

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 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 7:15 p.m. by Mayor Harry C. Goode, Jr.

1. The invocation was given by Council Member Kathy Meehan.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Mark LaRusso	Vice Mayor, District 2
	Richard Contreras	Council Member, District 1
	Kathy Meehan	Council Member, District 3
	John Thomas	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Joanne Corby	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathy Baker	Assistant City Clerk
	Amy W. Elliott	Deputy City Manager
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes – August 28, 2007 regular meeting

Moved by Meehan/Contreras for approval of the minutes. Motion carried unanimously.

6. City Manager's Report

No additions/comments to the City Manager's written report.

7. Public Comments

Valeria Thompson, 1105 Dove Street, discussed a letter she received from Code Enforcement advising she must move a trailer from her property by September 17 or be fined. She said she is still living in the trailer. Ms. Thompson asked that Code Officer Tom Kleving not be allowed on her property without her authorization.

Mr. Gougelman advised that this Code Enforcement action is a quasi-judicial issue. He strongly recommended that Ms. Thompson take this matter to the Code Enforcement Board who will levy any fines and can afford some relief from such fine. He added that it appears Ms. Thompson has stated a basis where some relief might be afforded.

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Gwen Burley, 710 Unity Drive, discussed what she feels is a public safety issue regarding the Island Walk project on Eau Gallie Boulevard, beachside. She discussed the wall that was constructed and the vegetation planted around it and said they obstruct driver visibility and create a safety hazard. Ms. Burley stated it is negligent to allow development over public safety and Melbourne taxpayers' dollars could be at stake.

Mr. Schluckebier stated that this item has been to the Code Board a few times. The development was granted one variance; however, he does not think additional requests for variances were granted. He is aware of the vegetation issue but does not know whether anything is pending. He said he would have staff investigate.

Vice Mayor Mark LaRusso commented he spoke to Council against changing this property to commercial before being elected to Council. There are still many issues to be resolved with this development. It's not an issue of whose tax dollars are at stake, the important thing is public safety.

NEW BUSINESS

8. ORDINANCE NO. 2007-66, VACATING OF STREETS AND ALLEYS: (Second Reading/Public Hearing) An ordinance amending Chapter 28, Article V of the City of Melbourne Code, by providing new guidelines for requests to abandon and vacate dedicated rights-of-way and easements. (First Reading - 8/28/07)

Attorney Gougelman read Ordinance No. 2007-66 by title. There were no public comments.

Moved by Meehan/LaRusso for approval of Ordinance No. 2007-66. The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2007-67, FPL FRANCHISE: (Second Reading/Public Hearing) An ordinance granting an electric franchise to Florida Power & Light and providing for monthly payments to the City of Melbourne. (First Reading - 8/28/07)

Attorney Gougelman read Ordinance No. 2007-67 by title. There were no comments from the public.

Mr. Schluckebier reported that he received the signed side letter (of concessions by FPL) that Council approved at the August 28 meeting from Sandy Sanderson, FPL.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-67. The roll call vote was:

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

Motion carried unanimously.

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NEW BUSINESS

10. COUNCIL ACTION RE: Acceptance of the selection committee's ranking of firms for the Consultant's Contract for Professional Engineering Services for D.B. Lee Wastewater Reclamation Facilities improvements, Project No. 31507; and authorization for the City Manager to negotiate a contract with Boyle Engineering Corporation, Orlando, FL.

Jenni Lamb, City Engineer, briefed Council.

Responding to Vice Mayor LaRusso, Ms. Lamb reported that Hazen and Sawyer was the consultant for the previous phase. Each phase must be bid to conform with the Consultant Competitive Negotiations Act (CCNA) because the project is over \$1 million. She reported Boyle Engineering's main office is in Orlando; however, their Ft. Pierce office meets the 60 mile radius, they can have someone here within one hour.

Mr. LaRusso stated Boyle was chosen, in part, because a key team member co-authored the Environmental Protection Agency (EPA) guidelines for reclaimed water, is a member of the Florida Department of Environmental Protection technical advisory committee for reuse, a member of the Florida Water Environment Association and Water Environment Federal reuse committee and authored numerous publications on this subject. He asked if that person would be working on this project. Ms. Lamb said that staff member will provide services under the contract, noting that one factor that won over the selection committee.

Council Member Joanne Corby asked if the person is a consultant or employee and if the contract has any stipulation about that person leaving the company. Ms. Lamb responded he is an employee and while that probably gave Boyle an edge, they have extensive experience with this type of wastewater treatment reclamation facility.

Responding to Mr. LaRusso, Ms. Lamb noted that the employee is based in Orlando.

Moved by Meehan/Thomas for approval of the selection committee's recommendation of Boyle Engineering Corporation to provide professional engineering services and authorization for the City Manager to negotiate a contract with Boyle Engineering Corporation for professional engineering services. Motion carried unanimously.

11. CONSENT AGENDA:

Moved by Thomas/Meehan for approval of 11 'a' through 'i' as recommended. Motion carried unanimously.

- a. Supplement No. 332 to the Continuing Consultants Contract for engineering services to study the gravity sanitary sewer system from Hibiscus Boulevard to the Grant Street Water Reclamation Facility, Project No. 31105, Frazier Engineering, Inc., Melbourne, FL - \$17,500.
- b. Purchase of four flanged Milliken valves and AUMA actuators for Water Production, Diller-Brown, Inc., Oviedo, FL - \$24,838.

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- c. Purchase of a 6,500 gallon vertical, dual-wall chemical storage tank, USA Bluebook, Gurnee, IL - \$22,738.
- d. Contract award to provide Employee Assistance Program (EAP) services to approximately 974 employees, their dependents, and significant others, Horizon Health EAP Services, Lewisville, TX - \$4.05/quarter per full time employee; estimated annual cost of \$15,778.80.
- e. Renewal of property, inland marine floater, general liability, police liability, public officials errors & omissions, automobile liability, auto physical damage coverage, workers' compensation, and police & firefighters AD&D, Florida Municipal Insurance Trust - annual premium of \$2,115,507; renewal of the Melbourne Airport's E&O coverage, Florida Municipal Insurance Trust, underwritten by National Union Fire Insurance Company - annual cost of \$22,568; renewal of third party claims administration, Johns Eastern Company, Inc. - estimated annual cost of \$9,620; and renewal of third party workers' compensation claims administration, Professional Administrators, Inc. - annual cost of \$42,250.
- f. Approval of a License Agreement/Previously Bid Concessionaire Agreement between the City of Melbourne and Kali Tikee, Inc. for operating concessions at the two municipal golf courses.
- g. Resolution No. 2049: A resolution providing for an adjustment in solid waste services rates based on a 2.69% change in the Consumer Price Index and as authorized by Section 14-46 (d) of the City Code.
- h. Resolution No. 2050: A resolution renaming the Melbourne Municipal Golf Course "Crane Creek Reserve Golf Course at Melbourne" and the Harbor City Golf Course "Mallards Landing Golf Course at Melbourne."
- i. Resolution No. 2051: A resolution authorizing the City Manager to execute a Special Warranty Deed between the City of Melbourne and The Lofts of Melbourne, LLC for property located on Strawbridge Avenue (Block 32, Lots 12 and 13).

12. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

13. LIEN RESCISSION CE 04-145: (Public Hearing) Denial of a request for a lien reduction of \$4,000. (Stacey L. & Stevie Joe McCray - 2502 Canal Street) (Hearing scheduled by Council - 08/14/07)

Dan Porsi, Code Enforcement Administrator, briefed Council. The McCrays were cited in January 2004 for lack of paint (protective covering) on the exterior of the home. The owner had done stucco but not painted the home. Inspector Kleving worked with the

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owner to gain compliance. After 10 months the case was brought before the Code Enforcement Board in November 2004. Action was continued until the December meeting, when the case was again presented to the Code Board and the property was found in violation. The owner was given until January 10, 2005 to comply or a fine of \$250/day would be assessed. At the January meeting, the respondent was given until February 7 to comply or a fine of \$50/day would be assessed. Because the home was not in compliance, on February 23 the Code Board assessed a fine of \$50/day retroactive to February 7. The property remained in non-compliance and on April 27, 2005, the fine was capped at \$4,000. In August 2005 the Code Board authorized foreclosure and there was nothing further on the case until June 2007 when the owner asked the City for rehabilitation monies. Ms. McCray submitted a request to appear before the Code Enforcement Board for a rescission of the fine to be eligible to receive the rehabilitation money. At the July 26, 2007 Code Board meeting, Inspector Kleving announced that the property was in compliance; however, there was no one present to represent the respondent. Therefore, the Board recommended the lien not be reduced.

Mrs. Corby asked whether the goal of the Code Board is to generate a revenue stream or keep the City looking nice.

Mr. Porsi responded that the Code Compliance Division tries to gain compliance through education and working with citizens. Ms. McCray was made aware of the availability of free paint and workers to assist her. By the time an issue is brought before the Code Board, staff has exhausted every effort to work with the owner.

Stacey McCray, respondent, confirmed she received a letter with information about paint but when she checked on it she was told the paint was donations and there was none available. Ms. McCray stated she had just had a baby and scraped up enough money to stucco. She said when she found out about the program (City's Housing Reconstruction Program) it was like a blessing, she never thought she would get her house redone, brand new straight from the ground. She was told that this (satisfaction of Code lien) was one of the steps she had to go through to get the help (Housing Reconstruction Program assistance).

Mrs. Corby asked if the home is in compliance now and if the attention brought to Ms. McCray's home was based on complaints. Ms. McCray responded the house is in compliance and she did get a lot of complaints from Code Enforcement.

Mr. Porsi noted that the respondent was required to have a permit to stucco the home, which could not be finalized until the structure was painted. That initiated the Code action.

Council Member John Thomas asked Ms. McCray why she did not respond. Ms. McCray said she went to a couple of meetings and did what she was asked to do. She did enough so the house looked somewhat better and she did not think she had to come back. She said she works at McDonalds and barely makes enough to make it, let alone pay this.

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Mr. Thomas said he is stuck on what is the right thing to do. Council needs to support the Code Enforcement Board; if we rescind lien after lien it takes the teeth out of what they are trying to do. However, the hard part is weighing whether Ms. McCray did what she needed to. This issue has troubled him since he read it.

Mrs. Corby agreed. She believes Council needs to support Code Enforcement; they uphold the codes and standards for our community. However, she does not want to have a situation where Council can't look at these case by case, especially a property that someone is trying to clean up or bring into compliance. She said it would be easier to make decisions if a better process was in place. The process can't be fixed immediately, but she would like to look at it. Mrs. Corby suggested a timeline of the worst cases with the efforts documented. She is not saying staff hasn't done that, but she would like to see the effort made and that the property owner acknowledged receipt and understands the information. Ms. Corby said because the property is in compliance and she does not want Code Enforcement to become a revenue stream, she will not support denial.

Council Member Cheryl Palmer said she thinks Code Enforcement made every effort to keep this person informed; however, she does not think the owner understood that she needed to report when she came into compliance. When sending a letter, Code is doing what they think is right to inform the citizens, but perhaps some follow up beyond the letter is needed. When patrolling neighborhoods where a house is gathering fines, someone needs to make a follow up phone call. There are functionally illiterate people that may not understand what they read. We don't know how long the property has been in compliance because the owner didn't know to call. And this is not the first time Council has heard this. Mrs. Palmer said that the Code Board feels frustrated that Council is not backing their liens; however, the Code Board needs to understand that people feel they can come to Council for a hearing because they have come into compliance and there are extenuating circumstances. This is a financial burden. Ms. McCray has come into compliance and stands to receive \$75,000 in home rehabilitation. Mrs. Palmer stated that perhaps the cost to the City and the Code Board could be recouped from this money.

Mayor Goode explained the process to the audience. Lien rescissions were previously addressed by the Code Board. The legislature determined that Council should hear these cases. Respondents have been fined by the Code Board and are now asking Council to provide relief. He noted that this is the third or fourth case Council has seen in the past few months. He thinks it is due to miscommunication. This case has been going on since January 2004; 32 months is a long time. He said the Code Board needs to look at its own operation and how it does business. This is not the first respondent that has said there is a lack of communication. Mayor Goode supports collecting the actual fees spent over the 32 months. He said this process needs to be fixed and added that he doesn't want to see more of these cases.

Noting that Ms. McCray qualified for \$75,000 assistance with the stipulation of satisfaction of this Code Enforcement lien, Mr. LaRusso asked whether Ms. McCray would receive \$75,000 if Council rescinds this lien.

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Mr. Schluckebier stated one issue doesn't have anything to do with other. Ms. McCray qualifies for the \$75,000 assistance.

Mr. LaRusso stated he is not arguing for or against. He noted that the Code Board is quite upset with Council. He read from the minutes of the August 29 Code Board meeting where board member Bruce Mochwart stated the board is spinning its wheels with code cases based on Council's action, and board member Lorna King discussed the time and effort of the board members. Mr. LaRusso stated Mr. Mochwart makes a good point in that the Code Board chairman, board member or someone from staff should be present to speak when these cases are brought to Council.

Mayor Goode commented that the Code Board is like the circuit court and Council is the court of appeal. The circuit court doesn't tell the court of appeal how to do their business. The process needs to be reviewed so that something like this doesn't sit for 32 months.

Mr. LaRusso added that he is not sure whether the Code Board is concerned that Council is not supporting them, or they are expecting to generate revenue. He added for the record he would like to extend an olive branch to the Code Enforcement Board. Council and that Board need to come together.

Council Member Kathy Meehan referenced the agenda information which states that Ms. McCray is a single parent accepted by the City's Housing Reconstruction Program due to her very low-income status and that she qualifies for \$75,000 assistance with one provision being the satisfaction of the Code Enforcement lien. She asked for clarification.

Mr. Schluckebier stated Melinda Thomas, Housing and Community Development Director, is here and can answer questions about the Housing Reconstruction Program. The City does not make loans to upgrade homes for people with outstanding lien issues.

Mrs. Palmer stated this discussion leads her back to the issue of cost. Ms. McCray is in such a state to qualify for this money and this lien must be satisfied before she can get a dollar of the rehabilitation money. On her McDonald's job she can't pay those costs. Mrs. Palmer withdrew her comment about Ms. McCray paying the City's costs.

Melinda Thomas, Housing & Community Development Director, said the City's Housing Reconstruction Program requires that someone requesting City assistance must demonstrate that the property taxes are paid and the property owner is in good standing with the City, i.e., water bills, Code liens, etc. When Ms. McCray applied for assistance she advised she could not pay this lien. She was advised to go to the Code Board to request a rescission.

Mrs. Thomas stated that the Board did not drop the ball. They foreclosed on the property and the respondent was not cited again for the same issue. Ms. McCray's mistake was ignoring the meetings, not showing up; it was in very poor taste and not in her best interest. Mrs. Thomas commented that staff continued to call Ms. McCray to try to get her to the meetings. She asked that Council not drop the requirement that people make

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good on their debts to the City. The costs are minimal and that home will never be threatened with foreclosure.

Mrs. Palmer asked whether Mrs. Thomas thought Ms. McCray would ever be able to pay this lien if Council does not rescind it. Mrs. Thomas stated that based on her income, Ms. McCray is not in a position to pay. However, if she makes arrangements to make payments over time, staff would continue the Housing Reconstruction Program process. She has no savings to count on, no income. The house is in terrible condition and the family has had to move out because the home is unsafe.

Mrs. Palmer asked if Ms. McCray maintained ownership. Mrs. Thomas said yes, and the lien is standing in the way of the improvements. She said the ultimate goal is to make sure the property is cleaned up and livable.

Moved by Thomas/Palmer to rescind the lien to zero (see revision to motion).

Responding to Mrs. Corby, Mrs. Thomas confirmed that Ms. McCray is not living in the home. The Code violation was observed from the right-of-way; stucco work was going on that needed to be painted. The lien on the property is only for the condition of the outside of the home. However, the condition of the inside of the home is not livable.

Mrs. Corby asked Ms. McCray if her intention is to move back into the home. Ms. McCray responded yes, she intends to clean it up and make a home for her family.

Mrs. Corby stated that Mr. Mochwart has some great ideas. We don't want to send a message that all liens will be removed by Council. It is important to clean up the City. She wants the process improved. She added that the City needs to make every effort to ensure we have affordable housing.

Mr. Schluckebier asked that the maker/seconder give consideration to rescinding the lien based on the unusual, extenuating financial hardship situation.

The maker/seconder agreed to amend the motion to reduce the lien to zero based on the unusual, extenuating financial hardship situation.

Mr. LaRusso commented that the Code Board looked at about 30 cases in August. Council has two tonight and heard one at the last meeting; however, respondents must petition Council specifically for a case to be heard.

Mr. Schluckebier stated requests for rescissions come before Council on the consent agenda. If Council wishes to hear a case it is normally scheduled for a month out.

The question was called. Motion carried unanimously.

14. LIEN RESCISSION CE 07-016: (Public Hearing) Denial of a request for a lien reduction of \$8,750. (William E. & Su Yeah Denton - 27 East Nelson Avenue) (Hearing scheduled by Council - 08/14/07)

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Dan Porsi, Code Enforcement Administrator, briefed Council. This case was due to hurricane damage in 2004. The neighbors began complaining in 2006. The Dentons were cited in December 2006 for a roof in disrepair and an unsecured vacant building. At the February 2007 Code Enforcement Board meeting residents from the area were present and complained about the continuing condition of the property, noting that transients and rodents were seen. The Dentons were found in violation and at the March Code Board meeting a \$250/day fine was assessed. The property was brought into compliance on April 28 and had accumulated an \$8,750 fine. The Dentons, who live in Maryland, cited financial difficulty and not being able to find a contractor as reasons to consider a rescission.

The Dentons did not appear or provide representation for the rescission request at the July Code Board meeting. Based on prior complaints from residents and the elapsed time, the Board recommended no rescission be considered.

William Denton, Clinton, Maryland, advised he did not attend the last meeting because he did not know about it. He thought he would receive a letter, but didn't receive any notice. He talked by phone with Terry Oliver who advised him of this meeting. He flew down to be present. He explained the home was pretty much destroyed by the 2004 hurricanes, and FEMA refused assistance. He finally found a contractor through a friend in Maryland that put a tarp on, but was too busy to replace the roof. All contractors were too busy and most said it would be at least a year. The tarp blew off and Code Enforcement contacted him. He made efforts to get people here, but being in Maryland, that was hard to do. He plans to return to Melbourne and turn the residence into a professional building. Mr. Denton said he did put a new roof on the structure, but the inside is totally demolished because of the rain, etc.

Mayor Goode asked if the property is in compliance. Mr. Denton responded yes. He understands he should pay fees; however, he is asking for a rescission or reduction; because he can't afford \$8,000. That is money that would go into reconstruction of the house.

Mrs. Meehan asked if the house was insured when it was damaged. Mr. Denton responded no, Citizens had dropped him two months prior, but he received the letter late and couldn't get other insurance at the time based on the existing hurricanes.

Mrs. Corby asked if Mr. Denton lived in Melbourne or Maryland. Mr. Denton said he lives in Maryland. He flew down today for the meeting and will fly back home tomorrow.

Mrs. Palmer stated that in looking at the time line, the property was in non-compliance on March 28 of this year and a roofing permit was issued about a month later. Mr. Denton responded that he honestly did not recognize that he needed to attend the meeting, he just recognized that the work needed to be done.

Mr. Porsi stated that Mr. Denton hired a contractor who received a permit. Once the contractor received the permit the fine stopped accumulating.

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Mr. LaRusso referenced the meetings that note that the respondent was not present, and asked Mr. Denton if he received certified letters from Code Enforcement. Mr. Denton said he did receive certified letters about the violation; however, he did not receive letters about the Code Board meetings. He has been in contact with Terry Oliver and did receive a letter stating that the request for rescission was denied by the Code Board.

Mr. LaRusso stated that as with other cases, the Code Board recommendation to not reduce the fine is based on no communication at or before the Code Board meetings. He said maybe that is where the black hole is. The certified letter should state if you don't come to the meeting it won't be looked upon favorably. It is incumbent on us to make sure property owners are properly notified. Had the applicant been there it is possible a settlement or recommendation may have been worked out. We aren't uncompassionate; we want to make sure people comply, but don't want them to be financially burdened.

Mr. Denton stated he put a new roof on the house when he was able to and tried to comply. He said he plans more improvements; he is not somebody that doesn't care.

Mrs. Palmer noted that the roof was damaged in 2004 and the house sat for three years. One month after it was cited it was repaired.

Mr. Denton said there was a tarp on the roof and when the tarp blew off the neighbors complained. It was his intent to get down here to fix it.

Mrs. Palmer referenced the time period and said even if he had the money he couldn't find a contractor, but it looks like Mr. Denton didn't do anything until Code Enforcement gouged him.

Mr. Denton responded that he had been looking for roofers; they still tell you they are busy. He added that JR Roofing put him in as a favor. He said he didn't do it because he was being fined; however, he understands that it looks that way.

Mr. LaRusso moved to reduce the fine by half and give the Dentons one year to pay.

Mr. Gougelman asked about Mr. LaRusso's intention should the fine not be paid in that time. If Council agrees to reduce the fine the lien cannot be returned to the full amount. He suggested that Council agree not to reduce the lien; however, if one-half of the amount is paid within a certain amount of time it would satisfy the lien.

Moved by Palmer/LaRusso to reduce the lien by half and asked the attorney to provide a time frame. (See revision to motion.)

Mr. Gougelman advised Mr. Denton that Council is moving in a direction to cut the fine by half. He asked how soon Mr. Denton could pay the fine. Mr. Denton asked for six months. Mr. Gougelman advised that Council's approach should be to agree not to reduce the fine; however, authorize staff to satisfy the lien if 50% is paid within six months.

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Maker/seconded agreed to amend the motion to not reduce the fine and authorize staff to satisfy the lien if 50% of the lien (\$4,375) is paid within six months. Motion carried unanimously.

Mrs. Corby asked if Mr. Denton understands. Mr. Denton stated yes.

Mr. LaRusso asked if the City would allow Mr. Denton to make monthly payments. Mr. Schluckebier stated the City can work with Mr. Denton. He added that Mr. Denton would be provided with a copy of the minutes of this meeting.

FOR THE RECORD: Mr. Gougelman stated that Mr. Denton is able to make partial payments; however, if he makes 99% of the partial payment in six months, but doesn't make the full 50% (\$4,375) the fine will remain at \$8,750.

15. SITE PLAN APPROVAL (SP-2007-19) PARKWAY PLACE APARTMENTS: (Public Hearing) A request for site plan approval to allow a 216-unit multiple-family apartment project at a density of 14.66 units per acre on a 14.73-acre site zoned R-2 (15) (One-, Two-, and Multiple-Family Medium Density Residential with a cap of 15 units per acre), located on the southeast corner of Parkway Drive and Wickham Road. (Owner - Wickham Park, LLC) (Applicant -The Richmond Group of Florida, Inc.) (Representative - Matthew Soyka, Soyka Engineering & Associates, Inc.) (P&Z Board - 8/16/07)

Mrs. Dittmer briefed Council.

The Planning and Zoning Board voted unanimously to recommend approval of approval of the site plan, prepared on a single-page by Soyka Engineering and Associates, Inc., Drawing Number SK-1, signed, sealed, and dated July 25, 2007, subject to the findings contained in the agenda memorandum and the following conditions:

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

Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.
- b. Appropriate environmental permits, including permitting for the gopher tortoises, must be obtained as part of the construction plan review process.
- c. 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.
- d. In conjunction with the development of this project, the applicant shall provide a minimum of an additional 10 feet of right-of-way on Wickham Road and at the

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intersection with Parkway Drive if necessary, and construct a dedicated right turn lane and a transitional lane onto Parkway Drive, if permitted by Brevard County. The details of the right-of-way and timing of construction shall be mutually approved during the construction plan review process, and impact fee credits can be given for the contribution of the land, engineering design, and actual construction costs as determined by the City Engineer.

- e. The proposed buildings shall be substantially consistent with the rendering submitted by the applicant.
- f. 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 *amended* capacity reservation fee in the amount of \$40,843.80 for transportation, water and sewer impact fees, (on January 9, 2007, the applicant paid \$64,881.00 for 152 condominium units). Payment must be received by the City of Melbourne within 10 business days of the date of rendition of the Development Order by City Council approval. The 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.

Phil Nohrr, applicant's representative, 1800 W. Hibiscus Boulevard, discussed the plan. He said that the applicant agrees with all the conditions and stipulations.

Mr. Nohrr commented that he is not here to tear down another project; however, there are some issues with the affordable housing apartment project to the south (Wickham Club Apartments). He said that project has the same zoning and density and is very similar to his client's project. He asked that this site plan request not be tainted based on problems at Wickham Club Apartments.

Continuing, Mr. Nohrr stated that the Richmond Group is a large entity with a lot of affiliates. They own, construct and manage their projects through a series of affiliate companies. This is one of the larger affordable housing developers in the United States. They invest in a project and manage it; they don't build and turn over. Mr. Nohrr stated that in Melbourne, the Richmond Group owns/operates Manatee Cove on U.S. 1, which is affordable housing, and Rivercrest Apartments on north U.S. 1, which is not affordable housing. It is a project they purchased 10-11 years ago that they hold, manage and maintain.

Mr. Nohrr stated applicants for affordable housing with his client are provided services including healthcare, residence activities, financial counseling, life safety training; all done regularly in the complex. He discussed the strict qualifications for applicants and noted that a credit report and a public records search are done for criminal activity of all family members. Mr. Nohrr noted that the engineer, the owner's representative and the manager from Manatee Cove are present.

Mrs. Meehan asked if the Manatee Cove complex is monitored 24 hours.

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Judy Roberts, Manatee Cove property manager, confirmed there is a security alarm service monitoring the complex and there is an employee that resides at the complex.

Mrs. Meehan asked if drug activity and anything out of the ordinary are addressed and reported to the Melbourne Police Department. Mrs. Roberts responded yes. She noted that residents receive a seven day notice to cure a violation and if they don't or there is a problem they are given a seven day notice to terminate and are terminated. Mrs. Roberts added there have to be police reports, documented cases.

Mr. LaRusso asked if the resident employee is a maintenance person. Ms. Roberts stated it is a leasing person; however, two maintenance staff are five minutes away.

Mrs. Palmer asked about the number of police calls to the Manatee Cove complex. Ms. Roberts stated that she can't answer that question because some calls are domestic; it is beyond her field of experience. She said the Manatee Cove office has made one call to the Police Department.

Mr. Schluckebier stated that information can be obtained.

Mr. Thomas asked about the number of staff calls that are drug related. Ms. Roberts responded none. A neighborhood crime watch was established in October 2006 and it takes time to get going. They have had three meetings with the Police Department and Jane Meier to educate residents.

Mrs. Corby asked whether this project falls under the Sadowski Act. Mr. Nohrr said he is not familiar with the Sadowski Act. Mrs. Corby stated it relates to affordable housing. Mr. Nohrr responded that funding has been approved for this project through the State of Florida so he assumes it does.

Mrs. Corby asked how we determine what areas are going to be designated for affordable housing and what areas are we looking at.

Mr. Schluckebier stated that is not something that is geographically based. There is a City-wide policy that encourages creation, sustenance and attainability of affordable housing situations. He confirmed for Ms. Corby that there is nothing in the Code that mandates location, style of home, etc. He said the City is less aggressive in that the State has encouraged cities and counties to try to barter and give density credits and upgrades in zoning, the next step of aggressiveness about affordable housing; however, the City has not done that. We have a policy that says it is our policy to encourage affordable housing projects. Mrs. Corby asked if there are plans to take the next step and Mr. Schluckebier replied no.

Council Member Contreras disclosed that he spoke to Attorney Nohrr on August 24 and specifically discussed this site plan. Another part of the discussion was tax credit, as well as affordable housing. Mr. Contreras said some Council Members are moving in the right direction in that it is all well and good to have affordable housing in Melbourne; however, there is the question of compatibility. He is not prejudiced to this particular project.

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Referencing Wickham Club Apartments, he said some of the same requirements were in place there; family size, review of who is in the units, and so forth. The criteria was much the same. That particular project has been an absolute haven for crime; helicopter flyovers, gun shootings, break-ins, raping of children, and it is bleeding into Wickham Village, West Park Town Homes, and his neighborhood of Weston Park. Prior to Wickham Club Apartments there was one affordable housing complex to the south, and even with that the area experienced an increase in crime activity.

Continuing, Mr. Contreras stated that his district, District 1, is now wrapped around with affordable housing or proposed affordable housing. He said we want to encourage affordable housing; however, he questioned the compatibility and the quantity in this one area. These neighborhoods have taken significant hits as far as safety and compatibility.

Moved by Contreras/Goode to postpone (SP-2007-19; Parkway Place Apartments) until crime statistics for the areas that border Lake Washington Road, Croton Road, Parkway Drive and Wickham Road can be provided to Council.

Mrs. Palmer said when Council looked at sites for adult entertainment, staff used a term for the associated negative impacts to an area and asked if this could be provided in this instance.

Mrs. Meehan asked for the crime reports for Manatee Cove Apartments.

Mr. Gougelman stated that this has been advertised as a public hearing. If Council postpones the item it should be to a time certain.

The maker/seconder agreed to postpone action until the October 9 Council meeting.

Mr. Schluckebier stated that he will provide Council with the Police Department precinct reports for these areas. He stated that Mrs. Palmer is referring to adverse secondary impacts; however, that impact usually concerns only adult entertainment. He understands what Council is trying to get at and believes that the crime statistics should satisfy Council's questions.

The question was called. Motion carried unanimously.

Recessed: 8:53 p.m.

Reconvened: 9:03 p.m.

16. PRELIMINARY PLAT APPROVAL (SD-2006-06A) MAYFAIR ISLES SUBDIVISION, PHASE 1: (Public Hearing) A request for preliminary plat approval to allow development of Phase 1 of the Mayfair Isles Subdivision on 253.85± acres zoned PUD (6) (Planned Unit Development with a cap of 6 units per acre), located south of Florida Avenue, east of Babcock Street, west of Lipscomb Street, and north of Eber Boulevard/Pirate Lane; and approval of a PUD Development Agreement for Mayfair. (Owner/Applicant - Southern Homes of Melbourne II, LLC) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 8/16/07)

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- a. A request for preliminary plat approval to allow development of Phase 1 of the Mayfair Isles Subdivision, which includes parcel identification, the main street system, stormwater management systems, landscaping tracts, and the construction of the Eber Boulevard/Pirate Lane alignment on 253.85± acres.
- b. Resolution No. 2052: A resolution authorizing the City Manager to execute a Development Agreement for Mayfair between Southern Homes of Melbourne II, LLC and the City of Melbourne.

Ms. Dittmer briefed Council.

The Planning and Zoning Board voted unanimously to recommend approval of the two-sheet Master PUD Plan prepared by Construction Engineering Group of Melbourne, Florida, dated April 6, 2007, and a five-sheet plat prepared by AAL Land Surveying Services, Inc., of West Melbourne, Florida, Project Number 18420-2-PLAT1, with a signed and sealed date of April 10, 2007, subject to the following conditions:

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

Any substantial change to the preliminary plat will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council. A substantial change for this project is any change that is inconsistent with the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.
- b. All hardwood trees and scrub oaks located outside of any building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- c. The applicant will acquire all necessary permits and will mitigate through the appropriate agency/agencies for the scrub jays and gopher tortoises located onsite.
- d. All appropriate environmental permits must be obtained as part of the construction plan review process.
- e. The development of this phase shall be consistent with all of the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.
- f. All tracts utilized to meet open space requirements will be reviewed for consistency with City Code during construction plan review.

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- g. 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 (10%) in the amount of \$361,038 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 the Development Order by City Council approval. The transportation, water and sewer capacity reservation shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne. Failure to have reserved capacity shall be a basis for withdrawing approval of the development order.
- h. Payment of the water and sewer impact fees shall occur as described in the Developers Agreement as follows: payment of 12.5% within 10 business days of the date of rendition of this Development Order by City Council, and payment of another 12.5% prior to December 31, 2007.

Phil Nohrr, applicant's representative, stated Council has seen the project and he is here to review or answer any questions for Council. Considerable time has been spent working with staff on an agreement that is acceptable to both parties. This is a tremendous project for this area and they are anxious to get going. The project will accelerate the four-laning of Eber Boulevard and its realignment from Minton Road to Lipscomb Street with connection to Commerce Park Boulevard, Robert Conlan Boulevard and to U.S. 1, providing a major east/west corridor. Mr. Nohrr noted that the applicant and the local manager are present.

There were no public comments and no disclosures from Council members.

Responding to Mayor Goode, Mr. Nohrr stated that the applicant is aware and agrees with the findings and conditions.

Discussion followed regarding the realignment of Eber Boulevard/Pirate Lane. City Engineer Jenni Lamb, confirmed that the current Pirate Lane/Lipscomb Street intersection will be abandoned and the area will be used for stormwater. No homeowners will be affected with the road closing because there are no driveways in that portion of Pirate Lane.

Mr. Contreras stated currently there is no stoplight at that intersection and asked if one would be installed at the new intersection. Mrs. Dittmer stated yes, when the warrants are met. Mrs. Lamb added that the intersection currently does not warrant a signal; however, it may following this build out.

Moved by Palmer/Meehan for approval of SD-2006-06A, based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

Moved by Contreras/Meehan for approval of Resolution No. 2052 authorizing the City Manager to execute the Development Agreement for Mayfair. Motion carried unanimously.

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17. PRELIMINARY PLAT APPROVAL (SD-2006-06B) MAYFAIR ISLES SUBDIVISION, PHASE 2 (PARCEL 4): (Public Hearing) A request for preliminary plat approval to allow development of Phase 2 of the Mayfair Isles Subdivision, which includes 104 single-family residential lots on a 17.09±-acre parcel zoned PUD (6) (Planned Unit Development with a cap of 6 units per acre), located on the south side of Florida Avenue, east of Babcock Street, and west of Lipscomb Street. (Owner/Applicant - Southern Homes of Melbourne II, LLC) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 8/16/07)

Mrs. Dittmer briefed Council.

The Planning and Zoning Board voted unanimously to recommend approval of the preliminary plat for Phase 2 of the Mayfair Isles Subdivision as submitted on a two-sheet plan prepared by AAL Land Surveying Services, Inc., of West Melbourne, Florida, Project Number 18420-2-PLAT2, with a signed and sealed date of April 10, 2007, subject to the following conditions:

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

Any substantial change to the preliminary plat will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council. A substantial change for this project is any change that is inconsistent with the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.

- b. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- c. The applicant will acquire all necessary permits and will mitigate through the appropriate agency/agencies for the scrub jays and gopher tortoises located onsite.
- d. All appropriate environmental permits must be obtained as part of the construction plan review process.
- e. Only one building permit may be issued on the plat prior to recordation of the final plat.
- f. The development of this phase shall be consistent with all of the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.
- g. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, and as detailed in the Developer's Agreement and in the

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conditions of Phase 1 of the Mayfair Isles Planned Unit Development, the Owner/ Developer is subject to timing and payment of the appropriate transportation, water and sewer impact fees.

There were no public comments and no disclosures from Council.

Phil Nohrr, applicant's representative, informed Council he had nothing to add and agreed with the findings and conditions.

Moved by LaRusso/Thomas for approval of SD-2006-06B based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

18. PRELIMINARY PLAT APPROVAL (SD-2006-06C) MAYFAIR ISLES SUBDIVISION, PHASE 3 (PARCEL 5): (Public Hearing) A request for preliminary plat approval to allow development of Phase 3 of the Mayfair Isles Subdivision, which includes 138 single-family residential townhome lots on a 12.57±-acre parcel zoned PUD (6) (Planned Unit Development with a cap of 6 units per acre), located on the south side of Florida Avenue, east of Babcock Street, and west of Lipscomb Street. (Owner/Applicant - Southern Homes of Melbourne II, LLC) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 8/16/07)

Mrs. Dittmer reviewed the project.

The Planning and Zoning Board voted unanimously to recommend approval of the preliminary plat for Phase 3 of the Mayfair Isles Subdivision as submitted on a two-sheet plan prepared by AAL Land Surveying Services, Inc., of West Melbourne, Florida, Project Number 18420-2-PLAT3, with a signed and sealed date of April 10, 2007, subject to the following conditions:

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

Any substantial change to the preliminary plat will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council. A substantial change for this project is any change that is inconsistent with the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.

- b. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- c. The applicant will acquire all necessary permits and will mitigate through the appropriate agency/agencies for the scrub jays and gopher tortoises located onsite.

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- d. All appropriate environmental permits must be obtained as part of the construction plan review process.
- e. Only one building permit may be issued on the plat prior to recordation of the final plat.
- f. The development of this phase shall be consistent with all of the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.
- g. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, and as detailed in the Developer's Agreement and in the conditions of Phase 1 of the Mayfair Isles Planned Unit Development, the Owner/Developer is subject to timing and payment of the appropriate transportation, water and sewer impact fees.

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

Phil Nohrr, applicant's representative, said he had nothing to add to staff's report and agreed with the findings and conditions.

Moved by Thomas/Meehan for approval of SD-2006-06C based on the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

19. PRELIMINARY PLAT APPROVAL (SD-2006-06D) MAYFAIR ISLES SUBDIVISION, PHASE 4 (PARCEL 7): (Public Hearing) A request for preliminary plat approval to allow development of Phase 4 of the Mayfair Isles Subdivision, which includes 55 single-family residential lots on a 11.16±-acre parcel zoned PUD (6) (Planned Unit Development with a cap of 6 units per acre), located on the south side of Florida Avenue, north of Eber Boulevard, and west of Lipscomb Street. (Owner/Applicant - Southern Homes of Melbourne II, LLC) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 8/16/07)

Mrs. Dittmer briefed Council.

The Planning and Zoning Board voted unanimously to recommend approval of the preliminary plat for Phase 4 of the Mayfair Isles Subdivision as submitted on a two-sheet plan prepared by AAL Land Surveying Services, Inc., of West Melbourne, Florida, Project Number 18420-2-PLAT4, with a signed and sealed date of April 10, 2007, with the following conditions:

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

Any substantial change to the preliminary plat will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City

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Council. A substantial change for this project is any change that is inconsistent with the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.

- b. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- c. The applicant will acquire all necessary permits and will mitigate through the appropriate agency/agencies for the scrub jays and gopher tortoises located onsite.
- d. All appropriate environmental permits must be obtained as part of the construction plan review process.
- e. Only one building permit may be issued on the plat prior to recordation of the final plat.
- f. The development of this phase shall be consistent with all of the conditions and requirements of the Preliminary Development Plan, the Community Development District and the Developer's Agreement.
- g. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, and as detailed in the Developer's Agreement and in the conditions of Phase 1 of the Mayfair Isles Planned Unit Development, the Owner/Developer is subject to timing and payment of the appropriate transportation, water and sewer impact fees.

There were no public comments and no Council disclosures.

Phil Nohrr, applicant's representative, once again said he had nothing to add to staff's presentation and agreed with the findings and conditions.

Moved by Contreras/Meehan for approval of SD-2006-06D based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

20. RESOLUTION NO. 2053, STORMWATER UTILITY BUDGET: (Public Hearing) A resolution to adopt an annual stormwater utility budget for the fiscal year beginning October 1, 2007.

The public hearing was opened and closed with no comments.

Moved by Contreras/LaRusso for approval of Resolution No. 2053. Motion carried unanimously.

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21. RESOLUTION NO. 2054, CERTIFICATION OF STORMWATER ASSESSMENT ROLL:
A resolution certifying the Stormwater Utility Assessment Roll.

Mrs. Lamb reviewed her memorandum, which revises Exhibit “A,” of the resolution by reducing the billed parcels to 30,852 and increasing the total amount to \$1,123,557.84.

Moved by Meehan/LaRusso for approval of Resolution No. 2054 with the revisions to Exhibit “A.” Motion carried unanimously.

22. ORDINANCE NO. 2007-68 (A&V NO. 304): (First Reading/Public Hearing) An ordinance vacating the southerly three feet of a six-foot wide public utility and drainage easement at 560 & 572 Louvre Drive. (Applicants - Frank & Mary Zambrotto)

The attorney read Ordinance No. 2007-68 by title and Mrs. Lamb briefed Council.

Mrs. Lamb briefed Council.

Moved by LaRusso/Contreras for approval of the Ordinance No. 2007-68. Motion carried unanimously.

23. ORDINANCE NO. 2007-69 (A&V NO. 309): (First Reading/Public Hearing) An ordinance vacating approximately 126 feet of the north end of Grant Court. (Applicant - City of Melbourne)

Attorney Gougelman read the ordinance by title and Mrs. Lamb reviewed the item.

Moved by Meehan/Thomas for approval of the Ordinance No. 2007-69. Motion carried unanimously.

24. ORDINANCE NO. 2007-70 (Z-2007-1106), ORDINANCE NO. 2007-71 (CU-2007-05), AND SITE PLAN APPROVAL (SP-2007-08) SHOPS AT DAIRY ROAD: Ordinances providing for a change in zoning and granting a conditional use to allow construction of a 3,300 square foot convenience store with eight fueling positions and site plan approval to allow a retail shopping complex, located at the northeast corner of Dairy Road and Eber Boulevard. (Owner/Applicant - Courtelis Company) (Representative - Hassan Kamal, P.E., BSE Consultants, Inc.) (P&Z Board - 8/16/07)

- a. Ordinance No. 2007-70/Z-2007-1106: (First Reading/Public Hearing) An ordinance changing the zoning from C-1 (Neighborhood Commercial) to C-2 (General Commercial) on a 1.61-acre parcel.
- b. Ordinance No. 2007-71/CU-2007-05: (First Reading/Public Hearing) An ordinance granting a conditional use to allow construction of a 3,300 square foot convenience store with eight fueling positions and a shopping complex on a 1.61-acre portion of a 5±-acre parcel.

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- c. Site Plan Approval (SP-2007-08): A request for site plan approval to allow construction of a shopping complex with four separate buildings, including a single-story multiple unit retail project with 18,900 square feet of retail space, a 3,150 square foot bank with drive-thru lanes, a separate 4,000 square foot retail building, and a 3,300 square foot convenience store with eight fueling positions on a 5±-acre parcel.

Mr. Gougelman read Ordinance Nos. 2007-70 and 2007-71 by title and Mrs. Dittmer briefed Council and noted that a letter of intent to file a petition from a property owner was submitted after the public hearing at the August 16, 2007, Planning and Zoning Board meeting. Staff will determine if property owners representing 20% of the land area within 500 feet sign the petition, which will then require a 6/7 vote during the second reading of the rezoning ordinance.

The Planning and Zoning Board voted five to two to recommend approval of Z-2007-1106, CU-2007-05, and approval of SP-2007-08, as submitted on a single-page site plan by BSE Consultants, Inc., Drawing Number 10330207, with a signed and sealed date of July 30, 2007, including the following conditions:

- a. Changes to the site plan will require reevaluation by the Engineering Department and Planning and Economic Development Department.
- Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.
- b. The applicant shall be limited to the uses approved as part of the original rezoning of the five acres, and identified in Ordinance 99-41.
- c. The applicant shall provide a right-turn/taper into the project from Eber Boulevard, as determined/permitted by the City Engineering Department during the construction plan review process.
- d. The applicant shall construct a 24-foot wide driveway connection to the vacant multiple-family residential property to the north. The timing of the construction and recording of a cross access easement shall be finalized with the construction plan review process.
- e. Any request to change to the square footage of the buildings or the amount of impervious area shall be reviewed for consistency with the maximum impervious of 65% within the aquifer recharge area.
- f. Appropriate environmental permits must be obtained as part of the construction plan review process.
- g. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved. Buildings and parking/drive aisles shall

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be shifted where possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.

- h. A six-foot high masonry wall and associated vegetation shall be constructed adjacent to the vacant residential property located to the north and east and a six-foot opaque fence shall be constructed adjacent to the fire station located to the east, consistent with City Code, Appendix D, Chapter 9, Article III and Article XV.
- i. The proposed buildings shall be substantially consistent with the rendering submitted by the applicant.
- j. 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 (10%) in the amount of \$31,289.68 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 the Development Order by City Council approval. The transportation, water and sewer capacity reservation shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne. Failure to have reserved capacity shall be a basis for withdrawing approval of the development order.

Mrs. Dittmer confirmed for Vice Mayor LaRusso that the parcel must be rezoned C-2 in order to have a gas station.

Mr. Thomas noted that he received several emails regarding this and forwarded them to the City Clerk for distribution to Council.

Mayor Goode asked the applicant's representative to complete a sign in sheet. The Mayor referenced an email in opposition received from Jo Ann Clark, and opposition emails received by Council Member Thomas from South Oaks homeowners Kermit and Norma Sommer, MC "Rocky" Godwin, Arthur B. and Beverly Karns, and Katherine Haggerty and Henry Lappen.

Hassan Kamal, BSE Consultants, applicant's representative, said he has been involved in this project for a while. The property was rezoned to C-1 in 1999 and the entire five acres was to be master planned to ensure there were no adverse impacts to the surrounding area. Turn lanes, right in/right out access, and the opportunity for vehicle/pedestrian interconnections were provided. Mr. Kamal said that the applicant is agreeable with City staff's recommendation to add a turn lane onto Dairy Road subject to Brevard County approval. The entire site has been master planned and staff documented that it meets all applicable requirements. They will also meet the landscape and site plan requirements. He noted that there are no wetlands/wildlife constraints. A portion of the property is in an aquifer recharge area and there will be no more than 65% impervious area within the aquifer recharge zone.

Continuing, Mr. Kamal stated that the applicant is in agreement with the Planning and Zoning Board recommendations. He said there was discussion of two additional

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stipulations at the Planning and Zoning Board meeting; however, these were not approved or included by staff. One was to limit the hours of operation the same as the convenience store approved at the southwest corner of the same intersection. Currently there is no tenant. Mr. Kamal said he has talked with a few prospective tenants and at this time the location doesn't warrant a 24 hour operation. For the immediate future there will not be a 24 hour operation. However, his preference would be to let the market dictate that. There was also discussion about flipping the building so the back of the building faces Eber Boulevard and the gas pumps face north. That is not a good idea because the back of the building would face the intersection of Eber and Dairy and the backs of buildings are not attractive and well maintained; people driving on Eber or living across the street would not be happy. He said they will work with the lighting standards and screening to be more compatible with the adjacent development.

Discussion followed regarding how long Mr. Courtelis has owned this property. Mr. Kamal said Mr. Courtelis has owned the property at least 20 years. Mayor Goode commented that Mr. Courtelis owned the property when he (Mayor Goode) was Mayor in the early 1980s.

Mrs. Meehan referenced the drawing in the agenda package and asked if the approval is based on that rendering. Mr. Kamal stated one of the stipulations requires construction to be in substantial conformance to that rendering. That is their intent.

Jo Ann Clark, 4048 Green Oak Drive, Board Member South Oaks Homeowners, advised that she resides directly across from the proposed service station. She is concerned about her property value and the other South Oaks homeowners. The City's policy is to send notices to homeowners within 500' of a development; however, with a homeowners' association, what happens to one homeowner happens to all. It is her opinion that it is wrong to say that a development only affects people living within 500'. She doesn't know anybody that would buy a home across the street from a service station, especially with a convenience store. The applicant doesn't have a tenant and concedes to reduce the hours, but down the road may increase it 24 hours. She listed the businesses in the area and said the South Oaks residents are retired and have a routine; they visit specific stores.

Mrs. Palmer commented that the last time she heard from the South Oaks neighborhood it was about the new fire station. She asked how that has affected the neighborhood. Mrs. Clark said they can justify the fire station even though the footprint has changed. She added if she were in the market to buy a home now she wouldn't buy in South Oaks.

Mr. LaRusso asked if the gas station/convenience store are what Ms. Clark opposes. Mrs. Clark said that predominantly, a gas station/service station is something they strongly oppose.

Mr. Kamal responded to the concerns raised. He said he can't address property valuation. There are no studies based on good quality commercial development. As far as operating hours, the prospective tenants he talked to have not indicated they would operate 24 hours; however, in five to eight years the market may dictate otherwise. Mr.

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Kamal concluded by stating that the project stands on its own merit and the documentation from City staff.

Mayor Goode closed the public hearing. There were no disclosures from Council.

Responding to Mr. LaRusso, Mrs. Dittmer confirmed that Council approved a convenience store not yet built on the commercial property located diagonally from this project.

Mr. Thomas stated he won't support the rezoning or the project because he does not believe it is consistent with the neighborhood and is not a good fit.

Moved by Meehan/Goode for approval of Ordinance No. 2007-70.

Mayor Goode stated that Council has already approved the same type of development on the opposite corner so we can't say it is not compatible.

Mrs. Meehan commented that she lives near a gas station on U.S. 1. It is convenient and she doesn't have to get out on the highway that much. She believes it is compatible.

Mrs. Palmer said that the zoning change is from Neighborhood Commercial to General Commercial and asked if the applicant would be able to build a commercial building other than a gas station with Neighborhood Commercial zoning. Mrs. Dittmer responded yes, the rezoning is related to the gas pumps.

The question was called. The roll call vote was:

Aye: Meehan and Goode

Nay: Contreras, Thomas, Palmer, Corby and LaRusso

Motion failed.

Based on denial of Ordinance No. 2007-70, no action was required on Ordinance No. 2007-71.

Moved by LaRusso/Contreras to return the site plan to staff to work with the applicant to revise without gas pumps. Mayor Goode stated that without objection the site plan is returned to staff.

25. ORDINANCE NO. 2007-72 (CPA-2006-39) AND ORDINANCE NO. 2007-73 (Z-2007-1116) PAUL RUFO: Ordinances providing for a Comprehensive Plan Amendment and a change in zoning on a 0.69-acre parcel, located on the east side of Wickham Road, north of Parkway Drive, and south of Melbourne Fire Station #77. (Owner - Brevard County) (Applicant/Representative - Paul R. Rufo) (P&Z Board - 8/16/07)

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- a. Ordinance No. 2007-72/CPA-2006-39: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Public Lands and Institutions/Recreation to Public Lands and Institutions/Commercial on a 0.69-acre parcel.
- b. Ordinance No. 2007-73/Z-2007-1116: (First Reading/Public Hearing) An ordinance changing the zoning from I-1 (Institutional) to C-1 (Neighborhood Commercial) on a 0.69-acre parcel.

Attorney Gougelman read the ordinances by title and Mrs. Dittmer reviewed the item.

The Planning and Zoning Board voted unanimously to recommend approval of these requests.

There were no public comments.

Mr. Thomas noted that Mr. Rufo serves as a volunteer on his coaching staff and mentioned that the project was coming to Council; however, they did not discuss it.

Mrs. Corby reported that in February 2006 she met with Mr. Rufo and his wife regarding the project.

Mr. LaRusso advised that he was at a social function a number of months ago where he saw Mr. and Mrs. Rufo and discussed the project; however, he made no determination.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-72. Motion carried unanimously.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-73 based on the findings and condition contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

26. ORDINANCE NO. 2007-74 (Z-2007-1117AD/LDR-2007-05/FOC-2007-06) AUXILIARY LANES: (First Reading) An ordinance amending Appendix B, Article IX and Appendix D, Chapter 8 of the City of Melbourne Code, by amending the requirements deceleration lanes and left-turn lanes. (Applicant - City of Melbourne) (P&Z Board - 8/16/07)

The City Attorney read Ordinance No. 2007-74 by title and Mrs. Dittmer briefed Council.

The Planning and Zoning Board unanimously voted to recommend approval.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-74 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

27. ORDINANCE NO. 2007-75, CITY PROPERTY: (First Reading) An ordinance amending Chapter 2, Article VIII of the City of Melbourne Code entitled "Disposition of Real

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Property,” by providing for standards and procedures for the sale, lease or other disposition of property owned by the City.

Mr. Gougelman read Ordinance No. 2007-75 by title.

Mrs. Palmer stated she appreciates Deputy City Manager Ralls hard work on this ordinance; he did a wonderful job. The ordinance provides that park property over two acres can't be sold without a referendum; however, when she spoke with Mr. Ralls by phone today it appears that some City parks are not designated as such. She asked him to explain this to Council and asked Council to take action to designate park property to fall within the diameter of a referendum for anything over two acres.

Mr. Ralls commented that the official designation for park property is not really clear. There are properties included in the Comprehensive Plan's list of parkland acreage. We consider Wells Park, the Auditorium property and the entire block as park property. The entire 35 acres, including the Liberty Bell Museum property, is listed under the table for parklands, but is not explicitly defined. He suggested an amendment to the Comprehensive Plan for clarification. His interpretation would be that the Wells Park block is park property and protected by the over two acre referendum rule because it is listed as parkland in the Comprehensive Plan.

Mrs. Palmer said she is fine with Ordinance No. 2007-75. Council needs to take action aside from this to designate our parks as parkland in the Comprehensive Plan to be protected by this ordinance. She said she would agree to move forward with this ordinance if Council takes action to better define park property.

Mr. Schluckebier stated that Council can proceed with first reading of this ordinance and follow within 30 days with the park designation.

Mrs. Palmer referenced Sec. 2-252.6 (methods of disposal) that provides “the City may negotiate the sale of real property with a particular person or entity and no further advertising will be needed to effect a transfer.” She asked if that means the City could effect a private sale without an opportunity for anyone else to purchase.

Mr. Ralls referenced the sale of the parking lot property on Strawbridge Avenue noting it was a negotiation with a single property owner. It was not advertised for bids or sale. However, based on Ordinance No. 2007-75, it would be advertised because an ordinance would be required for the sale and ordinances are advertised.

Moved by Palmer/LaRusso for approval of Ordinance No. 2007-75. Motion carried unanimously.

28. ORDINANCE NO. 2007-76, CITY HALL PARKING: (First Reading) An ordinance amending Chapter 31 of the City Code, entitled “Traffic and Motor Vehicles,” by providing a penalty for unauthorized parking at a City facility where official signs have been posted.

Attorney Gougelman read the ordinance by title.

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Moved by Contreras/Thomas for approval of Ordinance No. 2007-76. Motion carried unanimously.

29. COUNCIL DISCUSSION RE: Recent and future water line replacements.

Robert Klapproth, Public Works and Utilities Director discussed the City's water line replacement program and the unidirectional flushing program that's coming. He said that Dr. Robert Reiss, Reiss Environmental will address chemistry issues.

The City's water line replacement program started in 1987. Prior to the program, if something broke we fixed it. A lot of the system was built before the mid 1970s, when cast iron and galvanized steel pipe was the prevalent technology. The system was completely analyzed to determine what we had where. A five year plan was established to schedule waterline replacements and every year we look at that plan and adjust it based on complaints received or rash of breaks in a particular area. Staff has submitted a miscellaneous waterline replacement program every year for the past 20 years. Mr. Klapproth displayed images of the City's water pipe system, the 107 miles of pipes replaced at a cost of over \$20 million, and the 16.5 miles proposed for replacement in the next five years at a cost of \$9.5 million. We have concentrated on some areas more than others, mostly the old Melbourne and Eau Gallie areas based on the older pipes. He said this is not a total representation of the piping system; we actually have close to 1,000 miles of pipe. Most of the transmission mains are metal and will remain metal because it's the best technology for the bigger pipes. He said this program will not stop, it continues; however, there is no way we could replace all the pipes that need to be replaced with the available money. He noted that replacements are not done with just contractors; City employees make the replacements for short lengths (two blocks or less) in neighborhoods with serious problems that need to be addressed immediately.

Mrs. Meehan asked if replacement is planned for the Southgate area, noting she has received complaints from this area. Mr. Klapproth responded that Southgate has PVC pipes and complaints can possibly be related to something else. He will take a look at it.

Mr. Thomas asked if Sherwood Park has any replacement slated. Mr. Klapproth responded that there is still some six inch cast iron in Sherwood Park; however, a lot of replacement has already been done. Staff tries to spread the wealth around best we can responding to the complaints we receive.

Mrs. Corby thanked Mr. Klapproth for a nice job. As the pipes are replaced, it would be helpful if she could see a map, especially with the road names. She suggested using this map with the areas blackened.

Mr. Schluckebier stated that Mrs. Corby is asking that as Council is asked to award these projects that staff provide the locations on this map. He said that 10-15 years ago concern was raised in the outlying areas of our system not located in the City of Melbourne that they were being short changed; however, this map makes it clear that if there is a problem within our water system, inside the City or not, the pipes are being replaced with equal footing.

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Mr. Klapproth discussed the unidirectional flushing program that has been in the works for about a year. It was a difficult process but we are on the homestretch and Reiss Environmental was instrumental in that. The past year has been spent identifying the system and the priorities. He pointed out that bids were opened yesterday for the two parts of the work, the valve locations and the actual flushing. We are well within the established budget. The zones have been identified and prioritized, one contractor will go to the zone, find the valves and make sure they are working and ensure we can isolate the system, and then move to the next zone. After that contractor has gone through a few zones, the second contractor will come in and start flushing the system. We budgeted \$1 million in next year's budget for this process and the bids came in at about \$750,000. The contract will be brought to Council on September 25 for award and hopefully by October 22 we will have crews in the field starting the program. He said he expects that once the program is started, 75% of the calls we receive about dirty water will stop.

Mayor Goode discussed the water quality complaints Council has been receiving. Council will adopt a new \$170 million budget in two weeks; however, all that money won't be in the bank on October 1. It will take some time to collect some of that money.

Mr. Klapproth stated that as far as he is concerned, if Council approves the budget on September 25, that money is available for this project. The award of this project will be on the same agenda. We've been working on this and no one has seen anything done. We are finally at that point and we are within budget.

Responding to Mrs. Palmer, Mr. Klapproth noted that prioritizing was done based on complaints; areas with the most complaints received highest priority. Mr. Schluckebier stated that staff will provide a map of the zones with the contract award.

Mrs. Palmer commented that some residents in the older neighborhoods with the most complaints have given up and stopped calling. Mr. Klapproth stated staff went back through our records and established a database, which was one of the most difficult parts of this entire process and what has taken so long to get to this point.

Robert Reiss, Reiss Environmentals, explained that he conducted a water chemistry study to evaluate whether there are characteristics of the water leaving the water treatment plant that might contribute to customer complaints. He looked at the water at the water treatment plants as it entered the distribution system and then sampled the water throughout the distribution system itself. He looked at whether the quality changed after the water left the plant and moved through the distribution system; specifically looking at the stability of the water and whether it was corrosive. Stable water will not be corrosive. He also looked at how aggressive the water was. The water leaving the water treatment plants is excellent; there was nothing found in the water that would contribute to customer complaints. However, his analysis found that the water in the distribution system is aggressive and corrosive and contributes to customer complaints. Specific recommendations have been developed and submitted to staff relative to the stabilization process, including upgrade to enhancements to the chemical feed systems. He said he understands there is a line item in the budget already planned for this type of work and staff is currently reviewing the

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recommendations and will bring them to Council.

Mrs. Palmer asked if the chemical feed systems are located down line or at the plant. Mr. Reiss stated some are at the plant and some are in the distribution system.

30. COUNCIL ACTION RE: Appointment of three regular members and two alternate members to the Citizens' Advisory Board.

Moved by Contreras/Meehan to reappoint Dale Haynes, Eva Mills and Rhodie Humbert. Motion carried unanimously. (11/12/2007 – 11/11/2010; 3-year term each)

Council Members Palmer and Corby nominated Matthew Conkle.

Moved by Contreras/Goode to close the nominations. Motion carried unanimously.

Moved by Goode/Palmer to appoint Matthew Conkle. Motion carried unanimously. (11/12/2007 – 11/11/2010; 3-year term)

Council Members Palmer and LaRusso nominated Eric Ellebracht.

Moved by Contreras/Goode to close the nominations. Motion carried unanimously.

Moved by Goode/Meehan to appoint Eric Ellebracht. Motion carried unanimously. (9/11/2007 – 11/11/2009; unexpired 3-year term)

31. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole 805 E. Palmetto Avenue, referenced Council Member Contreras' comment about people not coming to speak, especially on the budget. People in the community don't think it does any good because Council doesn't listen. She discussed the Coy Clark project and the Courtelis property. She does not speak to be critical, she still cares about the City.

32. ADJOURNMENT

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

The meeting adjourned at 10:29 p.m.



Assistant City Clerk – 9/19/2007

Approved by Council: September 25, 2007 w/correction to page 16