



City Council Minutes

Special Meeting 5-29-91

City of Naples

City Council Chambers
735 Eighth Street South
Naples, Florida 33940

-SUBJECT-	ORD. NO.	RES. NO.	PAGE
<p><u>RESOLUTION:</u></p> <p>-APPROVE stipulation and memorandum of understanding in Smith, et al v. City of Naples and Stuart O. Kaye litigation.</p> <p>ADJOURN</p>		91-6393	2 4

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ROLL CALL

ITEM 1

Councilmen

Also Present:

Other interested visitors and citizens.

ITEM 2

The City Attorney reviewed the background of the issue and told Council that the parties involved had negotiated in very good faith and had agreed upon a Memo of Understanding. He pointed out that the Memo of Understanding provided for a parking garage, but that Mr. Kaye would have the

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
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option whether to build one or not. Under the previous agreement, the City would have had that option.

Attorney Rynders said that everything in the Memo of Understanding appeared to be in order and if Council agreed to relinquishing the option of building the parking garage, he would recommend approval. He said he would then ask for 90 days for the agreement to be finalized, after which time all litigation would be dismissed.

Vice Mayor Passidomo asked if the Memo of Understanding would be contractually binding and if it would circumvent the local Development Agreement Act. City Attorney Rynders said that it was inconceivable that a court would say these disputes could not be settled using this vehicle.

Community Development Director McKim said that the City should have some flexibility in the design of the garage. She suggested adding language that would give the City review power, emphasizing that criteria must be met and the design of the garage must be compatible to the area.

With regard to the vacation of the right-of-way adjacent to the UTS Building, Mrs. McKim said that adjacent property owners would be affected, so their input should be heard by Council.

Mrs. McKim said that Council should be very cautious in moving forward and giving the impression that a drive-thru window would necessarily be approved. Councilman Korest noted that the usual procedure required is a conditional use for a parking structure. He asked if the signing of the Memo of Understanding would affect in any way the procedures Council and the Planning Advisory Board (PAB) must go through for the vacation of a right-of-way. City Attorney Rynders commented that Council may not want to commit to a right-of-way at this time.

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Attorney Kim Kobza told Council that a Development Agreement would be the proper vehicle by which to address such concerns as additional levels on the parking garage, landscaping, etc. He said that the Memo of Understanding shifts the responsibility of building the parking garage from the City to Mr. Kaye, and does provide the Smiths and the Wynns the option to build two additional levels on the garage. Attorney Kobza stressed that the City also had the option to construct two additional levels; that option would not evaporate.					
Attorney Kobza told Council that the parties involved are agreeing in good faith, and understand that a substantial amount of engineering design and planning must still be accomplished. Further design and planning would be realized in the course of the review processes, in conjunction with conditional use and vacations. Attorney Kobza confirmed that the Memo of Understanding states in concept what the parties hope to achieve within the next 90 days and that subsequent to that details would be incorporated. Attorney Kobza and Councilman Passidomo agreed that the Memo of Understanding is a conceptual understanding so that the parties can proceed.					
After discussion, all parties agreed on a 120-day time frame for the Development Agreement, which will come before Council on August 7, 1991.					
MOTION: To <u>APPROVE</u> the resolution, with an addendum which will be prepared.					

Barnett				X	
Herns				X	
Korest				X	
Muenzer				X	
Passidomo	X			X	
Sullivan				X	
Anderson				X	
(7-0)					

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ADJOURN: 11:52 a.m.

Kim Anderson
KIM ANDERSON, MAYOR

Janet Cason
JANET CASON
City Clerk

Marilyn McCord
Marilyn McCord
Recording Secretary

These minutes of the Naples City Council were
approved on June 5, 1991.