



City Council Chamber
735 Eighth Street South
Naples, Florida 33940

City Council Workshop Meeting - April 15, 1996 - 8:30 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL

ITEM 1

Present: Bill Barnett, Mayor

Council Members:

John R. Nocera

Fred L. Sullivan

Fred Tarrant

Peter H. Van Arsdale (Arrived at 8:34 a.m.)

Absent: Marjorie Prolman, Vice Mayor
Bonnie R. MacKenzie, Council Member

Also Present:

Dr. Richard L. Woodruff, City Manager

Maria J. Chiaro, City Attorney

Assistant City Manager William Harrison

Richard Gatti,

Development Services Director

Virginia Neet, Deputy City Clerk

George Henderson, Sergeant-at-Arms

Werner Haardt

Charles Andrews

Henry Watkins

Tim Marx

Ron Soulard

Donna Thayer

Everett Thayer

Mark Kinkaid

Other interested citizens and visitors

Media:

Steve Hart, Naples Daily News

David Taylor, Continental Cablevision

ITEMS TO BE ADDEDITEM 2

Item 7 - Discussion/explanation regarding appeal of Mageiro's Restaurant relating to revocation of a conditional use for staged entertainment. *(Requested by Mayor Barnett)*

Item 8 - Discussion regarding Council voting techniques. *(Requested by Mayor Barnett)*

Item 9 - Discussion regarding budget requests from non-profit organizations. *(Requested by City Manager Richard Woodruff)*

**.....ITEM 8
DISCUSSION REGARDING COUNCIL VOTING TECHNIQUES (Requested by Mayor Barnett) (8:31 a.m.)**

Referring to Council's present "aye/nay" voting method, Mayor Barnett relayed complaints from petitioners who stated that they either could not hear Council's final vote or were unclear as to how individual Council Members voted. He suggested that if Council wished to return to the individual polling method, the polling order should be rotated. Council Members Nocera, Van Arsdale, and Sullivan stated that they preferred the present voting procedure; however, Council Member Tarrant commented that polling the votes would be easier for the audience. Council Member Van Arsdale took the position that the aye/nay method saved time but suggested that Council Members raise their hands as they vote.

It was the consensus of Council to continue the present "aye/nay" voice vote method with the Mayor announcing the vote and identifying, for the record, those who voted for and against.

**..... ITEM 3-a
INTERVIEW WITH HENRY B. WATKINS, CANDIDATE FOR COMMUNITY SERVICES ADVISORY BOARD (8:38 a.m.)**

An interview was conducted with Henry Watkins.

**RESOLUTION 96-7685..... ITEM 3-b (1)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD; AND PROVIDING AN EFFECTIVE DATE. Title not read. (8:45 a.m.)**

Council Member Sullivan recommended appointing candidate Jeffrey Reynolds as a permanent member since he had served as an alternate. Other Council Members, however, noted Mr. Reynolds poor attendance record.

Public Input: None. (8:47 a.m.)

MOTION by Nocera to APPROVE Resolution 96-7685 APPOINTING HENRY B. WATKINS AS A MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD; seconded by Van Arsdale and carried 5-0 (MacKenzie-absent, Nocera-yes, Prolman-absent, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

**RESOLUTION 96-7686..... ITEM 3-b (2)
A RESOLUTION APPOINTING AN ALTERNATE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD; AND PROVIDING AN EFFECTIVE DATE. Title not read. (8:49 a.m.)**

Public Input: None. (8:49 a.m.)

MOTION by Nocera to APPROVE Resolution 96-7686 APPOINTING ROBERT LAMURRIAS AN ALTERNATE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD; seconded by Tarrant and carried 5-0 (MacKenzie-absent, Nocera-yes, Prolman-absent, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

.....ITEM 7
**DISCUSSION/EXPLANATION REGARDING APPEAL OF MAGEIRO'S RESTAURANT
RELATING TO REVOCATION OF A CONDITIONAL USE FOR STAGED
ENTERTAINMENT. (Requested by Mayor Barnett) (8:53 a.m.)**

City Attorney Maria Chiaro commented on Mageiro's Restaurant's appeal to the Collier County Circuit Court which stemmed from Council's revocation of its conditional use approval for staged entertainment. She reported that Circuit Court Judge Ted Brousseau had ruled that a conditional use was, in essence, a zoning right and that the Code Enforcement Board, not the City Council, was the proper forum to determine violations to the conditions set forth in the conditional use. As of result of this ruling, Ms. Chiaro explained, Mageiro's Restaurant may continue to offer staged entertainment, but she clarified that there was no controlling Appellate Court decision on this issue and the Circuit Court's ruling applied only to Mageiro's Restaurant. City Attorney Chiaro then explained that a proposed amendment to the City Code may assist Council in future conditional use challenges by clearly articulating Council's revocation rights. She noted, however, that the Circuit Court's ruling made no reference to language, or lack thereof, within the City Code. Options available to Council were to appeal the Circuit Court's decision to the District Court of Appeals and/or proceed to amend the City Code in order to specify Council's right to revoke a conditional use. Additionally, City Attorney Chiaro defined parameters by which Council could continue to incorporate a waiver to a conditional use whereby the petitioner agrees to Council's revocation rights. Procedures relating to conditional use violations, potential fines and court costs were also discussed and City Attorney Chiaro recommended granting staged entertainment in license form, such as an occupational license addendum, as opposed to a conditional use.

Mayor Barnett asked the City Attorney to provide the Council Members with the Circuit Court ruling along with a memorandum summarizing Council's options and her recommendations.

**RESOLUTION 96-7687..... ITEM 3-b (3)
A RESOLUTION APPOINTING ONE CITY RESIDENT TO THE BOARD OF APPEALS;
AND PROVIDING AN EFFECTIVE DATE. Title not read. (9:15 a.m.)**

Public Input: None. (9:15 a.m.)

***MOTION by Sullivan to APPROVE Resolution 96-7687 APPOINTING ROBERT
GEROY TO THE BOARD OF APPEALS; seconded by Van Arsdale and carried
5-0 (MacKenzie-absent, Nocera-yes, Prolman-absent, Sullivan-yes, Tarrant-yes,
Van Arsdale-yes, Barnett-yes)***

.....ITEM 4
REVIEW OF ITEMS ON 4/17/96 REGULAR MEETING AGENDA. (9:18 a.m.)

Item 7 - (Planned Development amendment for Harbortowne at Goodlette Road and U.S. 41)
Council Member Sullivan requested a scale model in order to better visualize the development's vertical impact. Additionally, Council Member Tarrant questioned whether consultant Ray Gindroz had been paid in full for his services relating to the 41-10 Redevelopment Project.

At this point in the meeting, Council Member Tarrant asked Council to take action in order to install additional railing on the fishing pier as a safety measure. City Manager Richard Woodruff stated that although necessary materials were available for additional railing, the City was awaiting additional grant funds from Federal Emergency Management Agency (FEMA) prior to completing that portion of the pier. After further discussion, Mayor Barnett asked staff to keep Council apprised on the status of the FEMA grant.

Break 9:39 a.m. - 9:49 a.m. It is noted for the record that the same Council Members were

present when the meeting reconvened.

.....**ITEM 6**
REPORT BY STAFF AND DISCUSSION OF AVION PARK CANAL DREDGING PROJECT. (Pursuant to 4/1/96 Workshop Meeting) (9:49 a.m.)

City Manager Richard Woodruff provided background information regarding the \$38,000.00 project, which is funded through a special assessment, and stated that maintenance dredging was nearing completion. The purpose of this discussion was to address residents' concerns regarding the extent of dredging.

Development Services Director Richard Gatti stated that, after lengthy discussions with Avion Park resident Everett Thayer, the following issues surfaced: 1) residents' expectations of 3-foot water depth at low tide; 2) residents' dissatisfaction with the vegetation trimming along the canal, and; 3) residents' concerns about possible inappropriate actions relating to the Naples Municipal Airport. Mr. Gatti stated that this dredging project was governed by the assessment amount, the State permits, and the contract documents and stated that the canals' rocky bottoms prevented deeper dredging. He also pointed out that, at City expense, an additional 2,400 cubic yards of sediment was excavated to accommodate a boat ramp for the residents and to remove accumulated sediment along the river. Mr. Gatti then explained how the Department of Environmental Protection requirements and the dredging permit governed the scope of work which was based on soundings taken at 50-foot intervals. Results of the soundings (cross sections) were provided to the contractors prior to bidding and Mr. Gatti noted that the contractor had met the contract specifications. (Attachment 1) Dr. Woodruff pointed out that although some Avion Park residents expect the City to further deepen the canals by removing rock, this was a maintenance project only and did not include rock removal. Mr. Gatti also explained that, per agreement with the Naples Municipal Airport, dredge material from the canals was accepted as fill on airport property in exchange for removal of noxious Myrtle Weed. Dr. Woodruff then described how the special assessment district was established and the formula used to allocate the \$38,000.00 cost. Because State law limits the assessment to the original amount, additional expenses would be funded either by the City or a new assessment district. He relayed staff's position that the Avion Park canal dredging had always been a maintenance project intended to remove silt only and further deepening should be funded through a new assessment district. Council Members Sullivan, Van Arsdale, and Tarrant concurred that the project's sole intent was maintenance dredging, restricted to silt removal. At this time Mayor Barnett read into the record the April 13, 1996 letter from Avion Park residents Mr. and Mrs. Donald Collins. (Attachment 2)

Public Input: (10:24 a.m.)

Everett Thayer, 1690 Avion Place, contended that the information provided to Avion Park residents was inconsistent with the engineering plan and attributed this inconsistency to engineering mistakes. He said no dredging or tree trimming had been done on his portion of the canal and that the City had mislead residents. He further stated that Assistant City Manager William Harrison had assured him that there would be a 3-foot depth after dredging. Mr. Thayer requested that Council review the 1989 Avion Park canal dredging, arranged by residents, and suspend current dredging until other contractors could be consulted. (Attachment 3) **Donna Thayer, 1690 Avion Place**, said the City promised 3-foot water depth at mean tide but asserted that her property was not improved by the project. She said it is the City's responsibility to either finish the project or void the assessment and let the residents contract the project themselves. **Ron Soulard, 1595 Avion Place**, referred to the City diagram indicating a 3-foot deep center channel to the canal ends. He claimed this misled residents since this channel could not be used without removing sediment surrounding docks as well.

He said that he had informed City staff of the inadequate dredging and although his portion of the canal was dredged twice, the center channel depth is still not 3-feet. Mr Soulard conceded this it was not feasible to remove rock but insisted that sediment removal was the City's responsibility. **Tom Marx, 1635 Airway Drive**, said a 3-foot deep channel center is of no benefit to residents if they can't access it. Avion Park residents, he added, would be willing to pay the assessment if they thought they could use the canal. Mr. Marx also stated that the contractor refused to dredge around his dock claiming that it would undermine piling.

Dr. Woodruff explained that the intent was to create a 30-foot wide channel, but dredging around docks was the responsibility of property owners. The property owners then displayed photographs of the canals at low tide to show what they described as the remaining sediment after dredging.

Project Engineer Mark Kincaid, of Suboceanic Consultants, Inc., made the following representations: 1) dredging took place along the entire canal lengths; 2) dredge quantities were lower than projected due to unanticipated rock in the canals; 3) payment to the contractor was on a lump sum basis; 4) dredging did take place in front of the Thayer property; 5) the contractor was instructed not to trim mangroves if they did not interfere with the dredging; 6) Suboceanic reviewed and verified the contractor's bid; and 7) the contractor had complied with specifications. Although they estimated that 1,920 cubic yards would be removed from the north canal and 2,030 cubic yards from the south canal, the actual material dredged was 1,585 and 1,592 cubic yards, respectively.

Council Member Tarrant recommended that this matter be tabled for Council to visit the site and Council Member Nocera observed that perhaps this project should have been more extensive. City Manager Woodruff then suggested an on-site visit within the next few weeks, at the lowest possible tide, but reiterated that the City had never promised to cut cap rock in the Avion Park canals.

It was the consensus of Council that a Workshop Meeting would be conducted in the next few weeks in the Avion Park Subdivision to be scheduled at low tide in order to view a portion of the canals, and that staff would provide a current survey to correlate with the photographs displayed to Council by Avion residents. Staff would also investigate the need for additional vegetation trimming.

.....**ITEM 5**
DISCUSSION OF PROPOSED TRAFFIC STUDY TO ANALYZE THE INTERSECTIONS OF FIFTH AVENUE SOUTH WITH EIGHTH AND NINTH STREET. (Pursuant to 4/3/96 Regular Meeting) (11:06 a.m.)

City Manager Richard Woodruff illustrated the present configuration of the Fifth Avenue South and Eighth Street South intersection along with modifications suggested by Council Member Van Arsdale. These modifications included the installation of three on-street parking spaces on Fifth Avenue South, in front of the Merrill Lynch Building, and added on-street parking on each side of Eighth Street South. Dr. Woodruff also described how landscaped boulevard medians could be installed on Eighth Street South. It had been determined that a roundabout at this intersection was impractical. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Dr. Woodruff said staff could test the effects of parking spaces in the right-hand lane (westbound) by placing barrels where the parking spaces would be. If this proves impractical, the barrels could be removed quickly. He then asked for Council's direction as to whether staff should test different traffic options at the intersection or whether a traffic study should be conducted.

Mayor Barnett and Council Member Sullivan questioned the need for any changes to the intersection with Mr. Sullivan expressing specific concerns about traffic backing up to Ninth Street South. Mayor Barnett also submitted that the intersection is too busy and complex even for staff to test the various options. Council Member Van Arsdale stated that this issue pertained to the intersection's form and, as such, was a continuation of the Fifth Avenue enhancement.

It was the consensus of Council that this item would be added to the April 17, 1996

Regular Meeting Agenda.

CORRESPONDENCE and COMMUNICATIONS.....

Police Officer Brian Wingo introduced Rex Owens, a fourth grade student at Lake Park Elementary School, who is involved in a college scholarship program called "Pre-connections". Officer Wingo explained that this program monitors participating students through high school and provides four year college scholarships.

.....**ITEM 9**
DISCUSSION REGARDING BUDGET REQUESTS FROM NON-PROFIT ORGANIZATIONS. (11:36 a.m.)

City Manager Richard Woodruff stated that although the Council had donated or matched funds to aid various non-profit organizations, the City's current budget does not specifically provide for this expenditure. Dr. Woodruff then asked Council to set a policy regarding this matter.

It was the consensus of Council to continue with the existing City policy.

ADJOURN.....
11:39 a.m.

Bill Barnett, Mayor

Tara A. Norman
Chief Deputy City Clerk

Prepared by:

Virginia A. Neet
Deputy City Clerk

Minutes approved: 5/15/96



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