



*City of Naples*

City Council Minutes

Regular Meeting July 7, 1982

City Council Chambers  
735 Eighth Street South  
Naples, Florida 33940

-SUBJECT-	Ord. No.	Res. No.	Page
APPROVAL OF MINUTES - Regular Meeting, June 16, 1982 & Special Workshop Meeting, June 23, 1982			1
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Monthly detailed expenditure and revenue summary to Councilmen			1
Preliminary report from Wilson, Miller, Barton, Soll & Peek next week on spray irrigation study			1
Review City Manager & City Attorney's salaries during budget			3
RESOLUTIONS			
-To Grant a conditional Variance for dock extension-Schaefer		4052	1
-To Grant Easement Vacation Petition' 80-A2-Moorings Park, Inc.		4053	2
-To Approve Special Election November 2, 1982 for Holland vacancy		4054	3
-To Authorize 10-year lease for Funtime Nursery		4055	3
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ORDINANCE - FIRST READING			
-To Authorize City Manager to advertise for bids for Public Works vehicles for 82-83 budget - APPROVED	--		2
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-To settle Venetian Bayview Property/Tropic Development of Naples lawsuit - permit 75 units			4
-No action on Dr. Bretz' request for terramycin for lethal yellowing of palm trees			5
PURCHASING			
-Award annual bid for construction equipment rental		4057	5
-Award annual contract for sidewalk construction and repair		4058	5
-Award bid for hurricane shutters for City Hall		4059	6

City Council Chambers  
735 Eighth Street South  
Naples, Florida 33940



CITY COUNCIL MINUTES  
Regular Meeting

Time 9:05 a.m.

Date July 7, 1982

The Mayor called the meeting to order and presided as Chairman.

ROLL CALL: Present: Stanley R. Billick  
Mayor  
  
R. B. Anderson  
C. C. Holland  
Harry Rothchild  
Wade H. Schroeder  
Randolph I. Thornton  
Kenneth A. Wood  
Councilmen

Also Present:  
Mark Wiltsie, Acting City Manager  
David W. Rynders, City Attorney  
John McCord, City Engineer  
Roger Barry, Community  
Development Director  
Ellen P. Marshall,  
Deputy City Clerk

See Attachment #1 for supplemental attendance list.

INVOCATION BY: Reverend Eleanor McMullen, East Naples United  
Methodist Church

APPROVAL OF MINUTES: ITEM 3

MOTION: To APPROVE the minutes of the Regular Meeting  
of June 16, 1982 and the Special Workshop  
meeting of June 23, 1982.

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ANNOUNCEMENTS - MAYOR BILLICK ITEM 4

Mayor Billick noted that Councilmen would receive on a monthly  
basis a detailed expenditure summary and revenue summary and  
a recap. In response to an inquiry from Mr. Anderson, Acting  
City Manager Wiltsie noted that there would be a quarterly re-  
port containing "Cost to Complete" figures. Mr. Schroeder  
noted his desire to have the budget figured on a monthly basis.

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Mayor Billick noted that a preliminary report would soon be  
forthcoming on spray irrigation from Bill Barton (Wilson,  
Miller, Barton, Soll & Peek), per Council's retaining of the  
firm for this study.

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---RESOLUTION 4052 ITEM 5

A RESOLUTION AUTHORIZING DREDGING ACTIVITIES WITHIN VENETIAN  
BAY AT 307 NEOPOLITAN WAY, SUBJECT TO THE CONDITION SET FORTH  
HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Public Hearing: Opened 9:15 a.m. - Closed 9:25 a.m.

Bill Edixon of Bruns & Bruns, Inc., representing the petitioner,  
William Schaefer, addressed Council and requested approval of  
their request for dredging activities as originally submitted.  
In answer to questions from Council, he noted that construc-  
tion could be accomplished as suggested in City Manager Jones'  
memorandum of June 17, 1982 (Attachment #2) but would be more

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	
Anderson	X				
Holland					
Rothchild		X			
Schroeder					
Thornton					
Wood					
Billick					
			C O N S E N S U S		
Anderson		X	X		
Holland			X		
Rothchild			X		
Schroeder		X	X		
Thornton			X		
Wood			X		
Billick			X		
(7-0)					

CITY OF NAPLES, FLORIDA

City Council Minutes

Date July 7, 1982

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	

RESOLUTION 4052 (Cont.)

ITEM 5 (Cont.)

costly and would depend on approval from the Park Shore Association. John McCord, City Engineer, noted his agreement with the opinion obtained from Bernie Yokel of the Collier County Conservancy, in opposition to dredging.

MOTION: To ADOPT a resolution APPROVING a conditional variance for a dock extension as per City Manager Jones' memorandum of June 17, 1982, as attached to the resolution.

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COMMUNITY DEVELOPMENT DEPARTMENT/NAPLES PLANNING ADVISORY BOARD ITEM 6

---RESOLUTION 4053

ITEM 6-a & 6-b

A RESOLUTION VACATING AND ABANDONING A 20 FOOT WIDE UTILITY EASEMENT LOCATED IN UNINCORPORATED AREA, SECTION 15, TOWNSHIP 49 SOUTH, RANGE 25 EAST, COLLIER COUNTY, MORE PARTICULARLY DESCRIBED HEREIN: ACCEPTING AN ALTERNATE EASEMENT THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

Anderson	X	X	
Holland		X	
Rothchild	X	X	
Schroeder		X	
Thornton		X	
Wood		X	
Billick (7-0)		X	

Title read by City Attorney Rynders.

Mayor Billick noted that all conditions requested by the City had been met by the petitioner, Moorings Park, Inc. (Big Cypress Golf & Country Club, Inc.)

MOTION: To ADOPT the resolution as submitted

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---ORDINANCE

ITEM 7

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ADVERTISE AND ACCEPT BIDS FOR PUBLIC WORKS VEHICLES AND EQUIPMENT; PROVIDING FOR PAYMENT THEREFOR TO BE MADE FROM THE BUDGET FOR THE FISCAL YEAR 1982-83, PURSUANT TO SECTION 8.14 OF THE CITY CHARTER; AND PROVIDING AN EFFECTIVE DATE. PURPOSE: TO AUTHORIZE THE ADVERTISEMENT AND ACCEPTANCE OF BIDS FOR PUBLIC WORKS VEHICLES AND EQUIPMENT PRIOR TO ADOPTION OF THE 1982-83 BUDGET.

Anderson		X	X
Holland	X		X
Rothchild			
Schroeder			X
Thornton			X
Wood			X
Billick (6-0)			X

X

Title read by City Attorney Rynders.

Richard Hechler, citizen, asked about an opportunity for the public to verify the need for this equipment to which Mr. Holland responded that the Second Reading would be advertised and there would be a Public Hearing. Mr. Schroeder noted the need for Council to make a close review of the Capital Improvement Plan when it is submitted because these purchases were contained in this five-year proposal.

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Mr. Rothchild away from the Council table - 9:34 a.m.

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CITY OF NAPLES, FLORIDA

City Council Minutes

Date July 7, 1982

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	
<p>---ORDINANCE _____ (Cont.) <span style="float:right">ITEM 7 (Cont.)</span></p> <p>Mr. Holland again noted his desire to have department heads sit with Council during the budget review to help Council justify these proposed expenditures.</p> <p><u>MOTION:</u> To <u>APPROVE</u> Ordinance on First Reading</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p> <p>Mr. Rothchild returned to the Council table - 9:35 a.m.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p> <p>Mayor Billick noted that he had neglected to mention during his announcements that after discussion with City Manager Jones and City Attorney Rynders, they had agreed that it would be more appropriate to discuss their annual salary increases along with the budget review.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p>					
Anderson Holland Rothchild Schroeder Thornton Wood Billick (7-0)				X X X X X X X	
<p>---RESOLUTION 4054 <span style="float:right">ITEM 8</span></p> <p>A RESOLUTION CALLING A SPECIAL ELECTION IN THE CITY OF NAPLES FOR THE PURPOSE OF ELECTING A CITY COUNCILMAN TO FILL THE VACANCY CREATED BY THE RESIGNATION OF C. C. "RED" HOLLAND; SETTING FORTH THE PROCEDURE FOR QUALIFYING AS A CANDIDATE FOR SAID OFFICE; PROVIDING FOR PUBLICATION OF NOTICE OF THE ELECTION; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Mr. Holland stated his reasons for the proposed resolution. Mr. Anderson suggested there might be an occasional conflict of interest for Mr. Holland during the remainder of his term in office to which Mr. Holland responded he would check with the City Attorney if a problem arose. Mr. Anderson also suggested that Mr. Holland's current appointment to the Metropolitan Planning Organization might create a problem during the balance of his term on Council to which Mr. Holland responded by indicating a willingness to be replaced. Councilman Rothchild and citizen Richard Hechler stated their feeling that this should not be necessary.</p> <p><u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p>					
Anderson Holland Rothchild Schroeder Thornton Wood Billick (7-0)		X		X X X X X X	
<p>---RESOLUTION 4055 <span style="float:right">ITEM 9</span></p> <p>A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A LEASE BETWEEN THE CITY OF NAPLES AND FUN TIME NURSERY, INC., PROVIDING FOR THE LEASING OF LOTS 1 AND 2 OF RIVER PARK PLAT NO. 2, AS RECORDED IN PLAT BOOK 4, PAGE 58, COLLIER COUNTY RECORDS OF COLLIER COUNTY, FLORIDA BY THE CITY TO SAID CORPORATION; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Mr. Schroeder suggested adding language to the lease (Part 3) concerning maintenance of the buildings to which Mr. Holland noted that the nursery was under the jurisdiction of state and county and would be maintained in accordance with the City's standards also. This was verified by Paul Hartley, a member of the Board from the nursery. Mr. Schroeder also asked Roger Barry, Community Development Director, to present Council with a complete plan for the final development of the Carver</p>					
Anderson Holland Rothchild Schroeder Thornton Wood Billick (7-0)		X	X	X X X X X X	

CCF120

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	
<p>---RESOLUTION 4055 (Cont.) <span style="float:right">ITEM 9 (Cont.)</span></p> <p>site. Mr. Holland asked that some consideration be given to the parking situation around the Community Center. He also suggested that the City assist the group to whom the old Recreation building was donated in their efforts to move it. Mr. Rothchild brought up the subject of the building noted in Resolution 3706 that was to be donated to the Black Betterment Committee and moved to property donated for that purpose and asked that the City consider help in some way to accomplish this move. John McCord, City Engineer, noted that he thought that a variance was going to be requested because the donated land did not meet the flood level standards. Mr. Rothchild asked that the editorial from the Naples Daily News' July 1, 1982 edition be made a part of the minutes (Attachment #3)</p> <p><u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p> <p>Mr. Schroeder presented Mayor Billick with a \$10.00 check to pay the rent stipulated in the lease.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p> <p>---DISCUSSION/ACTION - Settlement of Venetian Bayview Property/Tropic Development of Naples <span style="float:right">ITEM 10</span></p> <p>Attorney Thomas Maloney, representing Tropic Development of Naples, addressed Council and reviewed the background of this matter and answered questions from Council. City Attorney Rynders noted his opinion as stated in his memorandum dated June 29, 1982 (Attachment #4). Mr. Schroeder noted his concern that this compromise could bring about other requests of a similar nature by developers using this approach. Mr. Holland noted his opinion that the property should be developed as specified in the outcome of the previous lawsuit. Gilbert Weil, citizen, stated his hope that this would not set a precedent for other properties in the area. City Attorney Rynders noted that there would have to be another reduction in density in the City for the problem to arise again. Edward Hannam, citizen, asked for an explanation of the use of the recreational facilities by the two developments.</p> <p><u>MOTION:</u> To accept the recommendation contained in the City Attorney's memo and to <u>AUTHORIZE</u> City Attorney Rynders to execute a stipulation in case No. 81-801-CA-01, for the construction of 75 units on a total of 7.615 acres owned by Tropic Development of Naples, Inc., adjacent to the Venetian Bayview Development.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p> <p>---RESOLUTION 4056 <span style="float:right">ITEM 11</span></p> <p>A RESOLUTION APPOINTING A CONSULTANT SELECTION COMMITTEE FOR THE PURPOSES HEREINAFTER SET FORTH, RELATING TO PREPARATION OF THE PUBLIC WORKS AREA DEVELOPMENT PLAN; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Mr. Holland indicated his wish to amend the resolution to include a councilman and a citizen on the committee. He suggested Bob Russell as the citizen. Mr. Russell noted he would accept the appointment. Discussion followed regarding whether the committee should do any negotiations after ranking the firms. It was the consensus of Council to further</p>					
Anderson		X		X	
Holland					X
Rothchild		X		X	
Schroeder				X	X
Thornton				X	
Wood				X	
Billick (5-2)				X	
Anderson				X	
Holland		X		X	
Rothchild			X	X	
Schroeder				X	
Thornton				X	
Wood				X	
Billick (7-0)				X	

CITY OF NAPLES, FLORIDA

City Council Minutes

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COUNCIL MEMBERS	MOTION	S E C O N D S	VOTE		A B S E N T
			Y E S	N O	
	amend the resolution by adding "and bring back its recommendation as to ranking for Council to approve before beginning negotiations". Mr. Holland also wished to nominate Mr. Schroeder on the committee. In response to a question from John McCord, City Engineer, it was the consensus of Council that the Consultant Selection Committee for the Municipal Dock also bring its recommendation as to ranking to Council before the beginning of negotiations.				
	MOTION: To ADOPT the resolution as amended adding Councilman Schroeder and citizen Robert Russell to the staff members named and to add the procedure of bringing the ranking to Council prior to negotiations.				
	***	***	***		
	Mr. Rothchild left the Council Chambers at 10:55 a.m.				
	***	***	***		
	---DISCUSSION/ACTION - Lethal Yellowing program				
	ITEM 12				
	Dr. William E. Bretz addressed Council and made his request to purchase Terramycin from the City for use by his condominium. Tom Walsh of Walsh & Shenefield who are in the business of treating palms noted the low cost for this service. It was the consensus of Council that the City should not engage in resale of the product and they took no action on this request.				
	***	***	***		
	---PURCHASING				
	ITEM 13				
	---RESOLUTION 4057				
	ITEM 13-a.				
	A RESOLUTION AWARDED BIDS FOR CONSTRUCTION EQUIPMENT RENTAL; AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.				
	Title read by City Attorney Rynders.				
	MOTION: To ADOPT resolution as presented.				
	***	***	***		
	---RESOLUTION 4058				
	ITEM 13-b.				
	A RESOLUTION RENEWING ANNUAL CONTRACT FOR SIDEWALK CONSTRUCTION AND REPAIR AT VARIOUS LOCATIONS IN THE CITY; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER THEREFOR; AND PROVIDING AN EFFECTIVE DATE.				
	Title read by City Attorney Rynders.				
	MOTION: To ADOPT resolution as presented.				
	***	***	***		

CITY OF NAPLES, FLORIDA

City Council Minutes

Date July 7, 1982

COUNCIL MEMBERS	MOTION	SECTION	VOTE		ABSENT
			YES	NO	
Anderson			X		
Holland		X	X		
Rothchild					X
Schroeder	X		X		
Thornton			X		
Wood			X		
Billick			X		
(6-0)					

---RESOLUTION 4059

ITEM 13-c.

A RESOLUTION AWARDING THE BID FOR HURRICANE SHUTTERS FOR THE CITY HALL AND CITY COUNCIL CHAMBERS; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

MOTION: To ADOPT resolution as presented.

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CORRESPONDENCE & COMMUNICATIONS

Richard Hechler, citizen, noted that the Consultants Selection Committee for the Public Works Yard Development might travel to other similar facilities around the state to find out whether they could obtain architectural plans for another facility that would be feasible for the City's compound.

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ADJOURN - 11:08 a.m.

*Janet Cason*

Janet Cason  
City Clerk

*Stanley R. Billick*

Stanley R. Billick, Mayor

*Ellen P. Marshall*

Ellen P. Marshall  
Deputy City Clerk

These minutes of the Naples City Council approved on 07-21-82

CCF120

## Also present:

Reverend Eleanor McMullen  
Charles Andrews  
Tom Walsh  
Bill Hill  
Lyle Richardson  
Dr. Bretz  
Bill Edixon  
Walter Olsen  
Herb Luntz  
Tom Maloney  
Mike Crane  
Edward Hannam  
Edward Ranney  
Harold & Hannah  
Mrs. Stevens

Mary Springrose  
William Shearston  
Richard Hahn  
Mr. & Mrs. Bill Brandt  
Richard Hechler  
Gilbert Weil  
Robert Russell  
Paul Hartley  
Mazie Bedford  
Alice Hack  
Herb Cambridge  
Alice LaResca  
Chuck Moehlke  
Mr. & Mrs. Craig Kiser

## News Media:

Scott Stewart, TV-9  
Jeff Leen, Miami Herald  
James Moses, Naples Daily News  
Tuck Thompson, Naples Daily News

Lynn Levine, TV-9  
Brad Ritter, WBBH-TV  
Steve Kaskvick, News Press

Other interested citizens and visitors





*City of Naples*

--- MEMO ---

ATTACHMENT #2 - page 2  
Honorable Mayor and Members of City Council  
June 17, 1982  
Page Two

Such a dock extension would not present a hazard to prudent navigation and would eliminate the need for dredging in the sensitive littoral zone as defined in Chapter 7-31. However, it should be noted that the current dock provides reasonable depths for conventional docking of the present boat.

It is our recommendation that Council take the following action.

- a. Denial of the permit for dredging on the basis that the resulting negative biological impact is unnecessary; and
- b. Approval of a conditional variance of 20 feet to the wharf limit line for the construction of a five foot wide dock extension provided approval of the Park Shore Association Board of Directors is secured by the Petitioner prior to issuance of a building permit.

Respectfully submitted,

*Franklin C. Jones*  
Franklin C. Jones  
City Manager

Prepared By:

*Mc 6/21*  
John R. McCord, P.E., City Engineer  
Engineering Memo. 182-61

Authorization for City Clerk to advertise for Public Hearing and to notify adjoining property owners.

JRM:adm

Attachments

cc: Petitioner  
Agent  
Bernie Yokel  
Waterway Council  
Park Shore Board of Directors

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: CITY MANAGER FRANKLIN C. JONES

SUBJECT: PROPOSED DREDGING ACTIVITIES ADJACENT TO RESIDENTIAL DOCK - VENETIAN BAY - OUR FILE DR 82-3

OWNER: WILLIAM SCHEAFER

AGENT: BRUNS & BRUNS, INC.  
WILLIAM EDIXON, P.E.

PROJECT LEGAL: LOT 40, BLOCK 18, PARK SHORE UNIT 3

PROJECT LOCATION: 307 NEAPOLITAN WAY

DATE: JUNE 17, 1982

**BACKGROUND:** Under the provisions of Chapter 7-31 of the Code of Ordinances, City Council approval must be obtained for certain dredging and filling activities. In conjunction with staff review and recommendation, a public hearing must be held and adjoining property owners notified. Also, in compliance with past practice, review and comments are requested from the Collier County Conservancy and Naples Waterway Council. Attached are explanatory documents in conjunction with the above petition, including comments from the Waterway Council. The petitioner has requested permission to dredge 27.5 cubic yards of material from in front of and under an existing dock to a maximum depth of approximately six feet below low water elevation. The purpose of the project is to facilitate the convenient use of a "boat floater" as shown in the attached photos from the project site.

In addition to the dredging aspects of this project, Council must further consider the need for a variance from the established wharf limit line of this subdivision. Information relating to this is presented by Roger Barry's memo dated June 11. The current dock does not encroach; however, if one views the "boat floater" device as a dock, then a 20 foot variance would be required for its continued use. This, according to the Park Shore Association Board of Directors, poses no problem as presented in their attached correspondence of June 9.

Dr. Bernie Yokel has also reviewed this permit request. His opinion from a biological viewpoint is that the dredging should not be permitted since disruption of the littoral zone would occur.

**RECOMMENDATION:** In the past, projects under Chapter 7-31 have been permitted based upon demonstrable need and attention to minimizing negative biological impact. As indicated by the attached permit sketches, ample water depth for the "boat floater" exists approximately 20 feet out from the existing dock structure. Since this particular area of the Bay is approximately 240 feet wide, a dock extension not exceeding five feet in width would be reasonable.



City of Naples

MEMO

June 29, 1982

TO: Hon. Mayor and Members of Council  
FROM: David W. Rynders  
RE: Litigation with Venetian Bayview developers

Mr. Maloney's attached request for discussion of settlement of litigation concerns property located on the northeast corner of Crayton Road and Park Shore Boulevard. The City has been involved in two lawsuits with developers of this property during the last four years. The first of these was decided in the City's favor and the second is still pending. This will outline the factual background:

Prior to January 1974, "Venetian Bayview" owned 10.18 acres of property at the above-mentioned location zoned for residential, multi-family, uses at a density of 25 units per acre. On January 15, 1974 the developer drew a building permit for construction of 255 units plus recreational facilities on the property. For economic reasons they could only complete a portion of the project which consisted of one five story, 64 unit, residential structure together with a recreational building, swimming pool and parking lots; and they subsequently allowed the building permit to expire.

Meanwhile, the City of Naples had reduced residential densities throughout the City, specifically reducing Venetian Bayview's property from 25 to 12 units per acre. When the developer sought a building permit later to complete the project as originally planned, the application was denied. This matter was brought before the City Council on several occasions in 1976 and 1977 and the Council determined that it would not waive the limitations imposed by the new zoning densities of this property.

The developer subsequently filed suit alleging that the City had approved its original site plan for 255 units and issued building permits thereon (upon which the developer had relied to its detriment) and was therefore, equitably estopped from refusing to re-issue the building permits upon payment of the required fees. The matter went to trial in June of 1977, at which time the court ruled that the City was not equitably estopped from applying its reduced density levels to the subject property. This decision was based upon a case cited by the City, *Gross v. City of Riviera Beach*, 367 So.2d 648 (Fla. 4th DCA 1979), certiorari denied by Fla. Supreme Court, Case No. 56, 562, November 19, 1979, in which the Fourth District Court of Appeal, in connection with an almost identical situation, said that,

"The cessation in construction rendering the December, 1973 building permit void precluded Appellant from raising the issue of equitable estoppel, thus requiring it to bring the entire project into compliance with the revised ordinances." *Gross*, 367 So.2 (Emphasis added here)



Naples Daily News

THOMAS J. DEGENOR  
Publisher

GEORGE W. CECIL  
Executive Editor  
J. PATRICK BEISING  
Advertising Director

165 Central Ave., Naples, Fla. 34109 Thurs., July 1, 1982 PH: 813-362-3181

## Leave Fun Time Where It Is

Mayor Stan Billick's proposal to give Fun Time Nursery a 10-year lease on its present site for \$1 a year makes good sense.

Support for the non-profit day care center is widespread through both the black and the white community. Its location at the corner of Fifth Avenue North and 10th Street North next to the Carver housing complex is ideal for the working families who make heavy use of the center.

The City Council at its last meeting voted to withdraw the authorization for the city manager to sell the property on which Fun Time stands, but it did not address the issue of whether the nursery would remain there.

Apparently, the city had planned to sell the valuable corner property to reimburse its coffers for expenses involved in setting up the Civic Center adjacent to the Carver property. The nursery was to be moved to the lot across the street from the Civic Center after the building on that property had been relocated.

However, several problems crept up in those plans. First,

the lot across from the Civic Center is not large enough to accommodate Fun Time and variances would have had to be granted. Second, due to the deteriorated condition of the Fun Time buildings, it is doubtful whether they would have survived the move. Third, the lot across from the Civic Center would be ideal for parking since the center is probably the only one in the nation without a single parking space.

Fourth, and perhaps most importantly, there did not appear to be anyone outside of a few city councilmen who favored moving Fun Time. On the contrary, widespread support for keeping the nursery in its present location was voiced by a cross section of the community at the City Council meeting.

We feel strongly that Fun Time should stay where it is and that it should have a long-term lease at a nominal yearly fee so that nursery directors can proceed with building improvement plans.

To do anything else would be unnecessary and unwarranted and could cause unrepairable damage to a valuable community asset.

Hon. Mayor and Members of  
City Council  
June 29, 1982  
Page 3

It would therefore be my recommendation to settle the litigation on the basis of Mr. Maloney's suggestions. If it is not the Council's desire to settle the suit, I will be pleased to set the matter down to trial before the Circuit Court at an early date.

Respectfully yours,

*David W. Rynders*  
David W. Rynders  
City Attorney

DWR/clk

Hon. Mayor and Members of  
City Council  
June 29, 1982  
Page 2

Venetian Bayview appealed the decision of the trial court, which the Appellant Court later affirmed in a Per Curiam decision. (See attached)

Subsequently, the developer took the position that the land on which the existing 64 unit building was constructed at 25 units per acre (8 2.56 acres) should be severed, for zoning purposes, from the rest of the project. This would permit them to construct 91 additional units.

However, this proposal to "sever" part of the property was not raised in the foregoing litigation; in fact, Venetian Bayview itself described the "subject property" of that suit as the entire 10.18 acres of land in their pleadings. Because of this, the language cited above in the Gross case and language in the Circuit Court's Final Judgment, the City Staff has been of the view that the density for the entire Project should be at the reduced levels determined in the City's amendatory ordinances. At 12 units per acre, 10.18 acres gives 122 total units. We believe 64 exist on the property now and 58 more may be built.

The developers obviously dispute this view and filed motions in their original lawsuit to have the density computed according to their method which would have permitted them to construct 91 more units at that site. The court denied their motions on jurisdictional grounds. The developer then filed a second lawsuit alleging that the Final Judgment in the first lawsuit should be interpreted to permit them to construct 91 additional units. This suit is now ready for trial or summary judgment. However, Mr. Maloney, representing recent purchasers of the original developer's interests in the subject property, has proposed a compromise to resolve this litigation: essentially splitting the difference and permitting construction of 75 more units. Any construction would have to meet current setback and height restrictions, among other things.

I have always recognized that the original lawsuit could have been interpreted, had it been set forth correctly in the pleadings, to apply only to the 7.62 acres of remaining undeveloped property. However, this is not what was done; although the developer was apprised of this problem long before the first suit even went to trial. Additionally, the case mentioned above states the applicable rule in such a way as to indicate that the City ought to apply its new zoning ordinances to the "entire project". Also, please consider that this project was originally approved as one site plan and as one project; and the entire project, including the existing 64 unit building, will be designed to enable the joint use of the common elements of all of the condominium units, including the existing swimming pool and recreational buildings and facilities.

At the same time, nothing prevents the City from settling this litigation upon the recommendations of Mr. Maloney and one should always be mindful of the uncertainties of litigation. Settlement assures the City, as well as the developers, that only a limited number of units, appropriate to the surrounding multi- and single-family neighborhood, will be constructed.