



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Workshop Meeting – September 6, 2005 – 8:32 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Tamela Wiseman, Vice Mayor

Council Members:

William MacIlvaine
Johnny Nocera
Gary Price
John Sorey III
Penny Taylor

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Terry Fedelem, Parks & Pkwy. Design/CIP Supt.
Victor Morales, Assistant to the City Manager
Robin Singer, Community Development Director
Elizabeth Rogers, Recording Specialist
Jessica Rosenberg, Deputy City Clerk
Ron Wallace, Construct. Management Director
Robert Devlin, FEMA Coordinator
Martin Conant, Building Official
Dan Mercer, Public Works Director

Peter Manion
Rusty Batcher
Kenneth Kosowski
James Lenanne
Kathleen McFadden
Peter Van Arsdale
John Remington
Jim Boula

Other interested citizens and visitors.

SET AGENDA.....ITEM 2

Noting the devastation of Hurricane Katrina, Mayor Barnett indicated that City Clerk Tara Norman had suggested making it possible for employees to make contributions via a voluntary payroll deduction, which the City of Naples would then match. The funds would be donated to the American Red Cross. He said that it was the Council's intent that this program commence as soon as possible.

PUBLIC COMMENT.....ITEM 3

(8:34 a.m.) **Gary Burris of 11661 Labrador Lane of East Naples**, referred to a proposal he had submitted to Council Member Nocera regarding a flotilla of vessels to provide assistance to shrimp fleets in the Louisiana Gulf Coast impacted by Hurricane Katrina. He requested financial assistance, noting that two vessels were ready to leave from the Keys immediately as well as 55 vessels to work with the Red Cross. He also requested that the City adopt a small port in Louisiana as a sister city. Initially this would involve dock space for loading and delivery of fuel and supplies. City Manager Robert Lee stated that while he would ascertain the availability of

space at the City Dock for two shrimp boats, he also wished to ensure that any such effort it is coordinated with appropriate agencies. Mr. Burris advised that his organization is already in communication with various agencies and the state government; however, Council Member MacIlvaine requested a statement of purpose and procedure before making a decision on this particular request. In response to Council Member Taylor, Mr. Burris assured Council that the two aforementioned vessels are shallow draught and could be accommodated at the City Dock. Council Member Nocera recommended that the City also ascertain that this is the best utilization of resources in this regard. Mayor Barnett asked Mr. Burris to follow-up with the Council at the regular meeting on September 7.

NAPLES AIRPORT AUTHORITY QUARTERLY UPDATE.....ITEM 4

Naples Airport Authority (NAA) Chair Peter Manion indicated that the following individuals were also present in conjunction with this presentation Eric West, Airport Authority Commissioner; Ted Soliday, Executive Director; Joseph McMackin of Bond Schoeneck & King, attorney; Sheila Dugan, Executive Director of Finance and Human Resources; and Irving Dunn, Director of Engineering and Planning.

Chairman Manion reported that Delta Airlines was still operating three flights per day and that a reported sale of this subsidiary was not expected to impact service. He stated that Delta's financial situation nevertheless remains perilous and the question of bankruptcy is yet to be determined.

Regarding legal matters, Mr. Manion reported that federal funding had resumed following resolution of the stage 2 jet ban litigation as well as noting a favorable ruling in the Jet One case in federal bankruptcy court. He also reported contact with City Manager Lee and Council Member Taylor regarding possible assistance with the community's proposed acquisition of the Fleischmann property (Caribbean Gardens/Zoo) with the possibility of seeking federal funds applicable to the area of noise abatement. He said that this would be addressed in the next NAA planning meeting.

Sheila Dugan presented an outline of the Fiscal Year 2006 budget. (It is noted for the record that a copy of Ms. Dugan's electronic presentation is contained in the file for this meeting in the City Clerk's Office.) Ms. Dugan indicated that net operating revenues were expected to increase 6%. Fuel rates, responsible for a portion of this increase, will be reviewed later in the year for possible reduction in flowage fees. Nevertheless, this will be dependent on an eventually successful final resolution of the Jet One litigation. Of the \$2.6 million expended on litigation in Fiscal Year 2005, 29% was related to the stage 2 jet ban and other noise issues, and 71% was related to Jet One litigation, Ms. Dugan noted.

Due to prior impacts of litigation and attendant decreased fuel volumes, withholding of FAA (Federal Aviation Administration) grants, and delays in capital expenditures in recent years, operating expenses are projected to increase by 13% over 2005 resulting in a decrease in operating income of 10%. Projected net income for Fiscal Year 2006 is \$976,000 (see Attachment 1; a comparison 2005 and 2006 capital expenditures appears as Attachment 2).

Irving Dunn reviewed the four quadrants of the airport property and indicated that a build-out plan would be presented to the Council in the coming months. Fiscal Year 2005 capital

improvement projects were cited as Phase II of airfield lighting and a taxi lane in the north quadrant; a T-hangar project in the south quadrant had however been postponed due to lack of federal aid. However, an entrance beautification project was undertaken. For Fiscal Year 2006 federal funding of approximately \$6 million will enable such projects as upgrading the general aviation terminal, security upgrades, a new crash/fire/rescue vehicle, and the T-hangar program in the south quadrant. In response to Council Member Taylor, Mr. Dunn confirmed that the airport can accommodate four times the amount of stormwater than parameters dictate, including that which is derived from areas east of Airport Road that drains onto the airport property.

In conclusion, Chairman Manion indicated that the NAA financial situation seems positive and that NAA is looking forward to resolving pending litigation issues.

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Public Comment: (9:05 a.m.) **James Lennane, President of Continental Aviation**, indicated that ~~he~~ his firm had been based at Naples Airport since 1993. He conveyed support for the position of Jet One, pointing out that the \$2 million net cash flow anticipated by NAA in Fiscal Year 2006 is attributable to its takeover of fuelling of Jet One clients. He stated that Jet One owner Scott Phillips may have erred in entering into underlying fuelling agreements with fractional operators which Mr. Phillips had induced to base operations in Naples, but Mr. Lennane said he did not believe this constituted the fraudulent practices which NAA had alleged. The difficulty had occurred when NAA in 2002 revoked a long-standing policy which had allowed operators like Jet One to dispense fuel; NAA could then assume fuel vending, he said. Mr. Lennane recommended assessment of some sort of penalty against Jet One, the payment of which would then allow the firm to remain viable in light of the amount of business activity it has generated in the area, even if the business must be sold to retire debt.

In further discussion, Chairman Manion reiterated that the possible Delta Airlines bankruptcy would not result in a cessation of operations in Naples. However, Council Member Sorey requested further information regarding the revenue guarantee aspect of the Delta presence at the airport. In response to Council Member Taylor, Executive Director Soliday also indicated that there were no plans to alter the Australian pines which screen the Avion Park neighborhood from the airport. Miss Taylor expressed the hope that suitable landscaping would be installed in that location if the trees were eventually removed; Airport Executive Director Soliday concurred. Council Member Nocera commended Chairman Manion and the NAA staff for maintaining positive operations in light of the demand placed upon it by various litigation.

INTERVIEWS WITH CITY COUNCIL CANDIDATES.....ITEM 5

Mayor Barnett announced that the actual selection of a Council Member would occur at a 1:30 p.m. special meeting that day and that the swearing-in ceremony would occur at the regular meeting the following day. This individual will serve until the February Council election. The following interviews were conducted:

Rusty Batcher

Vice Mayor Wiseman acknowledged Mr. Batcher's contributions as a member of the Code Enforcement Board and inquired as to whether he would run for City Council in the upcoming February 2006 election. Mr. Batcher indicated that if he was satisfied with his performance on Council in the upcoming months he would do so. During his interview, Mr. Batcher cited the following issues:

- The importance of maintaining a sound course for the future of the City and being watchful of such important issues as the restructuring of the Four Corners (US 41 and Fifth Avenue South) as well as the area where US 41 intersects with Tenth Street and issues involving Naples Bay such as safety and water quality.
- Prompt and efficient action on matters of importance with postponement only when absolutely necessary.
- The fact that he would blend well with the Council due to his experience in working with plans and drawings and his keen attention to detail.
- That in conjunction with his ability for analysis, he would maintain an awareness of the impact of Council decisions upon the people of Naples.

Kenneth Kosowski

- Mr. Kosowski stated that he had owned property in Naples for over five years and had retired from the medical field, becoming a full-time resident one and a half years before. He said that he believed his qualifications as a clinical manager coordinating care between physicians, nurses, pharmacists, patients and caregivers provided him with necessary skills to work effectively and objectively. He then highlighted the following issues of importance:
- Naples Bay speed zones, maintaining the City's beaches, the intersection of U.S. 41 and Fifth Avenue South and its relation to the east side of US 41 (41-10/Heart of Naples district).
- Although he is seeking a pharmacist's license, he believes that he possesses the time and ambition needed to serve on the City Council.
- That he had not decided whether to run for office in February 2006, but that he would support actions which he deemed to be in the best interests of the City.
- That he believed citizens of Naples are well informed regarding issues involving the City and surrounding areas.

James Lennane

Mr. Lennane related the following positions during questioning by the Council:

- That, if selected, he would not seek election in 2006 in that he felt that the four-month interim before the February 2006 and therefore incumbency would provide an unfair advantage.
- That his experience includes six years of service on the Port Royal Property Owner Association and work with the successful Bayshore area redevelopment.
- That his focus is on fresh water availability rather than the price of providing fresh water.
- That he is concerned about commercial exploitation and overcrowding of the City, endangering its residential character, noting conflicts between the interests of tourism and those of residents. He cited the importance of the Bert Harris Act to provide recourse for private property owners and advised that if chosen he would remove himself from Naples Airport Authority issues, deeming this a conflict of interest.
- That power lines should be scheduled for undergrounding and that reuse water should be sold to residents at a reasonable cost.
- That stormwater issues are of concern and that the City's aging utilities infrastructure is in need of replacement.

- That the interests and demographics of Pelican Bay residents are dissimilar to those of Naples residents and that City residents should have the opportunity to vote on the issue of annexation.
- That the professional fishing industry should not be hindered by speed laws in Naples Bay unless environmental dangers are proven, citing the economic importance to the community of business people.

Vice Mayor Wiseman stated that she respected Mr. Lennane's opinions, although she may not always agree. Mrs. Wiseman also inquired as to Mr. Lennane's use of Jeff Lytle of the Naples Daily News as a reference and asked whether Mr. Lytle had specifically authorized the use of his name in this manner. Mr. Lennane responded that Mr. Lytle had in fact not done so and that, while familiar with his positions, Mr. Lennane was unsure of whether or not Mr. Lytle would concur. Council Member Sorey cited Mr. Lennane's strategic planning background and stated that he believed Mr. Lennane would be very productive on City Council. Mayor Barnett said that he was seeking the best candidate, regardless of whether that individual intend to run for office in February.

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Kathleen McFadden Mrs. McFadden informed The Council that she had been a City resident for nine months but had been visiting for three years, expressing the view that her status as a recent resident gave her a unique perspective on the elements that might attract people to the area. The following points were then covered:

- That her extensive business experience would be an asset, that she wished to preserve the small town feel and wished to see small businesses thrive.
- That she is not interested in running for election in February.
- That zoning is the key to controlling growth and that diversification of the economy with regard to construction and real estate is important to the community.
- That lacking environmental expertise, she would research these issues as they apply to the City of Naples.
- That, if not chosen, she would be interested in serving in another capacity such as on the Planning Advisory Board.

Gary Price

The following issues were raised during Mr. Price's interview.

- That as Chair of the Planning Advisory Board, he feels strongly that a five-year and ten-year vision would be most effective way to approach issues facing the community now and in the future.
- That an annexation policy is needed in order to help guide these types of decisions and that he has had experience with at least two annexations.
- That the Chair of each voluntary board and committee should meet with City Council at least annually to review the status of important issues.
- That he is aware of the need to balance family and other commitments with service on the City Council and is willing to commit to the position.
- That based on a thorough review of the City's budget, a solid vision should be developed and then addressed through adequate funding.

- That it is important for the Planning Advisory Board (PAB) to be involved in issues of annexation with regard to land use.
- That vessel speed zones have been the most difficult issue the Council has faced and that safety is the first priority in this regard.

Mayor Barnett noted for the record that the sixth applicant, Thomas Ryan, was unable to be present for interview.

RECESS: 10:40 to 10:55 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

.....**ITEM 6**
REQUEST FOR ATTORNEY CLIENT SESSION PERTAINING TO JOSEPH BIASELLA V. CITY OF NAPLES, JOE HERMS, PENNY TAYLOR AND FRED TARRANT, U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA CASE NO. 2:04-CV-320-FTM29DNF.

City Attorney Robert Pritt made the following request: Pursuant to Section 286.011(8)(a), Florida Statutes, City Council was being asked to conduct an executive closed (attorney/client) session at 11:30 a.m. during the regular meeting of September 7, 2005, to discuss settlement negotiations and strategy related to litigation expenditures in reference to the following litigation case: **Joseph Biasella v. City of Naples, Joe Herms, Penny Taylor and Fred Tarrant, U.S. District Court, Middle District of Florida Case No. 2:04-cv-320-FTM29DNF.** The following persons will be present for the session: Mayor Bill Barnett; Vice Mayor Tamela Wiseman; Council Members Penny Taylor, Johnny Nocera, John Sorey and William MacIlvaine; City Manager Robert E. Lee; City Attorney Robert D. Pritt and Attorney James D. Fox of Roetzel & Andress; and Pam Arsenault of AAF Reporting, Certified Court Reporter. The estimated duration of the session is 20 minutes. It was noted that the attendance of the Council Member to be sworn in following the selection process to be conducted later that date would be announced prior to the beginning of the attorney/client session.

SIGN CODE PRESENTATION.....ITEM 7
(It is noted for the record that a copy of the electronic presentation made by City Attorney Robert Pritt is contained in the file for this meeting in the City Clerk's Office.) City Attorney Pritt indicated that the Florida League of Cities had provided an alert which he said he believed should be shared with the City Council so that any amendments to the City's sign code could be considered.

A sign code had been found unconstitutional in the case styled *Solantic v. City of Neptune Beach*, scheduled to be heard by the full panel of the 11th Circuit of the Federal District Court Of Appeal (binding in Florida, George and Alabama). Since the Neptune Beach code is fairly typical, the findings will have widespread implications. At issue were content-based permitting schemes, applicable either in terms of wording or the identity of the speaker; this is opposed to content-neutral messages, directions and holiday decorations. Mr. Pritt pointed out that any time speech is regulated (First Amendment), provisions must be narrowly tailored and there must other viable channels of communication available causing ordinances to fail because they are over-broad. In *Solantic* the court nevertheless found that size limitations were reasonable because it did not regulate content.

He said that the City of Naples sign ordinance should be amended dealing with the permitting process, deemed a prior restraint on speech when it is not expedited, particularly for non-content

neutral signage. In addition, entire ordinances are being struck down even though not all provisions are found unconstitutional, and even though, like the City of Naples, a severability clause is present stating unchallenged provisions remain.

Political signs, he said, are of particular concern, and past amendments locally in this regard may not have sufficiently addressed legal issues which have been subsequently raised. Mr. Pritt therefore recommended a review of the City's sign code for compliance to the extent possible with current court interpretations. Nevertheless, final adoption should be delayed until the final determination in the Neptune Beach case, Mr. Pritt added.

Consensus to proceed as recommended by City Attorney Pritt.

U.S. 41 LIGHTING AND LANDSCAPING PLAN PRESENTATIONITEM 8

Construction Management Director Ron Wallace reported that the initial plan had been for lighting and landscaping improvements to all of U.S. 41 inside the city limits. He then gave a slide presentation (a copy of which is contained in the file for this meeting in the City Clerk's Office) containing information from conceptual design to the present. Director Wallace proposed extending the lighting and landscaping project from Seventh Avenue North to Fleischmann Boulevard, with \$1.2 million being budgeted for lighting and \$275,000 for landscaping in 2005-06; of the \$1.2 million budgeted, approximately \$600,000 had been funded, which would allow improvements to extend as far as Banyan Boulevard.

Director Wallace indicated that the lighting would emulate that of the south portion of the project, and the landscaping would require determination of whether to continue with brick inlays also as done in the south. Landscaping recently also completed in the south included removal of all vegetation and planting of royal palm trees and low-lying ground cover in the center of the medians, he said. Director Wallace then noted the concrete median north of Seventh Avenue North and explained that the Naplescape project had proposed replacing the existing shell mixture with turf grasses and other vegetation, as well as restoring existing vegetation, and installing new irrigation. Currently, the project ended at Seventh Avenue North because the limits of the 41-10/Heart of Naples area had been reached, he noted. Proceeding to the northern boundaries of the City would cost approximately \$4 million in lighting improvements alone.

Director Wallace expressed the view that should the improvements end at Fleischmann Boulevard or Golden Gate Parkway, the dramatic effect achieved would also cease. Although the 2005-06 budget does not include funds for lighting improvements north of Fleischmann, funds are available for restoration of landscaping that had been damaged by FDOT (Florida Department of Transportation) in its US 41 improvement project, he said.

In response to Mayor Barnett, Terry Fedelem, Parks and Parkways Design and CIP Superintendent, stated that the completion date for the lighting and landscaping improvements on the Gordon River Bridge and at Four Corners (US 41 and Fifth Avenue South) had been set for the end of the month. Superintendent Fedelem also explained that former Mayor Ned Putzell had initiated the Naplescape project in 1987, with the support of the Chamber of Commerce, which had assisted in obtaining an estimated \$100,000 in funding from business owners along US 41. Simultaneously, he said, the City had begun expansion of its reuse water irrigation system on US

41, from Fleischmann Boulevard to Pine Ridge Road. Mayor Barnett pointed out that this project had been a community effort substantiated by fundraisers such as celebrity galas.

Council Member Taylor expressed concern for the lighting improvements while supporting the landscaping efforts. Director Wallace characterized the current landscaping between Seventh Avenue South and Seventh Avenue North as virtually nonexistent. In response to Council Member Sorey, Director Wallace stated that the next phase would be Seventh Avenue North to Fleischmann Boulevard. Should funding be insufficient, Banyan Boulevard would be approximately half the distance, he said. Council Member Sorey said that he supported extending the lighting and landscaping improvements to Fleischmann Boulevard, as currently outlined. In response to Council Member Taylor, Director Wallace explained that although installation of the light fixtures could be postponed, the electrical conduit must still be installed prior to planting turf grass and other vegetation. Council Member Taylor nevertheless strongly urged that City beautification efforts be postponed, and that efforts instead be concentrated on providing relief to areas stricken by Hurricane Katrina.

Mayor Barnett confirmed for City Manager Lee that staff should move forward with the plan as presented.

FEMA FLOOD MAPS – CONSTRUCTION IMPACTS AND OTHER ISSUESITEM 9
FEMA (Federal Emergency Management Agency) Coordinator Robert Devlin, Building Official Martin Conant, and Community Development Director Robin Singer gave a slide presentation on this topic (a copy of which is contained in the file for this meeting in the City Clerk's Office).

FEMA Coordinator Devlin reported that because the City participates in the National Flood Insurance Program (NFIP), it is required to adopt a flood ordinance, participate in the program, and adhere to the flood maps. He then explained that the Flood Insurance Rate Maps (FIRM) establish the following flood zones:

- Velocity (VE) – the potential for flooding is probable and storm surges would be greater than three feet;
- AE - would flood with rainfall or storm surges up to three feet; and
- X – would not require flood insurance although flooding is possible.

Mr. Devlin also noted that the FIRM establish a base flood elevation for new construction and determine applicability of higher regulatory construction standards (VE zone); such construction standards would include breakaway walls (not part of the structural support and intended to collapse under specific lateral loading forces without causing damage to remainder of the building or supporting foundation system) and frangible (breakaway) floors. He subsequently demonstrated a computer link to the proposed flood maps on the City's Internet website and pointed out the various proposed flood zones.

Although the initial impact to River Park and Lake Park would be insignificant, FEMA Coordinator Devlin explained, the proposed flood maps would eliminate the X zone in Old Naples and along the western border of Coquina Sands; and Park Shore, Moorings, and Venetian Bay would experience an increase in required elevations to 13 feet 3 inches. He also confirmed that the proposed flood maps increase the required elevation one to three feet, depending upon

the zone. Council Member Taylor pointed out that, under the proposed flood maps, citizens residing in the current X zones would then be required to purchase flood insurance.

FEMA Coordinator Devlin noted that staff would be drafting resolutions pertaining to adoption of the proposed FEMA flood maps and that he had forwarded a copy of the City's Flood Ordinance to FEMA, which would submit its recommendations for revisions. Rather than to adopt the State's ordinance, he suggested slightly modifying the City's existing ordinance; a representative of FEMA had concurred, he said.

Regarding outreach meetings, FEMA Coordinator Devlin said that residents would that week be receiving announcements indicating various meetings throughout the City to address questions and concerns; FEMA representatives would be in attendance at the meetings to discuss insurance and other related issues regarding construction.

In response to Mayor Barnett, Mr. Devlin stated that Brad Loar, FEMA Branch Chief of Region 4 in Atlanta, had recently assured him that the two representatives who had previously committed to attending the aforementioned meetings would in fact be present. Residents would first be afforded an opportunity, via computer, to determine the flood zone in which their homes are located; subsequently, they could move to another table where insurance issues would be addressed; a third table would be devoted to construction issues, primarily regarding the impacts of the revisions from AE to VE zones.

Building Official Martin Conant announced that a new Florida Building Code would become effective October 1. He then reported that a new form, addressing what is known as the FEMA 50% rule (defining a substantial improvement as being an improvement to a structure that equals or exceeds 49.9% of the structure value prior to the new work being performed) had been implemented in August. Substantial improvements, he added, are generally not permitted unless the existing structure is raised above the base flood elevation. FEMA had been sent a draft of the proposed new form as well as a copy of the existing form. Furthermore, FEMA had disapproved of the cost-per-square-foot calculation method that the City had been using. The City, he said, had been divided into four zones, Zone D being the least costly from a construction standpoint (\$55 per square foot) and Zone A being the most expensive (\$110 per square foot); the per square foot cost had not been updated for a number of years, he added.

A resolution had been approved in 1997, Mr. Conant further explained, that enumerated four methods of determining values; the first being a good faith estimate by a contractor, a second being the actual contract price, a third being the prevailing cost for the work to be performed using the per-square-foot calculation, and the fourth being a double appraisal. During his brief tenure with the City, he said, the third had been the sole method that had been used. He then stated that he understood that, in 2003, FEMA had recommended against the double appraisal method. He then expressed the view that the actual contract price would be the most accurate estimate and recommended that Council authorize preparation of a resolution endorsing this method of calculation.

Building Official Conant indicated that the aforementioned new form requires submittal of two affidavits, one from the property owner and the other from the contractor; each affidavit states

the cost of the project and that each attests the information to be true. He further explained that a schedule whereby the contractor would either list subcontractor bids or estimates itemizing material and labor costs would be included with the affidavits. In response to Council Member Sorey, Building Official Conant expressed the view that if the City refused to change its method of calculation, it could ultimately lose its flood insurance coverage.

Community Development Director Robin Singer reported that numerous building and zoning issues had arisen, some of which had been discussed at a recent Planning Advisory Board (PAB) meeting; these issues include swimming pool elevations, steepness of driveways, and an excessive number of steps between the finished floor and the garage floor. Another issue, she said, is the interruption of water flow across properties that contain either berms or retaining walls with elevated grades. Director Singer stated that the current code contains no provisions for limiting the amount of impervious area on property, and inquired as to whether Council would support limiting the width and area of driveways or patios, which currently are not limited. Numerous communities also limit setbacks and width of driveways, she added.

Director Singer pointed out examples of stem walls that had been attractively camouflaged by landscaping, as well as stilt construction. She then recommended the following:

Stem Walls and Stilts

- Amending the building code to encourage stem wall construction and preservation of existing grade and historic storm water flows;
- Requiring that structural elements at grade, such as stilts, be concealed; and
- Presenting recommended revisions to the PAB in November.

Swimming Pools

- Amending the building code to clarify that swimming pool decks shall not exceed 30 inches above natural grade;
- Limiting the amount of impervious areas in front and rear setback areas; and
- Presenting recommended revisions to the PAB in October.

Driveways

- Amending the building code to limit the width of driveways and requiring side setbacks; and
- Presenting recommended revisions to the PAB in October.

Zoning In Progress

- Allowing permits to be reviewed per proposed FEMA elevations with total building height measured from new elevations.

Council Member Sorey urged Council to determine a method allowing those currently applying for permits to build at new FEMA levels; otherwise new residences will exist that are involuntarily nonconforming. In response to Council Member Sorey, Director Singer offered to confer with the City Attorney to determine whether there is a method to expedite the building code amendments. During recent discussions, she said, City Attorney Pritt had indicated that, under the current building code, no method exists for providing waivers during the interim period. Council Member Sorey requested that City Manager Lee or City Attorney Pritt further

research the issue prior to the next meeting, which Mayor Barnett pointed out would be the ~~next~~ following day.

Council Member Sorey cited a coastal construction setback variance for a swimming pool at a residence on Gulf Shore Boulevard, that had recently been approved by Council and requested that staff research the issue of the swimming pool shell not being of breakaway construction. Additionally, he requested consideration of a methodology for a common swale which would assist in softening the impact of variations in elevations. Mayor Barnett requested that City Attorney Pritt research and respond to the aforementioned issues as soon as possible.

Public Comment: (12:14 p.m.) **Peter Van Arsdale, 123 11th Avenue South**, stated that the electrical undergrounding proposed in Port Royal had failed because the Port Royal Association had elected to own the utility lines, which was unacceptable to FPL (Florida Power & Light). Mr. Van Arsdale expressed concern regarding the new FEMA regulations and the preservation of older homes and property owners' rights to improve their residences rather than to demolish them. He then expressed support for the double appraisal method of determining value and requested that Council direct staff to assertively renegotiate with FEMA. Mayor Barnett requested that staff determine whether FEMA would allow the City to continue using the current method of calculation until the new FEMA regulations are implemented in November. Council Member Nocera concurred that the new FEMA regulations would encourage demolition, rather than renovation, of older homes. **John Remington, 3525 Gordon Drive**, stated that the new FEMA flood maps would create safety concerns regarding swimming pools, and recommended challenging the FEMA flood maps.

City Manager Lee stated that although he understood contractor concerns pertaining to compliance with FEMA regulations, the decision to comply is not optional, but rather a federal requirement. Furthermore, FEMA could place the City on probation, add an assessment to flood insurance policies, and ultimately suspend the City from the NFIP, causing residents to be unable to purchase flood insurance, and resulting in the City being subject to liability from residents and property owners. City Manager Lee also indicated that he was unaware of anyone who wished to prohibit renovation of older structures, thereby changing the character of the City. He then expressed the belief that FEMA had implemented the 50% rule to enable property owners to renovate older residences rather than to completely transform them by adding another story.

FEMA had clearly communicated to the City that the square footage methodology previously used was unacceptable, City Manager Lee said. He then confirmed that FEMA would be present at outreach meetings to describe and respond to inquiries regarding the new flood maps. Mayor Barnett directed an additional meeting for contractors and other interested parties. City Manager Lee then recommended creating a resolution identifying specific measures that the City is taking to comply with FEMA. Relative to the aforementioned 1997 resolution, City Manager Lee clarified that he had directed staff to implement the new methodology of using the actual contract price prior to amendment of the resolution. He further clarified that the 1997 resolution indicates that staff should use the highest of the four methods contained therein, and explained that the square footage methodology is inappropriate because it does not consider when square footage is not being added.

In response to Council Member Taylor, City Manager Lee suggested that staff secure the language from the FEMA requirements prior to making a decision as to whether to appeal to a higher echelon. Council Member Taylor however urged staff to negotiate with FEMA based upon the overwhelming desire of the community to maintain a sense of place through residential homes. City Manager Lee stated that FEMA would be present for a forthcoming joint workshop with Collier County. Council Member Sorey suggested directing staff to return to Council with a more proactive, aggressive plan to determine requirements imposed upon the City as well as any options available locally.

City Manager Lee asserted that the primary priority is to comply with the law while satisfying local concerns.

Consensus to direct staff to: 1) research negotiation results of other municipalities; 2) aggressively negotiate with FEMA, appealing to the highest echelon; and 3) seek the input of local contractors Peter Van Arsdale and John Remington.

In response to City Manager Lee, Council Member Taylor stated her recommendation that appeal of FEMA's decision be based upon the desire to preserve the character and older structures without demolishing structures due to FEMA's 50% rule.

“BACK DOOR” GARBAGE SERVICE PRESENTATION.....ITEM 10

Public Works Director Dan Mercer, while giving a slide presentation (a copy of which is contained in the file for this meeting in the City Clerk's Office), reported that various issues are occurring that require amendment of the City's regulations with reference to the traditional “back door” collection of refuse. These include emptying in-ground refuse containers having caused physical difficulties for some employees as well as other situations where inaccessibility is an issue. Mr. Mercer then proposed the following amended program:

- City Manager to clarify the convenient locations for garbage “pick-ups”
- Approved locations will include areas on or adjacent to driveways/garage doors and side yards providing easy access
- Approved locations will **not** include street rights-of-way and backyards, although alleyways would not be precluded.
- October – begin distributing notices to all residential customers.
- November – begin issuing warning notices for non-compliance.
- January 2006 – revise ordinance to include penalties, if necessary.

Along the rights-of-way, residents are not to place their refuse for collection prior to 7:00 p.m. the previous day and should remove their containers by 5:00 p.m. the day of collection, Mr. Mercer added. Mayor Barnett however recommended revising the above timeline as follows: 1) November – deliver preliminary notice depicting appropriate locations for refuse collection; 2) January – commence delivering warnings of noncompliance; and 3) February or March – revise the ordinance.

**.....ITEM 11
DISCUSSION OF APPLICATION AND PERMIT FOR PERMANENT ANCHORAGE
OF VESSELS IN NAPLES BAY**

City Manager Robert Lee requested Council's confirmation that the staff should proceed with maintaining a mooring field. He noted that the December 1 deadline set by the Department of Environmental Protection (DEP) had been extended to March 1 and that total cost would include

the initial estimate of \$350,000, as well as an annualized cost of \$2,631. In response to Council Member Sorey, Community Services Director David Lykins stated that additional restroom facilities at the City Dock would be required only if the mooring field were maintained. Council Member Sorey stated that he supported a mooring field, but not at the estimated expenditure for 12 mooring anchors. Later in the discussion various Council Members indicated concurrence with this position.

Public Comment: (12:56 p.m.) **Jim Boula, 702 Broad Avenue South**, recommended that the City mount a legal challenge to the DEP determination with regard to restroom facilities since the rules being applied are those for new marinas and not existing facilities.

Director Lykins confirmed that all recreational slips are currently occupied and explained that the additional restroom facilities could in fact be applied toward the construction of additional transient slips, thereby increasing income to the City Dock. During further discussion the marina facilities at the City of Sarasota were mentioned, and Vice Mayor Wiseman pointed out that these restroom facilities are on land. Director Lykins stated that constructing a new facility on land to accommodate restrooms could cost more than renovating an existing one over water.

Vice Mayor Wiseman expressed concern that, even with additional restroom facilities, the mooring field would be restricted to use by City Dock tenants, which would further decrease public benefit. City Manager Lee clarified that while the Temporary Use Agreement (TUA) currently restricts use of the restroom facilities to City Dock tenants, the application would include additional restroom facilities that would be available for public use. In response to Mayor Barnett, he however expressed the belief that DEP viewed its action in allowing temporary use of the City Dock as benevolent because of the lack of prior permitting; therefore, DEP is in fact viewing it as a new marina.

Consensus to direct staff to: 1) inform DEP and legal advisors of Council's desire for a mooring field, but not at the cost presented; 2) via legal counsel, seek alternatives while exhausting all avenues; 3) notify DEP of current efforts; and 4) explore the possibility of a cooperative effort with Collier County.

BRIEFING BY CITY MANAGERITEM 12

City Manager Robert Lee stated that a copy of his written report had been included in the packet (a copy of which is contained in the file for this meeting in the City Clerk's Office). Council Member Sorey urged Council Members to request the support of local state legislators as well as the South Florida Water Management District (SFWMD) for the City's application for funding of an alternative water supply (Senate Bill 444).

REVIEW OF ITEMS ON THE 09/07/05 REGULAR MEETING AGENDAITEM 13

Withdraw: Item 8-b (agreement for purchase and sale of goods; mulch). Add: Item 16 (amendments to continuing contract with Tetra Tech, Inc./Hartman & Associates and 2004-05 budget). With regard to Item 8-f (sanitary and storm sewer relining) Council Member Taylor requested clarification of the differential between the budget amendment and total cost.

CORRESPONDENCE AND COMMUNICATION.....

Vice Mayor Wiseman requested information regarding the recent approval of the Arsenault wall on Third Street and expressed concern regarding the construction method being utilized. Council Member Sorey recommended replacing the shell in the City's right-of-way, adjacent to the wall in question, combined with landscaping. Council Member Sorey requested that Council convey its appreciation to the Marco Island City Council for its concern for the environment. Council

City Council Workshop Meeting – September 6, 2005 – 8:32 a.m.

Member Taylor advised that she would soon be forwarding a draft of a letter to the Board of County Commissioners (BCC) regarding Caribbean Gardens/Zoo (Fleischmann) property acquisition.

ADJOURN
(1:11 p.m.)

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Susan Cairns, Recording Specialist

Elizabeth Rogers, Recording Specialist

Minutes Approved: 10/5/05

FY 2006 Operating Budget

Operating Revenues (Net)	\$ 9,609,000
Operating Expenses	<u>(7,308,000)</u>
Operating Income	2,301,000
Other Revenues (Expenses)	297,000
Depreciation Expense	<u>(1,622,000)</u>
Net Income	\$ 976,000

FY 2006 Expenses and Expenditures

	Estimated FY 2005	Proposed Budget FY 2006
Total Available Resources at Beginning of Year	\$ 3,821,000	\$ 3,442,000
Revenues and Receipts	11,350,000	15,032,000
Total Available Resources, Revenues and Receipts	15,171,000	18,474,000
Expenses and Expenditures	11,729,000	15,315,000
Total Available Resources at End of Year	\$ 3,442,000	\$ 3,159,000

FY 2005 and FY 2006 Summary

	Estimated FY 2005	Proposed FY 2006
Net Income	\$ 1,385,000	\$ 976,000
Capital Contributions	<u>1,939,000</u>	<u>4,295,000</u>
Change in Net Assets	3,324,000	5,271,000
Total Net Assets - Beginning	<u>28,474,000</u>	<u>31,798,000</u>
Total Net Assets – Ending	\$ 31,798,000	\$ 37,069,000
Unallocated Cash	\$ 2,753,000	\$ 2,734,000
Restricted Cash	256,000	131,000
Operating and Capital Reserves	<u>1,500,000</u>	<u>1,500,000</u>
Cash & Equivalents at Year End	\$ 4,059,000	\$ 4,365,000