



City Council Chamber
735 Eighth Street South
Naples, Florida 33940

City Council Regular Meeting - November 2, 1994 - 9:00 a.m.

Mayor Muenzer called the meeting to order and presided.

ROLL CALL

ITEM 2

Present:

Paul W. Muenzer, Mayor
Alan R. Korest, Vice Mayor

Council Members:

Ronald M. Pennington
Marjorie Prolman
Fred L. Sullivan
Fred Tarrant
Peter H. Van Arsdale

Also Present:

Dr. Richard L. Woodruff, City Manager
Maria J. Chiaro, City Attorney
Kevin Rambosk, Assistant City Manager
Missy McKim, Community Dev. Director
John Cole, Chief Planner
Ann Walker, Planner II
Dr. Jon Staiger, Natural Resources Mgr.
William Overstreet, Building Official
Mark Thornton, Comm. Services Director
Jane Tull, Sergeant-at-Arms
Tara Norman, Deputy City Clerk
Marilyn McCord, Deputy City Clerk

Media:

Eric Staats, Naples Daily News
Jerry Pugh, Colony Cablevision

See Supplemental Attendance List
(Attachment 1)

Other interested citizens and visitors

INVOCATION and PLEDGE of ALLEGIANCE

ITEM 1

The Reverend H. Peter Lyberg, Shepherd of the Glades Lutheran Church

ITEMS TO BE ADDED

ITEM 3

City Manager Woodruff requested that a resolution be added to the agenda authorizing the Mayor to notify Colony Cablevision that its franchise agreement with the City of Naples expires November 21, 1994. He also asked that an item be added to authorize the purchase of "Direct Talk 2" building permit inspection software. **It was the consensus of Council that these items be added as 13-a and 19, respectively; the agenda for this meeting was therefore set.**

CONSENT AGENDA

APPROVAL of MINUTES

ITEM 14

10/10/94 City Council Workshop
10/17/94 City Council Workshop
10/19/94 City Council Regular Meeting

RESOLUTION 94-7297

ITEM 15

A RESOLUTION ACCEPTING A GRANT OF EASEMENT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO AND MADE A PART HEREOF, FROM THE COLLIER COUNTY PUBLIC SCHOOL BOARD FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A REUSE WATER LINE OVER A PORTION OF LOT 92 OF NAPLES IMPROVEMENT COMPANY'S LITTLE FARMS; AND PROVIDING AN EFFECTIVE DATE.

CAPITAL PROJECTS CARRY-FORWARD BUDGET AMENDMENTS:

ITEM 16

16-a	Utility Tax - Community Services	\$218,929.47
16-b	Utility Tax - Equipment Services	\$53,400.00
16-c	Streets Fund	\$192,744.00
16-d	Water & Sewer Fund	\$3,146,417.00
16-e	Solid Waste Fund	\$122,900.00

ITEM 17

AWARD OF TWO-YEAR BID FOR ELECTRICAL SERVICE TO BE UTILIZED BY CITY DEPARTMENTS FOR ROUTINE ELECTRICAL REPAIRS AND MINOR RENOVATIONS.

ITEM 18

AUTHORIZATION TO ISSUE PURCHASE ORDER FOR A COMMERCIAL RIDING MOWER.

MOTION: To **APPROVE** the Consent Agenda.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION 94-7298

ITEM 5

A RESOLUTION GRANTING VARIANCE PETITION 94-V8 FROM SECTION 106-74(c)(2) OF THE COMPREHENSIVE DEVELOPMENT CODE WHICH REQUIRES A LANDSCAPED BUFFER BETWEEN A PARKING AREA AND AN ADJACENT COMMERCIAL PROPERTY, IN ORDER TO PERMIT THE INSTALLATION OF THE REQUIRED LANDSCAPING WITHIN AN EASEMENT ON THE ABUTTING PROPERTY; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Greg Boggs, senior real estate representative for Southland Corporation, appeared on behalf of this petition.

Planner Ann Walker explained that the variance requested is solely in relation to a landscaped buffer which would serve to separate a medical office use from the 7-11 convenience store. In order to expand, the medical office had acquired a portion of the property between the 7-11 and the medical office which had been owned by the convenience store parent company, Southland Corporation, and which had been vacant for approximately ten years. The property would accommodate sufficient parking for both facilities but would not allow ample space for a landscaped buffer for each. A variance was therefore being sought. While the petition did not meet the strict requirements for a variance, the Planning Advisory Board had recommended approval because of the benefits which would accrue from upgrading the area, Ms. Walker concluded.

It was requested by Council that, in conjunction with this project, the petitioner delineate from the adjacent parking lot a sidewalk area which runs along Seventh Avenue North.

Vice Mayor Korest asked if steps were being taken to recognize situations such as this one in overlay district regulations which would serve to facilitate redevelopment. Staff confirmed that work was now underway to amend zoning district regulations to obviate the need for variances of this type, and that input was being obtained from property owners in that area.

Council Member Tarrant asked whether it was the policy of Southland Corporation to have two clerks on duty in their convenience stores at all times. City Manager Woodruff indicated that he would provide Mr. Tarrant with information on City regulations in this regard.

Public Input: None (9:22 a.m.)

MOTION: To **APPROVE** this resolution as presented.

Korest		Y
Pennington	M	Y
Prolman		Y
Sullivan	S	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

(Denied)

ITEM 10

A RESOLUTION GRANTING VARIANCE PETITION 94-V10 FROM SUBSECTION 102-176(3) OF THE COMPREHENSIVE DEVELOPMENT CODE TO ALLOW AN ADDITION TO ENCROACH APPROXIMATELY NINE FEET INTO A REAR YARD SETBACK, ON PROPERTY LOCATED AT 4890 WHISPERING PINE WAY, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Chief Planner John Cole indicated that communications had been received from immediate neighbors who had been opposed to this variance; the Planning Advisory Board had voted unanimously to deny based on its finding that the hardship criteria had not been met. It was clarified that although the petitioners were not present, they had been advised of the PAB's recommendation and of the Council's scheduled consideration.

Public Input: None (9:38 a.m.)

MOTION: To **DENY** this petition.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION 94-7299

ITEM 11

A RESOLUTION GRANTING CONDITIONAL USE PETITION 94-CU8 FOR THE RECONSTRUCTION OF AN EXISTING TENNIS COURT AND THE ADDITION OF A SECOND TENNIS COURT AT 2150 GORDON DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Chief Planner John Cole explained that the staff and Planning Advisory Board had recommended approval of this request for renovation of a tennis court. He said there had been confirmation in the PAB record that the intent was strictly as a single family accessory use, that assurances had been given that lighting would cause no intrusion in the neighborhood, and that landscaping would shield the courts from Gordon Drive.

Public Input: None (9:40 a.m.)

MOTION: To **APPROVE** this resolution as presented.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE 94-7300

ITEM 12

AN ORDINANCE AMENDING ORDINANCE NO. 94-7255, CHANGING THE TIME FOR SUBMITTAL OF DOCUMENTS PURSUANT TO ORDERS OF ACTION RELATED TO THE INTERACTIVE CABLEVISION FRANCHISE, SECTION 3; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff explained that this ordinance would allow Interactive Cablevision additional time to provide certain financial documents necessary to obtain a CATV franchise; with approval of this ordinance, a 45-day time period would begin that day.

Public Input: None (9:45 a.m.)

MOTION: To **ADOPT** this ordinance on second reading.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION 94-7301

ITEM 6-a

A RESOLUTION GRANTING CONDITIONAL USE PETITION 94-CU9 FOR A DRIVE-UP WINDOW ACCESSORY TO A RETAIL STORE AT THE NORTHWEST CORNER OF U.S. 41 AND THIRD AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Planner Ann Walker indicated that this petition had been recommended for approval by the Planning Advisory Board with the condition that a landscape plan and elevation plan for the Third Avenue (west) side be provided. Although the criteria for granting a variance had not technically been met, it was believed that the intent of the ordinance had been satisfied. The PAB had expressed the desire, however, that the side of the building facing Third look more like a storefront than a warehouse. Ms. Walker also pointed out that the site had been used for several years as a parking lot for the Post Office across the street. The prior use had incorporated a public alley on the north side of the property, and this alley will continue to be used for access.

J. Dudley Goodlette, attorney for the petitioner, indicated that the proposed drive-up window would be open during store hours (9:00 a.m. to 9:00 p.m. daily) and for prescription purchases only. Mr. Goodlette urged approval, expressing the belief that the proposed use was in the best interest of downtown redevelopment, and because it is adjacent to the medical district as well as the US 41 corridor, this use was clearly contemplated in the redevelopment plan. He also confirmed the petitioner's understanding that because of past practice, it was expected that some Post Office patrons may continue to use the parking lot, particularly during the holiday season.

Greg Siefkert, representing Eckerd Drugs, clarified various other points with reference to the proposed use: that there is an increasing use of drive-up windows at pharmacies, that lanes allocated for this purpose would be adequate to handle anticipated traffic flow, and that appropriate signage would be installed.

While indicating his support of the proposed improvements to this site, Council Member Tarrant nevertheless expressed concern about possible City liability for vehicle and pedestrian accidents if Council permitted an alteration in the traffic flow. City Attorney Chiaro indicated that state law provides that municipalities are not liable for the results of discretionary decisions such as applying zoning laws.

Korest	M	Y
Pennington	S	Y
Prolman		Y
Sullivan		Y
Tarrant		N
VanArsdale		Y
Muenzer		Y
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

Public Input: None (10:09 a.m.)

MOTION: To **APPROVE** this resolution as presented.

RESOLUTION 94-7302

ITEM 6-b

A RESOLUTION GRANTING VARIANCE PETITION 94-V11 FROM SECTION 106-103(a)(1) OF THE COMPREHENSIVE DEVELOPMENT CODE WHICH REQUIRES THAT ACCESS FROM ONE SECTION OF AN ON-SITE PARKING AREA TO ANOTHER BE PROVIDED ON SITE, IN ORDER TO ALLOW THE USE OF AN ALLEY FOR TRAFFIC CIRCULATION ON PROPERTY AT THE NORTHWEST CORNER OF U.S. 41 AND THIRD AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro

Public Input: None (10:10 a.m.)

MOTION: To **APPROVE** this resolution as presented.

Korest		Y
Pennington	M	Y
Prolman		Y
Sullivan	S	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ITEM 19

AUTHORIZATION TO PURCHASE "HTE" *Direct Talk 2* BUILDING PERMIT INSPECTION SOFTWARE MODULE.

City Manager Woodruff explained that when the original purchase of software from HTE had been approved, the staff had not been aware that the building permit inspection module was not included.

However, because building permit revenues were considerably ahead of the prior year, this additional purchase of \$30,334 could be funded. (A summary memorandum is contained in the file for this meeting in the City Clerk's Office.) Building Official William Overstreet explained that this integrated software module would replace a manual system resulting in significant savings in the time required to handle building inspections and related activities. The new system would allow contractors to inquire by phone at any time during or after business hours regarding the status of various projects. The volume of requested building inspections had increased approximately 300% over the prior year, Mr. Overstreet indicated.

Council Member Sullivan asked whether this system would help prevent building permits from being repeatedly renewed. Mr. Overstreet confirmed that controls would be provided and that daily and weekly reports could be generated showing the status of each project so that those not completed in a timely manner could be identified.

Public Input: None. (10:26 a.m.)

MOTION: To **AUTHORIZE** this purchase.

Korest		Y
Pennington	M	Y
Prolman		Y
Sullivan	S	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION 94-7303

ITEM 7

A RESOLUTION GRANTING CONDITIONAL USE PETITION 94-CU10 FOR STAGED ENTERTAINMENT IN THE OASIS CHICKEE BAR AT THE HOWARD JOHNSON RESORT LODGE, 221 9TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Community Development Director McKim indicated that the resolution initially presented to Council had been revised to include a condition that this activity be reviewed in one year.

MOTION: To **APPROVE** the revised resolution noted above.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION 94-7304

ITEM 13-a

A RESOLUTION AUTHORIZING THE MAYOR TO NOTIFY COLONY CABLEVISION OF FLORIDA THAT ITS FRANCHISE AGREEMENT WITH THE CITY OF NAPLES EXPIRES NOVEMBER 21, 1994, AND ASKING COLONY CABLEVISION TO SEEK AN EXTENSION TO ITS EXISTING FRANCHISE AGREEMENT ON OR BEFORE NOVEMBER 15, 1994, FOR A PERIOD OF SIX MONTHS TO ALLOW TIME FOR

RENEGOTIATION OF THE FRANCHISE; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Assistant City Manager Kevin Rambosk explained that although it was the City's position that the Colony Cablevision franchise would expire on November 21, 1994, Colony had expressed a different view based on a clause in the current franchise agreement. The six month extension outlined in the resolution presented would provide for continuation of cable television service while negotiations are underway for a new franchise agreement. Should Colony not respond to the City's notification, the City has the option of pursuing a declaratory judgment in the Federal courts, Mr. Rambosk noted.

City Attorney Chiaro explained that the original franchise agreement provided for renewal without going through a formal process, but that subsequent Federal and City enactments had changed that. It was therefore clear to her, Ms. Chiaro said, that there is now no automatic renewal of the Colony Cablevision franchise. She also pointed out that Palmer Cablevision, Colony's predecessor, had requested a franchise renewal before transfer of Colony; from this it could be presumed that a change in the law had therefore been acknowledged.

Kenneth Fuchs, representing Colony Cablevision, indicated that his company would not interrupt service and restated Colony's position that their cable television franchise agreement with the City extended through 2004. This, he said, could be found in the record. He also said that while he had not had an opportunity to review materials provided the Council at this meeting, he would welcome the opportunity to make a formal response at a future date. With reference to the technical quality of Colony equipment, Mr. Fuchs assured the Council that a high quality of service was now being maintained.

Council Member VanArsdale expressed reservations about whether the original franchise agreement could be invalidated by federal or local law. He said he did not see the purpose of pursuing the current course, noting the expense involved in the effort. Council Members Pennington and Korest, however, indicated their support for the course of action being pursued by the City, both to assure continued high quality service to its citizens and to maintain the City's right to regulate cable franchising.

Public Input: (11:22 a.m.) **Robert Shiff, a member of the City's ad hoc Cable Television Committee** Mr. Shiff noted that one of his committee's purposes was to prepare for renewal of the Colony Cablevision franchise and that Mr. Fuchs had attended many of these meetings.

MOTION: To **APPROVE** the resolution as presented.

Korest	M	Y
Pennington	S	Y
Prolman		Y
Sullivan		Y
Tarrant		Y
VanArsdale		N
Muenzer		Y
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

(First Reading)

ITEM 13-b

AN ORDINANCE EXTENDING THE EXPIRATION OF THE FRANCHISE TO COLONY CABLEVISION OF FLORIDA PURSUANT TO SECTION 3 OF ORDINANCE 3388, FOR A ONE YEAR PERIOD ENDING NOVEMBER 21, 1995; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Public Input: None (11:25 a.m.)

MOTION: To **APPROVE** this ordinance on first reading.

Korest	M	Y
Pennington	S	Y
Prolman		Y
Sullivan		Y
Tarrant		Y
VanArsdale		N
Muenzer		Y
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION 94-7305

ITEM 9

A RESOLUTION GRANTING VARIANCE PETITION 94-V9 FROM SECTION 110-37(a)(1) AND (c) OF THE COMPREHENSIVE DEVELOPMENT CODE WHICH PROHIBITS FENCE HEIGHTS TALLER THAN THREE (3) FEET WITHIN FRONT YARD SETBACKS AND CHAIN LINK FENCES OUTSIDE OF COMMERCIAL OR INDUSTRIAL ZONING DISTRICTS, IN ORDER TO PERMIT A SIX (6) FOOT TALL, CHAIN LINK FENCE, 18 INCHES FROM A FRONT PROPERTY LINE, AT 2900 GORDON DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Attorney Chiaro indicated that Council Member VanArsdale had inquired whether his membership in the Port Royal Club would constitute a conflict of interest in this matter. She said that there would be no conflict of interest unless membership resulted in gain over and above his use of the services provided by the club.

City Manager Woodruff responded to a prior Council request for information regarding whether chain link fencing was present in front yard setbacks on any property in the City zoned Public Service. Chain link fencing is now present on some school property as well as at the City's public works area and at Fleischmann Park, Dr. Woodruff explained. Chain link fencing at Cambier Park was however not considered to be in the front yard setback area.

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In response to Council Member VanArsdale, Community Development Director Missy McKim explained that chain link fencing was prohibited in front yard setback areas primarily due to aesthetic concerns and because in front yards all fence height is regulated to achieve a general open feeling. In addition, Ms. McKim noted, when chain link fence is permitted it must be screened by landscaping. This, however, raises a crime prevention issue because of restricted visibility. Nevertheless, vegetation alone is permitted in front yards, she added. Council Member VanArsdale said he could not rationalize why, if visibility were a concern, hedges in front yards also were not prohibited. City Manager Woodruff indicated that he would schedule a workshop for further discussion of this issue.

John Remington, Chairman of the Port Royal Clubrest building and grounds committee, explained that thennington proposed fencing would be used primarily to enclose aolman recreation area for children. He said that landscapingllivan would be planted so that the fence eventually would not berrant visible.

Y

Y

Y

M

Y

Y

S

Y

Y

Public Input: None (11:51 a.m.)

-0)

=Motion S=Second

MOTION: To **APPROVE** this resolution as presented.

Yes N=No A=Absent

Recess: 12:00 p.m. to 1:30 p.m. It is noted for the record that Deputy City Clerk Tara Norman acted as recording secretary for the preceding portion of the meeting and that Deputy City Clerk Marilyn McCord acted as recording secretary until adjournment. Roll call was taken and all Members of Council were present.

RESOLUTION NO. 94-7306

ITEM 8

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A DEVELOPMENT AGREEMENT FOR PARCELS 7 AND 8, NAPLES CAY; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

The City Attorney advised that this would be a quasi-judicial proceeding which requires that Council examine the evidence, weigh its value, and make a decision based on that evidence. There is no requirement that the testimony presented be given as sworn testimony, however, in evaluating the record, the courts may evaluate whether the evidence was presented as sworn testimony. Mr. Thomas Becnel, the developer, and Chief Planner John Cole were sworn in by Deputy City Clerk Marilyn McCord. City Attorney Chiaro said further that because this is a quasi-judicial proceeding, the courts have determined that the decision may be reviewed by writ of certiorari, if there is an allegation that there is any prejudice because of exparte communications prior to this hearing. For that reason, the City Attorney asked each Council Member to disclose on the record, so as to avoid a presumption of prejudice, any contact they have had with either a proponent or opponent of this agreement, the nature of that contact, and whether the contact formed any prejudice in the mind of

the individual City Council Member.

Mayor Muenzer: Talked with between six and eight people who are residents of Park Shore and Sea Gate, Attorney Salvatori, and Mr. Becnel. The Mayor never spoke alone with Mr. Becnel, and spoke with Mr. Salvatori twice. Nothing was said or done to prejudice his decision.

Vice Mayor Korest: Talked with several people who reside in Park Shore and some who live in Le Park. He spoke to no one directly involved in the petition. Believes he is objective in this matter.

Council Member Van Arsdale: Spoke with Attorney Salvatori and Mr. Becnel at the end of the last Council meeting involving this matter. Spoke with Attorney Salvatori on November 1, 1994. Also spoke with Mr. Mecklenburg and the Bennets of Le Park. None of them had any influence on Mr. Van Arsdale's decision.

Council Member Sullivan: Had conversations on October 31, 1994, with Mr. and Mrs. James Brennan and with Bill Mecklenburg, who reside at Le Park, and who allowed Mr. Sullivan to view the Naples Cay premises from their building. Conversations with them were not such as to prejudice Mr. Sullivan in any matters involving this case. He also received written correspondence from Attorney Salvatori dated October 27, 1994. Mr. Sullivan has had no conversations with any of the proponents of the recommended changes.

Council Member Prolman: Has had conversations with several of the people who reside in Park Shore and the Naples Cay area. Also received a letter and memorandum dated October 27, 1994, from Attorney Salvatori.

Council Member Pennington: Has had conversations with many concerned citizens throughout the City including Park Shore. Received correspondence from both opponents and proponents, and the letter from Attorney Salvatori dated October 27, 1994. Mr. Pennington believes that none of those contact have been prejudicial to him.

Council Member Tarrant: Has had no conversation whatsoever with Attorney Salvatori or his client and one or two brief conversations with people who reside in Naples Cay. Mr. Tarrant professes no prejudice in this matter.

City Attorney Chiaro advised that anyone who testifies will be subject to cross-examination and can

be asked questions either by the staff or by the representatives of the developer and the developer.

City Manager Woodruff announced that the presentation, which would provide a historical record of the issue, would be offered by Chief Planner John Cole. Council Member Tarrant objected to the sequence of the way in which this issue was being handled. For the record, Mr. Tarrant said, "It appears we are getting into a show and tell process here, and I wonder if it isn't a little bit more fundamental to know what the developer's rights are on the property."

City Attorney Chiaro stated that in terms of the sequence, there was no legal requirement that the presentation proceed in any particular sequence. Attorney Chiaro had submitted a memorandum to Council (Attachment #2) presenting her opinion in regard to whatever vested rights may reside in the present developer. ~~Attorney Chiaro stated in that memorandum that it seemed clear to her, since the original Development Agreement had expired, that the developer does not have vested rights. However, the courts could determine that the developer had some rights to develop.~~

BREAK: 1:47 p.m. - 1:55 p.m. NOTE: Counsel recessed so that Council could review the above mentioned memorandum from the City Attorney.

The presentation by Mr. Cole began with a video taken from the upper floors of Le Park, for the purpose of providing a perspective of the Naples Cay properties. Mr. Cole then explained the current request and reviewed the 1989 development agreement. The current request allows for:

- One residential building on the western "site" of no more than 84 dwelling units, no more than 28 stories tall and no more than 320 feet in height. No lot coverage or building setback requirements are applied to this building which will require filling a portion of a mangrove wetlands.
- No more than 22 dwelling units built on the remainder of lots 7 and 8 in buildings no taller than 87 feet on parcel 7 and no taller than 3 stories over parking on parcel 8. "R3-18" zoning district standards are followed on parcel 7 except for lot coverage which is increased from 35% to 30% and "R3-12" zoning district standards are followed for lot 8 except for building height which is increased from 30' and lot coverage which has been increased from 25% to 30% as well.
- No more than 92 dwelling units total are permitted.

The applicants had also asked for waiver of the City's dredge and fill permits and coastal construction setback line permits. Historically, this property entered into its initial development agreement with the County, subject to annexation into the City in 1989. In conjunction with that, the property owners entered into a development agreement with the City. That original development agreement, which expired in March, 1994, applied to undeveloped lots 7 and 8 of Naples Cay. The applicants requested an extension of the development agreement; during the course of negotiations with the City, their proposal has evolved into the request before Council. The completed application was submitted on May 24, 1994.

Staff recommended denial of the submitted request and approval of an alternative program which would assign Lot 7 a development potential consistent with the City's "R3-18" multi-family residential zoning classification and Lot 8 a development potential consistent with an "R3-12" multi-family residential zoning classification. The Planning Advisory Board (PAB) voted 5-0 to recommend denial of the proposed petition, finding it inconsistent with the Comprehensive Plan. Staff has heard comments from residents in the neighborhood, Members of the PAB and of Council, that there is some benefit to moving the available building potential to the western site. It was noted that staff had received numerous letters from individuals and organizations; 26 were opposed to the proposed construction and four were in favor. Staff also received ten telephone calls expressing opposition to the proposed development.

Staff's alternative proposal would adopt a modified development agreement which:

- A. Permits a building on the western "Site" to exceed the 8 story limit referenced by the City of Naples Comprehensive Plan. For each story above 8 that is built on the western site, one story is subtracted from the 8 story height limit available to the eastern remainder of lot 7. This could result in a maximum 16 story building on the western "Site."
- B. Permits buildings on parcel 8 up to three stories over parking in height which otherwise meet the "R3-12" multi-family zoning district standards.
- C. Allows a total of 92 units.
- D. Limits total lot coverage on parcels 7 and 8, including the "site" to 30%.
- E. Retains City review authority for dredge and fill permitting and coastal construction setback line variances and requires a General Development Site Plan review prior to construction.
- F. Deletes language regarding the development of boat docks on Venetian Bay.

Mr. Cole utilized visual aids to show the comparison between the proposed construction and some of the existing buildings in Naples Cay. Density figures were also reviewed. In response to Council Member Tarrant, Mr. Cole confirmed that the City's Future Land Use Map was revised after the 1989 annexation and development agreement.

Attorney Leo Salvatori, representing the petitioner, addressed Council. He stated that the disagreements between staff and the applicants relate back to the issues of vested rights and estoppel.

The property, which was originally in the County, originally allowed for 430 units. Currently there are 256 units at Naples Cay that are either built or being built. The petitioners commenced discussions with the City during November, 1993, relative to the extension of the development agreement. They were advised at that time that staff could support extension of the development

agreement as is. Attorney Salvatori noted that he respected the fact that Mr. Cole does not recall making that statement. The applicants eventually petitioned the City for an extension of the development agreement on March 23, 1994, in letter form. In May they were asked to pay the \$100.00 filing fee, and did so. Since the applicant was not asked to pay the fee until May, said Attorney Salvatori submitted that the application was filed in March, before the expiration of the development agreement. He did not believe that was an important issue, however, since it has to do with the issue of vested rights.

Attorney Salvatori referred to the letter he had written to Members of Council on October 27, 1994, and apologized to anyone who had been offended by its tone. This is the fifth public meeting on the matter, he noted, and there has been much confusion regarding the issue of vested rights. His letter was meant to set forth the petitioner's vested rights. Attorney Salvatori explained that vested rights is the concept wherein a party gets certain rights incident to things that were done or not done in a governmental setting. He said that the development agreement made it very clear that it was intended to go beyond its five year term. Attorney Salvatori read several sections of the development agreement.

During the last five years, 206 permits have been pulled for units that have been built or are being built. Preliminary plans were drafted for parcel 8. The building of 206 units vests certain rights, said Attorney Salvatori. He said that the former developer told staff at that time that he doubted he could build 380 units in five years and that it was necessary to have some provisions in the development agreement to give him protection to the extent that it could continue thereafter if it could not be built in five years. For that reason, stated Attorney Salvatori, the development agreement was replete with references to vested rights.

The second way this issue was addressed was through the concept of amending the Comprehensive Plan, said Attorney Salvatori. He continued by stating that the agreement provided that the City was to amend its Comprehensive Plan to denote that the property, on the Comprehensive Plan, would be as set forth in the development agreement. The developer had been told by staff that that had not been done. Since the last time the developer appeared before Council, staff found a provision in the Future Land Use Element which provides that the City had entered into a number of development agreements, not just Naples Cay. Those development agreements provided development rights as to those properties.

Attorney Salvatori continued, "From what I understand from the staff, the Comprehensive Plan was amended to note that this property is the development agreement as it pertains to the property." Attorney Salvatori said that in his opinion this was an estoppel situation which was associated with, but not exactly the same as, vested rights. He said that if Mr. Becnel had applied for a permit to build any building on parcels 7 and 8 that was otherwise in compliance with the provisions set forth in the development agreement and the City buildings codes, the City would have had to give him a permit. Now, said Attorney Salvatori, the petitioner has been told he cannot extend the development agreement as is or obtain a building permit. He referred to case law pertaining to estoppel as it applies to a governmental agency if a developer acts in reliance to its detriment in an act or omission that was made by the government and suffered damages thereby. He asked, "Did the developer act in reliance on the City's agreement to amend its Comprehensive Plan? Of course it did....your agreement even says it can act in reliance upon it. Is that a good faith reliance? Yes. Your own

agreement says the developer may act in reliance upon that and that's vested rights. Did they rely to their detriment? We're here today. Need we say more? Does he have certain rights because of it? Yes, he does."

The compromise plan was reviewed by Attorney Salvatori. The current request fundamentally allows for:

- . One residential building on the western site of no more than 84 dwelling units, no more than 28 stories tall and no more than 320 feet in height. No lot coverage or building setback requirements are applied to this building, which will require filling a portion of a mangrove wetlands.
- . No more than 22 dwelling units built on the remainder of lots 7 and 8 in buildings no taller than 87 feet on parcel 7 and no taller than 3 stories over parking on parcel 8. "R3-18" zoning district standards are followed on parcel 7 except for lot coverage which is increased from 25% to 30% and "R3-12" zoning district standards are followed for lot 8 except for building height, which is increased from 30' and lot coverage which has been increased from 25% to 30% as well.
- . No more than 92 dwelling units total are permitted.

Attorney Salvatori went on to describe further concessions made by the developer. A waiver for dredge and fill permit had been requested; the developer is now agreeable to go through the regular process. Attorney Salvatori stated, "Our client has the right to construct the project as approved in the development agreement." He said that the developer has attempted to accommodate the City in every way possible and he believes that legal argument would support the developer.

Council began its discussion with questions to Attorney Salvatori. Council Member Pennington referred to the vested rights issue, pointing out that he believed it was important that agreements have a finite period. Several times during the course of discussion, it was mentioned that at the time the development agreement was approved, a different Council and different City staff were involved in the process.

City Manager Woodruff asked that everyone keep in mind the fact that the Comprehensive Plan is not a document in itself and that the Comprehensive Plan and zoning do not have to be identical or consistent. Zoning cannot grant more than what the Comprehensive Plan can, he noted. The Comprehensive Plan indicates the potential development that can exist at Naples Cay. The development agreement stood as the zoning during the five year period; once expired, the zoning that remains is the "R3-12" zoning. Dr. Woodruff commented, "We're being asked to approve a development plan that we feel is expired, and to approve something that goes beyond that."

In response to Council Member Prolman's question about estoppel, City Attorney Chiaro disagreed that the City was stopped from denying approval of the issue before Council today. She stated, "The argument that I can make right now based on that which was submitted is that there are no vested rights pursuant to the previous development agreement. I won't make that statement that absolutely he has no vested rights, and I can't tell you what a court will do." The City Attorney noted that this

was a quasi-judicial hearing, where Council makes a decision based on facts before them.

Answering Council Member Van Arsdale, Chief Planner Cole explained that development agreements do have time limits and renewal was not just "rubber stamped" but requires a period of time in which staff reviews the components.

Attorney Salvatori told Council, "We can argue forever. You and I will disagree, but hopefully we'll ~~never have to find out who's right. Please remember that zoning ordinances are interpreted usually~~ in the favor of the property owner. Trial is an uncertain thing; we want to avoid that. The compatibility of this project has been talked about. Let's not lose sight of that. Nothing has changed in five years."

BREAK: 3:40 p.m. - 3:50 p.m.

NOTE: For the record, all seven Members of Council were present after the break.

Mr. Thomas Becnel, 40 Seagate Drive, principal of the Naples Cay development, addressed Council. He stated, for the record, that he concurs with everything his attorney had said, and pointed out that he was not before Council for the purpose of discussing legal issues. Mr. Becnel said that he had come before Council previously with the idea of a compromise which he thought would work to the benefit of all concerned. He continued, "We have given on almost every issue we felt we could in order to facilitate this. We've reduced the density, we've restricted lot coverage, we've increased parking to two spaces per unit, we've deleted our rights with regard to the bridge, we've deleted our rights with regard to boat slips on Clam Bay, given up the right to build a time share, reduced the number of buildings from six to three. So far, we've received nothing from the City." Mr. Becnel pointed out that in his opinion the compromise plan would provide a more sensitive development and a more pleasant environment. With the mitigation of the wetlands lake, he said, the mosquito breeding area would be eliminated.

Mr. Becnel said that he had heard people refer to the fact that as the developer he had no rights. He signed a purchase agreement for the remainder of Naples Cay based upon his belief that he had certain rights, stated Mr. Becnel. Had his rights expired, he noted, he is not certain that the development agreement would have allowed him to pull a building permit. Mr. Becnel remarked that he believed Council's questions were sincere and he hoped to come up with a fair and equitable solution. He complimented Council on the amount of time which has been spent on this matter, and remarked, "I firmly believe that if you're in a negotiating process, you must frequently review your situation to ensure it is equitable and fair. I'm satisfied with the compromise." Mr. Becnel said further that the plan was based upon what he thought could be developed. His fall-back position, he stated, would be to rely on the County development agreement or in the judgment of a court.

There are critical things Council should be aware of in considering this development, noted Mr. Becnel. A taller building would result in a quality development that meets market expectations that people all over the United States have when they come to Naples. The proposal would allow for floor to ceiling heights that exceed the Naples norm. Mr. Becnel noted also that the trend everywhere is for more space and volume in buildings. He talked about the economical break point

which would make it impossible to build fewer units. Mr. Bechnel said, "This is the last site to be built on in Naples in a high rise configuration, so we can't set a precedent. There's no one to follow."

At this point Council had many questions for Mr. Bechnel, who further described the square footage of the plan. Council Member Pennington emphasized the fact that he would not support any building of this height. Mr. Pennington noted that there are aging homes to the south of Naples Cay, and as those are sold and demolished, there would probably be a push to build higher buildings. With respect to constraints on the developers, Mr. Pennington agreed that had been done historically because Naples does not want to be known as the City with the highest buildings between Miami and Tampa. He said that he believed this issue could be a precedent setting.

Council Member Tarrant referred to the recent staff report about 37 properties on the beachfront and stated, "There's really only one thing I like less than a 28 story building on the beach and that is stepping on private property rights. I believe the applicant has shown great flexibility and willingness to give. I think it's been a very fair and reasoned response, and while I don't like the building, it is a compromise."

Mayor Muenzer asked the applicant if there was any alternative placement of the building possible, and Mr. Bechnel stated for the record that there was no alternative site that could handle this. Everyone had expressed concern about the parcel 7 north site, he said, and parcel 8 was not appropriate for this size building.

NOTE: Deputy City Clerk Tara Norman acted as recording secretary from 4:30 p.m. until 4:55 p.m., at which time Deputy City Clerk Marilyn McCord took over those duties until adjournment.

Council Member Van Arsdale expressed his concerns about the compatibility of the proposed development and the low rise villas nearby. Mr. Bechnel explained that low and high rise buildings create a good market mix, for instance, in Park Shore, where such a mix is attractive. Dr. Woodruff agreed that a mix of low and high rise was appropriate. The villas near Naples Cay preceded the proposed development, he noted.

**Public Input: Opened: 4:47 p.m.
Closed: 6:00 p.m.**

Charles P. Fister, 100 Seagate Drive

Registered but did not speak; left prior to public input session.

**David Caldwell, President of Seagate Property Owners Association
5182 Sand Dollar Lane**

Mr. Caldwell reported that the Seagate Property Owners Association was in favor of moving the proposed buildings away from their subdivision. The consensus of the group was that a 320 feet was too high a building for the site. The Association prefers the option set forth by staff.

Stephen Pistner, 10 Seagate Drive

Mr. Pistner introduced himself as the President of the Seapoint Property Owners Association and

Vice-Chairman of the advisory committee which governs most of the decisions for Naples Cay. Mr. Pistner indicated that there appeared to be some differences in opinions on this issue. He asked to be very well understood in that some erroneous information had been given out by staff as well as Association members. That erroneous information resulted in something less than strong support, he noted. Mr. Pistner told Council that at a meeting held on this date, advisory committee members voted 7-1 in favor of the compromise development. The vast majority of the 163 owners were of the opinion, said Mr. Pistner, that their first preference would be one tall building in order to gain all the open area possible. The owners of Naples Cay would accept that compromise as the appropriate compromise, he stated. Open space next to the Seagate subdivision seemed to be an excellent compromise, noted Mr. Pistner. For the record, Mr. Pistner said that he would support the number of units per acre proposed. The compromise plan was clearly in the interest of the vast majority, he stated again.

James H. Brennan, Jr., 4951 Gulf Shore Boulevard North

Mr. Brennan told Council that he lives 200 feet above ground level, in Le Park. He and his wife decided to move to Naples from Marco Island in 1990. At that time, realtors told the Brennans that low rise and mid-rise building would be constructed in Naples Cay. Mr. Brennan said that he would not have purchased property at Le Park knowing that at a future date a developer would build a 320 foot tall building in front of theirs. He asked Council to oppose the development proposed. To Mr. Bechnel, Mr. Brennan addressed the comment that although he may be a better neighbor of Seagate, he has become a worse neighbor to Le Park.

William Mecklenburg, 4951 Gulf Shore Boulevard North

Mr. Mecklenburg expressed support for staff's plan, and urged Council not to approve a 320 foot tower.

Eugene Meldon, 4901 Gulf shore Boulevard North

Mr. Meldon represented the Meridian Condominium. He took issue with the Naples Cay developers and said that the lake on the site was not a mosquito breeding ground and he resented plans to remove the lake. Mr. Meldon beseeched Council to consider the property rights of the property owners in the Meridian. He also pointed out that the developer could have requested review of the development agreement prior to its expiration date.

Adam White, 2225 Hidden Lake Drive

Mr. White, representing the Collier County Audobon Society, addressed Council. He said that the Society's major concern was Clam Pass. Less space for stormwater retention would result should the plans be approved. Stormwater would then be directed into Clam Bay, resulting in an impact to the fragile ecosystem. Mr. White asked that Council keep in mind the fact that they can adopt stricter zoning restrictions. He concluded, "We recommend rejection of this, but City Council has the final say. We urge you not to allow any development beyond the present rules."

Henry E. Mayer, 4051 Gulf Shore Boulevard North

Mr. Mayer related how he had also been told by realtors that only low rise buildings were planned for the Naples Cay site. He suggested that the developer accept the compromise plan.

Marvin Katz, 10 Seagate Drive

Mr. Katz, who owns a unit at Seapoint, said that he believed Mr. Bechnel had some most admirable ideas, however he did not believe the individual property owners had been able to express themselves. Mr. Katz said that if this issue could be put to a vote, Council might obtain more input.

Fran Stallings, 5051 Castello Drive

Mr. Stallings, representing the Florida Wildlife Federation, commented that if he were to go to a meeting representing a decision point and attempted to push beyond what the applicable regulations requirement, his efforts would probably be met negatively. On the other hand, when a developer comes before Council asking for waiver of requirements and asks for rights and talks about market expectations, that was not reason for waiving the proper rules and regulations. The Clam Bay situation is not healthy, said Mr. Stallings, and a comprehensive effort was needed to identify problems there. Almost every development causes destruction, he said, and it is important to do everything possible to maintain the natural habitat. Mr. Stallings reported that the Wildlife Federation would support staff's approach to this development.

In reply to Council Member Prolman, Mr. Stalling said that he did not agree that the lake on the site was a health hazard. It is part of the stormwater retention area. That fact troubles him with respect to zero setbacks, he said, because when stormwater runoff exists, time and distance are needed. As a general rule, he explained that lower density was much better than higher density, however the answer lies in what is accomplished with the area as a whole.

David Rice, 255 Champney Bay Court

Mr. Rice also spoke on behalf of the Florida Wildlife Federation and told Council that his concerns were with the oversight requirements. The City needs to retain all of its rights to review impacts on very sensitive land, he said, and the proposed development agreement goes even further in restricting oversight requirements. Mr. Rice stated that there had been at least nine references to severely limiting review requirements, and the environment cannot be protected if these are given away. Normally, he added, if someone required a variance from City procedures, they would have to follow the strict guidelines of the Code.

With reference to the prior development agreement, Mr. Rice stated that those types of agreements ~~have a limited duration and the developer chose not to obtain a new agreement prior to its expiration.~~ The laws at the time of execution of the agreement shall govern its execution, he noted. Mr. Rice ~~went on to say that the agreements created potential constitutional problems, and may create unequal~~ treatment among property owners. He concluded, "Our goal is not to deprive the developer of his rights so long as the City keeps its oversight rights."

BREAK: 5:30 p.m. - 5:35 p.m.

Attorney Doug Wood, 1000 Tamiami Trail North

Representing Teryl Beyrent, a resident of Seagate, Attorney Wood addressed Council. He informed Council that Ms. Beyrent believes the proposed development would be inconsistent with the surrounding area, and would decrease the value of the surrounding property. Attorney Wood commented that no one would dispute the fact that the developer had certain rights. However, there are rules and regulations, and neighboring property owners also have rights to enable them to enjoy

their own property without interference. Attorney Wood went on to say that Seagate property owners were primarily against the development because the developer proposes to use the property in a certain way which is inconsistent with the zoning. His recommendation and suggestion was to follow staff's recommendation and deny the development agreement.

Dr. Anton P. Milo, The Club, Naples Cay

Dr. Milo explained that he was a surgeon and that he could see a cancer in the issue at hand. He said that he was very concerned about the fact that the United States Constitution refers to everyone's right to health, safety, etc., yet the proposed development would greatly impact some of those rights.

Dr. Milo brought attention to the fact that a 28 story structure, if located where the developer proposes, would block the sun from the swimming pool which serves The Club, West Shore, and the Beach House condominiums. He said that he purchased his unit for its aesthetic and health value and believes that a 28 story building would decrease those values.

Fred Meiers, 88 Seagate Drive

Mr. Meiers resides in the Villas Raphael, which is directly across the street from where the proposed building would be located. He stated that he believed the building would be completely out of character with the rest of Naples Cay. Mr. Meiers reported that he had no problem with mosquitos in his neighborhood and also brought attention to the fact that the road into Naples Cay consists of only two lanes.

Patricia Pistner, 10 Seagate Drive

Ms. Pistner told Council that she would prefer looking out at a single column rather than a "sea of buildings." A single, tall unit would provide a more uninterrupted view, she noted. With respect to the building blocking sun from the pool, as mentioned by Dr. Milo, Ms. Pistner said that the building would be sufficiently far away to eliminate any shadowing. She asked that Council consider the developer's request for one single building and more open space.

Bill Scruggs, 20 Seagate Drive

Mr. Scruggs introduced himself as President of the Beach House Condominium Association and Chairman of their Advisory Committee. He reported that the Committee had researched the development plan and the existing swimming pool would not be blocked by the proposed building. Secondly, Mr. Scruggs said that there appeared to be a lot of confusion about the feelings of Naples Cay residents. Meetings of the Advisory Committee, which is made up of representatives from each Naples Cay condominium, showed support of the developer's plans.

Chief Planner Cole spoke on three points, for the record. Mr. Cole announced that his initial contact with Resort Acquisitions did involve their construction of Baypoint. He worked with architects and developers of that building in order to ensure it would be consistent with the 1989 development agreement. Mr. Cole also had a series of conversations with Attorney Salvatori at that time to ensure that building would be vested under the 1989 development agreement. He told the developers that provided they submitted a complete set of drawings to the City for staff review, staff would consider that vesting under the 1989 development agreement. Staff's vesting decision was based on submittal of a complete document.

Mr. Cole engaged in conversations with the developers for several months and held a meeting with Attorney Salvatori, Mr. Bechnel, and Mr. Cruise. At that time Mr. Bechnel was interested in parcels 7 and 8 and the group discussed how they might proceed with renewing the development agreement. Mr. Cole spoke to the others about the process and procedures as well as alternative ideas which might result in a better project. Mr. Cole had indicated to the developers that their best approach would be to request a continuation of the 1989 development agreement, however that was not meant to indicate staff support. In reply to Dr. Woodruff, Mr. Cole said that he did not remember if he had explained to Mr. Bechnel that any decision about the continuation of the development agreement would have to be considered by Council.

With respect to public notice, Mr. Cole stated that staff sent out mailings, which are based on computer lists from the County Appraiser's Office. It is possible that someone was not contacted if their property was newly purchased.

Attorney Salvatori noted that a number of the speakers had mentioned concern about the City not participating in the dredge and fill process. In fact, the City will be involved in that process, since the lake on the site does need some type of rehabilitation. The coastal construction setback line waiver was in the original development agreement, said Attorney Salvatori. However, if that is a major concern, the developer will go through the regular process. With respect to an earlier comment about "raping the wetlands," Attorney Salvatori reported that Dr. Staiger's report would tend to argue that. He went on to say, "We came here in response to concerns of the Seagate people. We are here to work with you to the extent that we can."

Responding to Mayor Muenzer's questions, Attorney Salvatori said that the developer was considered a cantilevered approach for the proposed structure.

Vice Mayor Korest stated that his preference for this development would be for a single building on the site, lower in height than what was proposed. To answer Mr. Korest's inquiry, the City Attorney explained that language in paragraph 9 of the development agreement is provided for the purpose of having the agreement withstand legal challenge. She said that it was not inconsistent with her opinion and was language that would provide a basis for upholding the agreement if the actions of Council were challenged and protects City interests if approved.

Mr. Korest asked about section 13, which refers to the building being compatible with existing structures. Dr. Woodruff reminded Council that the development agreement was not put together to represent staff's position. The agreement needs to be in its stated form, he noted, but that does not assume staff's concurrence. Dr. Woodruff went on to explain that should Council approve the development agreement as proposed, it should be discussed one paragraph at a time. He suggested that Council could continue discussion of this item to a time certain.

Council Member Van Arsdale stated that he believed there was no justification to go back to City zoning, which was never designed for the area. It would be helpful, he commented, if Council as a group would decide where to start, first determining what changes were in order. He expressed concern that Council was so vague about the building's location. Mr. Van Arsdale suggested that perhaps the same standards that exist in Park Shore should be adopted for Naples Cay. Height had never been a problem in his opinion, stated Mr. Van Arsdale, but relationships to other buildings

was very critical. He said, "We should agree to start at some point, then either adopt the standard we are comfortable with or adopt this with staff's recommendation."

Council Member Sullivan questioned what rights the developer had, under the 1989 development agreement, when that agreement expired. Relative to Park Shore, Mr. Sullivan said that at the time it was annexed, not everyone was happy with some of the existing agreements. The annexation did take place, and many things did come into the City's jurisdiction as a result. Mr. Sullivan said that he had often speculated, would some of those developments have occurred if they had come under City standards. Mr. Sullivan said that he was inclined to believe that a 28 story building would not add to the ambiance of Naples Cay, and he had concerns about the precedence of this matter. As redevelopment begins south of Park Shore, he noted, Council may have requests for similar buildings, and he was most concerned about the ecosystem. Mr. Sullivan stated that he would not sign off on the proposed development agreement without first discussing it paragraph by paragraph, because in his opinion there were too many instances where the oversight responsibilities of Council were being given away. His position would be not to support the compromise.

Council Member Prolman expressed many of the same concerns, including the fact that the proposed structure would overpower the surrounding community. This involves vital land, said Mrs. Prolman, and she was concerned about the environment. She reminded everyone that Council's job was to protect the best interests of the City. However, Mrs. Prolman said that she did respect the developer's rights and would support the alternative plan as recommended by staff, which she believed would be a good neighbor for the entire community.

Council Member Pennington said that he was not supportive of the compromise plan, however to a lesser extent would be opposed to too short a building on the site. If Council could agree on a maximum building height, he stated, then direct staff to work with the developer further, perhaps a PD (Planned Development) would be appropriate. Mr. Pennington made a motion: **To provide as maximum height that which is present established at Baypoint and direct staff to work with the developer to bring back an agreement, and perhaps a PD, to Council.**

Council Member Tarrant remarked, "Someone's ox will get gored here. I still believe we need to think about what we did in the case of Cambier Park, when we were so concerned about preserving open space." He agreed that the developer had certain rights, however the matter of vested rights is a basic right. Mr. Tarrant said that he did not believe the agreement as such was null and void and the vested rights were still present. The City was probably not on firm legal ground in this matter, stated Mr. Tarrant, and based on the many written and oral statements, he believed that the alternate plan would be a fair compromise.

Following further discussion, Council Member Pennington revised his motion:

To approve a maximum building height for the remaining development of Naples Cay, equal to that of Baypoint, which is presently under construction; that staff work with the developer to bring back for Council consideration a plan for completion of the development of Naples Cay.

To clarify, Mr. Pennington explained that he proposed a height equal to Baypoint, non-site specific,

with staff and the developer working on details.

In discussions with the developer and his attorney, it was determined that the developer preferred not to continue this item. Mr. Becnel brought attention to the fact that he had been before the PAB on two occasions and before Council three times. He remarked, "The target keeps moving, and it's impossible for us to hit the target." Mr. Becnel told Council that his opportunity to take advantage of the selling season this year had already been destroyed because of delays. He emphasized the fact that he believed a tall, slender building would be much more pleasing to everyone than an 18 story building of twice the density. He expressed his appreciation to Council for its willingness to compromise, noting that he was also attempting to be cognizant of what the Naples Cay residents would accept.

Vice Mayor Korest said that he was a bit concerned with the motion as made. He told Mr. Becnel he would prefer as few buildings as possible on the site, allowing for as much green space as possible. Mr. Becnel told Mr. Korest, "You're heading in the direction I've wanted, few buildings, but sufficient height to build enough units to justify the development. It's not just a question of numbers. I have to convert the numbers into a realistic, marketable plan."

City Manager Woodruff made the following comments: "We are trying to balance the developer's rights that may exist under the old development agreement, also the rights under the original development agreement. We are concerned also about not setting a precedent. I would recommend you reinstate the development agreement with the exclusion of two clauses. The developer has said he'd be willing to reinstate the rights they say they have. Because the Code says you can do something doesn't mean you do it. Reinstate the existing development agreement because it says what they say they want, take out of that document what we've said they don't have a right to: boat slips on Venetian Bay and the proposal of the bridge. The Naples Cay people will see development of Naples Cay as they were told it would be. Park Shore north will see the development of Naples Cay as they were told it would occur. The only change would be no boat slips on Venetian Bay and no bridge. Whether the developer wants that or not is not the issue; this simply authorizes the status quo.

Council Member Pennington withdrew his previous motion, and reinstated his motion as follows:

MOTION: To enter into a development agreement in ~~substantially the form as the previous~~ development agreement, with the exclusion of the paragraphs related to the rights related to bridges and the rights related to the boat slips on Venetian Bay.

BREAK: 7:30 p.m. - 7:40 p.m.

For the record, all Members of Council were present

Korest	S	Y
Pennington	M	Y
Prolman		N
Sullivan		Y
Tarrant		N
VanArsdale		Y
Muenzer		Y
(5-2)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

after the break.

Prior to voting on the above motion, City Manager Woodruff reviewed the highlights of the development agreement:

Pages 539 and 540 (Summary pages): Schedule 3, which deals with the entire Naples Cay development, states that the overall density for the project is 380 dwelling units, which may be allocated among the parcels at the developer's discretion. Paragraph 2 lists for parcels 1 through 8, the building heights. For those parcels which Council is specifically dealing with, parcel 7 north, is stated as a building height of 12 living floors over two stories of parking. Parcel 7 south is 8 living floors over two stories of parking. Parcel 8 is three living floors over one story of parking. Parcels 1 through 6 are not applicable because they are already developed.

Under paragraph 3, Other Permitted Uses: Recreation facilities including non-commercial boat launching facilities, and private boat houses and docks on Venetian Bay, inner Doctors Bay and inner Clam Bay, semi-private clubhouse with liquor and food services, and the dwelling unit rentals for a period of no less than one week for parcels 1 and 2. All other parcels shall comply with the City zoning ordinance provisions which prohibit rentals of less than one month.

Page 4, Right-of-Way and Hurricane Evaluation: the streets within Naples Cay are private therefore no sidewalks are required. Developer shall have the option to construct or improve a private bridge inside the private entrance on the Seagate Drive.

If Council takes the suggestion Dr. Woodruff had made earlier, they would eliminate from Paragraph 3 the private boat house and docks, striking the words "on Venetian Bay." In Paragraph 4, the sentence would be eliminated which refers to the developer's option to construct and improve a bridge inside the private entrance.

Page 522, Recitals: Dr. Woodruff reported that staff had found nothing in that section which needed change.

Page 523: "Lot A of the property which was not included in the court order, shall be limited to a building height of 30 feet above the established 100 year flood elevation, or three living floors, plus appropriate roof line over ground level parking, whichever is greater, and shall comply with the zoning regulations of 'R3-12' District."

Page 524, "The City shall therefore agrees not to place any additional height, density, or other restrictions except those already set forth in this agreement on the property to be annexed."

Page 525, paragraph 4: "The standards set forth in this agreement shall govern development of the property and any conflicting standards in the City's zoning ordinance shall not be applicable."

Page 525, paragraph 5: " The duration of this agreement is five years."

II, Findings and Determinations: Contains primarily legal findings and determinations such as annexation of the properties in the public interest, etc.

Page 529: City acknowledges that the developer has commenced development of the property in accordance with the applicable coastal construction setback line of Collier County as provided in Section 7-14 of the Code of Laws and Ordinances of Collier County, Florida, together with the Department of Natural Resources.

Page 530: The City further recognizes that DNR may move its coastal construction setback line landward.

City Attorney Chiaro informed Council that all references to annexation would be removed from the development agreement.

Also prior to the vote, Mr. Becnel proposed another alternative: A height of 275 feet for the primary structure, with no specific number of floors, no building on parcel 7 north, only one building on parcel 8, to be comprised of ten units. Mr. Becnel said that he believed this would serve better than reinstatement of the original agreement. Mr. Pennington did not accept the developer's alternative suggestion.

Vice Mayor Korest voted in the affirmative, although he admitted he was not totally happy with the results. He said that in no way should this decision prevent the developer from presenting another plan.

Council Member Prolman did not support the motion, expressing her opinion that sections may exist in the original agreement that may have ramifications.

Council Member Sullivan voted in favor of the motion, noting that it accomplished several things, including elimination of the vested rights problem.

Council Member Tarrant voted in the negative, commenting on his belief that the developer had offered a very simple, clear alternative.

Mayor Muenzer said that he had hoped a different decision would be reached, noting that there had been many conflicting comments made, making this a very difficult vote. He voted in favor of the motion.

Motion carried by a vote of 5-2.

Council Member Van Arsdale made a motion as follows: **To amend the development agreement in the following manner: Hold density of Naples Cay to 348 dwelling units; no buildings to be constructed on parcel 7 north; building height on parcel 7 south to be 275 feet; parcel 8 to have ten units in one building consisting of three floors over one of parking.** The motion died for lack of a second.

Council Member Tarrant made the following motion:

MOTION: To amend the development agreement to provide for the building heights and densities as set forth by the developer and his counsel; density not to exceed 348 units; no building on parcel 7 north; ten units consisting of one three-story building over one story of parking on parcel 8; maximum height of 275 feet on parcel 7 south.

The motion failed by a vote of 2-5.

Korest		N
Pennington		N
Prolman		N
Sullivan		N
Tarrant	M	Y
VanArsdale	S	Y
Muenzer		N
(2-5)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

Open Public Input:

None.

Correspondence/Communications

None.

Adjourn: 8:15 p.m.

PAUL W. MUENZER, MAYOR

Janet Cason
City Clerk

Tara A. Norman
Deputy City Clerk

Marilyn A. McCord
Deputy City Clerk

These minutes of the Naples City Council were approved on December 7, 1994.

Supplemental Attendance List

Werner Haardt
Justina Ford
J. Dudley Goodlette
James Rideoutte
David Rice
Kenneth Fuchs
Leo Salvatori
Reverend H. Peter Lyberg
Robert Shiff
William Mecklenburg
Eugene Meldan
Adam White
Henry Mayer
Marvin Katz
Fran Stallings
Doug Wood

Steven Pistner



Index

City Council Regular Meeting

November 2, 1994

Convened 9:00 a.m. / Adjourned 8:15 p.m.

James Brennan
Greg Boggs
Greg Sieflert
John Remington
Anton Milo
Fred Meiers
Patricia Pistner
Bill Scruggs
Charles Pfister
David Caldwell

ADJOURN	27
APPROVAL of MINUTES	2
AUTHORIZATION TO PURCHASE	
Purchase HTE building permit inspection software module	6
BID AWARD #95-04	
Two-year bid for electrical services/Bentley Electric Co., Inc.	2
BUDGET AMENDMENTS	
Streets Fund	2
Utility Tax - Community Services	2
Utility Tax - Equipment Services	2
Water & Sewer Fund	2
BUDGET AMENDMENTS	
Solid Waste Fund	2
INVOCATION and PLEDGE of ALLEGIANCE	2
ITEMS TO BE ADDED	2
ORDINANCE (First Reading)	
Request for cable television franchise extension/Colony Cable	9
ORDINANCE 94-7300	
Amend Ord 94-7255/cable franchise/Interactive Cablevision	5
PURCHASE ORDER	
Commercial riding mower/Wesco Turf, Inc.	2
RESOLUTION (Denied)	
Variance 94-V10/4890 Whispering Pine Way	4
RESOLUTION 94-7297	
Accept utility easement from School Board for water reuse line	2
RESOLUTION 94-7298	
Variance 94-V8/Southland Corp/860 Seventh Avenue North	3
RESOLUTION 94-7299	
Conditional Use 94-CU8/2150 Gordon Drive	4
RESOLUTION 94-7301	
Conditional Use 94-CU9/Eckerd Drug Store/U.S.41 & Third AV South	5
RESOLUTION 94-7302	
Variance 94-V11/U.S. 41 & Third AV South/traffic circulation	6
RESOLUTION 94-7303	
Conditional Use 94-CU10/Oasis Chickee Bar/Howard Johnson Resort	7
RESOLUTION 94-7304	
Notify Colony Cablevision of 12/21/94 franchise expiration	7
RESOLUTION 94-7305	
Variance 94-V9/Port Royal Club/chain link fence	9
RESOLUTION NO. 94-7306	
Development Agreement 94-D2/Naples Cay	10
ROLL CALL	1

