



City of Naples

City Council Chambers
735 Eighth Street South
Naples, Florida 33940

-SUBJECT-

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Date 05/24/89

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At approximately 9:45 a.m., Council recessed and moved these workshop proceedings to the City Council Chamber in order to discuss the remainder of the agenda.

Mayor Putzell reconvened the meeting at approximately 10:00 a.m. and advised that he had been asked by the Conservancy for the same opportunity to present their expert testimony as Collier Development Corporation had at the May 10, 1989, proceedings.

Discussion then ensued relative to what was fair and just for all parties involved. Councilman Crawford supported the Conservancy's request, but believed a two-hour limitation for the presentation to be adequate. Mrs. Anderson-McDonald concurred and said one consolidated presentation of scientific evidence would be appropriate, not individual emotional discourse.

City Manager Jones pointed out that since the meeting would be in a workshop setting, Council could set parameters by which it would hear testimony. It does not have to be a public hearing, he said, but could be a special invitation to the Conservancy with time limits established therein. The meeting could then be advertised and it made clear that this would not be a substitute for the public hearing to be held on June 21, 1989.

It was the consensus of Council that the City Manager's Office would notify the Conservancy and establish an appropriate meeting date to hear expert testimony with regard to Sabal Bay; the public notice should clearly indicate that this would not be a public hearing.

City Manager Jones advised those members of Council interested in visiting the Key Island site

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should notify either the City Manager's Office or Mr. John Remington and arrangements would then be made.

ITEM 1

DISCUSSION OF ORDINANCE RELATING TO ISSUANCE OF CABLE TELEVISION FRANCHISES

City Attorney Rynders advised he had received many suggestions to the proposed ordinance from Attorney Don Pickworth, representing Palmer Cablevision; Mr. Rich Gunter, representing Cablevision Industries; and Attorney Bruce Anderson, representing Telesat Cablevision, Inc. He was now asking Council for its guidance regarding those proposed amendments.

In accordance with State and Federal law, the City of Naples cannot issue exclusive franchises to cable companies as recent legislation has demanded a need for competition in this industry. The purpose of this ordinance, City Attorney Rynders explained, was to provide a means by which applications could be uniformly processed. In response to Mayor Putzell, the City Attorney said he believed it better to have an ordinance in place prior to the processing of any applications for franchise.

Prior to allowing those who so registered the opportunity to speak, Mayor Putzell reviewed Council's criteria for speakers.

Mr. Ed McMahon, representing the Naples Civic Association, advised his group was in favor of competition and fully supported the ordinance. He then made a few suggestions: ensure all franchisees adhere to the same performance standards to address customer complaints; new companies should present the City with a five year build out plan; have adequate performance and construction bonds in place so that cut cables and the like would be swiftly repaired; and set up criteria on the basis of 20 homes per mile.

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Referring to the suggested requirement of 20 homes per mile prior to the introduction of a new cable service to an area, City Attorney Rynders cautioned Council that such a requirement had not received a favorable response from the Courts. Mr. Richardson asked if the ordinance could define geographical areas to which Mr. Rynders advised it was possible to require a new applicant to provide service to an area greater than what they had applied to provide for more competition.

Citizen Egon Hill of 430 Putter Point Court spoke in favor of the ordinance and said that his Palmer Cablevision bills have increased nearly 92% in the past five years. He asked Council to support this ordinance to provide for competition of cable service in the area.

Attorney Don Pickworth, representing Palmer Cablevision, asked for more stringent requirements in the ordinance to help deter the effects a new franchisee who practices "cherry picking" might have on the community. Mayor Putzell asked if Attorney Pickworth's client would agree to the laying of parallel lines for a new cable company. Mr. Pickworth said he believed such action to be typical of an overbuilder and further believed parallel lines not practical. Palmer has laid cable lines for all subdivisions in the City and has expended much capital in preparing areas for cable service. Telesat would benefit greatly from those efforts, Mr. Pickworth said. Referring to Palmer Cablevision's area of service, City Attorney Rynders pointed out that the company did not serve Avion Park.

In order to relieve some of the burden from the existing franchisee, City Attorney Rynders explained, it is possible for Council to charge different franchise fee rates. The City can charge up to 5%; Palmer currently is paying 3%. Such action would most probably enhance the competition process, he said. The City could also require Telesat to service a larger area; however, this requirement has not been enforceable through the Courts. In fact, City Attorney Rynders

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continued, a large portion of the litigation of which Telesat is involved is directly related to such a requirement.

Discussion then ensued regarding Section 7 of the ordinance which required additional approval from Council should 30% or more of the company be acquired by an individual or group of individuals. Attorney Don Pickworth said he believed this percentage to be rather high and recommended a 5% to 10% ceiling. Mayor Putzell, however, pointed out that 5% to 10% ownership would not control a business and believed the proposed 30% sufficient in this case.

Mayor Putzell called on Mr. David Dea who had registered to address Council; however, Mr. Dea declined comment.

Mr. Rich Gunter, representing Cablevision Industries of Florida, referred to his letter dated May 22, 1989, herein included as Attachment #2. Mr. Gunter supported an increase of the proposed application fee as he did not believe \$1,000 prohibitive enough. Such a nominal fee would encourage "fly-by-night" operators who have no intention of serving City subscribers, he contended.

Referring to the ordinance, Mr. Gunter added that he did not believe the build out schedule outlined in the ordinance adequate. A more appropriate time length, he said, would be five years for the entire City. By the same respect, the requirement for 10,000 linear feet of cable to be laid within two working days is too stringent, Mr. Gunter noted. He recommended that an amount not to exceed 3,500 feet to be appropriate. Mr. Gunter further recommended that the requirement relative to damage repairs by incoming franchisees be more austere to prevent any intentional tampering by the competition. He suggested language from a Hillsboro County ordinance which he believed appropriately addressed this issue and offered to provide the City Attorney with that documentation.

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Also, referring to a previous suggestion by the Naples Civic Association, Mr. Gunter said he believed the requirement of 22 residential units within continuous and annexed lands to be inconsistent and said he believed it would provide for legal ramifications if enforced as it would create different standards for annexed property.

Citizen W.W. Haardt of 4900 Whispering Pine Way supported competition relative to cable service. He recommended that the ordinance be drafted in such a manner as to protect the consumer's interests. Referring to the proposed franchise for Telesat, Mr. Haardt said he believed it important that Palmer also be required to adhere to the same regulations.

Attorney Bruce Anderson, representing Telesat Cablevision, Inc., advised his client had filed an application with the City on March 21, 1989. While he was not opposed to the ordinance, he did believe one suggestion made at these proceedings to be unconstitutional, that of requiring the new applicant to lay cable wherever Palmer Cablevision has now. Attorney Anderson recommended a clause be inserted which would provide for universal pricing and he agreed to work with the City Attorney in regard to appropriate language for such a clause.

Mr. John Blevins, Director of Public Relations for Telesat Cablevision, Inc., said he supported the proposed ordinance but did not believe comments of overbuild to be accurate. Telesat has over 60,000 subscribers, he noted, and with their overbuild policy have been able to provide competitive service to the areas it now maintains. In response to Council, Mr. Blevins said he believed the proposed time limit to be too stringent and said it would not provide for competition.

Mayor Putzell asked if Palmer Cablevision would be subject to the new ordinance requirements. Attorney

Pickworth advised his client had the right to renegotiate his agreement and would be subject to

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those sections of the ordinance which can be enforced through police power.

Discussion then ensued relative to a time frame with which Council could adequate review the ordinance prior to second reading, June 7, 1989. City Attorney Rynders advised he would prepare drafting changes and provide Council with copies of the ordinance with or before the next agenda packet.

ITEM 2

REVIEW OF EFFLUENT USAGE AT GOLF COURSES

Utilities Director Chaffee explained his office had tracked the amount of reuse, metered and unmetered uses, discharge to the Bay, and chloride levels since January, 1989. The results have been very favorable, he said. In fact, the past two weeks have effected virtually no discharge into the Gordon River.

Referring to the chloride level and effect it has upon vegetation, Mr. Richardson asked if those issues had been resolved with area golf courses. Mr. Chaffee explained that because of the City's coastal location, it is impossible to avoid absolute salt water intrusion through tidal effects. If the chloride level does not exceed 400, the plants should experience no difficulties. However, if the chloride level exceeds that mark, then there would be a salinity problem.

Mr. Chaffee concluded that if the City had not implemented its effluent reuse program, current conditions would have warranted mandatory phase 2 water restrictions. Additionally, in November of last year, the City would have been placed under mandatory phase 1 water restrictions.

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ITEM 3

RIP-RAP PROGRAM FOR NAPLES BAY

City Manager Jones explained that pursuant to Council's direction, staff had studied cost estimates for this program in terms of an assessment district. One factor which might deter the project would be State approval. The Department of Environmental Regulation (DER) and the Department of Natural Resources (DNR) both might not look favorably upon the project inasmuch as there are areas which would require an eight foot high and wide rock revetment which could substantially cover the Bay bottom.

Mayor Putzell suggested the public be informed of this proposal as soon as the State's position could be obtained and, further, that staff allow for adequate public input. City Manager Jones agreed and advised staff could contact those property owners' associations involved to solicit their views.

Discussion then ensued relative to Council support of this project and it was the consensus of Council to proceed with this rip-rap program for Naples Bay.

Natural Resources Manager Staiger elaborated on the State's position and said DER has no objection to such structures providing they cover a muddy area. However, should those structures encroach over extensive oyster bars, the State would be reluctant to issue any permits for construction. Staff will have to prepare a detailed survey relative to the Bay bottom in order to determine if this project would be feasible.

ITEM 4

SALARY SURVEY REVIEW.

City Manager Jones advised staff had compiled an internal salary survey of approximately 21

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locations with 17 respondents for certain professional, supervisory, and management personnel. Staff found some of the salaries were above and below the averages of those cities surveyed. Competitive salaries enable the City to recruit and retain personnel, Mr. Jones explained. He then recommended an outside consultant be engaged to provide an overview of the City's entire pay plan; the last review was completed in 1985.

In response to Mayor Putzell, Personnel Director McShane noted the City's annual turnover rate was approximately 15% most of which included Communication Operators from the Police Department. However, since the salary for that particular job has been increased, those positions have remained filled.

Referring to the recent County pay plan review, Mr. Jones noted the Collier County School Board was also undergoing a similar review of its pay plan and organizational structure. He then reiterated his suggestion that the City engage in a review of its current pay plan and organizational structure.

In response to Councilman Crawford, City Manager Jones said bid proposals from interested consultants could be obtained and costs reviewed at that time for both the pay plan revision and organizational structure review. The City would benefit from such a review by receiving independent critiques of its Plan, ensuring that salaries are competitive, and noting any corrections to the Plan.

Mayor Putzell asked if such a major review could be accomplished in-house. City Manager Jones advised that it could, however, it would take all the Personnel Director's time for a period of not less than one year. An outside company, Mr. Jones contended, could accomplish this project in a more timely fashion.

Discussion then ensued relative to salary ranges. Personnel Director McShane pointed out that approximately 58% of the salaries surveyed showed

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significant highs or lows in their ranges. It was the consensus of the majority of Council, excepting Mr. Crawford, to proceed with requests for proposals from consulting firms for the pay plan survey. Mr. Crawford said he was not convinced that such a survey from an outside firm an appropriate expenditure of taxpayers' monies.

After a brief discussion regarding the second phase of the survey, review of the organizational structure. Council asked staff to provide them with cost estimates inasmuch as it was not confident that this expenditure was necessary.

ITEM 5

ESTABLISHMENT OF BAY PLANNING ORGANIZATION.

City Manager Jones asked Council for some guidance relative to the proposed resolution which authorizes staff to execute an Interlocal Agreement with the County to create a Bay Management Organization. Mayor Putzell noted the Collier County Commission Chairman on several occasions has advised that Naples Bay is uniquely a portion of the City and as such the City should be solely responsible for its maintenance.

Discussion then ensued relative to the make up of this Committee. It was the consensus of Council that the Bay Management Organization should be comprised of a majority of City Councilmen and a minority of County Commissioners. In addition, the staff coordinator should also be from the City along with the Chairman for this Committee.

Councilman Richardson pointed out that this Committee would be responsible for much more than water management. It would review septic tank pollution, influx of water from the Golden Gate canal system, and many other issues which other organizations in the past have attempted to solve. Mr. Barnett noted that one group needed to take

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charge and perhaps this Committee could endeavor to do that.

Referring to the Executive Summary of the Naples Area Chamber of Commerce, 1988 Naples Bay Task Force, Final Report, Mr. Muenzer noted some inaccuracies wherein it states: "All surface water and storm sewage in the City of Naples runs directly into Naples Bay." This is not true, he contended, in fact, all such water runoff west of Ninth Street South and west of U.S. 41 drains directly into the Gulf of Mexico. Only 30% of the entire City is drained into Naples Bay.

ITEM 6

UPDATE ON STATUS OF UNIFIED DEVELOPMENT
CODE REQUIRED BY GROWTH MANAGEMENT ACT.

Community Development Director McKim briefly reviewed staff's schedule for completion of the

Unified Development Code pursuant to the Growth Management Act due August 1, 1989. Staff has anticipated completion of the actual format by that date, however, it will still be necessary to make revisions to those sections of the Code not under this mandate, such as subdivisions and zoning regulations.

Discussion then ensued relative to penalties if the August 1, 1989, deadline should not be met. While there are no penalties per se, Mrs. McKim explained, if the Code has not been submitted by that date, it could be subject to challenge by any member of the citizenry.

Councilman Richardson also noted that the City of Naples was the first to submit its Comprehensive Plan and would also be first in submitting a Unified Development Code. City Manager Jones then pointed out that staff and Council would be busy

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until the deadline with meetings and Code preparation.

ADJOURN: 12:40 p.m.

Janet Cason

Edwin J. Putzell, Jr.
EDWIN J. PUTZELL, JR., Mayor

JANET CASON
CITY CLERK

Jodie M. O'Driscoll
JODIE M. O'DRISCOLL
DEPUTY CLERK

These minutes of the Naples City Council were approved on _____.

SUPPLEMENTAL ATTENDANCE LIST

David Dea
Rich Gunter
Ed Addiss
Ted Campbell
Angie Poteet
Bruce Anderson

Ed McMahon
Frank Fry
Lee Addiss
Charles Andrews
John Blevins
Don Pickworth

W.W. Haardt
Egon Hill
Fred Cull
Herb Anderson
Roger Knotts

Other interested citizens and visitors.

NEWS MEDIA

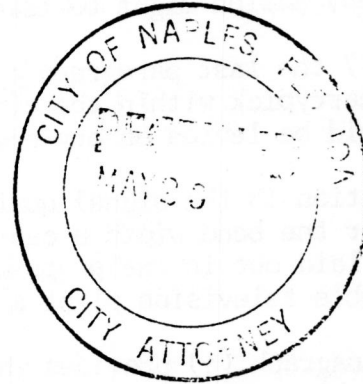
Donna Howell - WEVU-TV
Pat Wasson, WNOG

Lori Darvas, Naples Daily News

**Cable
Vision
INDUSTRIES**

May 22, 1989

Mr. David W. Rynders, City Attorney
City of Naples
735 Eighth Street South
Naples, Florida 33940



Dear Mr. Rynders,

Thank you for the opportunity to comment on your proposed cable television ordinance. As you pointed out to the City Council, writing such an ordinance is a difficult and time consuming task. My intention here is only to assist you in that task.

While reviewing your proposed ordinance I composed a list of areas of concern that I suggest you and the City Council review prior to adopting a final ordinance. As we discussed in our telephone conversation today I am only prepared to draw a list of concerns and problems areas today. I will bring to our meeting on the 24th my suggested solutions and examples of other Master Cable Television Ordinance's from throughout the state.

- 1) On page 5 of the proposed ordinance you have listed an application fee in the amount of \$1,000.00 to offset the cost of evaluating an application. In our experience that amount would be considered low. As you noted to the council, cable television regulation can be very complexed. The cost of evaluating the application is likely to be much higher for the city. Also at \$1,000 the City will not be able to keep out "Fly By Night" operators who might apply for a franchise with no intention of ever serving any subscribers.
- 2) Also on page 5 you note that the City Council would hold a hearing to consider the application "Or accordance with State law". The master ordinances we generally see today spell out what in the state law must be considered at a duly noticed public hearing before franchises are awarded by a municipality or a County. Generally these items are listed in the ordinance to provide a check list for the franchisor in processing the application. That list would keep the city from inadvertantly omitting consideration of any requirements prior to granting a franchise.
- 3) On page 6 of the proposed ordinance in your discussion of franchise fees you indicate the city and the franchisee may negotiate the level of the franchise fees. The possibility exist that a new franchisee may negotiate a franchise fee at an amount less than is paid by an existing operator. The state statutes require that no municipality or county grant an overlapping franchise for Cable service on terms or conditions more favorable or less burdensome that those existing for any franchisee within a municipality. More specific wording of section 6 is required to prevent the city from inadvertantly violating that section of the states statutes.

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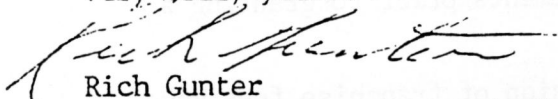
Cablevision Industries - Florida Region □ 1655 State Road 472 □ DeLand, FL 32723-6001 □ (904) 775-4444

- 4) On page 7 of the proposed ordinance in section 10 the words "Substantial Progress" are used but no clear definition of that phrase is found. Also in that section on franchise performance you allow a new franchisee until the 8th anniversary of the issuance of a franchise to offer service to 80% of the homes within a city. That requirement is too lax and would allow an operator over 7 years free reign in the City before any action might be taken to limit the service area.
- 5) Also on page 7 the last paragraph on the page provides a new operator with the ability to cherry-pick within the city. The same requirements for an incumbent operator should be levied on any new cable operator coming into the city.
- 6) On page 9 section 15 the signal quality requirements do not provide for the number of channels or the band width a cable system must be built to. That is, the requirements laid out in the proposed ordinance do not provide for building state of the art cable television plant and facilities.
- 7) On page 11 paragraph (j) provides that a cable television franchisee must notify an existing cable operator and location of system facilities must be accomplished 2 working days after such notice. Franchisee should also have to notify other utility operators and the same notice and locate requirements should apply to the other utilities.
- 8) The provision for locates of ten thousand linear feet in two working days is far too stringent.
- 9) On page 12, at the top of the page, paragraph (2) limiting liability for damage to an existing cable television service to that portion of the system located within 12 inches of a locator device does not afford adequate protection for the existing cable operator. Extensive damage to existing cable operator systems has been a problem throughout the state and far greater requirements for care should be listed in the ordinance.
- 10) On page 18, the requirement that a cable franchisee build where twenty-two residential dwellings that are located within 100 feet of any one mile of continuous or adjoining cable lines in annexed lands creates a different requirement for buildings in areas that are annexed versus the existing city. The present residents and residents in the annexed areas are treated differently.

The City's efforts to adopt the best possible cable ordinance that can be written will be rewarded with fewer problems in the regulation of cable television systems in Naples and will be rewarded with a greatly reduced possibility of litigation should any errors or omissions be discovered in the ordinance.

Thank you for the opportunity to make these observations. I look forward to working with you in the upcoming workshop.

Very truly yours,



Rich Gunter
Director of Government Relations