



# City of Naples

City Council Minute  
Special Meeting July 13,

City Council Chamber  
735 Eighth Street South  
Naples, Florida 339

| -SUBJECT-                                                                                       | Ord.<br>No. | Res.<br>No. | P  |
|-------------------------------------------------------------------------------------------------|-------------|-------------|----|
| <p><u>RESOLUTION</u><br/>-APPOINT Kim Anderson-McDonald to the Tourist Development Council.</p> |             | 88-5568     |    |
| <p>PUBLIC HEARING REGARDING REVISED DRAFT OF COMPREHENSIVE PLAN.</p>                            |             |             | 1- |

City Council Chambers  
735 Eighth Street South  
Naples, Florida 33940



Time 9:00 a.m.

Date July 13, 1988

Mayor Putzell called the meeting to order and presided as Chairman:

ROLL CALL: Present: Edwin J. Putzell, Jr.,  
Mayor

Kim Anderson-McDonald  
Alden R. Crawford, Jr.  
John T. Graver  
Paul W. Muenzer  
Lyle S. Richardson,  
Councilmen

Absent: William E. Barnett,  
Councilman

Also Present:

Franklin C. Jones, City Manager  
David W. Rynders, City Attorney  
Mark W. Wiltsie, Assistant City Manager  
Gerald L. Gronvold, City Engineer  
Norris C. Ijams, Fire Chief  
Frank W. Hanley, Finance Director  
Jodie M. O'Driscoll, Deputy Clerk  
Ann "Missy" McKim, Community Dev. Dir.  
Stephen R. Ball, Chief Planner  
Patricia "Trish" Heinonen, Planner II  
James L. Chaffee, Utilities Director  
Jon C. Staiger, Ph.D., Natural Resources Mgr.  
Ann Walker, Planner I  
George Henderson, Sergeant-At-Arms

See Supplemental Attendance List - Attachment #1.

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---RESOLUTION NO. 88-5568 ITEM 2

A RESOLUTION APPOINTING A MEMBER OF CITY COUNCIL TO THE TOURIST DEVELOPMENT COUNCIL. AS SET FORTH BY COLLIER COUNTY ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Mayor Putzell advised that the Chair had received a letter from Collier County requesting the appointment of a member of Council to the Tourist Development Council.

MOTION: To APPOINT Councilman Anderson-McDonald to the Tourist Development Council.

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ITEM 1

PUBLIC HEARING REGARDING REVISED DRAFT OF COMPREHENSIVE PLAN.

PUBLIC HEARING: Opened: 9:07 a.m.  
Recessed: 10:16 a.m.  
Reconvened: 11:06 a.m.  
Recessed: 12:00 p.m.  
Reconvened: 1:31 p.m.  
Closed: 2:35 p.m.

- a) Future Land Use Element
- b) Conservation and Coastal Management Element

Mayor Putzell advised that this was the first of two public hearings to be held with regard to the

| COUNCIL MEMBERS   | M<br>O<br>T<br>I<br>O<br>N | S<br>E<br>C<br>O<br>N<br>D | VOTE        |        | A<br>B<br>S<br>E<br>N<br>T |
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| Anderson-McDonald |                            |                            | X           |        |                            |
| Barnett           |                            |                            |             |        |                            |
| Crawford          |                            |                            | X           |        |                            |
| Graver            |                            | X                          | X           |        |                            |
| Muenzer           |                            |                            | X           |        |                            |
| Richardson        |                            | X                          | X           |        |                            |
| Putzell           |                            |                            | X           |        |                            |
| (6-0)             |                            |                            |             |        |                            |

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| COUNCIL MEMBERS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | M<br>O<br>T<br>I<br>O<br>N | S<br>E<br>C<br>O<br>N<br>D | VOTE        |        | A<br>B<br>S<br>E<br>N<br>T |
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| <p>Comprehensive Plan in accordance with State Growth Management Act. He then reviewed Council's policy with respect to those registered to speak at this public hearing and asked members of the audience not to repeat any comments previously heard by Council. Mayor Putzell pointed out that this hearing was to discuss revisions to the Plan and not proposed development plan for Key Island currently under consideration by the Planning Advisory Board (PAB).</p> <p>Community Development Director McKim referred to the City Manager's memorandum, dated July 7, 1988, which outlined major changes to the Future Land Use and Conservation and Coastal Management elements of the Plan herein included as Attachment #2.</p> <p>Attorney J. Dudley Goodlette of Cummings &amp; Lockwood, representing Key Island, Inc., asked that Council repeal its time limitation for speakers as he believed this issue too detailed to be sufficiently addressed within the seven minute time constraint. Mr. Goodlette presented a "briefing booklet" outlining sections of the Plan which his clients believe to be significant (A copy of which can be reviewed from the meeting packet in the City Clerk's Office). Upon review of each of the 15 tabbed items in the briefing booklet, Attorney Goodlette ascribed that portions of these two elements, by restricting certain types of development on the island, were violating his clients constitutional rights with respect to privately owned land. He urged Council to reconsider and amend these two elements in accordance with the briefing booklet submitted at this meeting.</p> <p>At this time, Mayor Putzell asked staff to note each speaker's comments so that it could advise and make further recommendations regarding the same to Council after the close of the public hearing.</p> <p>Michael F. Stephen, Vice-President of Coastal Engineering Consultants, referred to Dr. Jon Staiger's memorandum of July 8, 1988, (Attachment #3) and concurred fully with it. He then submitted proposed language for the Conservation and Coastal Management element, subparagraph (e) of page 36 (Attachment #4).</p> <p>Laverne Norris Gaynor, President of Key Island, Inc., reiterated her attorney's comments and added that her family, for the past 50 years, has contributed philanthropic and conservation services to the Naples community. She said she felt that her rights as a property owner were being violated by this proposed document and asked Council to reconsider the PAB's recommendation.</p> <p>Attorney Lawrence Farese of Cummings &amp; Lockwood, representing Key Island, Inc., said that the Plan's proposed limitation on development of the island denies his client the use of her property and she should, therefore, be compensated for her loss. He suggested that the Plan be amended, as outlined in the briefing booklet provided by Attorney Goodlette; such revisions would not infringe upon his client's rights. Attorney Farese then alluded to the proposed rezoning of the property currently used as a shore station for the Keewaydin Club and</p> |                            |                            |             |        |                            |

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| <p>said that this is the only access point to the island and the proposed zoning to R1-15 would greatly inhibit any future expansion, also an infringement of property rights. In response to Mayor Putzell, Mr. Farese advised that this was the only access point to the island owned by his clients.</p> <p>Referring to Velocity Zones (V-Zones), Mr. Graver asked how such an area was designated. Mrs. McKim explained that the Federal Emergency Management Agency (FEMA) specifies certain hazardous shore areas subject to flooding as high hazard areas for possible wash-out during a severe storm. She then noted the classification table for Conservation - Vital and Conservation - Limited development outlined in the Plan and herein included as Attachment #5. City Attorney Rynders added that the City has a responsibility for the health, safety and welfare of the public and must determine appropriate uses for development based on that premise. There are also specific State and Federal guidelines which must be adhered to regarding development of environmentally sensitive areas, he said.</p> <p>Dr. Mark Benedict, representing The Conservancy, said his group was opposed to the recommended change of designating Key Island to Conservation - Limited development. This island greatly impacts the natural system of remaining barrier islands and shoreline and should, therefore, stay undeveloped. Mr. Benedict further supported Dr. Staiger's memorandum (Attachment #3) reinserting items deleted by the PAB. Dr. Benedict asked that The Conservancy's letter establishing its policy regarding the Plan to the PAB be made a part of the meeting record (Attachment #6).</p> <p>Joe Fleming, also representing The Conservancy, cited several newspaper articles from the early 1980's wherein the owners of Key Island were seeking assistance for beach renourishment efforts as their beach was eroding at a rapid rate. He said that if development were permitted on the barrier island the erosion rate would increase because the natural system would be upset. He further supported Dr. Benedict and Dr. Staiger's amendments to the Plan.</p> <p>Dr. Bernard Yokel, representing the Florida Audubon Society, supported previous comments made by representatives of The Conservancy and urged Council to protect one of the last natural resources in the area. Mrs. Eileen Arsenault concurred.</p> <p>Attorney Nancy Stroud, representing John Donahue a property owner on Gordon Drive, advised that she supported the PAB's recommendation. She further asked that a letter previously sent to the Council outlining her client's objections to the proposed land use change to commercial for the entire shore station parcel on Gordon Drive be made a part of the meeting record (Attachment #7).</p> <p>Tom Campbell, representing the Citizens for the Protection of Gordon Drive (CPGD), concurred with the PAB's recommendation and said he did not believe the briefing booklet supplied by Cummings &amp; Lockwood was a fair and accurate accounting of all the facts.</p> |                            |                            |             |        |                            |

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Mary Dearholt, representing The Conservancy, supported previous comments made by other members of her group and pointed out that several advertisements for the Keewaydin Club indicate that it is a barrier island despite statements made to the contrary by Attorney Goodlette.

Attorney Bruce Anderson of Young, Van Assenderp, Varnadoe & Benton, representing the CPGD, sustained previous comments in support of the PAB's recommendation to Council and reiterated that his group was concerned about any proposed commercial land use designation for the shore station.

Citizen Tom Moss supported The Conservancy and Florida Audubon Society's comments and said he did not believe any development should be permitted on a barrier island.

Botanist Joel Kuperberg, representing Key Island, Inc., said he believed the current land use designation of Conservation - Vital for Key Island was inappropriate and would restrict the owner use of her property. There is an offshore sand shoal which protects the island, he said, and believed this shoal would counteract any effects of residential development on the island.

At this point, Mayor Putzell recessed the meeting for lunch until 1:30 p.m. at which time staff would be asked to comment on the recommendations made this morning by the public.

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Mayor Putzell called the meeting to order at 1:31 p.m.

Community Development Director McKim addressed several comments made by the public regarding these two elements and pointed out that staff has been guided by State requirements in this planning process and, at times, exceeded those requirements as it deemed necessary to protect the public's health, safety and welfare. Referring to Key Island, Mrs. McKim advised that development rights have not been taken away from that area. There is, however, a high hazard area designated for low density use because it is subject to extreme wave action which changes velocity daily. Any structure built upon this volatile area would most probably need to be rebuilt or reinforced should the island experience a severe storm or hurricane.

Mayor Putzell asked if the State mandated that density specifications be indicated within the Plan. City Attorney Rynders advised that the State requires cities to set up determining factors within the confines of the Plan and that density designations would be addressed in the City's zoning ordinance.

Referring to the shore station land use designation, staff said it believed low density, residential to be the most appropriate use inasmuch as it was the same as surrounding properties. The existing use would remain as a non-conformity under the City's current zoning ordinance.

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| <p>Policy 5-3 of the Conservation and Coastal Management element was deleted from the Plan by staff and such deletion was supported by the PAB. It has been recommended by Attorney Goodlette that this policy be reinstated; this policy was not appropriate and would invalidate the rest of the element if reinstated, Mrs. McKim said.</p> <p>Mrs. McKim noted property adjacent to the airport which was designated by staff as a high noise impact area. Staff recommended a land use designation of Conservation - Limited development; however, the PAB has suggested limited commercial as an appropriate use. Staff still supports its decision and asked Council to reconsider the PAB's recommendation.</p> <p>Chief Planner Ball reviewed the public hearing process by which the Planning Department and PAB conducted its meetings. All meetings, workshops and public hearings were appropriately advertised in the <u>Naples Daily News</u> by display ad. Executive summaries and draft copies of the Plan were also made available to the public. In addition, he said, area civic associations and other interested parties were notified by mail of upcoming meetings. Mayor Putzell asked if it was true that many documents were prepared so close to an upcoming meeting that many times the public did not have time to review them for comment. Mr. Ball advised that it was true, but the PAB continued many of its meetings to allow greater input from the public after a review of submitted documents.</p> <p>The Federal government established a Coastal Barrier Resources System which regulates the use of certain barrier areas. Key Island and several other small islands have been designated as part of this system which would not be eligible for Federal assistance in the event of a major hurricane or severe tropical storm. Staff believes that there is an upland area not affected by this system and can easily be developed on a limited basis, Natural Resources Manager Staiger advised. Dr. Staiger then referred to his memorandum, dated July 8, 1988, (Attachment #3) and asked Council to reconsider deletion of items enumerated therein. City Attorney Rynders pointed out that the policies deleted simply state that no further development can be completed on barrier islands which disrupts the natural system. Mrs. Anderson-McDonald said she believed the language contained in Policy 2-18, previously deleted by the PAB, to be vague. Attorney Rynders advised that unless Council was willing to purchase Key Island that some appropriate development must be allowed to protect private property owner's rights.</p> <p>Councilman Graver asked how much of the island's 430 acres staff deemed developable; Dr. Staiger advised approximately 130 acres, 30 of which currently house the Keewaydin Club. Mr. Graver then asked how staff determined the high hazard velocity zone (V-Zone). The Federal Emergency Management Agency (FEMA) designates these zones as hazardous shore areas subject to flooding during severe storms and hurricanes. Mr. Richardson asked how many of Key Island's 130 developable acres were contained in the V-Zone. There are approximately 35, Dr. Staiger</p> |                            |                            |             |        |

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said, however, it should be noted that of the remaining 105, 35 contain the existing Keewaydin Club structure. Mrs. McKim pointed out that while staff used the FEMA guidelines for its land use determinations, it did go one step beyond by citing certain areas of the island as Conservation - Vital which restricts certain types of development.

Mayor Putzell asked the City Attorney to address several issues discussed before Council this morning. City Attorney Rynders advised that Council was acting on the Plan in a Legislative capacity and that most of the Future Land Use and Conservation and Coastal Management elements would affect the island. In addition to City criteria which must be met, the State sets forth standards by which development on barrier islands must adhere to. Referring to the issue of private property rights, Attorney Rynders said that since staff has designated areas in the upland portion of the island for development, he did not believe there was sufficient data for the Courts to find that those rights were taken away. Property rights associated with the shore station are in no way being violated, he said, because costs for the parcel of prime real estate is as much as \$20-30 per square foot and the existing use could remain as a non-conformity. In response to Mayor Putzell, City Attorney Rynders pointed out that it was not appropriate in determining land use designations to take into consideration who owned the property in question.

Councilman Crawford asked what liability the City would have if it approved development on the island. City Attorney Rynders reiterated that Council was acting in a Legislative capacity in which it cannot be held accountable for tort liability; however, future Council's could be asked by island property owners, future taxpayers, for assistance in the event of any catastrophe because development of the island was approved by the City. It should be noted that the City would not be legally responsible to provide relief for those property owners. The Federal and State governments also would not provide any relief for development in the V-Zone as provided for by FEMA.

Attorney J. Dudley Goodlette, representing Key Island, Inc., advised that his group had not received a copy of Dr. Staiger's memorandum (Attachment #3) until today and said that his group supported the PAB's decision. Mayor Putzell cautioned Attorney Goodlette to only discuss any new information which his group would like to add, not comments previously discussed this morning.

Referring to certain items in the Plan, Mr. Crawford said that while he believed projects such as the proposed Boardwalk by Naples Bay to be worthwhile, he did not want to put the City in a position wherein they have a firm commitment to construct such structures eventhough funds may not be readily available. Mrs. McKim reiterated that the Plan can be amended every six months should the Council so desire.

The Mayor, at this point, reviewed the City Manager's memorandum, dated July 7, 1988,

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(Attachment #2) change by change for comments by Council members. Mr. Richardson suggested that the language relating to Item 2 under the Future Land Use element be changed to include Four Corners and Tenth Street in the Central Naples Design District Study Area delineated in Figure FL1, page 34.

Mr. Graver referred to Item 3 and asked if the current amount of low to moderate housing outlined in the Plan would be affected by future annexations. Mrs. McKim said that it can be assumed that additional land will be necessary for such housing after successful annexations. City Manager Jones pointed out that the formula used to address the needs of housing were based on an inventory of current housing and then projected to 1990. This same procedure would have to be implemented for any future annexation sites and incorporated into the Plan during the amendment process.

Councilman Crawford said that he believed staff's recommendation relating to Item 4 was more appropriate than the PAB's and fully supported the staff. Mr. Richardson said that he did not believe the City should be involved in any future land purchases for the airport. City Manager Jones commented that one of the major concerns was that this area designated for consideration as open space which the City might want to participate in.

Referring to Item 10, Councilman Muenzer said that at one of the public hearings, it was recommended that park benches be removed from the Plan for Broad Avenue. He further said that he believed such benches would be an asset to the Third Street Shopping area. Mrs. McKim advised that staff had originally recommended this Broad Avenue right-of-way be made into a typical open space, recreational area; however, it was removed from the Plan by area residents concerned about a possible increase in crime for the area.

Mr. Muenzer then referred to Land Use, page 46, and said that he believed the data found regarding the multi-family land use study were inaccurate. He asked that staff check their figures and correct the inaccuracies.

Under changes to the Conservation and Coastal Management element, Mr. Crawford asked about Item 4 and the deletion from the new Plan. Dr. Staiger noted that Policy 5-3 was more restrictive and deleted by staff; The Conservancy supported its reinsertion into the Plan.

Mr. Graver referred to Item 8 and asked for clarification regarding this policy. Chief Planner Ball explained that any structures required to be reconstructed after a catastrophe would have to adhere to the City's zoning ordinance currently in effect at the time of the disaster.

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| COUNCIL MEMBERS | M<br>O<br>T<br>I<br>O<br>N | S<br>E<br>C<br>O<br>N<br>D | VOTE        |        | A<br>B<br>S<br>E<br>N<br>T |
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SUPPLEMENTAL ATTENDANCE LIST

|                      |                    |
|----------------------|--------------------|
| J. Dudley Goodlette  | Michael F. Stephen |
| Lavern Norris Gaynor | Lawrence Farese    |
| Dr. Mark Benedict    | Joe Fleming        |
| Dr. Bernard Yokel    | Nancy Stroud       |
| Tom Campbell         | Mary Dearholt      |
| Bruce Anderson       | Tom Moss           |
| Eileen Arsenault     | Joel Kuperberg     |
| Kay Campbell         | W. W. Haardt       |
| Charles Andrews      | Jack Sturgis       |
| Jane Kimball         | Pat Mitchell       |
| Fred Mitchell        | Lee Layne          |
| Victoria Nicklos     |                    |

Other interested citizens and visitors.

NEWS MEDIA

Marty Bonvechio, Naples Daily News  
Dave Fuller, WNOG  
Denis Husty, Ft. Myers News-Press  
James Glasscock, WINK-TV  
Allison Schaeffer, WINK-TV



SPECIAL MEETING ITEM #1  
7/13/88

# *City of Naples*

## --- MEMO ---

TO: Honorable Mayor and Members of City Council  
FROM: Franklin C. Jones, City Manager  
RE: Revisions to the Comprehensive Plan  
DATE: July 7, 1988

### Background:

The City Council is scheduled to review the Comprehensive Plan on July 13th and July 20th. The meeting on the 13th will focus on the Future Land Use Element and the Conservation and Coastal Management Element.

The following is a brief summary of the major issues from these elements, along with reference pages in the plan. The Council should have all the updated plan changes, as recommended by the PAB, with the exception of the maps which are attached. Staff is in agreement with most of the proposed changes, except where noted. The Planning Division and Natural Resources staff will be available at the public hearings to summarize the recommendations and answer any questions.

### Major Changes to the Future Land Use Element:

- 1). Preservation of historic resources and to develop a historic district ordinance and design guidelines (pages 10, 11, 45, 47).
- 2). Studies of Central Naples commercial area and the development of an Urban Design Master Plan for the area (pages 14, 15, 33, 34, 35). Also see revised study area map (attached).
- 3). Designation of land for low to moderate income housing off Goodlette Road (pages 58, 60).
- 4). Designation of a high noise impact area near the airport, establishing limitations for development and review processes for this area. Also designation of

the land adjacent to the airport as commercial on the Future Land Use map. Staff has recommended this land be designated for conservation/limited development (pages 67-71).

- 5). Designation of waterfront commercial area as a mixed land use area and develop revised zoning standards to promote public access and water dependent land uses (pages 19, 20, 51, 52).
- 6). Provision for a boardwalk along city owned waterfront property of Naples Bay (page 15).
- 7). Change in the Future Land Use map for the shore station at the south end of Gordon Drive from limited commercial to low density residential and provide for future zoning designation of R1-15 (pages 37, 38).
- 8). Change the conservation designated land use category to conservation/vital areas and conservation/limited development, and provide for future zoning districts (pages 21, 22, 23).
- 9). Recognize the Keewaydin Club as a historic site and designate it as being in a conservation/limited development area (pages 36, 37, 38).
- 10). Right of way landscaping improvements on Broad Avenue (pages 45, 48).

Major Changes to the Conservation/Coastal Management Element:

- 1). The addition of background information on coastal barriers and high hazard areas and policy additions (pages 12, 37, 38, 39).
- 2). Inclusion of the velocity "V" flood zone as a high hazard area and providing for the transfer of density to upland areas on Keewaydin Island (pages 12, 39).
- 3). Change of conservation land development standards from preferred uses to permitted uses (pages 47, 50, 51, 52, 53, 54, 55, 56, 57).
- 4). Removal of policy 5-3 of the current Conservation/Coastal Management Element which allows for exceptions to other policies within the element (page 165 of the current 1984 plan).
- 5). Addition of environmental mitigation policy (pages 11, 12).

- 6). Development of marina siting criteria (pages 6, 25, 55).
- 7). Development of a post disaster redevelopment policy (page 12).
- 8). Hurricane evacuation information and policies (pages 22, 23).
- 9). Other policy changes which staff did not support (see attached memo from Jon Staiger).

Recommendations:

At a public hearing on June 24th, the Planning Advisory Board recommended that the City Council adopt the revised Comprehensive Plan, as presented.

Respectfully submitted,



Franklin C. Jones  
City Manager

Prepared by:

*Steve Ball m.m.*  
Steve Ball

Reviewed by:

*Missy McKim*  
Missy McKim

B:plan



# City of Naples

## --- MEMO ---

TO: MISSY MCKIM, COMMUNITY DEVELOPMENT DIRECTOR

FROM: JON C. STAIGER, PH.D., NATURAL RESOURCES MANAGER

DATE: JULY 8, 1988

SUBJECT: COMPREHENSIVE PLAN CHANGES

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The Planning Advisory Board made four changes to the draft Comprehensive Plan which I feel should be reconsidered.

Two policies, proposed under Objective 2 of the Conservation and Coastal Management Element, were deleted. I believe they should be restored, as follows:

- Policy 2-17: Recognize Key Island, as delineated by the Coastal Barrier Resources System, as an undeveloped coastal barrier for which the most appropriate use is as an undisturbed, functioning natural system.
- Policy 2-18: Coordinate review of any coastal barrier development or redevelopment proposals with the Southwest Florida Regional Planning Council, in compliance with their stated regional goal: from 1990, there shall be no further development on barrier islands that disrupts the natural processes of the barrier island.

The present (1984) Comprehensive Plan contains wording (pp. 178, 180) addressing the Development of Significant Environmental Impact Review Process. The same wording appears on pages 59 and 60 of the PAB-approved draft, with two deletions. I believe the original wording should be reinstated, because it strengthens the City's position that coastal zone resources shall be protected and utilized in a non-destructive manner. The restored wording is underlined, as follows:

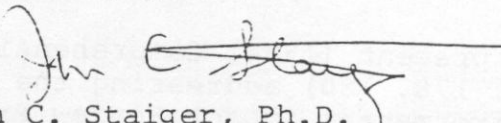
MEMO TO MISSY MCKIM  
COMPREHENSIVE PLAN CHANGES  
PAGE TWO  
JULY 8, 1988

1. Development of Significant Environmental Impact Review Process

All developments and their associated activities proposed to take place in Conservation/Vital or Conservation/Limited Development Areas shall be presumed to cause significant impacts upon the environmental functions and benefits of these areas. Therefore, the developer/owner shall be required to submit a Development of Significant Environmental Impact (DSEI) assessment for review and approval by the City. When appropriate, the DSEI assessment should be coordinated with the Development and Site Plan (GDSP) Review process provided for in the Zoning Ordinance, in addition to those other permitting processes stated elsewhere in the City's Code of Ordinances. No building permits shall be issued until the DSEI assessment has been reviewed by staff and the City's Planning Advisory Board, and approved by the City Council. This requirement shall not apply to the installation of mooring piles; construction of docks; to bulkheads or seawalls where the installation thereof is a simple continuation of the existing seawall or bulkhead line; or to repairs or restoration of docks for which city or state permits have been issued.

The purpose of the DSEI assessment is to encourage flexibility in the use of land, and the activities necessary to develop such uses, without delineating specific uses and activities permitted. The DSEI assessment will ensure that the proposed uses or activities are compatible with, and will not diminish the natural resources of the site or of the surrounding area unless it is clearly demonstrated to be in the public interest. The requirement for development of a DSEI may be waived by the Community Development Director in those instances where county, state, or federal permitting procedures require a similar environmental impact assessment process, provided the said assessment is of sufficient detail and is submitted for review and approval by the City.

Sincerely yours,

  
Jon C. Staiger, Ph.D.  
Natural Resources Manager

JCS:ljc

SUBSTITUTE LANGUAGE FOR CONSERVATION/COASTAL  
(e) BEACH AND DUNE SYSTEMS - Page 36

The Naples Beach is the primary public beach for most Collier County residents. Recent studies by Collier County and the State Department of Natural Resources have identified eroding portions of Naples area beaches as potentially suitable for restoration by beach nourishment. Also, within the City beach system are two tidal inlets, Doctors Pass and Gordon Pass. These inlets, when dredged to maintain navigation access to interior waterway channels, provide a small source of sand to adjacent beaches. The State of Florida recognizes that inlets alter the natural drift of beach quality sand material.

Section 161.142 Florida Statutes requires that dredging of beach-quality sand from inlets should be placed on the down drift beaches in a quantity equal to the natural net annual longshore sediment transport.

Additional available sand should then be placed on the basis of a review of pertinent factors including cost for placement and functional elements such as erosion rates, fill stability and transport rates.



TABLE C6

-----  
 CLASSIFICATION OF LAND DEVELOPMENT SUITABILITY  
 AND PERMITTED USES FOR CONSERVATION LAND

| VITAL                                                                                                                                                                                                                                                                            | LIMITED DEVELOPMENT                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A) Marine Grass Beds                                                                                                                                                                                                                                                             | A) Marginal Land                                                                                                                                                                                                                                       |
| <ul style="list-style-type: none"> <li>- propagation of sport commercial fish</li> <li>- waterfowl and wading birds</li> </ul>                                                                                                                                                   | <ul style="list-style-type: none"> <li>- passive, low intensity recreation</li> <li>- low density housing PD and DSEI</li> <li>- water quality maintenance supply</li> <li>- wildlife habitat</li> <li>- marinas - DSEI and siting criteria</li> </ul> |
| B) Tidal Swamp / Marsh areas                                                                                                                                                                                                                                                     | B) Class III Waters                                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>- storm protection</li> <li>- shore erosion protection</li> <li>- wildlife, marine habitat propagation</li> <li>- aesthetic enjoyment</li> <li>- limited mangrove removal - DSEI</li> <li>- marinas - DSEI and siting criteria</li> </ul> | <ul style="list-style-type: none"> <li>- fish/wildlife propagation</li> <li>- recreation</li> <li>- maintenance of water quality</li> </ul>                                                                                                            |
| C) Freshwater Swamp / Marsh areas                                                                                                                                                                                                                                                | C) Park, Recreation and Open Space                                                                                                                                                                                                                     |
| <ul style="list-style-type: none"> <li>- freshwater retention</li> <li>- saltwater intrusion barrier</li> <li>- storm/flood protection</li> <li>- wildlife habitat</li> <li>- aquifer recharge</li> </ul>                                                                        | <ul style="list-style-type: none"> <li>- recreation / open space</li> <li>- aesthetics</li> <li>- land use buffers</li> </ul>                                                                                                                          |
| D) Gulf Beaches / Dunes                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>- recreation / open space</li> <li>- protection of beach property from erosion</li> <li>- storm protection</li> <li>- aesthetic enjoyment</li> </ul>                                                                                      |                                                                                                                                                                                                                                                        |
| E) Class II Waters                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>- shellfish propagation/harvesting</li> <li>- recreation/small scale boating facilities</li> <li>- limited dredging - DSEI</li> <li>- marinas - DSEI and siting criteria</li> </ul>                                                       |                                                                                                                                                                                                                                                        |
| F) High Hazard Areas                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                        |

# The Conservancy

Offices and Nature Center • 1450 Merrihue Drive • Naples, Florida 33942 • 813-262-0304  
(located off Goodlette Road at 14th Avenue North)

## Officers

Mrs. John W. Dearholt  
Chairman of the Board  
James K. Kessler  
Vice Chairman

June 5, 1988

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President and CEO  
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Mrs. Richard D. Phalen  
Secretary

Mr. Lodge McKee, Chairman  
Planning Advisory Board  
City of Naples  
735 Eighth Street South  
Naples, Florida 33940

Re: Proposed Comprehensive Plan - May 1988  
Draft

Dear Mr. McKee:

## Directors

Rebecca D. Andrews  
Gary A. Armstrong  
Paul G. Benedum, Jr.  
James G. Brooks  
Hadley Case  
Richard J. Cavallaro, M.D.  
Mrs. Donald R. Clark  
James Y. Deupree  
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William Y. Hutchinson  
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John Rhodes  
Lloyd A. Sarty  
Raymond E. Snyder  
Victor von Schlegell  
George R. Wallace 3rd  
Elmer H. Wavering  
Roger N. Williams, M.D.

This letter is written to set forth The Conservancy's position with respect to the Comprehensive Plan as it is being considered by the Board. Copies have been provided to all other members of the Planning Advisory Board, as well as to the persons indicated below.

The Conservancy has a special obligation and responsibility, consistent with its charter and place in our community, to monitor all facets of community growth and development, and to comment upon and to advocate positions where it believes its interests are being affected by governmental action. The Conservancy is concerned that proper attention be given to the protection of the natural resources in the City of Naples and Collier County, both for ecological reasons and as a method of insuring that our economy, which is largely determined by the aesthetic and recreational values derived from these natural resources, is not adversely affected. Residents of the City of Naples want to preserve the quality of life, the character of the community and the resources which make it the special place that it is. If the community loses its character and its resources are not protected, the things that have made Naples attractive and appealing will be adversely affected.

mckee10

Mr. Lodge McKee, Chairman  
June 5, 1988  
Page 2

The Conservancy's interest in the Comprehensive plan centers on the Future Land Use and Conservation/Coastal Management elements and in particular the treatment of the areas which have been designated as vital areas, coastal barrier areas, and conservation/limited development areas. In addition, it has concern with respect to the water bodies within the city and the adjoining land and water areas in the county lying south of the city boundaries, especially Rookery Bay Aquatic Preserve. The Conservancy has both an ownership and a management interest and responsibility in the Rookery Bay National Estuarine Research Reserve portion of the Rookery Bay Aquatic Preserve.

We have previously offered suggestions for changes to the Comprehensive Plan draft prepared in April. Some of those comments have been reflected in the May revision but not all of them have been considered and we believe it is important to identify for the board and staff those places where we believe changes are necessary. We believe a distinct Objective with policies which concern Coastal Barriers is necessary and is preferable to the approach followed in the May 1988 draft. We enclose copies of portions of the May 1988 draft of the plan with our suggestions for additions and deletions including a distinct coastal barrier objective. We have reviewed a copy of memos submitted to your staff by J. Dudley Goodlette who represents the owners of Key Island. Our comments consider Mr. Goodlette's suggestions and incorporate those parts with which we do not disagree. We have also enclosed a legal memorandum which explains the legal framework for the regulation of coastal barrier islands and surrounding coastal resources and analyzes deficiencies in the May 1988 draft.

The Conservancy supports and urges the city to follow and itself support the policies which have been articulated by federal and state governments which conclude that development of coastal barriers is not consistent with sound public policy and that it should be discouraged, restricted, limited and prohibited to the extent legally possible. Compelling economic and scientific reasons exist for these policies. Listed on one of the attachments to this letter is a summary of those pieces of legislation, both state and federal, and state policies and plans which support this position.

On February 9, 1988, in support of The Conservancy's position, its board of directors by a vote of 29 to 0 adopted a policy opposing the development of barrier islands in Collier County. A copy of that resolution is attached to this letter.

mckeel0

Mr. Lodge McKee, Chairman  
June 5, 1988  
Page 3

Key Island is the only substantially undeveloped coastal barrier in Naples. The U.S. Congress has included Key Island, with the exception of a portion of its northwestern corner, within the Coastal Barrier Resource System. Although that portion is excluded from the coastal barrier designation by reason of existing development, it is important to remember that this exclusion is by reason of manmade improvements not because the excluded area is any less susceptible to those forces which make the development of barrier islands harmful. The Conservancy is concerned that development of existing barrier islands in Collier County and the City of Naples, such as Key Island, will affect the rich and vital natural resources of Rookery Bay Aquatic Preserve and the Rookery Bay National Estuarine Research Reserve. We believe that development of Key Island is in and of itself contrary to existing public policy, but when coupled with the fact that if it occurred, it could impact upon another existing and protected natural resource of acknowledged state and national importance, the reasons for preventing its development and that of other undeveloped barrier islands in Collier County are even more compelling.

The Conservancy appreciates the fact that Key Island is privately owned and believes that private property rights should be respected and considered in government policy. The public and private interests must, however, be balanced. In the case of Key Island and other undeveloped barrier islands in Collier County, The Conservancy believes that proper public policy permits retention of these islands in their natural functioning state without violating private property rights.

The Conservancy urges that the land use and coastal/conservation elements of the Comprehensive Plan include goals, policies and objectives which, in the strongest of terms, prohibit the development of the coastal barrier islands to the maximum extent which the law will permit.

We believe that the Board will consider The Conservancy's point of view on these matters to have merit but realize that those of you who serve on it may have concern that to adopt such policies could place the city in the position of ignoring private property rights. An owner of land is only guaranteed reasonable use of his land by the state and federal constitutions. The law makes clear, however, that this does not necessarily mean the highest and best use or even the most profitable use, so long as reasonable use is possible. We have included for your consideration a memorandum from our attorneys, Mershon, Sawyer,

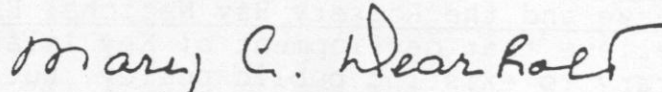
mckee10

Mr. Lodge McKee, Chairman  
June 5, 1988  
Page 4

Johnston, Dunwody, & Cole which deals with the law concerning use restrictions and prohibitions on the development of land for valid public policy reasons. We submit to you that the uses presently being made of Key Island for the Keewaydin Club together with certain low intensity passive uses are a reasonable use of the Key Island property sufficient to meet legal requirements.

We will plan to be present at the continuation of the public hearings in respect to the Comprehensive Plan on Monday evening.

Very truly yours,



Mary Dearholt  
Chair of the board

cc: Members of the Planning Advisory Board  
Mrs. Missy McKim, Community Development Director  
David Rynders, Esq. County Attorney  
J. Dudley Goodlette, Esq., Counsel to Key Island, Inc.

mckeel0

ENCLOSURES/ATTACHMENTS

1. Summary of Existing Legislation, Government Policies and Plans Respecting Barrier Islands.
2. Suggested Changes to Portions of the May 1988 Draft Comprehensive Plan; Proposed Coastal Barrier Management Objective and Policies.
3. February 9, 1988, Resolution of the Board of Directors of The Conservancy, Inc.
4. Legal Memorandum Concerning the Legal Underpinnings of the Coastal Barrier and Coastal Resource Protection Policies.
5. Legal Memorandum Concerning Regulatory Takings.

PARTIAL LIST OF STATUTES, RULES AND POLICIES  
AFFECTING COASTAL BARRIER ISLAND AND ESTUARIES

Coastal Barrier Resources Act - 16 USC §1350 et seq

Governor Graham's Executive Order (EO 81-105) dated  
September 4, 1981

Governor Graham's letter of August 8, 1986

Coastal Zone Protection Act of 1985 - F.S. §161.53  
et seq

State of Florida Control Infrastructure Policy  
F.S. §380.27

State of Florida Land Development Plan  
Prepared by Department of County Affairs  
(Ref F.S. §186.025(3))

State of Florida Comprehensive Plan  
F.S. §187.201 (9)(b)(3)

State of Florida Water Use Plan - F.S. Chapter 186

Southwest Florida Regional Planning Council Plan  
Coastal and Marine Resources Element

Florida Administrative Code Rule 9J5

Rookery Bay Aquatic Preserve Act - F.S. §258.35

Local Government Comprehensive Planning and Land  
Development Regulation Act - F.S. §163.3178(b)

# The Conservancy

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Offices and Nature Center • 1450 Merrihue Drive • Naples, Florida 33942 • 813-262-0304  
(located off Goodlette Road at 14th Avenue North)

## THE CONSERVANCY INC.

### Resolution

#### STATING THE POSITION OF THE CONSERVANCY REGARDING DEVELOPMENT OF BARRIER ISLANDS

WHEREAS, It is recognized on a nationwide basis that undeveloped barrier islands are environmental treasures containing resources of extraordinary ecological, physical, recreational, and economic value;

WHEREAS, barrier islands are highly changing dynamic systems which must be allowed to adjust to the forces of nature, and which serve as critical storm buffers providing protection for interior estuarine communities and human populations;

WHEREAS, The barrier islands of Collier County and their associated wetlands protect estuaries, such as the Rookery Bay National Estuarine Research Reserve in whose creation The Conservancy was instrumental, provide vital habitats for wildlife and critical breeding sites for sport and commercial fisheries;

WHEREAS, it has been repeatedly shown that barrier islands are unsuitable locations for development, the results of which degrade the islands' natural resources, disrupt the islands' dynamic nature and associated storm protection function, expose any island inhabitants to extreme storm hazard and high potential for loss of life and/or property and increase the economic burden on local and state governments by necessitating the expenditure of public funds for beach and inlet maintenance, disaster preparedness, and storm impact reconstruction;

WHEREAS, Federal, State, and regional regulations and policies strongly discourage the development of undeveloped barrier islands, have removed economic subsidies, have established other disincentives and, because it is widely recognized that public acquisition is the best way to protect these valuable resources, have encouraged their outright purchase as a suitable alternative to development.

WHEREAS, the State of Florida has recognized the value of Collier County's barrier islands as evidenced by the purchase of South Barefoot Beach and Cape Romano Island, and by the placement and high ranking of Key, Little Marco, Cannon, Coconut, and Johnson Islands on the Florida Conservation and Recreational Lands (CARL) acquisition list; and



WHEREAS, The Conservancy has a tradition of longstanding commitment to the protection of undeveloped barrier islands as most recently demonstrated by its opposition in 1984 to development on Cannon Island, its legal action in 1985 challenging the County Commission's approval of increased development intensity on southern Lely Barefoot Beach, its strong advocacy and petition drive in 1985 for the inclusion of all undeveloped and unprotected barrier islands south of Naples on the CARL acquisition list, and its sustained efforts to negotiate state acquisition and achieve fair compensation for landowners.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors that the position of The Conservancy Inc. regarding the development of undeveloped barrier islands within Collier County is as follows:

1. The Conservancy affirms that Collier County's remaining undeveloped barrier islands are vital to the ecological, environmental, storm protective, recreational and economic well-being of our community and that their loss to development or other man-induced forms of alteration will cause substantial damage to our coastal resources and will diminish the quality of life that we now value in Naples and Collier County;

2. The Conservancy will continue to take appropriate action necessary to prevent the degradation of Collier County's remaining barrier islands for the long-term good of our environment, native biological communities, and residents, and will seek to support, negotiate and work to provide island real estate holders with a fair and just economic alternative to development; and

3. The Conservancy will pursue and advocate those changes necessary in city and county comprehensive planning guidelines and land use regulations in order to ensure their consistency with existing Federal and state barrier island laws and policies.

This resolution adopted after motion duly made and seconded.

Recorded vote:

Aye: 29

Naye: 0

On this 9th day of February, 1988.

*Mary C. Dearholt*  
CHAIRMAN, BOARD OF DIRECTORS

MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE  
600 Fifth Avenue South  
Naples, Florida 33940

June 5, 1988

To: The Conservancy, Inc.  
From: Robert P. Diffenderfer  
Subject: ESTABLISHMENT OF A FUTURE LAND USE CATEGORY AS  
A REGULATORY TAKING

#### ISSUE

In connection with review of the City of Naples Comprehensive Plan, it has been recommended that Key Island be included within the "vital areas" classification for future land use purposes. This use category would permit existing and certain other limited uses but would not permit further development under the existing underlying R1-15 and R3T-12 zoning. Key Island is designated on the existing Comprehensive Plan Future Land Use Map as conservation/limited development and is required to be zoned PD in conjunction with a specific development proposal. The issue has been raised of whether including Key Island in a future land use category which permits existing use but proscribes expanded use constitutes an unconstitutional exercise of the police power, resulting in a regulatory taking.

#### DISCUSSION

Governments have the power, known as "the police power" to enact laws when necessary to protect the public health, safety and welfare. The exercise of the power must be reasonably related to the public welfare and must not be arbitrary, capricious or confiscatory. Land use regulations have long been recognized as an appropriate exercise of the police power. The Village of Euclid v. Ambler Realty Company, 272 U.S. 365 (1926). However, a regulation that goes "too far" will be recognized as an unconstitutional taking. Pennsylvania Coal Company v. Mahon, 260 U.S. 393 (1922). There is no easy test for determining when a regulation goes too far. A recent Florida decision analyzing this issue stated the test as follows:

"There is no settled formula for determining when the valid exercise of police power stops and an impermissible encroachment on private property rights begins. Whether a regulation is a valid exercise of the police

power or a taking depends on the circumstances of each case. Some of the factors which have been considered are:

1. Whether there is a physical invasion of the property.

2. The degree to which there is a diminution in the value of the property. Or stated another way, whether the regulation precludes all economically reasonable use of the property.

3. Whether the regulation confers a public benefit or prevents public harm.

4. Whether the regulation promotes the health, safety, welfare, or morals of the public.

5. Whether the regulation is arbitrarily and capriciously applied.

6. The extent to which the regulation curtails investment-backed expectations."

Graham v. Estuary Properties, Inc. 399 So.2d 1374 (Fla. 1981), cert.den., 454 U.S. 1083. As the comprehensive planning process in Florida now prohibits the issuance of any development order inconsistent with an applicable comprehensive plan, it is useful to examine cases involving rezoning and down zoning in this factual connection as well as cases construing the standard in general.

It is clear in Florida that if a government regulation denies the right to make any economically beneficial use of property, the government is deemed to have taken the property. The City of Miami Beach v. Ocean & Inland Company, 147 Fla. 549, 3 So.2d 364 (1941); Moviematic Industries Corp. v. Board of County Commissioners, 349 So.2d 667 (Fla. 3d DCA 1977). A down zoning, however, that does not deny all beneficial use of the property is a valid exercise of police power and does not constitute a taking. See Moviematic Industries, Corp. v. Board of County Commissioners, supra; Dade County v. Yumbo, 348 So.2d 392 (Fla. 3d DCA 1977), cert. den., 354 So.2d 988, Askew v. Gables-By-The Sea, Inc., 333 So.2d 56 (Fla. 1st DCA 1976), cert. den., 345 So.2d 420. In discussing the ranges of uses to which an owner of land might put it in connection with the ability of the government to regulate such use in the interest of the public health, safety and welfare, the Florida Supreme Court in Graham v. Estuary Properties held "an owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in

its natural state and which injures the rights of others." 399 So.2d at 1382 quoting from Just v. Marinette County, 201 N.W. 2d 768 (Wis. 1972). Similarly, "it is not necessary to the constitutional validity of an ordinance that it permit the highest and best use of a particular piece of property." Moviematic Industries Corp. v. Board of County Commissioners, 349 So2d at 671.

Protection of environmentally sensitive areas and pollution prevention are legitimate concerns within the police power. Graham v. Estuary Properties, Inc., Id.; Moviematic Industries Corp. v. Board of County Commissioners, Id. Graham v. Estuary Properties involved denial of a permit rather than a rezoning or down zoning situation but the reasoning of that case is compelling in that it affirms that an owner of property does not have an absolute right to change the "status quo" of his property where to do so would result in a public harm. Moviematic, supra, involved property which was down zoned from heavy industrial and business airport use to five-acre single family lots. This action followed a study of the effect that development in the region would have on the aquifer supplying water for the greater Dade County area. The court held that the objective was legitimately within the scope of the police power and that the means employed were reasonably related to that objective. The court also determined that as the owner had not proved that the property could not be put to any reasonable use under the new zoning classification that no taking had occurred. The governmental interest in the instant case is the preservation of the integrity of the coastal barrier estuarine system, the obvious question of safety relating to the provision of fire and police services and emergency evacuation and the state policy requiring no expenditure of public funds to subsidize development in high hazard areas.

An analysis of the factors set forth in the Graham v. Estuary Properties case suggest that regulation confining use of Key Island to existing uses would not be invalid. No physical invasion of the property is involved and a long standing economically reasonable use of the property continues. The existing club facility covers some thirty acres and is described by the property owner as consisting of some fifteen buildings, a lodge and recreational amenities. Such a land use regulation would prevent the public harm that would result from degradation of the coastal barrier-estuary system and would promote the public health, safety and welfare by concentrating population away from a known high hazard area and an area that cannot readily be serviced by public facilities. Such a regulation is resource based; it would be difficult to argue that its application was arbitrary and capricious unless different land owners were treated differently. It would also be difficult today to argue that a future land use policy so described would curtail legitimate investment-backed expectations given the regulatory framework which exists and has existed in this state for some time concerning permitting of activities in wetlands and

on coastal barriers and the state's strong policy against public support of such activities.

Although the policy described confining use to existing use would prohibit development of certain portions of Key Island, the focus is on the nature and extent of interference with the land owners' rights as a whole and not whether some particular use or even the most profitable one can be made of the property. Fox v. Treasure Coast Regional Planning Council, 442 So.2d 221 (Fla. 1st DCA 1983); Graham v. Estuary Properties, Inc., *supra*.

RPD

BARBARA A. ADAMS  
 FRED P. BOSSELMAN  
 JOHN E. BURKE  
 MARK E. BURKLAND  
 MAUREEN A. CROWLEY  
 MELBA S. CURRAN  
 WILLIAM F. DEYOUNG  
 LYNN M. ELROD  
 STOR P. FILIPPINI, JR.  
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 JULIE P. SHELTON  
 COLIN SMITH  
 MARK A. STANG  
 NANCY E. STROUD  
 WILLIAM J. TURBEVILLE  
 DEBRA J. TURCHIN  
 CLIFFORD L. WEAVER  
 THOMAS R. WOODROW

1 ADMITTED ILLINOIS AND FLORIDA  
 2 ADMITTED FLORIDA ONLY

ONE LINCOLN PLACE  
 1900 GLADES ROAD, SUITE 350  
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(407) 391-0400

Attachment #7 - Page 1  
 CHICAGO OFFICE  
 55 WEST MONROE STREET  
 SUITE 800  
 CHICAGO, ILLINOIS 60603  
 (312) 263-3600

June 17, 1988



FEDERAL EXPRESS

Mr. Lodge McKee  
 53 Broad Avenue South  
 Naples, Florida 33940

Dear Mr. McKee:

I am writing on behalf of Mr. John Donahue to support the changes to the Naples land use element proposed in the memo attached to the June 14th, 1988 Planning Advisory Board Agenda. The new language on page Land Use 37 regarding South Gordon Drive properly recognizes the residential character of the area and expresses a policy to not permit an expansion of the commercial use of the property now used as a "shore station" used by the Keewaydin Club. The new language eliminates the inconsistencies of the previous draft which assumed that the mainland property should be further developed for commercial use as the uses on Key Island expand, without sufficient regard to the stable residential neighborhood on Gordon Drive.

I am concerned about the discussion at the June 14 Planning Advisory Board meeting that continues to link the future use of the mainland property with the development of Key Island. The future of the Island is quite uncertain. There are no assurances to the Gordon Drive neighborhood that the Island will not be developed for extensive resort use. The developers of Key Island currently propose expanded use of the Keewaydin resort club and residential development of the Island, which adds a new and threatening dimension to the use of the mainland property.

Under the PD application filed with the City, the mainland property will become a marine and bus transportation terminal and garbage disposal site for the Keewaydin development. According to the PD application, trash from the future development will be transported to, compacted and stored on the mainland site. The site will serve as an on-going service delivery station for Club provisions. Service personnel will be bussed to and from the site for ferry service to the Island. Construction materials will be delivered and stored at the site. Two hundred twenty-five uncovered parking spaces for residents, resort guests, staff and police will be provided. Fifteen new boat

slips will be constructed. A new 3,000 square foot office building/waiting terminal with restroom facilities will be built.

This plan will thus transfer many of the day to day nuisance activities of the Island to Mr. Donahue's front yard, and to the residences along Gordon Drive. Aside from the impacts on shore, it will create marine traffic congestion at the existing, privately owned boat docks at that site, as well as a potential safety hazard to boating and to marine life such as the manatees in the area.

There is no legal or planning reason to continue to link the use of the mainland property to future development of Key Island. I fully agree with the City attorney's assessment that the developer has no vested right in the expansion of the mainland facility, and that limiting its use does not effect a constitutional "taking" of any rights to develop Key Island. There is no serious legal claim that the developer is entitled to further develop the site. For planning purposes, I believe the Board is now fully aware of the incompatibility of further commercial development to the residential neighborhood. The developer of the Island has indicated in the PD application that it has a license to use a facility in the waterfront commercial district at Boat Haven; the waterfront district was intentionally created for the type of use now proposed for the mainland property and should be used instead of the property on Gordon Drive. Finally, for planning purposes, property ownership is irrelevant, because government cannot ensure that any particular owner will continue to own property. The City can control the land use of property, and has the responsibility to ensure that uses do not adversely impact their neighbors.

At the June 14 meeting, you raised questions regarding the City code's provisions for off-street parking. I have had an opportunity to review those provisions and consider them in relation to the mainland property. As you know, both R1-15 and C-1 districts require off-street parking, and the general rule is that parking must be provided on the same lot or parcel of land that the parking is intended to serve. See Section 6, paragraph 23(F)(1) of the Zoning Ordinance. This requirement is intended to reduce the traffic and aesthetic impacts of parked vehicles in both residential and commercial districts. The ordinance also provides limited relief to that off-street requirement, which is available solely at the discretion of the city, through a conditional use petition. Specifically, an exception may be made so that

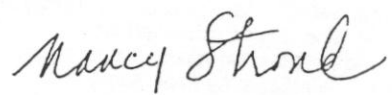
.... facilities may be provided on land within a radius of 600 feet of the lot, provided the land is zoned so as to permit such parking facilities.

See Section 6, paragraph 23(F)(2).

I do not believe that this exception applies to grant the Key Island developer a right to use the existing mainland property as an off-street parking lot for Key Island. According to our review of the PD land maps, the proposed parking lot is more than 600 feet from Key Island. The mainland property is certainly more than 600 feet from any of the new proposed residential lots. More importantly, it is apparent from the ordinance that the exception is meant to be used only where parking facilities will be consistent with the neighborhood in which they are located, pursuant to conditional use review criteria. Expanded parking on the mainland site will increase and concentrate traffic, noise pollution and other adverse impacts to the existing residential neighborhood. The parking will not be compatible or appropriate with adjacent property or property in the neighborhood, but in fact, will be detrimental to those properties. Therefore, it would not be an acceptable conditional use of the property.

We urge you not to permit the further development of the mainland property.

Very truly yours,



Nancy E. Stroud

NES/dm

- cc: Missy McKim
- Alan Korest
- Tor Kolflat
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