Cities is encouraging cities to work with their legislative delegation members. Unfortunately, the date of Legislative Action Day this year conflicts with the March 27 Council meeting. In discussions with the Mayor, it is our expectation that a group from Melbourne will travel to Tallahassee during the legislative session. There have been improvements suggested in some of the proposals, and Council Members wishing additional information should contact the City Manager.

Council Member John Thomas referenced the feasibility report on the Crane Park swimming pool. He asked if the location of the pool would make it eligible for CDBG funding if the City decided to proceed with the \$200,000 spray park system. The City Manager replied that he does not believe it is eligible; however, staff will secure additional information.

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Mrs. Corby referenced the Strategic Planning Session follow-up report:

Under the heading of “traffic flow”, the City Manager confirmed that 65% of transportation impact fees has been earmarked for improvements to county and state roads in the City and 35% has been earmarked for City roads.

Under the heading “evaluate current performance evaluation system”, Mrs. Corby said that she would like all employees polled about this subject. Additionally, she suggested that an employee satisfaction survey be included. She pointed out that, although the employee satisfaction survey was not one of the highest priorities, there is no reason to not incorporate both.

Moved by Corby/Thomas to direct City staff to poll all City employees about the effectiveness of the performance evaluation system and to conduct an employee satisfaction survey.

Mr. Schluckebier said that if it is Council’s desire to include a satisfaction survey, staff will respond to that direction.

Vice Mayor Mark LaRusso asked whether the survey would be conducted by an outside firm or done internally, and whether we have earmarked funds in our budget.

The City Manager replied that the satisfaction survey was not on our radar; it was not a tier one strategic planning issue. He added that staff will provide additional information about the method, cost, etc. In response to the Vice Mayor, the City Manager said that the cost should be less than \$5,000.

The question was called. Motion carried unanimously.

Vice Mayor Mark LaRusso referenced the City Manager’s Activity Report and asked if the change order for the Eau Gallie Pier Improvements project relates to the existing pylons. Mr. Schluckebier said he will provide an answer.

Additionally, Mr. LaRusso referenced the various animal permits issued for chickens. He asked if there is a threshold regarding the number of chickens allowed at a residence. The City Manager said he will provide an answer.

Mrs. Corby referenced the Fire Chief’s report on the use of private structures for fire training purposes. She said she would like to ask the Fire Chief questions about this issue at the next meeting.

7. Public Comments

None.

8. PRESENTATION TO COUNCIL: Update from Ron Sellers, Chief Executive Officer,

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Brevard Family of Housing Authorities.

Mayor Goode informed Council that Mr. Sellers will provide the Melbourne Housing Authority annual board report and then provide a status report on Ramshur Towers.

Ron Sellers stated that the mission of the Melbourne Housing Authority is to provide decent, safe, sanitary and affordable housing for persons of extremely low-income through moderate-income levels. Examples of strategies to meet housing needs include: employ effective maintenance and management policies to minimize the number of public housing units off-line; reduce turnover time for vacated public housing units; reduce time to renovate public housing units; seek replacement of units lost through mixed finance development and ensure access to affordable housing regardless of unit size required.

There are 209 people on the public housing waiting list. The breakdown is 139 extremely low-income, 62 very low-income and eight low-income. Mr. Sellers elaborated on the financial resources, planned sources and uses, and the resident management objectives. He noted that Ambling Development Partners has been selected as the new developer. Ambling is pursuing tax credits in the current cycle for the initial phase of new development, which consists of 72 units. In the meantime, the Housing Authority will continue to negotiate a lease extension with the property owner of Ramshur Towers, which is due to expire in November. At the same time, they are seeking alternative housing in case they have to relocate residents from Ramshur Towers. Additionally, he noted that they recently paid the 2006 property taxes on the property.

Mr. LaRusso said that the agenda materials indicate property owner John Rumpel is dissatisfied with the Melbourne Housing Authority as an organization. Mr. Rumpel has stated that the Authority failed to meet its obligations, including timely payment of real property taxes and vendor payments. Mr. LaRusso acknowledged that Mr. Sellers addressed payment of the property taxes. He asked for a status report on payment to vendors.

Mr. Sellers said they have entered into repayment agreements with all but one vendor; they will continue pursuing an agreement with that vendor. With allocation of the 2007 capital funds from HUD, they expect to catch up with the outstanding payables.

In response to the Vice Mayor, Mr. Sellers agreed to submit a follow-up report to the City Manager's Office.

Council Member Cheryl Palmer asked if there is a timeline for completion of projects. Mr. Sellers replied that Ambling will learn in August or September if it was successful in obtaining tax credits. If successful, construction could possibly start the first of the year.

John Rumpel, Winter Park, Florida, owner of Ramshur Towers, informed Council that it took six months for the Housing Authority to take care of the property tax bill. He noted that the Authority has asked him for a lease extension, which he is taking under consideration. The lease is under an escrow account held by a title company. He stressed that it is difficult to enter into a lease agreement with a tenant that is slow at paying bills. Mr. Rumpel said one

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vendor told him that if he didn't enter into the repayment agreement, he wouldn't be paid at all.

Mr. Rumpel concluded by saying the Housing Authority has shown bad faith and a poor payment history. He provided Council with a contact telephone number and added that he is still entertaining ideas on how to solve the problem; he doesn't want to be the one who puts the Ramshur Towers' residents out on the street.

UNFINISHED BUSINESS

9. ORDINANCE NO. 2007-05, A&V NO. 296: (First Reading/Public Hearing) An ordinance vacating a 40-foot wide, improved, platted right-of-way known as Riverview Drive, adjacent to Lots 28, 29, and 30 of Block 1. (Applicant - Riverwalk Sands Yacht Club Development, LLC) (Postponed - 2/27/07)

Note: In addition to the material in the agenda package, Council received the following correspondence: E-mail dated March 23 from Liz Donaldson, 2481 Riverview Drive, opposed. E-mail dated March 24 from Andrew Walsh, 1415 Lookout Terrace, opposed. E-mail dated March 26 from Joanne Wisler, 2616 Riverview Drive, opposed. E-mail dated March 26 from Julia and Paul Brooks, 2825 South Riverview Drive, opposed. Letter dated March 26 from Yvonne Morales, 2600 Riverview Drive, in support of the request with conditions. E-mail dated March 27 from Mitty Fontanez, 2510 Riverview Drive, in favor of the request with conditions.

City Attorney Paul Gougelman read Ordinance No. 2007-05 by title.

City Engineer Jenni Lamb briefed Council. The applicant, Riverwalk Sands Yacht Club Development, LLC, wishes to close Riverview Drive between Roosevelt Avenue and Hoag Avenue to develop the site for condominiums. Riverwalk has proposed: constructing a replacement road parallel to the existing Riverview Drive, paving Hoag Avenue from Riverview Drive to U. S. 1, terminating Roosevelt in a "T" turnaround, and providing traffic control at the Riverview Drive/Melwood Drive/Roosevelt Avenue intersection.

All utilities and City departments were notified of the request. There were no objections from outside utilities as long as a 40-foot wide easement is retained or the utilities are relocated.

City staff objected to this request because it will eliminate a scenic roadway and pedestrians will no longer be able to walk along the Indian River. Although engineering issues have been addressed by the applicant, staff supports protecting an improved, historic right-of-way. Therefore, the recommendation is for denial.

Mrs. Lamb listed the conditions that the applicant has agreed to. Additionally, she noted that the applicant also agreed to provide a scenic walkway along the river.

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Attorney Gougelman asked Council to keep the two standards for approval or denial of a right-of-way in mind. The first is consideration of whether any utilities in the right-of-way have been taken care of if the property is vacated. The second is a determination of whether there is a continued need for the public right-of-way. The second standard can be addressed through public testimony.

Mayor Goode said that staff recommended denial; therefore, he does not plan to vote in favor of vacating the property.

Mayor and Council made the following disclosures:

Mrs. Meehan said that on January 12, 2007 she met with Henry Fleches. He indicated that he wanted to close the road; she advised him to meet with the surrounding neighbors. On February 26 she spoke with Paul and Julia Brooks who offered no opinion until they have an opportunity to meet the developers. On February 26 she spoke with Gail Bray, River Oaks Condominium, who is opposed to the closure; she uses Riverview Drive to access the traffic light at University Boulevard. On March 3 Linda Pyne-Hufnagel, 2471 Riverview Drive, left her a message asking if she would be interested in moving the “red brick” house currently located on the property to another location; the developer has agreed to donate the house; and she stated there was an estimate to move the house via a barge to another location. Mrs. Meehan said she returned the call and advised Ms. Hufnagel that she was not interested in moving the house and that whatever estimate was obtained, it should be doubled.

Continuing, Mrs. Meehan said on March 5 she received a call from Mitty Fontanez who is in favor of the closure as long as there is public access to the river and the roadway is moved to the west side. On March 12 she received a call from Rena Foley on Melwood Drive who is opposed to the closure. On March 14 she received a call from Linda Pyne-Hufnagel who is opposed to the closure. On March 22 she spoke with Rose Baker, River Oaks Condominium, Roosevelt Avenue, who is opposed to the closure; she has a petition containing about 70 signatures; and she stated that the residents of the River Oaks Condominium use Riverview Drive to access the traffic light at University Boulevard. On March 22 she spoke with Paul and Julia Brooks who decided they are opposed.

On March 23 Ethel Carillet, Riverview Drive, left a message that she is opposed. On March 24 she met with Mitty Fontanez and Yvonne Morales at her house; they indicated that they attended a meeting with the developer and are in favor of closing Riverview Drive as long as there will be public access to the river and the road is moved to the west side of the project; and they have 30 plus signatures on a petition in support. On March 26 she received a phone call from Reverend Ron Fields, Christian Life Worship Center, Hoag Avenue, who is opposed to the closure; the closure will increase traffic on Hoag Avenue, which is a safety concern for the 50 – 60 children that attend church and church activities during the week.

Mr. LaRusso said that on March 23, 2007 he received a voice mail from Ethel Carillet who is opposed. On March 26 he received a voice mail from Ron Fields who is opposed.

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And, he noted that City Council received an e-mail dated February 23 with the February 27 agenda package from Art Owens, who is opposed to the request. Mr. Owens included photographs of the area with his correspondence.

Council Member John Thomas said that on March 21, 2007 he spoke with Rena Foley on the telephone who voiced her opposition to the proposed ordinance. On March 21 he spoke with Mitty Fontanez who is in favor of the ordinance; she said they have been trying to improve the neighborhood for 10 years but some neighbors want to keep the area blighted. On March 23 Ethel Carillet telephoned and said that she has lived on Riverview Drive for 12 years and is opposed to the closure. On March 26 he received a voice mail from Pastor Ron Fields who is opposed.

Mrs. Palmer disclosed that she spoke on the phone with Ms. Foley and with Ms. Brooks. They are both opposed to closing Riverview Drive.

Mrs. Corby said she received a telephone call from Reverend Ron Fields on March 26, 2007 expressing his opposition to the request.

Mayor Goode said that he met with (Mitty Fontanez and Yvonne Morales) at City Hall about another issue – not this project.

Mayor Goode opened the public hearing.

Henry Fleches, applicant, explained that they made this request for safety reasons because of the location of the curve and access to the river. He referenced the vacation of right-of-way known as Kragers Court by the City in the past.

Mr. Fleches distributed and discussed a handout containing: benefits to City and/or residents; memorandum from Traffic Engineer dated February 15, 2007; e-mail from Craig Silverman, City Public Works/Utilities Department, dated February 1, 2007; letter from Bright House Networks dated February 26, 2007; memorandum from FPL dated February 2, 2007; sketch of proposed site plan; survey of site; existing right-of-way aerial view; and proposed road aerial view.

Mr. Fleches elaborated on each benefit. He stated that from a life safety and utility perspective, they have addressed all issues. During discussions with the neighbors, they discussed their intent to provide a walkway east of the current road. They have agreed to provide this in exchange for relocation of the right-of-way.

Mr. Fleches said that in an effort to address the neighbors' concerns, they scheduled three meetings. Until about two weeks ago they felt that they had support from the neighborhood. The neighbors brought up the issue of the road being an historic road. However, they have checked with the state, City of Melbourne and county and found that Riverview Drive has not been designated as an historic road. He stressed that the view of the river is for the neighborhood and it is their intention to create an unobstructed view.

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Mr. Fleches displayed several photographs and a site layout during his presentation. He reported that the residents requested, and they have agreed to provide, a walkway/bikepath. This would be accomplished with a perpetual restrictive covenant or an easement.

Mr. Fleches informed Council that concerns have been raised that were not raised during the neighborhood meetings. He noted that the residents from the River Oaks Condominium Association are concerned that traffic will be dumped in front of their building. That is not their intent; the road they are proposing will not place traffic in front of the condominium. The canal on the property has been represented by some to be a free flowing canal; however, it is not. It is very dry and is not being used for its original, intended purpose. The canal has been severed to the north and south.

Mr. Fleches said that their agreement to provide a perpetual walkway was not something he and the Engineering Department felt was part of the abandon and vacate request. They made an agreement with the neighbors and felt that the appropriate forum to offer that agreement was at this meeting. Therefore, the walkway was not included with the application. Unfortunately, that created a trust issue with the neighbors.

Reverend Ronnie Fields, Pastor, Christian Fellowship Church, Hoag Avenue, stated that he is concerned that the closing of Riverview Drive would direct traffic down Hoag Avenue where his church is located. This will present a safety issue for the church and its parishioners. The church has activities that require the children to cross back and forth across the street.

Mrs. Meehan asked Reverend Fields if he had any objections to Hoag Avenue being paved, and Mr. Fields replied no.

William Baker, 1480 Roosevelt Avenue, said that he is the president of River Oaks Condominium Association, which is adjacent to the subject property. Mr. Baker agreed that development along the river is inevitable; however, it must be in sympathy with the character of the area. The developer knew what he was buying when he purchased this property and what he is proposing may be inappropriate for this site.

Riverview Drive is owned by the citizens of Melbourne who drive, cycle, walk and enjoy its ambience. Mr. Baker agreed that the curve in the road is dangerous; however, the proposal is to replace one short bend with two. Approval of this request would set a precedent. It will lead to homeowners with property on the river split by the road making the same request.

Mr. Baker concluded by asking Council to reject the request. He submitted a petition in opposition signed by 100% of the owners of River Oaks Condominium Association.

Linda Hopkins, 461 Mallard Lane (Melbourne beachside), stated that she is a cyclist and a member of a bicycling club. She expressed concern that the closing of Riverview Drive would affect bikers who use that route to avoid dangerous U. S. 1.

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Yvonne Morales, 2600 Riverview Drive, said she is located south of the proposed development. The concerns of the neighborhood about the proposed roadway are valid. Pedestrians and cyclists use the road. She said that she would be able to support this request if the developer is willing to provide a usable walkway within a certain distance from the development. She added that she did speak to most of the area businesses as well as a few “Tar Heel” residents and she submitted a petition in support of the request.

Note: The next 12 speakers (Julia Brooks through Steve Schnatz) used a Power Point presentation.

Julia Brooks, 2825 South Riverview Drive, said that her property abuts the section of Riverview Drive being discussed. She stated that she is opposed to the abandon and vacate request and submitted a petition in opposition signed by 95% of the residents of the neighborhood. One hundred percent of the residents who abut the property signed the petition.

Ms. Brooks referenced the Power Point presentation and showed the location of the Tar Heel neighborhood. She said that the area residents welcome and support development within the current Code allowance of R-3. She added that they are also for preserving the history of Melbourne and the quality of life in their eclectic neighborhood. She asked Council to preserve the scenic vista, scenic roadway and creek.

Billie Brown, 2900 Riverview Drive, informed Council that she is an abutting property owner to the south of the subject property. She added that she is also speaking for her neighbors to the west. They are against the closure of Riverview Drive. Riverview Drive is an historically significant roadway; it is part of the original highway system from Miami to Jacksonville.

Referring to the Power Point presentation, she showed old plats that refer to this roadway as “Dixie Highway.” Additionally, she noted that the creek acts as a natural filtration for stormwater runoff. Riverview Drive serves people in this neighborhood and neighboring communities. Almost 200 cars per day use the roadway. The road is used as a running trail, bike path, dog walk and scenic drive. It is the only corridor that connects the Lagoon House with Riverview Park.

Ms. Brown submitted several petitions from users of the roadway who are opposed to the closing, including the Florida Tech Crew Team and the Melbourne High School Rowing Team.

She concluded by saying that if this request is granted, a scenic asset benefiting all of Brevard will be lost.

Debbie Palmer, 2612 Riverview Drive, stated that she is against the closure of the road. She clarified that the Kragers Court abandon and vacate request referenced by the applicant (approved by City Council) is located west of Riverview Drive – not on the water.

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Mrs. Palmer explained that the applicant's application contained three reasons for the request. The first notes that this is an unimproved right-of-way. Mrs. Palmer stated that Riverview Drive is an improved right-of-way. The second point notes that approval of the request will provide for a better and safer plan. During two meetings with the neighbors, the developer stated that his attorneys had identified safety as a concern. The developer is worried about being sued if a homeowner is injured while crossing a public road to walk to the river. She pointed out that the developer would have no personal risk for something happening on a public road. As a comparison, she said that this road also runs through the middle of Riverview Park, which is a Brevard County park.

Continuing, she said that there has only been one accident in the past five years at the curve around the subject property. If safety is perceived as a concern, a stop sign should be placed; however, the residents do not believe it is a concern.

The third point on the application indicates that it would not be possible to develop the property to the east without vacating the road. She pointed out that the road has been at this location for 100 years and the property was purchased with the road running through it. There is no requirement for the eastern portion to have a concrete structure; however, the Planning & Economic Development Department has confirmed that accessory structures, including swimming pools, walk paths, recreation areas, patios, and decks are allowed on the eastern portion of the property.

Mrs. Palmer concluded by showing a picture of the "red brick" house on the property that was built in 1921 and is available for donation.

Rena Elder Foley, 2704 Melwood Drive, stated that she is opposed to the request. She referenced the creek that has been discussed and said it is currently low because this is our dry season.

Ms. Foley referred to the Power Point presentation that shows a wagon wheel intersection would be created if the roadway is moved to the new location as proposed. She referenced the letter in the agenda package from the School Board, which is also opposed to the request. Ms. Foley concluded by saying that safety will become an issue only if the request to abandon and vacate is granted.

Esther Ellison, 2807 Riverview Drive, said that there is another victim if this request is approved and that is the creek. The replacement roadway is proposed to be built on the creek. Currently, the banks are heavily vegetated and provide habitat for wildlife. The vegetation also acts as a sound barrier and a filtration system for the Indian River Lagoon. She informed Council the creek has historical significance. She displayed a 1920s photograph of "Tar Heel" that shows the "creek below Little Minnehaha Falls."

Mrs. Ellison assured Council that the creek is not cut off on the north side. It is bridged and piped and it serves as drainage for the entire neighborhood.

Paul Brooks, 2825 Riverview Drive, said that he is located contiguous to the north end of the right-of-way. He said that he gave careful consideration to this request, and he

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opposes it for a variety of reasons. Location is a prime factor in determining real estate value and the “Tar Heel” area enjoys its location near the Indian River Lagoon. Riverview Drive ties the neighborhood together. The residents in this area would like for the area to develop at its own pace. He encouraged Council to preserve the unique area. Mr. Brooks submitted a petition in opposition signed by folks who live outside the neighborhood.

Jerry Bennett, 1415 Roosevelt Avenue (and property owner at 1414 Hoag Avenue), said that the replacement road will directly affect his property on Hoag Avenue. He is opposed because he feels it will lower the value of his property.

John Robinetta, 1419 Roosevelt Avenue, said that he abuts the northwest corner of the subject property. He stated that he enjoys this old Florida neighborhood because it is quiet. The developer plans to remove the natural barrier between his property and the subject property. Building a road over the creek will ruin the habitat for animals and the game trail for animals going to the lagoon. He asked Council to reject the request and leave the scenic drive as it is.

Vic Szykeruk, 1421 Hoag Avenue, stated that he is opposed to the request. He commented that changing from the existing road to the “T” intersection configuration is not acceptable. He is worried that the proposed roadway will not be safe for his grandchildren.

Rose Baker, 1480 Roosevelt Avenue, encouraged Council to reject the request. She pointed out that the City should not give away public lands or roadways to allow a developer to increase the value of his property. Area residents use the road to walk, cycle and access the traffic signal at University Boulevard. She submitted a petition signed by members of the Melbourne Yacht Club opposed to the request.

Patty Wolf, 2934 Riverview Drive, said that she also represents Kevin Wolf and they are opposed to the request. Approval of the request would permanently close and deny use of Riverview Drive, an historic and scenic drive. They enjoy the tranquility and peace of the neighborhood; if disrupted, it can never be reclaimed. Approval of this request would benefit an elite few to the disadvantage of many.

Steve Schnatz, 2614 Melwood Drive, said that the residents have a full understanding that this has not been officially designated as an historic roadway; however, through testimony it is clear that the roadway is historically significant. He asked the City Council to consider a resolution to protect the improved right-of-way known as Riverview Drive.

Mr. Fleches referenced Attorney Gougelman’s comment that this is a two-pronged question. He stated that they will be taking care of relocating the utilities and they are requesting the continuation of Riverview Drive on the west side of the property. They are not looking to sever the roadway, just to relocate it. Mr. Fleches said he is afraid that by including the neighborhood they got into trouble. Their intent was not to seek the input of folks outside the 500-foot radius. And, he noted that out of the three meetings he held

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with the residents, only 15 people attended. They did incorporate the ideas of the people who attended.

Continuing, Mr. Fleches said they never represented that the new roadway would be straight and aligned with Riverview Drive to the north. Additionally, at no point did they say they wanted to place concrete structures on the east side of Riverview Drive. They wanted to provide a natural environment that would discourage transients. Mr. Fleches briefly discussed the creek and said it is certainly not the creek it was in the 1920s. And, he considers most of the vegetation to be overgrowth. Mr. Fleches asked Council to consider approval of this request from a safety standpoint.

Mr. Thomas pointed out that the applicant knew the configuration of the property when he purchased it. However, now he is suggesting that if Council doesn't approve this request, his project will be unsafe for children.

Mr. Fleches replied that is correct. He added that the market conditions at the time of purchase made it difficult to acquire land. They purchased the property and are now facing problems.

Mrs. Palmer said she does not believe that the applicant made a mistake in meeting with the neighbors. It is always best to obtain support for a project. Additionally, it was not a mistake to talk to people outside the 500-foot range because this property belongs to all the residents of the City of Melbourne.

Mayor Goode closed the public hearing.

Moved by Meehan/Palmer for denial of Ordinance No. 2007-05.

Mr. LaRusso said that the "Tar Heel" neighborhood is a multi-generational neighborhood and there are few left in the City. He noted that he plans to vote for denial.

Mrs. Meehan said that she respects the comments of everyone who has spoken and she noted that the majority of the neighbors who live directly in the area have been heard.

Mr. Thomas said that there are only a few places where we still have a truly scenic drive along the river. He added that he believes this project would pose a safety concern if it went through.

The question was called. The roll call vote was:

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

Motion carried unanimously.

Recessed: 8:24 p.m.  
Reconvened: 8:34 p.m.

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10. ORDINANCE NO. 2007-08 (CPA-2007-01) AND ORDINANCE NO. 2007-09 (Z-2007-1102) DONALD M. WALTRIP: (First Reading/Public Hearing) Ordinances providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial to Commercial/Industrial and a change in zoning from C-2 and C-C-2 (General Commercial) to M-1 (Light Industrial) on a 2.252±-acre parcel, located on the west side of U.S. Highway 1, north of University Boulevard and south of Powell Avenue. (Owners - Donald M. Waltrip/Jackson's Enterprises/Eddie S. Rickenbach/Mike Logsdon/Deroop Benimadhu) (Applicant/Representative - Donald M. Waltrip) (Postponed - 2/27/07)

Attorney Gougelman read both ordinances by title. Mayor Goode asked if Mr. Waltrip was in the audience; there was no answer. Mrs. Palmer disclosed that she drove by the property and noticed the number of sheds on the property.

Mayor Goode opened the public hearing.

JoAnn Davis, 2801 South Harbor City Boulevard, said that she is a member of the Melbourne Main Street Board of Directors. She stated that she is not in support of industrial zoning along South U. S. 1. By voting to include this area in the Community Redevelopment expansion area, Council recognized that this area is in need of help. This is the gateway to the City and the first impression of the City when driving in from the south. She added that the Planning and Zoning Board, the redevelopment agency advisory committee and staff recommended denial. Ms. Davis pointed out that this is not a grandfathering hardship; it is a misunderstanding of the zoning rules and regulations.

The Vice Mayor informed Ms. Davis that Council extended extra time to Mr. Waltrip because he didn't seem to understand the lease agreement and other issues.

Mayor Goode closed the public hearing.

Moved by Meehan/Thomas for denial of Ordinance No. 2007-08 based on the findings in the Planning and Zoning memorandum. The roll call vote was:

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

Motion carried unanimously.

Moved by Meehan/LaRusso to deny Ordinance No. 2007-09 based on the findings in the Planning and Zoning memorandum.

Attorney Gougelman said that when denying a land development permit, the reason for denial must be stated.

Mrs. Meehan said that denial is based on the request being the wrong zoning for the area. Industrial zoning is not compatible with C-3 zoning and it is inconsistent with the Comprehensive Plan.

The question was called. The roll call vote was:

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

Motion carried unanimously.

11. 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.) (Postponed - 3/13/07)

The City Attorney read Ordinance No. 2007-11 by title.

In addition to the correspondence in the agenda package, Council received the following: August 8, 2006 City Council minutes relating to the sale and purchase of the subject property to The Lofts (distributed at the request of Vice Mayor LaRusso). Melbourne Main Street letter signed by Laird Gann in support of the request (distributed at the request of Pat Poole). Petition submitted by Mrs. Poole on March 22, 2007 containing 82 signatures from folks opposed to The Lofts. Letter dated March 26, 2007 from Janet E. Bruce describing a petition in support of The Lofts being circulated by a Council Member through the Downtown Melbourne area.

Mayor and Council made the following disclosures:

Mayor Goode disclosed that last week he stopped by the Melbourne Main Street Office on another matter. Peter Flotz was also in the office and they briefly discussed The Lofts project.

Vice Mayor LaRusso said on March 22, 2007 Eva Nagymihaly left a message for him. He returned the call and they discussed height and setbacks. On March 27 she left another message; however, he did not return the call. And, today, Mrs. Pat Poole left a message but he did not have an opportunity to return the call.

Mrs. Meehan stated that Ron, Dennis and Ken Meehan own five buildings and one parking lot in historic Downtown Melbourne. She asked if she is legally able to vote on this item.

Attorney Gougelman said that only the Florida Commission on Ethics person can give a final determination on that. He added that he believes more likely than not that she could vote. There are ethics opinions involving quasi-judicial matters, such as site plans and conditional uses, where council members have owned property next to property subject to an application and no voting conflict has been found in those cases.

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Continuing with disclosures, Mrs. Meehan said on March 14, 2007 she met with Scott Maxwell, Parking Subcommittee chairman, at her office; he supports the project and indicated the importance of the parking garage. On March 14 she spoke with Jack Ryals, Melbourne Downtown Community Redevelopment Agency Advisory Committee, who believes this is a quality project that deserves attention in the Downtown area. On March 14 she spoke with Alan King, Chairman of the Planning and Zoning Board, who continues to support the project and believes that the requested height should be at 100%, not 50%. On March 14 she met with Peter Flotz at her office concerning a flyer that was distributed in the Downtown area. She said she advised Mr. Flotz to speak with Laird Gann, Melbourne Main Street Director.

On March 14 she met with Laird Gann, Melbourne Main Street, who asked her to attend the Board of Directors meeting on March 15; however, she had to decline because of a scheduling conflict. On March 17 she met with Laird Gann at her office and she gave him permission to put her name on the second page of the two-page official Downtown merchant fact sheet. On March 17 she met with Dano and Rita LoPresti at the Christmas Cottage office; they support the project. On March 20 she met with Chris Romandetti in his office; he supports the project.

Continuing, Mrs. Meehan said she met with 39 business owners along New Haven Avenue and Front Street and distributed the two-page official Main Street fact sheet. They all signed Laird Gann's Main Street petition. One business owner stated that the growth in Downtown Melbourne has been too slow for too long. Another business owner stated he will go out of business due to the lack of growth in Downtown Melbourne; he has been in business for the last five years.

Mrs. Meehan read the following list of business owners in Downtown Melbourne that she spoke with:

Giovanna Troisi	Oggi Salon & Spa	902 E. New Haven Avenue
David Smith	Kilwins	906 E. New Haven Avenue
Molly Conoway-Smith	Aveda Day Spa @ Oggi Salon	902 E. New Haven Avenue
Kevon Greenidge	321 Webguys	927 E. New Haven Ave, #314
Brian Long	Mirabella's	909 E. New Haven Avenue
Debbie Eddlemon	Isabella's	845 E. New Haven Avenue
Kim Cruickshank	Lord Ravenswood Hall	909 E. New Haven Avenue
Doris Huddleston	Nostalgia	908 E. New Haven Avenue
Pasquale Troisi	Napoli Imports	1905 E. Municipal Lane
Barry Remor	Network Support Company	904 E. New Haven Avenue
John Lamers	Airwire Net, Inc.	904 E. New Haven Avenue
Tony Diana	GMRS (Polling.Net, Inc.)	712/716 E. New Haven Avenue
Britt Powers	OTR	809/815 E. Palmetto Avenue
Catherine Hatton	Melbourne Dancewear	1905 Municipal Lane
Gerry Smith	Jessup's of Melbourne	912 E. New Haven Avenue
Karen Sycks	Cashin's Corner Collectibles	1910 Municipal Lane
Karen Harshaw	Jessup's of Melbourne	912 E. New Haven Avenue
Richard Goode	Harry Goode's Outdoor	1231 E. New Haven Avenue

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Thomas Kasica	Thomas J. Kasica, CPAPA	2210 Front Street, #301
Lesly Bazelais	Alfa Translation Services, Inc.	2210 S. Front Street, #304
Diane Hynes	Hynes Properties	636 E. Melbourne Avenue
Bella Forste	Bella's Restaurant	1904 Municipal Lane
Richard Schading	Schading Int'l Oriental Rugs	830 E. New Haven Avenue
G. Scott Maxwell	G. Scott Maxwell & Company	909 E. New Haven Ave, #203
Heather Tyner	The 905 Café	905 E. New Haven Avenue
Youtza Baez	Unique Treasures	828 E. New Haven Avenue
Donna K. Marr	Orchid Beach Clothing Co.	826 E. New Haven Avenue
Diana Jeffers	Le Bon Café	802 E. New Haven Avenue
Betsy Grammenos	DEI The Consignment Store	819 E. New Haven Avenue
Sandy Dulaney	Sendala's	909 E. New Haven Ave, #8
Steve Banta	Harbor Clippers Barber Shop	909 E. New Haven Ave, #10
Susan Tuttle	Mud Flats Pottery	826 E. New Haven Avenue
Laura Coffey	Railroad Emporium	924 E. New Haven Avenue
Kelly Johnson	Irish Shop	818 E. New Haven Avenue
Thomas Ardala	Village Scoop	2001 Vernon Place
S. Sam Nardone	Executive Cigar Shop	837 E. New Haven Avenue
Kiana Hynes	Cabana Boutique	1900 Municipal Lane
Ron Meehan	Meehans' Office Products	900 E. New Haven Avenue
Scott Lillycrop*	property owner	1908 Municipal Lane

\*Mrs. Meehan added that although Scott Lillycrop is on this list, she did not have him sign. His name was on Mr. Gann's petition.

(During the public hearing, Mrs. Meehan said she did speak to an employee at Finders Keepers, 809 East New Haven Avenue, who is opposed to the request.)

Mrs. Meehan continued with her disclosures and said that on March 27 she spoke with Janet Bruce concerning the petition that was passed around Downtown. Mrs. Meehan said she explained to Mrs. Bruce that it is not uncommon for former Council Members to pass out petitions as long as they disclose. Additionally she let her know that Laird Gann generated the Main Street two-page fact sheet and petition. Mrs. Bruce is against the additional height.

And, on March 27 she spoke with Anna Marie Cook who owns the building where Meg O'Malley's is located. Ms. Cook is in favor of the project.

Mr. Thomas said on February 27, 2007 he spoke with Peter Flotz who mentioned that the project will be energy efficient. On February 27 Fred Malik commented about the project being energy efficient. On March 9 Mrs. Pat Poole dropped off correspondence at his office in opposition; he was not in the office and did not speak to her. On March 12 he spoke with Mr. Dale Davis on the phone who is opposed. On March 14 Mr. Davis contacted him by phone and said he was glad he voted against the project. On March 16 he spoke with Jack Ryals on the phone who said that the Downtown community had been trying to get a residential project like this for 20 years. He told Mr. Ryals that he

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was concerned for the survival of small businesses with loss of parking during construction.

Continuing, Mr. Thomas said on March 20 he spoke by phone with Tony Masone who is in support of the project; Mr. Masone would like to see somebody actually build a project Downtown. On March 20 he received an e-mail from Dano LoPresti in support of the project and hoping he would reconsider. On March 20 he spoke with Chris Romandetti on the phone; he is in support of the project and also said he had spoken to several other people who support the project. On March 23 he spoke with Jack Ryals by phone who said he had talked with 89 Downtown businesses and more than 90% approved of the project; and there was zero concern about parking by the Downtown businesses. On March 26 he spoke with Eva Nagymihaly on the phone; she is opposed and feels the project will take away quaintness of Downtown; she suggested if this did not pass that the City purchase the property next door and make a big parking lot. On March 26 he met with Ken Bale in person regarding another matter and he voiced his support of the project; thought it would be great to get people living Downtown.

Mrs. Palmer said on March 23, 2007 she was in City Hall and ran into Pat Poole and Eva Nagymihaly who told her that one of our Council Members was going into Downtown businesses asking people to sign a petition in favor of The Lofts project. They provided her with a copy of the material that was being distributed.

Mrs. Palmer asked if any of the Downtown businesspeople who signed the petition referenced by Mrs. Meehan are tenants of the Meehan properties. Mrs. Meehan reviewed her list and replied "five."

Mrs. Corby said on March 6, 2007 she met with Peter Flotz in his office. They discussed the \$1.5 million land purchase that would be allocated into an account reserved for parking and infrastructure needs in the Downtown area. Mr. Flotz indicated that he talked with the Fire Chief to determine if they had significant equipment in case of emergency. They walked the site and discussed the vacancy rate and history in the Downtown area.

On March 13 she received information from Mrs. Poole and spoke with her about her petition. On March 20 she received a phone call from Tony Masone indicating that he was in favor of the project.

Mrs. Palmer said that it is her understanding that in a quasi-judicial proceeding, the City Council should not present their opinion in public. In light of that, she asked if it is appropriate for a sitting Council Member to pass a petition for or against a project they are about to vote on.

Attorney Gougelman said in a quasi-judicial matter, it is his recommendation that Council resist from taking a position on the issue until all evidence is in and the public hearing has been held. In this particular case, which is unique, it could be argued that a public hearing was held and a vote was taken. The petition was carried after that time. Overall, he recommended that Council Members not distribute petitions for or against and noted that we've had at least one court case in the past that addresses this issue.

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Mrs. Palmer said that the attorney has noted that it is not the best practice. She asked if it is legal for a member to lobby for or against a project coming up for a vote. Attorney Gougelman said the only case he can cite involves a previous member of Council and, in that case, the member didn't carry a petition. He elaborated on that case and said it is all a matter of due process; that is why it is in the best interest for members to remain neutral and detached.

Mrs. Corby pointed out that a full Council is not present at this meeting. She referenced the City Attorney's memorandum in the agenda package, which indicates three choices. Council can proceed, postpone everything until April 10 or later, or hold the public hearing and postpone action until April 10.

Mr. LaRusso noted for the record that he listened to the tape recording on this item from the March 13 meeting, reviewed the written minutes and received a full briefing from the City Attorney.

The Vice Mayor said it is his recommendation to hold the public hearing and postpone the vote until April 10. Additionally, he asked if there is anything with regard to this request that has changed.

Mayor Goode said he has an issue with postponing action until April 10 because another contentious item will be on the agenda. He recommended that any postponement be until April 24. Mr. LaRusso replied that he will not be here on April 24.

Mrs. Corby said she is trying to ensure that Council decides now how to proceed because of a missing Council Member.

Mrs. Meehan said she would like the item heard at this meeting. Mayor Goode said he is not interested in hearing the item if Council is not going to vote on it.

Mrs. Palmer said that after a lengthy public hearing and lengthy discussion at the last meeting, Council Members suddenly decided that this is not something that should be decided without a full Council. She pointed out that the members who felt that way at the last meeting should continue to believe that.

Mr. LaRusso said that Council learned a lesson at the last meeting, which is one of respect and honor. A Council Member should be given the opportunity to vote on an item, whether the request is in their district or not. At this meeting we are moving into another potential nightmare with a 3-3 vote.

Moved by LaRusso/Palmer to postpone this item until April 10. (Motion later withdrawn.)

Mr. LaRusso said he understands there is a perfect storm looming with two issues appearing on the same agenda; however, this is how he would like to proceed.

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Mayor Goode said there are a dozen sign in sheets for this meeting and people have been in the audience for the past 2 ½ hours waiting to speak.

The maker/seconded agreed that the intent is to postpone the public hearing as well.

Mr. LaRusso said that Council is in a peculiar position. The City Council approved a land deal with a developer and that contract is predicated on height, parking, etc. Council voted on that contract as a full Council; therefore, this item needs to be voted up or down as a full Council.

Mrs. Corby went back to Mr. LaRusso's earlier comment and asked if there has been any change in what is being presented. She asked if the developer is providing anything different from what he originally proposed.

Mr. LaRusso said the problem is that we negotiated a contract with the developer. If the height of the building comes down, the price of the contract comes down. Mrs. Corby agreed and added that Council should ask the developer if there is any consideration on his part to renegotiate the contract; that would shed light on this discussion. She said her intent is to try and move this item along.

Mrs. Palmer said that there is a motion on the floor to postpone, yet Council is taking up the matter. She added that if the developer had intentions to lower the height or renegotiate, he would have made them known to staff. Regarding the "full Council" discussion, Mrs. Palmer said that she argued at the last meeting that there was a quorum and a quorum could make decisions. There was discussion against that opinion; therefore, at this meeting Council needs to be consistent.

Mrs. Meehan said she would like to hear the people who have signed up to speak. Mayor Goode said the motion to postpone is not debatable. Mrs. Corby pointed out the other option, which is to hold the public hearing and postpone action. Mayor Goode said Council needs to vote the motion up or down or withdraw it.

Mr. LaRusso withdrew his motion.

Mrs. Palmer asked Mr. LaRusso if he would like to make a motion to hold the public hearing and postpone the vote.

Moved by LaRusso/Palmer to hold the public hearing at this meeting and postpone action. (Motion later withdrawn.)

Mrs. Palmer said the question is whether Council can make a decision with a quorum or whether a full Council needs to be present.

Mr. LaRusso said voting on an issue like this without a full Council at the last meeting went against Council's past practice. These are the standards this Council has established. This is a very contentious item and he doesn't want to have to go back again because of another 3-3 vote.

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Discussion continued on the process.

Vice Mayor LaRusso withdrew his motion.

Mayor Goode said if there are no objections, Council will conduct the public hearing and vote on the item. Vice Mayor LaRusso said he objects due to the reasons stated.

Mayor Goode opened the public hearing.

Peter Flotz, 812 East Strawbridge Avenue, applicant, asked to make his comments at the end of the public hearing.

Barbara Schading, 830 East New Haven Avenue, Schading International Oriental Rugs, stated she is in support of The Lofts. She noted that the development will be an attractive addition to the Downtown area. The current site contains a burned out building that is hardly attractive. The Lofts development will bring in high-end customers, revenue and business.

Ms. Schading reported that Mrs. Poole's petition was misrepresented to several business owners in the area and she refused to sign it on those grounds.

William Wade, 809 East New Haven Avenue, Finders Keepers retail store, reported that Council Member Meehan visited his store. He voiced his opposition to her; however, she did not disclose that at the beginning of the meeting.

Continuing, Mr. Wade said he is concerned about traffic, safety and the loss of parking. He referenced the parking lot located behind the Henegar Center and said no one is using it because it is too far from the core area. He recommended that The Lofts be built by the Henegar Center closer to other residents and that the parking garage be constructed at Waverly Place and Strawbridge Avenue.

Mrs. Meehan apologized for the oversight and said that she did speak to one of Mr. Wade's employees, who expressed opposition.

Stephen Borowski, 1343 Worth Court, Palm Bay, stated that he owns property on Waverly Place and he is opposed to the request for additional height. He supports The Lofts being built at 80' and doesn't buy the argument that additional height will bring in revenue and business. Mr. Borowski stated that additional height will take away the ambience of Downtown Melbourne. He concluded by saying there are other ways to bring in business to Melbourne other than building high-rises.

Dr. Debra Heitzman, 3135 South A1A, Melbourne Beach, said that she shops, eats and plays in Downtown Melbourne three to five days per week. She noted that this is not about parking or the loss of trees or air – this is about having a vision for the City of Melbourne. It is the City's responsibility to ensure that we provide a place for our future

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doctors, lawyers and engineers to return to. She concluded by asking Council to vote yes for The Lofts.

Joyce Coffey, 612 Cornell Avenue, Ye Olde and New Curiosity Shop, asked the compelling reasons for granting the additional height. She noted that height limitations are in place to preserve architectural flavor and ambience. Ms. Coffey said the City should also consider what will happen when a residential project is plopped in the middle of a commercial area. It is proven that there will be problems, especially when special events are held Downtown. She informed Council that in a town in Colorado, the local council imposed a 10:00 p.m. curfew on special events because of residential development that mixed with commercial. She added that we don't have a lot of venues for our young people – they love coming to events in Downtown Melbourne.

Ms. Coffey concluded by saying she is also concerned about parking and problems with semi-trucks and deliveries. She stated that she can't imagine how a semi will make it through the alley as proposed.

Eva Nagymihaly, 3413 Willowwood Drive (unincorporated Brevard County), asked Mrs. Meehan if she would recuse herself from voting based on distribution of a petition and giving an opinion on this development.

Mayor Goode said that issue has been decided. Ms. Nagymihaly asked for clarification from the City Attorney. Attorney Gougelman explained that state law provides two alternatives. If you have a voting conflict you must not vote; if you do not have a voting conflict, you must vote. The decision as to whether there is a voting conflict has to be made by the individual subject to the law. If the Council Member feels she may have a conflict, there is a caveat in the law that would allow her to abstain.

Mrs. Nagymihaly said she assumes Mrs. Meehan has a conflict if she has already made up her mind.

Mrs. Meehan stated that she does not have a voting conflict of interest.

Continuing, Ms. Nagymihaly said that C-3 was created for the redevelopment of Downtown but the sad part is very few people pay attention to the C-3 requirements. If Council allows this one building, it will set a precedent; 80' is high enough. Additionally, parking belongs to the citizens and the merchants; however, the City is giving away what should be 40 spaces. In return we will receive 20 small spaces inside of The Lofts development.

Mayor Goode called time. Ms. Nagymihaly appealed to Council Member Palmer for additional time.

Moved by Palmer/Corby to allow two more minutes. Motion carried. Council Member Meehan and Mayor Goode voted nay.

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Ms. Nagymihaly continued discussing her opposition and stated that members of the public who are accessing the building will occupy the 20 parking spaces. She noted that if the developer doesn't receive 120' he can back out of the contract. The City would get its spaces back and the immediate problem would be solved. She concluded by submitting a letter from Jeanne Straley, The Salon, 1918 Waverly Place, opposed to the request.

Pamela Bevan, 115 Signature Drive, Melbourne Beach, informed Council that old Melbourne is one of the features that drew her to this area. She asked the City Council to think in terms of progress and to meet any challenges brought on by progress. Ms. Bevan noted that if we don't build modern buildings we will have "rinky dink" businesses that aren't a big attraction.

Jennifer Wolf, 3203 River Villa Way, Melbourne Beach, stated that she is in favor of this project. She pointed out that the developer plans to build up and not out, following the guidelines set by the green building council. She added that we need things in our area that will attract and keep young people. Ms. Wolf said that Melbourne is not moving forward and this building is a step towards progress. She concluded by saying the eyesore is what is there now.

Mrs. Palmer said that she does not believe the future of her children and cultural opportunities hinge on a 120' building.

Pat Poole, 805 East Palmetto Avenue, asked the people in the audience who are opposed to stand. She referenced the petitions she submitted against the project and said that everyone who attended the Melbourne High School reunion signed; they are the people who grew up here. She disagreed that she misrepresented the petition she circulated and stated that height is wrong and the development should stay within the 80'.

Mrs. Corby asked what would be missing in Downtown Melbourne if the building were constructed at 120'.

Mrs. Poole said that it would take away from historic Downtown Melbourne; the residents don't want 24-hour activity; the Downtown area already has many residents; the current residents put up with the street festivals; and traffic is horrible.

Laird Gann, Executive Director, Melbourne Main Street, submitted a petition in support of the project along with a fact sheet. He said that after the previous flyer was distributed with the Melbourne Main Street logo and a "say no" headline, they felt it was necessary to provide facts and distribute a petition encouraging support for the project.

Mr. Gann reported that one of the four guiding missions of a National Main Street program is to encourage, support and lead efforts to stimulate the economic revitalization of historic downtown retail districts. While circulating their petition, they sought only one signature from business owners, merchants and property owners within the redevelopment area, focusing primarily in the retail core.

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Continuing, Mr. Gann stated that their petition contains 105 signatures; 98 people signed in support of the project and seven people signed against the project. Additionally, once individuals learned the facts, 11 requested that their names be removed from the earlier petition against the project.

Mrs. Palmer pointed out that Mr. Gann was in essence using taxpayer money (Melbourne Main Street recipient of City grant) to lobby for a private development. Mr. Gann disagreed and said that within the guidelines of the Florida Main Street Program he is pursuing redevelopment by combining public and private funds.

Mr. Flotz returned to the podium and reviewed a Power Point presentation on The Lofts project. He discussed the history and noted that City Council approved the sale of the property in August 2006 with contingencies. He noted that he previously reported that they had obtained three of the four easements (for the alley) as required by contract. However, today they are able to report that they have all four easements executed. Mr. Vaughn executed an easement today.

Mr. Flotz explained that the building they are proposing represents world-class architecture. The 120-foot height has been chosen as the correct height that landmark buildings should be built. This is a height that human beings feel comfortable with. He agreed that it is monumental and added that Downtown deserves a monument.

Mr. Flotz clarified that they are seeking a conditional use for the height, not a variance. The City's ordinances allow for a higher level of scrutiny for a building going higher than 80 feet. The Planning and Zoning Board unanimously approved their request. They have included ground level access and a means to service buildings along New Haven Avenue. He added that he hopes in the future they can extend that alley to Municipal Lane.

Mr. Flotz concluded by asking Council to vote favorably for this request.

Mrs. Corby asked if the first floor of the building will contain condominiums. Mr. Flotz replied that the condos begin 48' off the ground.

Mrs. Corby commented that the requested height of 120' will be by Code definition. She asked how much higher the building will actually be to accommodate the roof, mechanical structures, etc. Mr. Flotz said his guess is another 15 feet.

Mrs. Corby asked Mr. Flotz if he would consider proposing this project at 80 feet if an adjustment in the price of the property is considered. She added that she thinks this is a great project for the Downtown area; however, she doesn't think progress has to come with height.

Mr. Flotz said he does not know that answer because he is not alone in this decision; he has shareholders. At this point, he would like for Council to vote this project up or down.

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Mrs. Palmer asked how many guest parking spaces will be provided, not including the 20 public parking spaces. Mr. Flotz replied that he believes there will be four in front of the gate. He pointed out that there is no access to the condominiums from the ground level parking to the lobby. The lobby of the condominium will not have access from the City parking spaces. A person would have to travel the sidewalk and enter off of Waverly Place to access the lobby.

Mayor Goode commented that Trinity Towers East and West, located diagonally across the street, broke the height barrier in this area years ago. A brief discussion followed regarding the generous rear setbacks at Trinity Towers.

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

Mr. Thomas said he did not support this request on March 13 because he was concerned for the survival of small Downtown businesses. However, he now believes that fear is unfounded and the vast majority of Downtown businesses supports this project. Mr. Thomas stated that he has evaluated the information presented and he believes that this is a great project for Downtown that will preserve the quaintness. The character will blend well with the new City Hall.

Moved by Thomas/Meehan to approve Ordinance No. 2007-11, which includes SP-2006-37, based upon the findings contained in the Planning and Zoning Board memorandum and the conditions contained in the ordinance.

Mrs. Palmer said that there are things that fit and things that do not. Once this project is built, others will follow. The businesses that make Melbourne historic and quaint will not be able to survive. There will be upscale franchise stores and shops, but there will not be an historic Downtown Melbourne. Mrs. Palmer added that she does not believe going over the height provided for in the C-3 district is what the people of this City want for Downtown. She added that she is totally for redevelopment but she doesn't believe the height is appropriate for that site.

The question was called. The roll call vote was:

Aye: Meehan, Thomas, Corby, LaRusso and Goode

Nay: Palmer

Motion carried.

12. ORDINANCE NO. 2007-15 (FOC-2006-01): (First Reading/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. (Postponed - 3/13/07)

Attorney Gougelman read the ordinance by title. There were no public comments.

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Mrs. Dittmer confirmed for Mr. Thomas that the patrol will initially be in the retail core area of Downtown Melbourne. Mr. Thomas said that there is a lot of crime south of Crane Creek that affects the Downtown area; therefore, he suggested that the officer patrol the entire redevelopment area.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-15. Motion carried unanimously.

Recessed: 10:32 p.m.  
Reconvened: 10:37 p.m.

Mayor Goode referenced the time and asked Council to consider hearing Item 25 at this point. The applicant's representative has traveled from Ft. Lauderdale for the item.

Moved by Palmer/Corby to consider Item 25. Motion carried unanimously.

Council heard Item 25 at this point.

The following item was heard immediately after Item 25:

13. 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. (Postponed - 3/13/07)

From the agenda report: The lease agreement between the City of Melbourne and Brevard County will provide additional public parking (approximately 130 spaces) within Downtown Melbourne. The property is located behind the Henegar Center, also known as the former senior center site.

The terms of the agreement are:

- The lease is for a five-year period, renewable thereafter annually upon mutual consent of the two parties.
- The amount of the lease agreement is \$1.00.
- The City of Melbourne would be responsible for the maintenance and insurance of the parking lot.

Mr. Thomas asked if there is anything in the lease that would prevent the City from charging a fee for parking in this lot. Mrs. Dittmer said that the County might have a problem with that concept. Mr. Schluckebier added that if we went in that direction, we would begin by having conversations with the County. He pointed out that this is a relatively short lease.

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Moved by Thomas/Meehan to enter into an agreement with Brevard County to lease the vacant property behind the Henegar Center for the purpose of providing additional public parking. Motion carried unanimously.

14. COUNCIL DISCUSSION RE: C-3 zoning issues. (Requested by Mayor Goode)  
(Postponed - 3/13/07)

Mayor Goode noted that this is his agenda item and he is going to postpone it to a future agenda.

NEW BUSINESS

15. COUNCIL ACTION RE: Contract award for the 2007 annual roadway-resurfacing program, Project No. 68299, APAC-Southeast, Inc., Melbourne, FL - \$907,110.80.

City Engineer Jenni Lamb reviewed the recommendation.

Moved by Corby/Meehan for approval of the contract with APAC-Southeast, Inc. in the amount of \$907,110.80 for street resurfacing. Motion carried unanimously.

16. COUNCIL ACTION RE: Supplement No. 5 to the Continuing Hydrogeologic Services Contract for Grant Street injection well system operational data review and permitting, L.S. Sims & Associates, Inc., Rockledge, FL - \$53,500.

Mrs. Lamb briefed Council.

Moved by LaRusso/Thomas for approval of Supplement No. 5 to the Continuing Contract with L.S. Sims & Associates, Inc in the amount of \$53,500. Motion carried unanimously.

17. CONSENT AGENDA:

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

- a. Supplement No. 321 to the Continuing Consultant's Contract for professional services for the surveying of water production facilities, Frazier Engineering, Inc., Melbourne, FL - \$19,500.
- b. Approval of an agreement between the City of Melbourne and Jim Ford, CFA, Brevard County Property Appraiser, for the collection of non-Ad Valorem assessments for each tax year through December 31, 2010.
- c. Contract award to replace fencing at Ballard Park Tennis Courts, Southwest Park Softball Fields I and II, and the Jimmy Moore Baseball Field backstop, Design Management & Installation, Inc., Melbourne, FL - \$67,804.

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- d. Purchase of sewer line inspection equipment and software - Granite XP TV unit and office system plus additional modules, Cues, Orlando, FL - \$50,405.
- e. Purchase and application of Curfew® soil fumigant on 80 acres of fairways, roughs, and tees, and 192,000 square feet of greens at the Melbourne and Harbor City Golf Courses, Dow AgroSciences, LLC, Indianapolis, IN - \$48,160.
- f. Contract award for annual police promotional testing, Booth Research Group, Inc., Parker, CO - \$28,500.
- g. Contract award for purchase of badger water meters, Badger Meter, Inc., Milwaukee, WI - price increase of \$20,000 to reflect increased cost negotiated on piggybacked contract.
- h. Additional contract award to repair and resurface tennis courts at Ballard Park and Fee Avenue Park, Varsity Courts, Inc., Longwood, FL - \$16,898.
- i. Approval of farmers' markets in the redevelopment areas on property zoned C-3 or I-1 as part of the City's special activity permitting process.
- j. Approval of proposed revisions to the City's HOME Tenant Based Rental Assistance Program policies.
- k. Renewal of lease agreement between the City of Melbourne and St. Paul's United Methodist Church, located at 1591 Highland Avenue, for public parking for a period of five years.
- l. Approval of a Right-of-Way Use Agreement between the City of Melbourne and Durcar Partnership for a private driveway across the 16' unimproved alley right of way east and parallel to Guava Avenue behind the current Durham Electric Building at 1973 Guava Avenue.
- m. Resolution No. 2029: A resolution authorizing the City Manager to submit a grant application to the U.S. Department of Justice for Bulletproof Vest partnership grant Program funds in the amount of \$13,330 with matching City funds of \$13,330.
- n. Resolution No. 2030: A resolution affirming the City of Melbourne's long-term commitment to learning about and engaging in climate protection actions and authorizing and directing the Mayor to sign the U. S. Conference of Mayors Climate Protection Agreement. (Authorized by City Council 2/27/2007)

18. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

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

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a. Code Enforcement Board

Chairman Bennie Hopkins asked Council to consider hearing future board reports at the beginning of the agenda. He noted that boards are filled with volunteers who have to work and many have already left the meeting.

Moved by Corby/Meehan that future board reports be placed first on the agenda. Motion carried unanimously.

Continuing, Mr. Hopkins stated that their board is functioning effectively. Board attendance is good and they have never had to postpone a meeting due to a lack of a quorum. He added that when possible, the members feel that there is value in appointing alternate members to regular member positions. Mr. Hopkins discussed the composition of the board and said that as openings occur, they would like to see a civil engineer and/or someone with a fire background appointed.

Mr. Hopkins described the process followed when the Code Board considers a request for rescission of lien. He said they will be expanding the information provided to Council by including a timeline of the case, photographs and attendance at the meeting by the Code Enforcement Officer that worked the case.

Mr. Hopkins reported that the majority of the board members would like for Council to consider changing the Code, as it relates to appointment of chair and vice chair, so the process for quasi-judicial boards is the same as the process for non-quasi-judicial boards.

Mr. Hopkins recognized the excellent service provided by Code Officers, support staff and the volunteer board members.

Moved by LaRusso/Corby to continue the meeting through Item 20. Motion carried unanimously.

b. Library Board

Chairman Charlotte Friedland recognized the members and library directors in the audience. She explained that the Melbourne Library Board advises the Melbourne, Eau Gallie and Martin Luther King, Jr. Libraries. She noted that each library has an excellent director and an enthusiastic and helpful Friends group.

Ms. Friedland discussed recent activities and elaborated on their statistics. She informed Council that libraries received the best grades of any of the community institutions covered in a national survey. Public libraries are essential for maintaining a productive community. She concluded by inviting Council to attend a future meeting.

Mayor Goode informed the audience that Mrs. Friedland will complete 30 years of volunteer service in April. He commended Mrs. Friedland for her service and dedication.

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20. PRESENTATION TO COUNCIL: Comprehensive Annual Financial Report (CAFR) from Hoyman and Dobson.

(The report was distributed to City Council on March 13, 2007.)

Chas Hoyman and Debbie Bradley, representing Hoyman Dobson, the City's external auditing firm, provided a presentation to Council. The Power Point presentation included a review of the General Fund Unreserved Fund Balance; General Fund Operating Revenues and Expenditures; Water and Sewer System Operating Revenues and Expenses; Golf Course Fund Operating Revenues and Expenses; and the Airport Total Revenues and Total Expenses.

There were no questions from City Council.

Council Member Thomas said that if Council does not continue for a portion of the agenda, we will continue to get backlogged. Moved by Thomas/Meehan to continue the meeting through Item 24. Motion carried unanimously.

21. FINAL PLAT APPROVAL (SD-2007-01) WOODSHIRE PRESERVE: (Public Hearing) A request for final plat approval for the Woodshire Preserve, Phase I Subdivision at a density of 0.48 units per acre on a 183±-acre portion of a 375±-acre parcel presently designated with a Brevard County land use of RES-2 (Residential, up to two units per acre) and PUD zoning (proposed City land use designation of Suburban Estate Residential and REU zoning – Residential Estate Use, one unit per acre), located at the north end of Washingtonia Road, north of the Chestnut Run Subdivision. (Owner - Woodshire Preserve, LLC) (Applicant/Representative - Candice Hawks, Engle Homes) (P&Z Board - 3/01/07)

Mrs. Dittmer provided a brief overview for Council. The Planning and Zoning Board voted unanimously to recommend approval of the 11-page plan prepared by Ganung-Belton Associates, Inc. with a signed and sealed date of February 22, 2007 and the following conditions:

- a. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City, or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.
- b. The applicant shall provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (c) (4) prior to recordation of the final plat.
- c. The applicant shall provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- d. Only two building permits may be issued on any portion of the plat prior to recordation of the final plat.

There were no disclosures by Council. Mayor Goode opened the public hearing.

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Candice Hawks, representing the applicant, added that the first phase of this subdivision is located in the City.

Moved by Corby/LaRusso for approval of the final plat based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

22. ORDINANCE NO. 2007-16 (A&V NO. 265): (First Reading/Public Hearing) An ordinance vacating a 0.11-acre portion of right-of-way and the retention of a public utilities easement over the entire right-of-way being vacated at the southeast corner of Circle Avenue South and Shull Avenue. (Applicant - Riverside, LLC)

Attorney Gougelman read Ordinance No. 2007-16 by title. Mrs. Lamb briefed Council and noted that the portion to be vacated contains no improvements in the right-of-way. A fence has been located over this right-of-way for over 40 years. The City will retain an easement.

There were no disclosures by Council and no comments from the public.

Moved by Thomas/LaRusso for approval of Ordinance No. 2007-16. Motion carried unanimously.

23. ORDINANCE NO. 2007-17 (Z-2007-1103) GARY N. WELLS, 1705 AIRPORT BOULEVARD: (First Reading/Public Hearing) An ordinance changing the zoning from R-1AA (Single-Family Low Density Residential) to C-1A (Professional, Offices, and Services) on a 0.24-acre parcel, located on the east side of Airport Boulevard, south of the intersection of Airport Boulevard and Fee Avenue. (Owner/Applicant - Gary N. Wells) (Representative - Tim Shortell) (P&Z Board - 3/01/07)

Attorney Gougelman read Ordinance No. 2007-17 by title. Mrs. Dittmer reviewed the agenda report. There were no disclosures by Council and no comments during the public hearing.

Moved by Palmer/Thomas for approval of Ordinance No. 2007-17. Motion carried unanimously.

24. ORDINANCE NO. 2007-18 (CPA-2006-29), ORDINANCE NO. 2007-19 (Z-2006-1087), AND SITE PLAN APPROVAL (SP-2006-28) MAHALA VILLAGE: Ordinances providing for a Comprehensive Plan Amendment and zoning change on 3.94± acres, and site plan approval on 4.46± acres, located on the east side of Pineapple Avenue, south of Creighton Street, and north of McClendon Street. (Owner - GARD Development I, LLC) (Applicant/Representative - Rochelle Lawandales, Lawandales Planning Affiliates) (P&Z Board - 3/01/07)

- a. Ordinance No. 2007-18/CPA-2006-29: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial/Low Density Residential on 1.95± acres and Low Density

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Residential on 1.99± acres to Medium Density Residential with a cap of eight units per acre.

- b. Ordinance No. 2007-19/Z-2006-1087: (First Reading/Public Hearing) An ordinance providing for a zoning change from C-1 (Neighborhood Commercial) on 1.95± acres and R-1AAA (Single-Family Low Density Residential) on 1.99± acres to R-2 (8) (One-, Two-, and Multiple-Family Residential with a cap of eight units per acre).
- c. Site Plan Approval (SP-2006-28): (Public Hearing) A request for site plan approval to allow a 31-unit condominium project on 4.46± acres at a density of seven units per acre.

In addition to the material in the agenda package, Council received an e-mail (addressed to Mark LaRusso) from Rick Dillen, 1403 Pineapple Avenue, outlining changes that would need to be made before he could support the project and expressing concern with setbacks and parking.

Attorney Gougelman read Ordinance Nos. 2007-18 and 2007-19 by title. Mrs. Dittmer reviewed the agenda report. She noted that a Comprehensive Plan text amendment was approved in December 2006 to preserve this area as single-family residential. That text amendment resulted from this project being reviewed by the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee and the concerns the members raised about the domino effect in the area. The text amendment was approved ahead of this project; however, that amendment was not intended to prohibit this project.

During the Planning and Zoning Board public hearing, two property owners spoke against the request and two spoke in favor of the request. Several board members expressed concern regarding the layout of the project with regard to parking, and future development possibilities should the site not be developed as proposed. The Planning and Zoning Board voted four to three to recommend denial.

The single-family residential uses to the south will be protected from encroachment by the recently approved text amendment to the Comprehensive Plan. Existing uses to the north are zoned C-1 and contain both single- and multiple-family uses, exceeding six units per acre. The Comprehensive Plan site-specific policies indicate that low and medium density residential uses are suitable for areas north of Creel Street and east of U.S. 1. Any substantial change to the proposed site plan would require re-approval by Council, therefore requiring future public hearings for any new design.

Despite Planning and Zoning Board recommendation for denial, staff is recommending approval of the two-sheet plan prepared by Construction Engineering Group, with a signed and sealed date of February 23, 2007, subject to the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the Engineering Department and Planning and Economic Development Department.

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Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.

- b. Subdividing of land for individual homes is prohibited, since the project is developed as a condominium project with common land ownership.
- c. The proposed buildings shall be substantially consistent with the renderings submitted by the applicant.
- d. 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.
- e. The applicant shall post “no parking” signs along the driveway since the drive will be considered a fire lane for emergency access.
- f. Since individual driveways are not designed to meet parking, the applicant shall be required to include restrictions in the condominium documents that no overnight parking will be permitted.
- g. The project owner/developer must obtain Architectural Review Board approval for the project prior to any site development.
- h. The proposed six-foot wall along the north and south property line shall be dropped to three feet in height at the rear building line of the proposed buildings located along the Indian River Lagoon, so as to not interfere with the visual corridor of the river at the 35-foot water setback.
- i. The applicant shall be required to obtain Architectural Review Board and CRA approval for the final design of the proposed gazebo at the eastern terminus of Creighton Street.
- j. The applicant shall be required to obtain right-of-way use agreements/permits for the use of the Creighton Street for any uses within the right-of-way, including but not limited to the gate, turn-around, sidewalk and gazebo.
- k. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, the owner/developer shall be required to pay the capacity reservation fee in the amount of \$16,243 for transportation, water and sewer impact fees. Payment must be received by the City of Melbourne within 10 business days of the date of rendition of this Development Order by City Council approval. This Development Order shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne.

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Vice Mayor LaRusso asked Mrs. Dittmer to elaborate on the text amendment. Mrs. Dittmer said that the developer presented this plan to the CRA advisory committee. The members raised a concern if Council approved the rezoning, it would be the first of many to come and we would have encroachment into the single-family area to the south. Based on these discussions, staff proposed a text amendment and a site specific policy for that area providing that, in the future, single-family uses would be preserved along the east side. There was also a condition that any pending projects would not be affected. That text amendment would stand for all projects after this project. Additionally, the last lot is proposed to remain R-1AAA zoning.

Mr. LaRusso asked if the parking meets Code. He noted that the Planning and Zoning Board had a hard time conceptualizing million dollar homes on the river with guest parking located around the block and up the street.

Mrs. Dittmer replied that the site plan meets our Code. Every unit has a two-car garage. The Planning and Zoning Board was concerned that a few of the driveways will not accommodate a car; vehicles would have to park in the garage. Staff talked to the applicant about adding visitor spaces and they are agreeable.

Mayor Goode called for disclosures.

Mrs. Corby said on March 5, 2007 she received a call from Betty Moore pointing out an article in the Orlando Sentinel that day. The article referenced the shadow effects of large buildings. Additionally, Mrs. Moore said she opposed the project. Mrs. Corby said she read the article.

Additionally, she met with Mike Scott and Gary Potter on March 19. During that meeting they discussed: the project; meetings with the CRA advisory committee; approval by the CRA advisory committee; Planning and Zoning Board denial; parking and perhaps additional parking; and they discussed adding a gazebo at the end of Creighton Street. Mrs. Corby stated that she drove by the vacant lot on March 23 and she received a call from Phil Nohrr on March 20 who asked if she had any questions about the project.

Mr. Thomas said several weeks ago Michael Scott who works for the developer contacted him regarding a meeting; Mr. Thomas said he declined to meet. On March 26 he received a voice mail from Mr. Scott offering to meet and answer questions; he did not speak to him at that time. Mr. Thomas said he returned the call today and indicated that he didn't have any questions. On March 26 he spoke with Betty Moore and she spoke in favor of developing the area, although she did not specifically endorse this project.

Mrs. Meehan said on March 15, 2007 she met with City staff about this project; they talked about parking, setbacks and zoning. On March 22 she met with Mike Scott and Gary Potter. Gary Potter stated that he owns the Moonstruck Lounge in Downtown Melbourne. They discussed improvements to the right-of-way on Creighton Street; the community will be gated; this will be considered a green community; there will be an iron, open fence around the property; project will have 31 detached units with double car garages and no parking in the streets; guest parking will be in designated parking area;

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and they received approval from the CRA advisory committee. On March 25 she conducted a site visit and walked the property. She stated that this property is truly an eyesore. On March 25 Mr. Nohrr left her a message. She returned his call on March 27 and he stated they will add four additional spaces on the north end, which will be over the current Code requirements.

Mr. LaRusso said he attended two of the CRA advisory meetings and one crime watch meeting when the applicant provided a presentation. On March 13 he received a message from Mr. Potter offering to meet. The City Clerk's Office returned the call for him and indicated that he would not be able to meet. On March 20 Mr. Nohrr left a message and on March 24 they talked about the zoning, CRA approval and the density. On March 22 he spoke by phone with Rick Dillen. Mr. LaRusso had the City Clerk's Office distribute Mr. Dillen's subsequent e-mail.

Mayor Goode opened the public hearing.

Philip Nohrr, attorney representing the applicant, distributed a packet entitled "Mahala Village." He confirmed that four additional parking spaces have been added and he displayed the site layout with the additional parking. Mr. Nohrr noted that part of this property is in the redevelopment area. He assured that they would take the necessary steps to bring the remainder of the property into the CRA. He has been told by City staff that this is not a long process and the final decision would be up to the City Council.

Mr. Nohrr stated that the last thing they want to do is create a domino effect. They have left the last lot zoned R-1AAA to show their commitment to the residential portion of the CRA located to the south. There will be no domino effect unless a future Council takes further action.

Mr. Nohrr referenced the pictures in the packet of information distributed, which shows the unsightliness of property. Additionally, he submitted a letter from Leroy Ray, 741 Creighton Street, in support of the project. Mr. Nohrr referenced the sidewalk that will go around the project. He described changes they have made to accommodate neighbors.

Regarding breezeway, he said they are proposing a see through fence along Pineapple Avenue. Additionally, they will construct homes on the river in such a way to preserve the view. Mr. Nohrr stated that this is truly a green project; he elaborated on the details of construction and materials. The developer has spent several million dollars on the property to date. At the request of staff, they spent over \$100,000 cleaning up the site. This developer is committed to this project and they have spoken with actions.

Mayor Goode asked the applicant to address flooding issues, especially for the homes that will be located on the lower elevation property.

Jake Wise, civil engineer for the project, said that this property is in a Flood Zone AE with a base elevation of four. They are proposing to be quite a bit higher than that. Currently that entire area along the river has fallen apart over the years; it is completely

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unprotected today. As part of this project, it will be cleaned up and will provide protection for this project.

Mrs. Meehan asked about the turnaround movement drive (on Creighton Street) and asked if the property has been acquired. Mr. Wise said that is a 60-foot right-of-way, which is larger than a typical older subdivision right-of-way. They are working with engineering staff on a right-of-way use agreement. That will allow any visitors coming to the site ability to get off the road, since this is a gated community, or to turn around. He elaborated on the amenities proposed for the right-of-way for the public to use as part of the project.

Mr. LaRusso referenced the fence in the conceptual drawing and asked if there will be a condition prohibiting bushes from blocking the view. He said that a see through fence is fine, but they will lose the view of the river if they install six feet of landscaping.

Mr. Nohrr said the developer will place those conditions in the documents.

Mr. LaRusso said one of the challenges is that part of this property is in the CRA and the other part is not. He asked the impact if there is a recommendation made to not include the other portion of the property in the redevelopment area.

Mr. Schluckebier said we have the requisite studies and we believe it is a minor amendment to the CRA boundary that is completely in the jurisdiction of the City Council. The groundwork for that has already been laid. Staff does not believe there will be a challenge from outside the City. If the City Council decides it does not wish to enlarge the CRA to encompass those additional properties, it doesn't slow or hasten this project. It's not related to this project in any way. The biggest reason to include the additional parcels in the CRA is to accommodate the request of the County Property Appraiser.

Mr. LaRusso noted that the site plan will expire in one year. He asked what assurance they have that a "big box" won't be built on this site in the future if this project is not constructed. Further, he asked if the R-2 (8) zoning can be reverted to R-1AAA at that point.

Attorney Gougelman said one of the conditions of approval is that the site be built consistent with the site plan. If for some reason the developer abandons this project and Council attempts to down zone the property, the City could face a Bert Harris Act claim. Council may wish to consider adding conditions to the ordinance that address the fence and foliage.

Mr. LaRusso said that this development is a phenomenal opportunity for the area and he is moving towards working out all the wrinkles. The developer has invested a lot of money and directly across the street sits the dilapidated School Board building.

A brief discussion followed regarding future, adjacent development. Vice Mayor LaRusso noted that height in this area is already restricted by the overlay district in the Zoning Code.

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Rick Dillen, 1403 Pineapple Avenue, said that Mr. LaRusso has addressed most of his concerns. He referenced his e-mail, which also outlines his concerns. The developer could build at six units per acre without changing any zoning. The Comprehensive Plan text amendment states that these riverfront lots should remain single-family low density residential. He is concerned about changing the zoning to R-2 medium density multi-family to accommodate one or two more units per acre. This is a perfect opportunity to say no to changing the zoning on R-1AAA lots to multi-family.

Mr. Nohrr said he would work with City staff on additional language for second reading. He reminded Council that most of the property is zoned C-1 and there is a “parade of horrors” that can be built in the C-1 zone. This development will be an improvement and they will go the extra length with safeguards. This developer spent a fair sum of money, they have improved the property and they want to put in a worthwhile project that will add to and enhance that area.

Mayor Goode closed the public hearing.

Moved by LaRusso/Thomas for approval of Ordinance No. 2007-18 based upon the findings contained in the staff memorandum. Motion carried unanimously.

Moved by LaRusso/Thomas to approve Ordinance No. 2007-19 based on the findings and conditions contained in the staff memorandum and that staff work with the developer to address additional conditions relating to the transparent fence and a limitation on vegetation.

Mr. LaRusso stated that he is looking forward to this project coming to fruition. He added that he hopes the School Board will step up to the plate on the building located across the street. It is disgusting and the School Board should be ashamed.

The question was called. Motion carried unanimously.

Moved by Palmer/Corby for approval of the site plan based upon the findings and conditions contained in the staff memorandum.

Note: The following item was considered earlier on the agenda.

25. ORDINANCE NO. 2007-20 MAYFAIR COMMUNITY DEVELOPMENT DISTRICT: (First Reading/Public Hearing) An ordinance establishing and naming the Mayfair Community Development District pursuant to Chapter 190 of the Florida Statutes. (Applicant - Southern Homes of Melbourne II, LLC)

Attorney Gougelman read Ordinance No. 2007-20 by title.

From the agenda report: Southern Homes of Melbourne II, LLC, a Florida Limited Liability Company (the owner/developer), has already received Planned Unit Development (PUD) zoning on a 256±-acre track of land located east of Babcock Street, north of Eber

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Road/Palm Bay High School, and west of Lipscomb Street. The owner/developer proposes to build a 1,448 (see discussion during public hearing for clarification on this number) dwelling unit project on this property to be known as Mayfair.

To facilitate infrastructure construction, including water, sewer, drainage, and realignment of a portion of Eber Road east of Babcock Street at the entrance to the project, the owner/developer proposes to create a Community Development District (CDD).

Although CDDs are a common vehicle for the financing and construction of infrastructure by developers in Florida, this will be the first CDD within Melbourne. Community Development Districts are independent units of local government with their own elected governing boards. Creation of the CDD rests with the Melbourne City Council and, because the CDD is independent, oversight by the City will be minimal.

CDDs have the authority to bond and to tax, but most CDDs levy special assessments, which are used to fund the construction and maintenance of development project infrastructure.

The Mayor opened the public hearing.

Gerald Knight, Ft. Lauderdale, representing Southern Homes, briefly discussed the petition and pointed out that they had 1,448 units in the petition; however, that number is now 1,306 with the ability to go higher. The water and sewer improvements that the district may fund may include reuse as well.

Mr. Knight said that Attorney Gougelman did an outstanding job explaining what a Community Development District is, what it is for and how it operates. He elaborated and asked for approval.

There were no questions and no additional speakers. Mayor Goode closed the public hearing.

Moved by Meehan/Thomas for approval of Ordinance No. 2007-20. Motion carried unanimously.

By consensus, Items 26 through 29 were postponed until the April 10 meeting.

26. ORDINANCE NO. 2007-21 LOGOS: (First Reading) An ordinance amending Chapter 2 of the City Code, entitled Administration, by adding a new section, which provides for the adoption of the City's official logos.
27. COUNCIL ACTION RE: Approval of a 2007 interim agreement between the City of Melbourne and the City of West Melbourne regarding the sale and purchase of water.
28. COUNCIL DISCUSSION RE: Televised Council meetings.
29. COUNCIL ACTION RE: Board Appointments

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- a. Appointment of one regular member to the Code Enforcement Board.
- b. Appointment of one regular member to the Library Board.

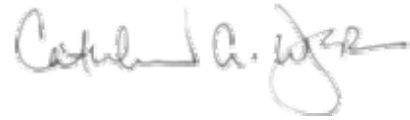
30. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

31. ADJOURNMENT

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

The meeting adjourned at 12:04 a.m.



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City Clerk – 4/5/2007

Approved by Council: \_\_\_\_\_