

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Special Meeting - February 28, 2005 – 5:05 p.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Tamela Wiseman, Vice Mayor (arrived 5:08 p.m.)

Absent:

Clark Russell

Council Members:

William MacIlvaine
Johnny Nocera
John Sorey, III
Penny Taylor

Also Present:

Robert Lee, City Manager
Robin Singer, Community Development Director
Carol Frank, Recording Specialist
Karen Kateley, Administrative Specialist
Nick Penniman
Linda Penniman
Douglas Newman
Corbin Wyant
James Weigel
Ron Pennington
John Farquhar
Maryellen Cohen
Kathy Avery
Sandra Leddy

Donald Leddy
Elaine Lockhart
James Rozzi
Tom Scholten
Jack Belcher
Clyde Matthews
Don Peacock
Ron Henges
Wayne Arnold
Regina Scholten
Brian Leiding
Other interested citizens and visitors.

Media:

Illene Stackel, Naples Daily News
Jason Darrell, NBC-2

SET AGENDA.....ITEM 2

No changes.

PUBLIC COMMENT.....ITEM 3

Mayor Barnett advised that public comment would be taken after the staff presentation in Item 4.

It is noted for the record that Vice Mayor Wiseman entered the meeting at 5:08 p.m.

.....ITEM 4

DISCUSSION REGARDING AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES PERTAINING TO ESTABLISHMENT OF ZONING DISTRICTS IN ORDER TO ADD TWO NEW ZONING DISTRICTS, R1-15M AND R1-10M, ADDING

SPECIFIC REGULATIONS FOR SINGLE-FAMILY PROPERTIES WITH THE MOORINGS SUBDIVISION.

City Manager Robert Lee acknowledged petitioners, property owners and staff for their efforts regarding this proposal. He advised that the text amendments would be reviewed, along with survey results and staff recommendations. City Manager Robert Lee noted that correspondence had been received from the petitioners requesting a removal of two elements due to resident opposition, leaving the setback increase the only element remaining.

Although the original request had been amended, Community Development Director Robin Singer, nevertheless, presented an overview of the entire proposal. (A copy of this presentation and other pertinent documents are contained in the file for this meeting in the City Clerk's Office.) Ms. Singer depicted the Moorings neighborhood with its current zoning districts and explained that the proposal would create two new zoning districts, R1-10M and R1-15M, which would effectively eliminate both the R1-10 and R1-15 zoning from the Moorings subdivision. Three components are contained in the proposed text amendment as originally proposed: 1) lot coverage and lot coverage calculations; 2) removal of side yard setback encroachments for new construction; and 3) increasing the R1-10 district setback from 7 ½ to 10 feet. Currently the R1-15 setback is, however, ten feet, she said. The proposed basis for lot coverage calculations would be the area containing a solid roof, including screen enclosures if covered in this manner, Director Singer said, the intended result being smaller homes. A review of building permits issued for the Moorings over the previous year showed that, under the proposal, four building permit applications would have been denied.

Director Singer said that the total square footage of a home would also be reduced by the fact that overhangs and mechanical equipment on new construction would no longer be allowed to encroach into side yard setbacks. By the same token, she said, it would also possibly eliminate overhangs on future architecture. Mechanical equipment must then be afforded an alcove or be placed in rear yards. Ms. Singer said that the reason for this element was to deal with stormwater runoff onto neighboring properties and to reduce mechanical noise. Ms. Singer advised that currently all water generated by new construction must be either retained on that property or be directed into the City's stormwater management system. Ms. Singer refuted Council Member Taylor, however, saying that a new home, built on a higher elevation, would not create additional run-off impact with adequate enforcement of the City's drainage ordinance.

Director Singer then said, while the petitioner's side yard setback calculations had been substantiated by staff, in the vast majority of cases, lot coverage requirements would, however, be more limiting. She then compared current setbacks to a typical Moorings lot (Attachment 1) and stated that a loss of 225 square feet of buildable area would occur on lots of 10,000 square feet, although there would be no effect upon buildable area on lots of 11,000 square feet or more. There are currently four lots in the R1-10 district that would be affected, she added. Ms. Singer presented the results of a survey of Moorings property owners provided by the petitioner (Attachment 2) indicating 33% of the district as being in favor of increased side yard setbacks. However, support for setbacks included those residents in the R1-15 district, which would be unaffected by the proposal.

She then conveyed staff's recommendations in the matter: retaining current lot coverage requirements, but requiring mechanical noise metering prior to issuance of a Certificate of Occupancy, and enforcement of new construction drainage standards. She also offered to residents of R1-10 zoning, noting that, if support is obtained, a simple ordinance amendment could be accomplished, noting an R1-10A district already in existence in Park Shore.

In a dialog with Council Member Taylor, Director Singer explained that currently gutters and downspouts must direct runoff into the stormwater system, along with requirements for swales and berming along the edges of property; however if these regulations have proven ineffective, Ms. Singer said, the requirements could be revisited. With regard to enforcement of mechanical noise regulations, Ms. Singer stressed that property owners would be required to comply with the applicable noise regulations, as well as being responsible for any corrective measures deemed necessary. She pointed out, however, that mechanical noise often attributed to air conditioning units is often found to instead be coming from pool equipment, which could be reviewed Citywide.

Public Comment: (5:29 p.m.) **Nick Penniman, 611 Portside Drive**, urged retention and acceptance of the proposed side yard setback requirements and better enforcement of the noise ordinance regarding acceptable mechanical equipment sound levels and suggested lot coverage calculations be re-visited Citywide. He stressed that existing homes be grandfathered in to avoid non-compliance. **Linda Penniman, 611 Portside Drive**, urged approval of the proposal. **Doug Newman, 2800 Crayton Road, representing the Moorings Property Owner Association**, said that he feels it is appropriate to standardize the Moorings neighborhood with ten foot side yard setbacks, however, the Association was not taking a position either for or against the current proposal. He said he believes that it is the property owner's responsibility to determine a solution. **Corbin Wyant, 320 Bowline Drive**, said that while he had been opposed to the original proposal, he supports the modified version which will retain the character of the Moorings, assure the property owner the ability to develop their property to its potential and cause the Moorings zoning to be consistent with the contiguous neighborhoods such as Park Shore and Coquina Sands. **James Weigel, 520 Anchor Road**, offered his support for the proposal, saying that it would enhance property values, facilitate better stormwater management and constitute a marketable product consistent with the rest of the City. **Ron Pennington, 3430 Gulf Shore Boulevard, North**, said that there had been an ongoing concern regarding mega-houses (those built to maximum capacity of the lot) and attendant property owner rights and values, but recommended the proposed ten-foot setback. He nevertheless urged caution and questioned the potential applicability of vested right issues under the Bert Harris Act. **John Farquhar, 6520 Parkview Way**, expressed concern for issues of this nature reoccurring in the future. **Maryellen Cohen, 571 Putter Point Place**, expressed concern for the lack of communication from the initiators of the proposal, pointing out that the Moorings Property Owner Association membership is voluntary, and the group making the rezone proposal does not speak on her behalf. Ms. Cohen questioned the impact of the proposal on a home she would be building in the near future. City Manager Lee assured the speaker that staff was not yet recommending Council approval, but rather requesting staff be allowed to continue working with property owners. **Kathy Avery, 2200 Kingfish**, said that she currently owns five investment properties in the Moorings and had not been notified about the proposal. She expressed dismay that her telephone number had been given to a proponent of the proposal immediately following

an e-mail and a conversation her husband had had with a City Council Member. Mayor Barnett pointed out that emails received by City Council Members are considered public record. **Donald Leddy, 635 Parkview Lane**, expressed appreciation for Council conducting an evening meeting and urged expansion of this practice. **Elaine Lockhart, 3500 Crayton Road**, received confirmation from City Manager Lee that City Council would determine which elements are ultimately approved, and that staff is now recommending Council allow staff to continue to work with residents regarding the abbreviated version under consideration. Mrs. Lockhart expressed concern for a potential loss of property value and said that, without the other elements, she would consider supporting the setback request. **Jim Rozzi, 2323 Windward Way**, said that he was originally opposed to the proposal but now supports the proposed ten foot side yard setback requirement, as long as the process remains fair and democratic and is determined by those property owners who currently retain 7 ½ foot setbacks. **Tom Scholten, 705 Starboard Drive**, said that he is opposed to the proposal because of the restrictions it places on private property rights. He said, as a builder, he feels that the proposal would cause a loss in property values in the Moorings. He expressed concern for the misinformation being distributed by some residents. **Jack Belcher, 555 Putter Point Place**, said he, too, is opposed to the proposal and expressed concern for the potential denial of his forthcoming plans for an expansion of his home that had taken over two years to develop. He also characterized the neighborhood action as grossly unfair because of the lack of notification to all residents. It is noted for the record that the following individuals chose not to speak when called: **Sandra Leddy, 635 Parkview Lane, Brian Leiding, 235 Bahia Point, Wayne Arnold, 435 Springline Drive, Don Peacock, 420 Putter Point Court, Ron Henges, 393 Windward Way, and Clyde Matthews, 2266 Windward Way.**

Council Member Sorey complimented the neighborhood group bringing this forward but noted that, contrary to newspaper reports, he had not participated in drafting the proposal. He offered assurances that City Council would consider the input provided prior to taking any action. He also disclosed that his personal trust owns a house at 2807 Crayton Road which had not, however, been built to the maximum lot coverage because of his sensitivity to spatial perception. Mr. Sorey noted that the democratic process would continue to counteract misinformation and help create an acceptable result.

Council Member Nocera, however, expressed concern for potential vested rights challenges under the Bert Harris Act as well as the potential for animosity among the 67% of residents opposed (see Attachment 2). Mayor Barnett reiterated that no action was then being considered, but Vice Mayor Wiseman agreed with Council Member Nocera and suggested staff be directed to determine whether there is support for the setback proposal. She also cautioned of the potential for creating a grandfathering situation and for perceived unfairness in singling out the Moorings rather than applying the regulations Citywide. Mayor Barnett said that, in this instance, the Moorings Property Owner Association has neither given nor denied support, although Council is traditionally concerned that proposals have this type of backing.

Council Member MacIlvaine stated that projects with building permits are normally allowed to proceed under prior regulations. He, however, expressed concern for the accuracy of assessment of support for the proposed setback amendment. Mayor Barnett and Council Members Taylor and Sorey agreed, with Mr. Sorey also stating that he felt only those residents currently with 7½ foot setbacks should be surveyed. Mr. Sorey also recommended that the City Attorney

determine whether there are any vested rights implications and that the staff survey local realtors for their opinion regarding property values. Council Member Nocera and Vice Mayor Wiseman reiterated concerns about opposition due to potential impact on property rights. Council Member Taylor agreed, although she said she also remained unconvinced that the proposal would have a direct effect on property values, noting ten foot setbacks already in place in adjacent Park Shore; nevertheless, she urged more accurate determination of neighborhood support. In response to Council Member Taylor, Community Development Director Singer said there were only six properties in the Moorings that would experience a square footage impact although approximately 450 lots currently have 7½ foot setbacks.

Council Members MacIlvaine and Sorey each supported further exploration and Mr. Sorey pointed out that methods exist that allow those in the process of development or redevelopment to continue during implementation of any proposal. Mayor Barnett said that he did not wish to take action impacting property values, although he said that is not convinced the proposal would have this result. He said that he is willing to pursue this proposal in an effort to clarify the questions raised. Various Council Members expressed concern for the unrecoverable cost of staff time, but supported further exploration of resident support and formalizing the consensus at the next regular meeting.

CORRESPONDENCE AND COMMUNICATION.....

None.

ADJOURN.....

6:19 p.m.

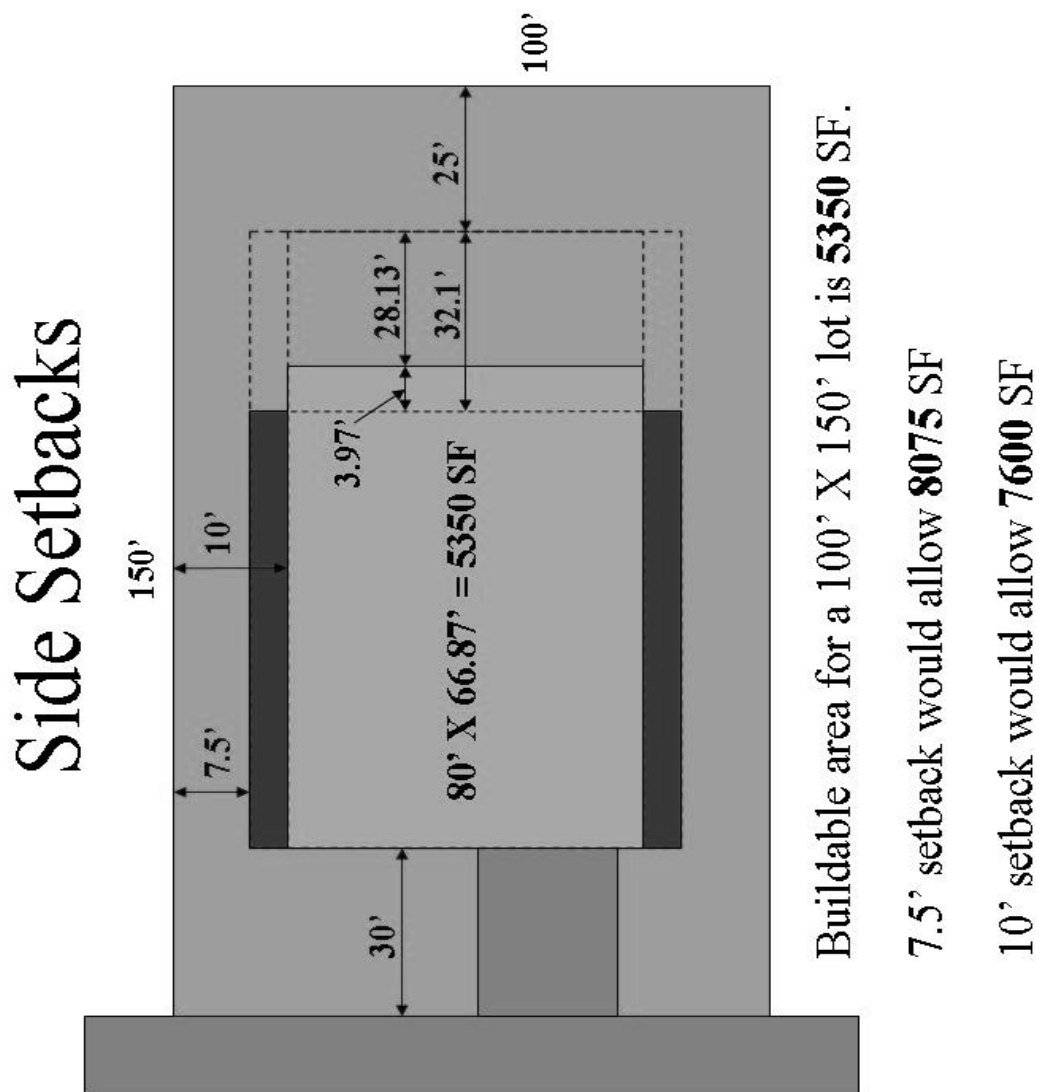
Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Pamela M. Koepke, Recording Specialist

Minutes Approved: 4/20/05



Survey Results

865 Single Family Homes Notified

Question	Identified 203		Anonymous 163	
	Yes	No	Yes	No
Support for increased setbacks	67 (33%)	136 (67%)	56 (34%)	107 (66%)
Support for decreased square footage	54 (27%)	145 (71%)	51 (31%)	112 (69%)
Support amendments as presented	52 (26%)	146 (72%)	46 (28%)	110 (67%)
Could support with changes	35 (17%)	129 (64%)	27 (17%)	91 (56%)