



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Special Meeting – Monday, October 16, 2000 – 8:15 a.m.**

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Mayor MacKenzie called the meeting to order and presided.

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**ROLL CALL .....ITEM 1**

**Present:** Bonnie R. MacKenzie, Mayor

Joseph Herms, Vice Mayor

Council Members:

Gary Galleberg

William MacIlvaine (arrived 8:24 p.m.)

Fred Tarrant

Penny Taylor

Tamela Wiseman (arrived 8:21 a.m.)

**Staff Present:**

Kevin Rambosk, City Manager

Beverly Grady, City Attorney

Tara Norman, City Clerk

Ron Lee, Planning Director

Virginia Neet, Deputy City Clerk

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**Also Present:**

William Boggess

Betty Pennington

Eric West

Charles Kessler

David Trowbridge

Michael Fernandez

**Media:**

Eric Staats, Naples Daily News

Other interested citizens and visitors

Prior to commencing the agenda, a moment of silence was observed for Firefighter Ben Good who had been killed in a motorcycle accident, and for the crew of the USS Cole which had experienced an act of sabotage in the Middle East.

**.....ITEM 2**

**SELECT AN ENVIRONMENTAL CONSULTANT PERTAINING TO THE MOST RECENT HAMILTON HARBOR PETITION FOR PROPERTY LOCATED ON THE EAST SIDE OF NAPLES BAY.** Planning Director Ron Lee reviewed the information which had been requested on the two firms currently under consideration (Attachment 1). He also called to Council's attention a memorandum from Attorney Nancy Stroud recommending Dr. Mark Brown be selected (Attachment 2). Mr. Lee confirmed that Dr. Brown was also his and Natural Resources Manager Jon Staiger's recommendation because Dr. Brown had not been employed by developers and would be the least biased. In response to Vice Mayor Herms, Mr. Lee clarified that Dr. Brown is an instructor who teaches others in the discipline of wetland delineation.

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**It is noted for the record that Council Member Wiseman entered the meeting at 8:21 a.m.**

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Vice Mayor Herms said he had made contact with W. Perry Horner of Horner Environmental who had indicated that another scientist with expertise in DNRs (Developments of Regional Impact) and water management would accompany Mr. Horner during the work. Mr. Herms, however, stated that he believed that either firm would be effective.

**Public Input:** (8:22 a.m.) **Michael Simonik, 455 13th Avenue South**, representing The Conservancy, reported concurrence with staff recommendations to choose Dr. Brown. Mayor MacKenzie noted that **Harry Timmins, Citizens to Preserve Naples Bay**, had requested that his letter to City Council dated October 2, 2000, be made a part of the record (Attachment 3).

**It is noted for the record that Council Member MacIlvaine entered the meeting at 8:24 a.m.**

Planning Director Lee clarified for Vice Mayor Herms that the current process being undertaken relative to Hamilton Harbor is a Development of Significant Impact (DSEI) and rezone petition from Conservation to Transitional Conservation. This was distinguished from another delineation process provided in the Code of Ordinances wherein the Natural Resources Manager would establish a preliminary line which could be appealed by the property owner to the Planning Advisory Board and City Council. Mr. Lee indicated that the aforementioned letter from Citizens to Preserve Naples Bay had been forwarded to the City Attorney to ensure that the proper process was being followed.

Mayor MacKenzie clarified that the issue before the Council at that meeting was merely the selection of an expert to assist the City as the Hamilton Harbor petition goes forward and is not indicative of how the Council would eventually act thereon. Council Member Tarrant observed that use of this expert would also assure that the petitioner progressively follows the necessary steps. Vice Mayor Herms, however, referred to Code Section 102-774 and questioned whether the required “intent to develop” and General Development and Site Plan (GDSP) had been filed by the developer. Planning Director Lee said that these had not been submitted because there were no development plans at the present time. The petitioner, he noted, would apply for the conditional use and GDSP following final determination from Council relative to Conservation and Transitional Conservation lands. Mr. Herms called for an opinion by the City Attorney as to whether the GDSP was being required of the petitioner. City Attorney Grady said that she and Attorney Stroud were reviewing Mr. Timmins’ procedural concerns, but noted that since the Hamilton Harbor application is in process, the services of the environmental consultant should be engaged and, at the same time, the attorneys work with the City staff and petitioners to resolve these issues.

***MOTION by Taylor to ENGAGE THE SERVICES OF DR. MARK T. BROWN, pursuant to recommendations from staff, the City Attorney and The Conservancy; seconded by MacIlvaine and carried 6-1 (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

Following the vote, Council Member Galleberg explained that he did not support the motion because of his belief that it was not an appropriate expenditure.

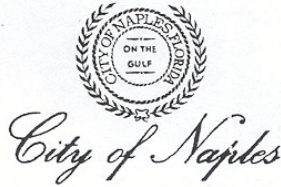
**ADJOURN** .....  
8:32 a.m.

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Bonnie R. MacKenzie, Mayor

Minutes prepared by:

\_\_\_\_\_  
Tara A. Norman, City Clerk

Minutes approved: 11/15/00



# M E M O

TO: Honorable Mayor and Members of City Council  
FROM: Ron Lee, Planning Director  
DATE: October 9, 2000  
RE: Hamilton Harbor DSEI Environmental Consultant

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As a follow-up the City Council meeting on October 4, 2000, I have outlined below the supplemental information requested.

## **Horner Environmental**

Wetland delineations: The firm continues to conduct wetland delineations as part of their standard services. A list of delineations completed in 2000 is attached.

Hourly Rate: \$75

Availability: The firm is available to complete the assessment during the week of October 14<sup>th</sup>.

## **Dr. Mark T. Brown**

Wetland delineations: He is not a consultant and does not complete wetland delineations on a routine basis. However, he is considered a wetland expert and teaches how to conduct wetland delineations. Dr. Brown has accompanied Army Corp and Water Management personnel on delineations. The original information submitted by Dr. Brown is provided as backup.

Hourly Rate: \$95

Availability: Dr. Brown is available to complete the assessment during the week of October 14<sup>th</sup>.



## Horner Environmental Professionals, Inc.

Attachment 1

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10/16/00 Special Meeting

October 5, 2000

Mr. Ron Lee  
City of Naples  
801 8<sup>th</sup> Avenue South  
Naples, Florida 34102

**Re: Representative Year 2000 Projects**

Dear Mr. Lee:

Please find enclosed a list of year 2000 projects that contain a significant wetland delineation and wetland assessment component. Please don't hesitate to contact me if you have any questions or would like additional information.

Thank you for the opportunity to provide you with this information.

Sincerely,

W. Perry Horner  
Horner Environmental Professionals, Inc.

10/16/00 11:07 AM 10/16/00 11:07 AM 10/16/00 11:07 AM

Attachment 1  
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**Ringhaver Site, Hillsborough County**

Wetland delineation, site planning, cursory qualitative analysis. Kearney Development, Inc., 2000.

**D'Urso Parcel, Pasco County**

Site development assessment, wetland delineations, muck depth sampling, qualitative analysis, development strategies. Pursley, Inc., 2000.

**Huntington Hills, Polk County**

Enforcement resolution, mitigation monitoring, reporting, permit modifications. Huntington Hills Golf and Country Club, 2000.

**Lake Alfred Career Development Center, Polk County**

Wetland delineation (SWFWMD, ACOE), environmental permitting. Walter-Fedy Group, 2000.

**Highway 98 Site, Polk County**

Wetland delineation (SWFWMD, ACOE), site planning, mitigation strategies. McVay-Wood, Inc., 2000.

**Ivory Stag Peat Farming, Pasco County**

Wetland delineation (FDEP, ACOE) on 1429 acre peat mining project, environmental permitting, mitigation design. WRB Enterprises, Inc., 2000.

**Henderson Site, Hillsborough County**

Wetland delineation (HCEPC, SWFWMD, ACOE) on 30 acre residential site. Florida Engineering and Environmental Services, Inc., 2000.

**RMT Soils Remediation Project, Hillsborough County**

Major soil remediation work along U.S. 41 corridor, SE of Port of Tampa. Includes wetland delineation (HCEPC, FDEP, ACOE), mitigation design, creation, environmental permitting, etc., RMT, Inc., 2000.

**J.J. Taylor Companies / BDFI, Hillsborough County**

Wetland delineation, environmental permitting, mitigation design, creation for major beverage facility center. J.J. Taylor Companies, Inc., 2000.

**Wyndlake Plaza, Pasco County**

Wetland delineation (SWFWMD, ACOE), environmental permitting for commercial office complex. Adams Engineering, Inc., 2000.

**Watkins Property, Polk County**

Wetland delineation (SWFWMD, ACOE) and environmental permitting for residential lakeshore enhancement. Goldsmith Construction, Inc., 2000.



**Little Everglades Ranch, Pasco County**

Water use permit modification work, lake design, habitat mapping, WRB Enterprises, Inc., 2000.

**Martin Site, Hillsborough County**

Wetland delineation (HCEPC, SWFWMD, ACOE) of residential parcel., Bobby Martin, 2000.

**Tarpon Ridge, Pinellas County**

Environmental permitting (PCDEM) of residential development (wetland impacts, threatened and endangered species resolution). Grady Pridgen, Inc., 2000.

**Gulf Landings, Pasco County**

Wetland delineation (SWFWMD, ACOE) of large residential development. Enforcement resolution, environmental permitting. Gulf Landings Development, 2000.

**Snug Harbor, Pinellas County**

Wetland delineation review, environmental permitting, mitigation design, Grady Pridgen, Inc., 2000.

**Madison Avenue, Hillsborough County**

Wetland delineation (SWFWMD, HCEPC, ACOE), threatened and endangered species analysis. HADAR, LLC, 2000.

**Lakeland Highlands Boulevard, Polk County**

Wetland delineation (SWFWMD, ACOE) for roadway improvement project. Environmental permitting, mitigation resolutions, etc., City of Lakeland, 2000.

**Mease Hospital, Pinellas County**

Bald eagle nest management, agency consultation, site planning, etc.. Morton Plant Mease, 2000.

**Hunters Greene, Polk County**

Wetland delineation (SWFWMD, ACOE), listed species reviews, mitigation design, environmental permitting, etc.. McVay-Wood, Inc., 2000.

**The Lakes at Christina, Polk County**

Mitigation monitoring project with permit (SWFWMD) modification. Colonial Industries, Inc., 2000.

**Robin Road, Polk County**

Wetland delineation (SWFWMD, ACOE), permit strategies, development feasibility. McVay-Wood, Inc., 2000.

**Fowler/301, Hillsborough County**

Aerial wetland delineation, qualitative analysis, listed species review, development feasibility. Florida Engineering and Environmental Services, Inc., 2000.

**VanBebber Site, Hillsborough County**

Wetland delineation (HCEPC, SWFWMD, ACOE) for commercial parcel, listed species review, VanBebber and Associates, Inc., 2000.

**Lake Bess, Polk County**

Wetland delineation (SWFWMD, ACOE) for residential project, qualitative analysis, listed species review. McVay-Wood, Inc., 2000.

**Ridge Acres, Polk County**

Wetland delineation (ACOE), for permit updating. McVay-Wood, Inc., 2000.

**West of 4 Corners, Hillsborough, Polk, Manatee, and Hardee Counties**

Wetland delineation (HCEPC, SWFWMD, ACOE), habitat mapping, listed species review. IMC-Agrico Company, 2000.

**Tradewinds, Citrus County**

Wetland delineation (SWFWMD, ACOE), site planning, listed species review, habitat mapping, etc., Artistic Home Builders, Inc., 2000.

**Richard Grant Property, Lee County**

Site mapping, habitat analysis, qualitative analysis. ARG & Associates, 2000.

**PCBOCC Eagle Nest 6C, Pinellas County**

Eagle nest monitoring for construction activities (mitigation construction). Morton Plant Mease, 2000.

**Bruce McVay, Polk County**

Wetland mitigation project, McVay-Wood, Inc., 2000.

**CF Industries, Port Tampa Facility - Raptor Consultation, Hillsborough County**

Emergency resolution of osprey nest, coordinated with Florida Fish and Wildlife Conservation Commission, 2000.

**FWCC Bald Eagle Project, West Central Florida**

State eagle study (4 years in progress) comparing rural and urban birds. Florida Fish and Wildlife Conservation Commission, 2000.

**S.R. 54/S.R. 56 Interchange, Pasco County**

Aerial wetland delineation, qualitative analysis, listed species review for interchange and adjacent parcels. JDN Development, Inc., 2000.

**LaMirage Center, Pinellas County**

Wetland delineation (PCDEM, SWFWMD, ACOE), development feasibility, site planning, The Walter Fedy Group, Inc., 2000.

**East Access Extension, Cross Creek Boulevard, Hillsborough County**

Wetland delineation (HCEPC, ACOE, SWFWMD), mitigation design, permitting

**Henderson Road Parcel, Hillsborough County**

Wetland delineation (HCEPC, ACOE, SWFWMD), listed species reviews, site planning,  
Newport Landing, LLC, 2000.

**RNC, Hillsborough County**

Wetland delineation (HCEPC, ACOE, SWFWMD), permitting strategies, negotiations,  
Progressive Engineering, 2000.

**Cedar Creek Assisted Living Facility, Citrus County**

Environmental assessment, development feasibility study, Mott-Westfall Medical Management,  
Inc., 2000.



Weiss Serota Helfman  
Pastoriza & Guedes, P.A.

# Memo

To: Kevin Rambosk  
City Manager

From: Nancy Stroud

Date: October 13, 2000

Re: Hamilton Harbor DSEI

I understand that the City Council has narrowed the choice of experts to assist the City in the review of the Hamilton Harbor applications to two persons. I have had the opportunity to review the resumes of both candidates and have spoken to Dr. Brown and Mr. Horner about the task before them. I am impressed with both candidates' qualifications, but I would like to recommend Dr. Brown as the City's choice.

The task for the expert is to assist the City in reviewing the Development of Significant Environmental Impact associated with the Hamilton Harbor application to rezone portions of the property to the "transitional conservation" zoning district. The City Code's provisions for conservation districts is unique in my experience. It is important to note that the task is not to delineate wetland jurisdictional areas pursuant to state or federal criteria, although local, state and federal permitting and review procedures may be considered, according to the Code. I believe that this effort requires a broad understanding and appreciation of coastal ecology, as well as experience in the field.

I am hopeful that this effort might bring about a resolution of the existing litigation between the City and Collier Enterprises. In the event that it does not, we should be mindful that the expert could be called upon to assist or give testimony in the existing litigation or potential subsequent litigation. The expert's experience in court should also be considered. I have personal knowledge and a positive opinion of Dr. Brown's experience in this regard.

Please feel free to call with any questions.

Cc: Beverly Grady, City Attorney

**CITIZENS TO PRESERVE NAPLES BAY, INC.**

Post Office Box 3160  
Naples, Florida 34106

F. Wheeler Conkling  
President

Harry H. Timmins  
Vice President

James R. Weigel  
Secretary/Treasurer

October 2, 2000

Naples City Council and  
Planning Advisory Board  
City of Naples, Florida

Attachment 3

Page 1 of 3

10/16/00 Special Meeting

Re: Review and Commentary regarding Hamilton Harbor Rezone Petition dated 9/11/00 and DSEI Application dated 9/00. Both submitted by Hamilton Harbor, Inc.

**Board Members**

Eileen Arsenault

William Blaikie

Dr. Millard Carnick

Dr. Anne Cook

Sewell H. Corkran, Jr.

J. Boyce Donaldson

Gordon R. Glorch

Laurance K. Harper, Jr.

Mary Harper

Edwin S. Hooker, Jr.

William H. Hyland

James K Kessler

James P. Lennane

Robert E. Ott

Jack H. Paley

Jane C. Timmins

George R. Wallace, III

Edwin M Williams

George E. Williams

Dear Ladies and Gentlemen:

1. CDC 102-774 recognized that some transitional (TC) land may exist within some areas zoned vital (C). However, paragraph (c) requires that all this land remain zoned C, "... until such time as an environmental assessment (DSEI), a general development and site plan, and a rezone to TC are completed, which will identify the exact location and related characteristics of the transitional land."

No GDSP has been submitted to comply with this zoning change requirement. This section does allow for a preliminary determination of a C-TC district boundary by the development services director and the natural resources manager, and their decisions are appealable to PAB and City Council. Thus, the documents submitted seem adequate only for the preliminary determination but not a zoning change in accordance with 102-774. The law should be followed.

2. Instructions for Filing a DSEI, page 1, General, says, "the DSEI assessment review process is intended to ensure that the proposed uses or activities are compatible with and will not diminish the natural resources of the site or the surrounding area unless it is clearly demonstrated to be in the public interest." This clearly supports the requirement in 102-774 noted in 1., above. How is it possible to comply with this clear intent without a GDSP? In fact the entire DSEI filing instructions are replete with requirements which cannot be met without a GDSP or similar document. Moreover, since the term "Development" is the first word in the DSEI title the entire process is clearly married to the intricacies of planned development of some sort.

3. The map which is included as part of the Rezone Petition and labeled "Conceptual Site Plan" (It does not seem to be a conceptual site plan) shows several areas apparently proposed for rezoning to TC. These proposed TC parcels are largely surrounded by lands which would continue to be zoned C. These appear to be relatively small plots; but, since the map shows no scale, their exact size can not be determined. Is such a polka dot zoning scenario the intent of transitional zoning? We think not. Section 102-785 (a) describes the purpose of TC lands:



"The transitional conservation district shall function in part as a buffer area to ensure compatible development adjacent to the conservation zoning district. There would be little practical benefit to establish strict controls over development in the conservation zoning district while permitting indiscriminate development to occur on its boundaries. TC district areas require special precautions and attention prior to development because of their resource value, potential hazards that may exist, and their proximity and relationship to conservation zoning district areas. Failure to consider these limitations may result in direct or indirect consequences harmful to the public health, safety and welfare."

These proposed TC spots surely could not serve as buffer areas to ensure compatible development adjacent to conservation vital zoned land. The proposal, therefore, does not comply with Section 102-785 (a).

4. DSEI Figure 3 (no scale shown) should be examined carefully and compared with Figure 1 of the original Hamilton Harbor DSEI. There are discrepancies. Especially note the north end of the property and the sizes and shapes of the areas now being designated as high quality wetland and low quality wetland compared with the previous sizes and shapes of those areas.

5. A significant portion of the land at the north end of the property now proposed for TC is land previously designated (original DSEI Fig. 1) relatively high quality wetland (mangrove). The new designation of some of this land is low quality wetland footnoted as containing 1.1 acres of low quality mangrove. Either this is wrong or the original DSEI Fig. 1 was wrong - perhaps both!

6. Mangrove Community is listed under Habitats of Special Concern in the CCM Support Document. No part of any such community should be changed from C to TC as is now apparently being proposed. Regardless, no development is allowed there anyway.

7. Other areas of proposed zoning change from C to TC seem to be Xeric Oak, Mixed Wetland Forest, Tropical Hardwoods and Cabbage Palms. Some of these likely come together as Coastal Hammock Communities - another Habitat of Special Concern referred to in policy 1-6, and thus should not be rezoned.

Further, some areas may be Fresh Water Swamp/Marsh or Marginal Land as defined on CCM pg. 18 and 19 with no development permitted. We have not found a topographic map in the submittal.

8. Some of the land proposed for TC zoning along the east side of the property appears to be moderate quality and low quality wetlands. Careful review of this spot is also called for.

9. The sheet titled DSEI Application refers to Sec. 102-774 (e) of the CDC. We can not find such a section in the CDC now in use at the Planning Dept.

10. Page 1 of the DSEI specifically links this submittal to the "ongoing settlement negotiations"; and thus, actions in this matter could surely become factors in Collier's suit against the City. Clearly, your attorney in that matter should be kept involved in this issue, though I note this petition is brought to you by Hamilton Harbor, Inc., not Collier Enterprises.

11. CCM 4, Policy 1-7 requires that the City confer with Florida Game and Freshwater Fish Commission and U.S. Fish and Wildlife Service prior to approving a DSEI. At what stage is that to be done?

12. There are differences between the C/TC proposed zoning on the "Conceptual Site Plan" included in the Rezone Petition and the proposed C/TC zoning on Figure 1 included in the DSEI. You will find those if you haven't already.

13. Exhibit D in the Rezone Petition directs your attentions to CDC sections 102-785 and 102-786. We too ask that you read those carefully. Some parts have already been referred to in this letter.

Exhibit D, numbers 5 and 6, seem to say that wetlands free of "significant" disturbance be placed in C and wetlands indirectly impacted be placed in TC. We urge you to use great care in applying the terms "significant disturbance" and "indirectly impacted" in reaching conclusions about which wetlands are valuable and which ones are disposable.

14. No land containing Habitats of Special Concern or described in Table 1 (CCM 17) and elsewhere, should be rezoned from C to TC under any circumstances.

-- SUMMARY --

We beseech you, please:

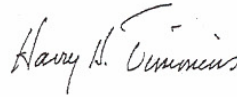
1. Follow the Comp. Plan.
2. Follow the Zoning (and rezoning) requirements.

Proceeding in contradiction to the requirements of these carefully crafted documents nearly always leads to trouble. It is hard to believe that Council is being asked to do this again at the Hamilton Harbor site. In this case we could create a sort of polka dot zoning which could lead to development efforts, now or in the future, that conflict with CDC 102-771, 774, 785 (a), 786 (d) and 86-203; as well as CCM pg. 17, 18, 19 and FLUE pg. 41 4., 42, 43 and 44. And, worst of all, this would have been accomplished by using an improper rezoning process. (See numbers 1 and 2 above).

Sincerely,



F. W. Conkling



H. H. Timmins