



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – November 2, 2005 – 9:03 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 II
John Sorey III
Penny Taylor

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Victor Morales, Assistant to the City Manager
Ronald Wallace, Construction Management Director
Stephen Weeks, Technology Services Director
David Lykins, Community Services Director
Robin Singer, Community Development Director
Stephen Olmsted, Planning Administrator
Tony McIlwain, Planner II
Elizabeth Rogers, Recording Specialist
Reverend Rich Kirschner
Debra Newman
Steve Hartsell
John Geshay
John Remington
Laura Lenz
Mary Mossing
Peter Thomas
Jack Ullrich
Terry Cole
Don Pickworth
Robert Paxton

Gerhard Seblattnigg
James Humphrey
John Domenie
Peggy Hanson
Donald Spanier
Julie Frantzen
Laura Jacobs
Becky Pogan
John German
Alan Horton
Orly Stoltz
Frank Messano
Allan Grossman
Pat Barton
John Iazzo
Ted Raia
Libbie Branson
Merlin Lickhalter
Martha Dykman
Ross Obley
Henry Kennedy
Andrew Dickman

Other interested residents and visitors

INVOCATION AND PLEDGE OF ALLEGIANCE.....ITEM 2

Reverend Rich Kirschner, First United Methodist Church.

ANNOUNCEMENTSITEM 3
Adoption Month, November 2005; and Southwest Florida Young Republicans Week, November 7 through 14.

Mayor Barnett commended staff, utility companies, outside agencies, City residents, and Collier County for cooperative efforts following Hurricane Wilma; Council concurred and commended Mayor Barnett for his leadership and also for providing telephone updates to citizens.

SET AGENDA.....ITEM 4

MOTION by Nocera to SET AGENDA withdrawing Item 7 at the petitioner's request, and removing Item 6-b(1) from the Consent Agenda for separate discussion and vote. This motion was seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Council Member Sorey confirmed that Phillip McCabe (McCabe's Irish Pub) and the Sugden Theater had resolved various issues between them regarding the St. Patrick's Day celebration (Agenda Item 6-b-6).

PUBLIC COMMENT.....ITEM 5
None.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 6-a

October 3, 2005 Workshop Meeting, as submitted; and October 5, 2005 Regular Meeting as amended on Page 2 "...specifically pertained to efforts Pastor Scott's promise to relocate the church away from the park and to secure property to construct a church."

SPECIAL EVENTS ITEM 6-b

- 2) House Party – John & Brigid Clapper – 11/12/05
- 3) Christmas Parade 2005 – Community Services Department & Fifth Avenue South Association – 12/13/05
- 4) Christmas Eve Service – Tree of Life Church – Cambier Park Bandshell – 12/24/05
- 5) Youth Sailing Regatta – Naples Community Sailing Center – Lowdermilk Park – 03/04-05/06
- 6) St. Patrick's Day Celebration – McCabe's Irish Pub and Grill – Sugden Plaza – 03/17-18/06
- 7) 4th of July Parade 2006 – City of Naples – 07/04/06

RESOLUTION 05-11015.....ITEM 6-c

A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH HUNTER-KNEPSHIELD COMPANY, FOR THE PURCHASE OF RECREATIONAL LIGHTING EQUIPMENT FOR THE FLEISCHMANN PARK FOOTBALL FIELDS AND SKATE PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-11016..... ITEM 6-d

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND OLYMPIC COMPACTOR RENTAL, INC. TO PROVIDE RENTAL OF RECONDITIONED SELF-CONTAINED ROLL-OFF COMPACTORS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-11017.....ITEM 6-e
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY
MANAGER TO AUTHORIZE AN EMERGENCY EXPENDITURE IN ORDER TO
PROVIDE HAULING AND DISPOSING OF LIME SLUDGE FROM THE CITY’S
WATER TREATMENT PLANT; AND PROVIDING AN EFFECTIVE DATE. Title not
read.

MOTION by Nocera to APPROVE THE CONSENT AGENDA EXCEPT ITEM
6-b(1), and with corrected Page 2 of the October 5, 2005, Regular meeting
minutes. This motion was seconded by Price and unanimously carried, all
members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes,
Taylor-yes, Wiseman-yes, Barnett-yes).

END CONSENT AGENDA

.....**ITEM 6-b(1)**
“THURSDAYS ON THIRD” – THIRD STREET SOUTH ASSOCIATION – 11/10/05,
01/05/06, 01/12/06, 01/26/06, 02/02/06, 02/09/06, 02/23/06, 03/02/06, 03/09/06, 03/23/06,
03/30/06, 04/06/06, 04/13/06, 04/27/06, 05/04/06, 05/11/06, 05/18/06, AND 05/25/06.

Public Comment: (9:13 a.m.) **Debra Newman, Executive Director of Fifth Avenue South Association,** first addressed local response to Hurricane Wilma by conveying the appreciation of association members to Mayor Barnett for his telephone messages (automatically transmitted to citizens via computer) which she said had represented a calming effect, likening the calls to fireside chats. She then commended staff for protection of the buildings, expeditiously removing debris from the Fifth Avenue area, and notifying the public of the reopening of businesses. With reference to the request by the Third Street South Association to expand its “Thursdays on Third” event to every Thursday, Ms. Newman pointed out the previous agreement had been for such an event on every third Thursday, while Fifth Avenue South would be able to stage an event every second Thursday. She also expressed dismay that the Third Street South Association had not advised the Fifth Avenue South Association of these plans.

Council Member Sorey suggested that staff review all planned events for the respective business districts and consider implementing a coordinated activity schedule. Council Member Taylor however expressed the view that Third Street and Fifth Avenue are sufficiently distant that simultaneous events would not pose a parking problem; she also cautioned free enterprise should be allowed the latitude to operate. Mayor Barnett suggested approving the November 10 event and continuing consideration of the remainder of the events to the next regular meeting, allowing sufficient time for the two districts to negotiate; Ms. Newman agreed to contact the Third Street South Association to discuss the matter.

MOTION by Nocera to APPROVE THE 11/10/05 DATE ONLY, and
CONTINUE THE REMAINDER OF THE DATES to the November 16
Regular Meeting. This motion was seconded by MacIlvaine and unanimously
carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes,
Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Ms. Newman also expressed concern that businesses are required to obtain live entertainment permits, yet wide support exists for street music on a weekly basis.

Vice Mayor Wiseman requested that the Community Services Department review the special events calendar for November and December to address certain discrepancies which had been noted.

RESOLUTION (Withdrawn – See Item 4).....ITEM 7
A RESOLUTION DETERMINING VARIANCE PETITION 05-V2 FROM SECTIONS 102-148 AND 110-39 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHED A MAXIMUM 30-FOOT HEIGHT FOR NON-HABITABLE ARCHITECTURAL ELEMENTS IN ORDER TO PERMIT THE CONSTRUCTION OF A ROOF OVER AN EXISTING OPEN-AIR CUPOLA AT A MAXIMUM HEIGHT OF 31'6", AT 2585 TARPON ROAD, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 05-11018.....ITEM 8
A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 05-FWW4 FOR A 10'-4" FENCE IN THE SIDE SETBACK AREAS ALONG THE SOUTH PROPERTY LINE FOR PROPERTY LOCATED AT 266 15TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:22 a.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the following ex parte communications: Wiseman/familiar with the site, and read correspondence; Price/visited the site; Nocera and Barnett/visited the site, and spoke with the petitioner; Taylor/familiar with the site, spoke with the petitioner, but had been unable to meet with the petitioner's agent; MacIlvaine/familiar with the site, but no contact since a discussion with the petitioner's agent approximately two months before; and Sorey/visited the site, had brief discussions with both the petitioner and resident Carl Kuehner.

Robin Singer, Community Development Director, explained that, in June of 2004, building permits had been issued for the home, including the already constructed wall in question, at 266 15th Avenue South. The plan reviewer had understood that a wall of greater height would be permissible if the petitioner obtained a letter of support from the adjacent property owner; this letter had in fact been obtained, Director Singer said. However, since no administrative authority exists for staff to make such a determination, the petitioner must request from Council a wall waiver. Staff had recommended denial because a wall of the allowed six foot height could in fact satisfy all safety and security requirements. Measured from the top of the wall to a drain on the adjacent property, at natural grade, the wall as constructed measured approximately nine feet. Director Singer requested that the staff report be entered into the record (Attachment 1).

Attorney Steve Hartsell, agent for the petitioner, stated that his client had nevertheless followed the appropriate permitting procedures, having only subsequently been informed by staff that a wall waiver should have been sought. The contractor, John Remington, Mr. Hartsell added, had previously received an identical administrative approval for a wall at a height greater than six feet from the natural grade.

Attorney Hartsell also reported that the contractor and Architect John Geshay had received an indication from adjacent neighbors, the Lenz family, that a wall would be preferable to a hedge as a buffer between the two properties. In August of 2004, at the direction of the City Building Department, Architect Geshay had submitted a modified permit and revised plans, depicting the wall desired by the neighbors, he added. Code compliance was verified on August 17, with a building permit being issued on August 24; the issue of the administrative approval of the wall height had not been raised until March 2005, construction having commenced the prior

September. Attorney Hartsell said that, upon learning that City staff had recommended denial of the waiver, the contractor had retained legal counsel, who he said he had subsequently replaced due to a conflict regarding this representation.

Attorney Hartsell distributed copies of the following documents:

- Exhibit 1: A facsimile cover sheet from architect John Geshay to Paul Bollenback, City of Naples; correspondence dated June 23, 2004, from Michael T. Lenz to Marty Conant, Building Official; renderings of the two options, one being the wall at 11.5 feet and the second being vegetation; and photographs of the property. (Attachment 2)
- Exhibit 2: The building permit, issued on August 24, 2004, for the fence and wall. (Attachment 3)
- Exhibit 3: Photographs depicting the site and wall. (Attachment 4)

Architect John Geshay further explained that the lot is bordered by an alley, 15th Avenue South, and Third Street South and reviewed the site plan (a copy of which is contained in the file for this meeting in the City Clerk's Office); he stated that the wall in question had been constructed for privacy, view, and security, and urged that the Council consider the fact that the wall is inconspicuous because it matches the color of the house, is a different color on the neighbors' side and that the natural grade is between 4.2 and 4.5 feet while the house elevation is at 11 feet. The wall design, Mr. Geshay also noted, is stepped down at the center rather than the ends, creating a view pleasing to the public. In addition, a hedge not only develops into a thick barrier, but requires maintenance access as well, he added.

In response to Council Member Sorey, Mr. Geshay stated that approximately five structures on the opposite side of the street had been rebuilt to an elevation of 11 feet, employing stem walls, and accommodating drainage into the street. Asserting that reliance on natural grade for height requirements is a hardship, Mr. Geshay expressed the view that: 1) it would be unreasonable to demolish the wall and reconstruct it 30 inches back from the property line; 2) replacing the wall with a hedge would be costly and would impact the fish pond on the site; and 3) the neighbors had specifically requested that a hedge not extend above the wall.

In response to Council Member Taylor, Community Development Director Singer stated that the wall could be reduced three feet in height and that a hedge, but not a decorative screen, could extend above the wall.

Attorney Hartsell requested approval of the wall waiver based upon the criteria having been met, and the fact that the petitioner and the petitioner's agents had made good faith efforts to comply with City Code and requirements, having received Building Department approval prior to construction of the wall. Mr. Hartsell further clarified that lot size, orientation and location, as well as the design of the Lenz home and the petitioner's house and wall, contribute to the unique circumstances contained in the criteria embodied in the Code. Attorney Hartsell also pointed out that, due to impending installation of a generator on the Lenz side of the wall, as well as the existence of other mechanical equipment, the wall functions as a sound barrier and secures the property from intruders. Furthermore, due to existing vegetation and that being planted, there are no visual impacts on either of the streets or the alley bordering the property. He added that no ingress or egress impacts exist.

Public Comment: (10:05 a.m.) **John Remington, 3525 Gordon Drive**, noted that, in addition to the wall in question, he had also constructed two such walls administratively approved by the Building Department. Regarding the wall in question, he reported that he had conferred with the neighbors, the City Manager, and the Building Department, all of whom had agreed that administrative rules in the Code at that time allowed for construction of a wall greater than six feet without a wall waiver. Noting the high level of activity in the aforementioned alley, Mr. Remington explained that a higher wall was also desirable because statuary in the area had previously been stolen. He also pointed out that while a hedge could grow as high as 25 feet, such an installation becomes unattractive as it ages and provides no sound barrier because of eventual permeability at the stem level. **Laura Lenz, 1544 Third Street South**, noted that the wall in question borders her property and that she is pleased with the installation, particularly due to installation of a generator on her property. She also noted that because of the differential in the height of the two properties, a wall of a lower height could cause injury to any pet or human who attempted to scale it. **Mary Mossing, 555 Starboard Drive**, stated that she had seen the wall, which she characterized as a beautiful addition to the community and that the petitioner, Mrs. Lavern Gaynor, deserved the privacy and security that the wall afforded. Therefore she requested that Council grant the waiver. **Peter Thomas, 2658 Gordon Drive**, indicated that, during the recent hurricane, the wall in question had protected vegetation on both sides and that from the back porch it appeared to be four feet tall. He also asserted that it controls noise and stops erosion, while recommending retaining the installation that City staff had previously approved.

During comment on this petition, Mr. Thomas commended Mayor Barnett and staff for their efforts following Hurricane Wilma, and Mayor Barnett expressed appreciation to Mary Mossing, Director of the YMCA, which had opened its facility to those who desired hot showers following the recent hurricane.

Attorney Hartsell stated that neither he nor the petitioner, architect or contractor are critical of the practical approach that staff had taken, although he disagreed that unique circumstances do not exist. Due to flood elevations, he added, a wall of lesser height would allow the adjacent property owners' generator and utility equipment to be visible above it, he added.

In light of the new FEMA (Federal Emergency Management Agency) floodplain regulations, Council Member Sorey requested that staff review the wall waiver process to determine whether walls should be measured from new grade or old grade. In response to Council Member Taylor, City Manager Robert Lee confirmed that the Design Review Board (DRB) is also reviewing the requirements for walls as related to the new FEMA flood maps.

MOTION by Taylor to APPROVE RESOLUTION 05-11018; seconded by Nocera, and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

City Manager Lee clarified that staff however does not have discretion in cases such as this but must follow the Code, and that Council must then make the appropriate decision. Council Member MacIlvaine noted that Council approval did not imply criticism of staff nor the process used to arrive at their recommendation for denial.

**ORDINANCE (First Reading).....ITEM 9
AN ORDINANCE DETERMINING REZONE PETITION 05-R5 FOR PROPERTY
LOCATED ON THE WEST SIDE OF U.S. 41 BETWEEN 2ND AVENUE NORTH AND**

4TH AVENUE NORTH, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM PD TO A NEW PD TO ALLOW FOR CONSTRUCTION OF AN ACCESS RAMP ACROSS THE WEST FAÇADE OF THE EXISTING PARKING GARAGE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:29 a.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the following ex parte communications: Wiseman/familiar with the property, received a telephone message from a hospital representative, and no further contact; Price/conversation with Naples Community Hospital (NCH) representative John Ullrich and participation in Planning Advisory Board (PAB) discussion two years before; Nocera/received a telephone message from Mr. Ullrich, and owns property across US 41; Barnett/had conversation with Mr. Ullrich; Taylor/spoke with Edward Norton of NCH a month prior, and Mr. Ullrich the previous day; MacIlvaine/spoke with Mr. Ullrich; and Sorey/spoke with Mr. Ullrich the previous day, heard petition as a PAB member, and had discussions with various hospital representatives.

Planning Administrator Stephen Olmsted advised that the PAB recommended approval of this petition, with conditions, and to amend the NCH Planned Development (PD) to allow a parking ramp along the west façade of the existing parking garage for direct access to the fourth level by hospital staff; the Design Review Board (DRB) had also recommended approval of the preliminary design plan, pending approval of the final design plan.

Jack Ullrich, Director of Real Estate for NCH, explained that a vehicle access ramp would reduce traffic congestion at the Medical Plaza entrance, provide improved parking access for both patients and employees, and enhance pedestrian flow and safety. The parking garage usage, he said, is approximately 60% employees on levels four through seven, and approximately 40% Medical Plaza patients on the lower three levels. The last phase of Medical Plaza I, including a wellness center, outpatient cardiac rehab, and physician offices, is presently being constructed, Mr. Ullrich said, and noted that the access ramp would separate employee and patient traffic by allowing only employees to bypass levels one through three.

Mr. Ullrich indicated that the ramp had been designed both in compliance with the 42-foot height restriction and to enhance the existing structure, with a Mediterranean roof, matching colors to the garage, and extensive landscaping.

Engineer Terry Cole of Hole Montes, Inc., utilized renderings (copies of which are contained in the file for this meeting in the City Clerk's Office), to illustrate present traffic flow as entering the internal driveway from US 41 or Eighth Street North and exiting onto US 41 or Eighth Street with approximately 60% traveling north and 40% south. The proposed ramp access would however connect to Second Avenue North and curve around the west façade along Eighth Street. Additionally, Engineer Cole noted, excavation of a lake to the east of the existing structure would complete the water management for the entire east campus.

Engineer Cole further stated that approximately 70% of the vehicular traffic that arrives between 6:30 and 7:00 a.m. would use the upper four levels of the garage, exiting between 3:00 and 4:00 p.m., while 30% would arrive by 8:00 a.m. and leave between 4:00 and 5:00 p.m. NCH had however agreed to the conditions embodied in the PAB approval recommendation (copies of

which are contained in the file for this meeting in the City Clerk's Office). He then proposed that, if necessary, the internal exit be revised in such a manner to allow the upper levels to exit through various levels, thereby reducing traffic exiting onto Second Avenue North. Mr. Cole explained that a chain would be installed inside the parking structure, prohibiting public traffic from entering the upper levels, and providing a sense of security and traffic separation within the facility.

In response to Council Member Taylor, Engineer Cole clarified that the first three levels of the garage would be used for traffic related to the Medical Office Building and the wellness facility and that by having the upper four levels enter and exit via the ramp, congestion would be reduced along the internal driveway. He also pointed out the overhead pedestrian walkway connecting the Medical Office Building and the main hospital facility, which would soon also connect to the Medical Office Phase II structure; however, an existing ground level walkway would remain in place.

In further discussion, Mr. Ullrich stated that, upon completion of construction, certain employees now parking on the level used by the wellness center would use the upper four levels, leaving an estimated 600 parking spaces available on the three lower levels for the Medical Plaza. He then advised that a majority of wellness center members are NCH employees who already park on the upper levels and said that he therefore did not anticipate these vehicles leaving the parking structure during working hours.

Responding to Council Member Price, Engineer Cole confirmed that the possibility of a right turn only off the ramp onto Second Avenue North had been discussed with City Traffic Engineer George Archibald. He also indicated that traffic flow could be monitored.

MOTION by Wiseman to APPROVE this ordinance on first reading, as amended in Section 1 to include "in accordance with the Planned Development Narrative attached hereto as Exhibit B, incorporated herein", following "See Exhibit 'A'". This motion was seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

ORDINANCE (First Reading).....ITEM 10
AN ORDINANCE DETERMINING REZONE PETITION 05-R7 FOR PROPERTY LOCATED AT 1900 TAMiami TRAIL NORTH, COMMONLY KNOWN AS COASTLAND CENTER MALL AND MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM "PD" PLANNED DEVELOPMENT, TO A NEW "PD" PLANNED DEVELOPMENT, TO ALLOW THE CONSTRUCTION OF THE "WEST END REDEVELOPMENT AND RENOVATION AREA" ON CERTAIN LANDS WITHIN THE MALL PROPERTY DESCRIBED HEREIN; PROVIDING REGULATIONS APPLICABLE TO THE DEVELOPMENT; AND PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:50 a.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the following ex parte communications: Wiseman/met with the petitioner's agent in the past regarding plans for redevelopment, and visited the site on numerous occasions; Price/conversations regarding the Cheesecake Factory as Chairman of the Planning Advisory Board (PAB), but not on this

petition; Nocera and Barnett/discussions with agent in the past; Taylor/spoke with Attorney Donald Pickworth by telephone, familiar with the site, and familiar with the plans; MacIlvaine/no discussions in the last several months; and Sorey/previous discussions, and a brief discussion with Mr. Pickworth that morning.

Planning Administrator Stephen Olmsted reported that the Coastland Center Mall had submitted a petition for 12,500 additional square feet of retail space at the west end, as well as interior renovations and remodeling. The Design Review Board (DRB) had recommended approval of the preliminary design plan, and the Planning Advisory Board (PAB) had recommended approval of the proposed amendment to the Planned Development (PD), he stated.

Attorney Donald Pickworth, representing Coastland Center Mall, reported that Council had been apprised of planned renovations in conjunction with construction of the Cheesecake Factory. The renovation plans had however become more extensive due to the community's preference for an enclosed rather than open-air mall, he added. The current main entrance facing US 41 would be replaced with two restaurants with two new entries to be constructed, one being closer to Sears and the other closer to Macy's. Utilizing color renderings (copies of which are contained in the file for this meeting in the City Clerk's Office), Attorney Pickworth indicated these new entrances as well as what he characterized as a corridor from the Cheesecake Factory to those entrances. He further pointed out an area adjacent to Macy's that would potentially be new gross leasable area (GLA) with a second floor, not to exceed the height of the Macy's store. Although most of the funding would be for interior renovation, he said, existing shutter features at the entrances would either be eliminated or scaled down, and palm frond motifs would be incorporated into the entries. A sign plan would also soon be submitted for consideration, he added. Attorney Pickworth noted that during initial expansion of the mall, sufficient parking had been incorporated for the expansions being considered that day.

Public Comment: (10:58 a.m.) None.

MOTION by Taylor to APPROVE this ordinance on first reading as submitted; seconded by Sorey, and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE AMENDING SECTION 94-43(c), CITY OF NAPLES STANDARD
FOR FLOODPLAIN MANAGEMENT, FOR THE PURPOSE OF ADOPTING THE
FEDERAL EMERGENCY MANAGEMENT AGENCY 2005 FLOOD INSURANCE
STUDY FOR COLLIER COUNTY AND INCORPORATED AREAS; PROVIDING A
SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Attorney Robert Pritt (10:59 a.m.).**

Public Comment: (10:59 a.m.) None.

MOTION by Taylor to APPROVE this ordinance on first reading as submitted; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

City Attorney Pritt noted for the record that no one from the public wished to address this issue, and City Manager Robert Lee reported that an interlocal agreement between the City, Collier County, FEMA (Federal Emergency Management Agency), and South Florida Water Management District (SFWMD) would be presented for review at the next Council meeting.

City Attorney Pritt added that, the required Planning Advisory Board (PAB) review would be scheduled prior to the next Council meeting, this review having been deferred due to the recent hurricane. Vice Mayor Wiseman stated for the record that approval of the ordinance however did not indicate approval of accuracy of the flood maps, only acknowledgement that Council cannot challenge them; Council concurred.

RESOLUTION 05-11019.....ITEM 12
A RESOLUTION DETERMINING PETITION 05-CU7 FOR RENEWAL OF A
CONDITIONAL USE FOR 25 OFF-SITE PARKING SPACES WITHIN 600 FEET OF
THE COMFORT INN PROPERTY, PURSUANT TO SECTION 106-102(b)2 OF THE
CODE OF ORDINANCES, IN ORDER TO OPERATE RENTAL BOATS AT THE
DOCKS OF THE COMFORT INN USING 25 LEASED PARKING SPACES AT GRAND
CENTRAL STATION, 300 GOODLETTE ROAD SOUTH, MORE PARTICULARLY
DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN;
PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND
PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:01 a.m.). This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony; all responded affirmatively. Council Members then disclosed the following ex parte communications: Wiseman, Nocera, Barnett and MacIlvaine/familiar with the site, but no contact; Price/familiar with the site, previous contact with representatives of Bayfront Inn, and heard the petition as Chairman of the Planning Advisory Board (PAB) in January 2004; Taylor/familiar with the site, acquainted with the owner, but no contact since owner received permit for offsite parking; and Sorey/familiar with the site, but no contact since the previous permit approval.

Planning Administrator Stephen Olmsted reported that Council had the previous year approved a conditional use to allow Extreme Rentals to use 25 parking spaces at Grand Central Station, the petition before Council that day being a renewal. The Planning Advisory Board (PAB) had recommended approval with conditions, including the requirement that valet service be provided to ensure that customers utilize the designated spaces.

Petitioner Robert Paxton, owner of Extreme Rentals, requested approval, and in response to Council Member Price, explained that the PAB had not afforded him an option to valet service. He had however determined that such a service would cost approximately \$3,000 per month and asked to be relieved of this requirement. Mr. Paxton also reported that he had consistently requested his customers use Grand Central Station parking because unauthorized vehicles in Bayfront Marketplace's parking area had the potential of being towed. Although most customers move their vehicles when asked, a few refuse because Bayfront refuses to post reserved parking signs.

Council Member Taylor expressed surprise that the petitioner had ever agreed to valet service and pointed out that Mr. Paxton's business had been displaced from the former Boat Haven property in conjunction with redevelopment. Miss Taylor suggested that Mr. Paxton include parking information on his website and ensure that every customer is provided with parking directions. Mr. Paxton stated that signs were currently being fabricated, for placement in front of the hotel office, indicating where parking for his business is permissible.

MOTION by Taylor to APPROVE RESOLUTION 05-11019 as amended, with conditions 1 through 6, and removing condition number 7 in Section 2 of the

draft resolution. The motion was seconded by MacIlvaine and carried 4-2-1 (MacIlvaine-yes, Nocera-yes, Price-no, Sorey-no, Taylor-yes, Wiseman-abstain, Barnett-yes). (See Attachment 5, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.)

Prior to the vote, Vice Mayor Wiseman stated that she would abstain due to her husband's contractual relationship with Bayfront. Mr. Paxton then confirmed for Council Member Price that he had in fact posted signs designating the Grand Central Station parking spaces as being for Extreme Rentals. Council Member Price expressed concerns regarding Council approving a request that had been modified since PAB approval, and parking issues that had predated Mr. Paxton's business in the area. Mr. Paxton noted that the hotel (Comfort Inn) was reducing the number of required parking spaces by combining certain rooms.

During the vote, Council Member Price attributed his negative vote to the removal of the PAB's condition of valet parking, and Council Member Sorey expressed the view that the petition should have been revised and resubmitted to the PAB.

Recess: 11:12 a.m. to 11:24 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

ORDINANCE (First Reading).....ITEM 13
AN ORDINANCE PERTAINING TO THE PELICAN BAY AREA LOCATED IN UNINCORPORATED COLLIER COUNTY, FLORIDA; PROPOSING THE ANNEXATION OF THE PELICAN BAY AREA TO THE CITY OF NAPLES, FLORIDA, MORE FULLY DESCRIBED HEREIN, CONTAINING 2,104 ACRES MORE OR LESS, SAID PROPERTY GENERALLY BEING BOUNDED ON THE NORTH BY VANDERBILT BEACH ROAD, BOUNDED ON THE EAST BY U.S. 41, BOUNDED ON THE SOUTH BY SEAGATE DRIVE, BOUNDED ON THE WEST BY THE GULF OF MEXICO; CALLING FOR A REFERENDUM ELECTION FOR SAID ANNEXATION IN THE AREA TO BE ANNEXED AND IN THE CITY OF NAPLES ON FEBRUARY 7, 2006; PROVIDING A BALLOT QUESTION; PROVIDING FOR NOTICE AND FOR THE PROCEDURES FOR CONDUCTING A REFERENDUM ELECTION; AND PROVIDING FOR ADOPTION AND FOR AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:24 a.m.). In response to Mayor Barnett, City Attorney Pritt explained that there had been a revision in the legal description, pertaining to a portion of Seagate Drive, after the original legal description had been publicized. The correct legal description had been included in the packet (a copy of which is contained in the file for this meeting in the City Clerk's Office), he added. He subsequently offered the following alternatives: 1) proceed with the hearing using the original legal description as advertised, or 2) continue the matter for a first reading at the next meeting. Mr. Pritt then noted that City Clerk Tara Norman had confirmed that there would still be sufficient time to complete the process within the election cycle, should the latter be chosen.

In response to Council Member Sorey, City Attorney Pritt stated that the revision would be too substantial to be made at the second reading. Community Development Director Robin Singer explained that the advertised legal description had been obtained from the Wilson Miller engineering firm at the request of the Pelican Bay Foundation. Subsequently, Foundation Attorney Madeline Ebilini had questioned the relationship of Seagate Drive to the City's boundaries.

While Vice Mayor Wiseman expressed concern with the closeness to the election cycle, City Attorney Pritt said that the hearing could however proceed at this meeting with the understanding that first reading would be continued to the next meeting. This, he said, would afford Council the opportunity to review the draft ordinance, and Council Member Price recommended using that day's forum as a replacement for the workshop discussion canceled due to Hurricane Wilma.

In response to Mayor Barnett, City Manager Lee, confirming that all previous questions had been answered to the best of the City staff's ability, indicated that should new questions arise during discussion, staff would attempt to respond accordingly. He further stated that it was unlikely that the various entities involved would approve interlocal agreements before a decision is made regarding annexation.

Consensus to move forward with the hearing, with the understanding that first reading would be continued to the 11/16/05 Regular Meeting.

Council and City Manager Lee concurred with Mayor Barnett's recommendation that the Pelican Bay annexation issue would be scheduled for 1:00 p.m. on November 16.

Mayor Barnett noted that a document containing three case scenarios for fire protection (Attachment 6) had been received from the Pelican Bay Foundation the previous day and inquired as to whether any of the three scenarios would be legally feasible. Regarding Case 3, Vice Mayor Wiseman inquired as to the specific entity indicated as underwriting the deficit and was critical that the submission had so recently been submitted, characterizing it as unprofessional and vague. Council Member Taylor expressed the view that, should the Foundation in fact be able to assess its members \$4 million over a four year period, the City would then be annexing what she characterized as a city unto itself.

Attorney James Humphrey, representing the Pelican Bay Foundation, stated that the City of Fort Myers had undergone similar annexation proceedings involving fire district issues. Once the citizens had voted in favor of the annexation, the respective agencies, counties, and fire district had resolved most of their issues before the effective date of the annexation. Other issues, however, continue to arise such as whether the special act creating the fire district or Chapter 171, Florida Statutes, takes precedence, he added. Although Lee County had concluded that the special act took precedence, Attorney Humphrey explained, the legislature had reversed that decision the following year. While concurring with City Attorney Pritt's recommendation that the matter be continued, he confirmed that the Foundation did in fact have the legal authority to assess its members in the amount of the City's anticipated four-year deficit. He also predicted that, should annexation be placed on the ballot for the February 2006 City of Naples election, the Pelican Bay residents would be apprised of the financial impact and would vote as a well-informed group. He further stated that the statutory intent would be for Pelican Bay and City voters to cast their ballots simultaneously rather than separately.

Attorney Humphrey further explained that the ultimate results of any of the three aforementioned case scenarios would be revenues exceeding expenses for the City and that it would be in the best interests of both the Foundation and the City for the effective date to be either December 31, 2006, or January 1, 2007, in conjunction with the end of a taxable year.

Vice Mayor Wiseman suggested obtaining a written legal opinion from Jeffrey Passidomo, legal counsel for the Foundation's Community Association, clearly expressing the Foundation's

authority: 1) to pursue annexation; 2) to assess Pelican Bay residents for the cost of fire service; and 3) regarding commercial property. Attorney Humphrey concurred that the Foundation should promptly provide the City with a legal opinion regarding the aforementioned issues.

In response to Council Member Price, City Attorney Pritt noted that ballot language is prescribed by Florida State Statutes. Council Member Price subsequently inquired as to the method for determining which of the three cases (see Attachment 6) submitted by the Pelican Bay Foundation would apply. City Attorney Pritt explained that the determination as to which case Council desired to pursue could be completed separately from the annexation ordinance.

Council Member Nocera expressed support for placing the annexation before the voters.

In response to Council Member Taylor, City Attorney Pritt indicated that he would prefer to review the three aforementioned options prior to offering an opinion. City Manager Lee offered to request that the City's annexation attorney, David Tolces, be present at the next meeting. Vice Mayor Wiseman expressed the view that Attorney Tolces should be present for every hearing regarding this matter.

Council Member Taylor characterized not including verbiage in the ballot language pertaining to the case selected by Council as taxation without representation. In response to Miss Taylor, Attorney Humphrey confirmed that the City could in fact assess the citizens of Pelican Bay should the Foundation decline to do so. He then stated that every property owner had received written notification of the annexation effort and its ramifications. Before the February City election, he added, each one would be afforded the opportunity to attend town hall meetings within Pelican Bay, as well as to receive written notification of any additional assessments and their ramifications. Council Member Taylor expressed concern that consent forms had been signed prior to the Foundation's submission of the proposals (Attachment 6). Attorney Humphrey clarified that the consent forms request an opportunity to vote on the matter. He then stated that there had in fact been significant due diligence, with disclosure to include the statutory provision for assessment.

Council Member MacIlvaine expressed the view that the ordinance before Council that day states that the voters, rather than Council, would determine whether to annex Pelican Bay and cited overwhelming support for a referendum that he had noted at a meeting of the Gulf Shore Condominium Association. Council Member MacIlvaine asserted that certain issues, such as reclaimed water, would not be resolved until after the ordinance is approved. Vice Mayor Wiseman stated that Council however had an obligation to ensure that any consent given is informed consent and suggested that language be incorporated into the ordinance stating that the effective date would be based upon achievement of certain interlocal agreements, and if not completed within a year of the vote, annexation would be rescinded.

Council Member Sorey asserted that Council's responsibility is two-fold: 1) determine whether to put the issue before the voters, and 2) provide the necessary information for the voters to make a well informed decision. He then concurred with City Manager Lee that interlocal agreement negotiations with North Naples Fire District (NNFD), Collier County and other entities would not occur until Council decides whether to place annexation on the ballot. Council Member

Sorey stated that he was committed to giving the voters of Pelican Bay and the City the opportunity to be heard on the issue on February 7.

Mayor Barnett explained that Council had, at a recent workshop, attained a consensus not to exempt Pelican Bay from the 42-foot height restriction that applies to commercial buildings in the City. Vice Mayor Wiseman however pointed out that the Foundation had, in its recent correspondence (Attachment 6), urged the City to place annexation on the ballot without stipulations about height restrictions. City Attorney Pritt however recommended against noting the height restrictions in the annexation ordinance which, he said, could cause confusion. In response to Council Member Price, he also said that, for simplicity, the draft ordinance also did not include the options recently provided by the Pelican Bay Foundation, although election of a specific case could be embodied in a separate resolution.

Council Member Taylor expressed the view that the third “Whereas” clause in the draft ordinance indicates that Council advocates annexation and requested that the verbiage be revised. City Attorney Pritt explained that in drafting the ordinance he had varied minimally from statutory language. Council Member Sorey disagreed with an assertion that Council had become an advocate for annexation, noting that each Council Member had one vote, as do members of the electorate. Council Member Taylor nevertheless urged Council to make it clear that it is not advocating annexation. Mayor Barnett asserted that Council is not advocating for or against annexation, only that it should be presented to the voters to decide. City Attorney Pritt stated that he would review the clause in question to ensure that Council is not doing anything further than what is required by Florida Statutes.

In response to Mayor Barnett, City Attorney Pritt confirmed that the City and its Fire Pension Board are in litigation with North Naples Fire District (NNFD), and subsequently expressed the desire to schedule an attorney/client session for December 7 to discuss that matter.

Vice Mayor Wiseman pointed out that the annexation ordinance references the Urban Services Report (USR) as the basis for the determination that annexation is in the best interest of the City and its residents, however, the USR contemplates the City, after four years, providing fire service and Collier County continuing provision of reuse water to Pelican Bay for irrigation. Therefore, she said she feared that several of the assumptions would be incorrect assuming that the ballot language references the annexation ordinance, which references the USR, therefore causing confusion. City Attorney Pritt offered to revise the “Whereas” clause to include other items as well as the USR, which must be considered.

In response to Council Member Taylor, City Attorney Pritt expressed the view that annexation is not dependent upon entering into interlocal agreements, and that referencing an enumeration of such agreements in the ordinance would be unnecessary. Miss Taylor then inquired as to whether the USR could be revised to indicate unknown variables, such as whether the County would continue to supply the reuse water, and that an agreement with NNFD was still pending. City Manager Lee expressed the view that the USR does in fact meet the statutory requirements. Of the three options discussed earlier in this item regarding fire service (Attachment 6), he explained, the first (retaining NNFD indefinitely with the City and Pelican Bay sharing the annual cost) had been a default option discussed with NNFD prior to compilation of the USR and had been included in the USR. Florida Statutes dictate what occurs as a result of an inability to

reach an agreement with NNFD, he added, and expressed the view that, unless City Attorney Pritt determined that the language in the third “Whereas” clause requires revision, it would be unnecessary to amend the USR, which contains all information that had been available at that time.

Public Comment: (12:17 p.m.) **John Domenie, 749 Bentwater Circle #20**, declined to speak when called. **Peggy Hanson, 800 L’Ambiance Circle**, noting that she had resided in Pelican Bay more than 15 years, expressed concern regarding numerous unanswered questions relative to annexation. The Pelican Bay Post, which she said had been controlled by the Pelican Bay Foundation Board of Directors, had been a disappointment and the consent forms had been presented as a consent to further explore annexation, rather than consent for actual annexation. She then noted that only 10% of the commercial properties within Pelican Bay appeared to support annexation. Ms. Hanson estimated the Pelican Bay residential population to be 14,000. **Donald Spanier, 812 Pitch Apple Lane**, was absent when called. **Julie Frantzen, 669 Gulf Shore Boulevard North**, stated that she and her husband were opposed to annexation, and predicted that Pelican Bay residents would have a larger presence in City government than current City residents. She then inquired as to whether the beach, boardwalks, and parking in Pelican Bay would be accessible to City residents, expressing the view that it would be equitable for City residents to have access to all Pelican Bay amenities. Mayor Barnett advised that certain questions posed by Mrs. Frantzen had been previously answered and offered to provide a copy of the responses. **Attorney Laura Jacobs, special counsel for NNFD**, clarified that the NNFD Pension Board, a separate entity from the NNFD, is actually the entity in litigation with the City; Council Member MacIlvaine, noting his affiliation with the City’s Pension Board, concurred. Confirming that she had in fact previously stated that the NNFD could enter into an interlocal agreement following approval of the annexation ordinance, Attorney Jacobs noted however that no formal offer had yet been received for presentation to the NNFD Board of Directors. Nevertheless, the Board of Directors had consistently maintained that it could not enter into an interlocal agreement that charges Pelican Bay properties less than those in the remainder of the district. Additionally, Attorney Jacobs expressed concern that the City’s interpretation by special outside counsel is inconsistent in the assertion that Chapter 171, Florida Statutes, does not apply but that there is an option for the City to pay 1.000 mill to NNFD for four years, then install its own fire service. Attorney Jacobs expressed support for the option which she said had been previously proposed by NNFD, whereby the City would decrease Pelican Bay’s tax rate and Pelican Bay would continue to pay NNFD 1.000 mill for its services. Finally, Attorney Jacobs expressed the view that NNFD would be willing to consider an interlocal agreement. Mayor Barnett noted the presence of **Becky Pogan, NNFD Director of Finance**, to answer questions. **John German, 1885 Veterans Park Drive, NNFD Assistant Fire Chief**, expressed the opinion that, although City Council continues to seek answers, certain ones are prepared to place annexation on the ballot for the voters to decide. He urged Council to restructure the ordinance language for clarity purposes, and suggested drafting two ordinances, one including and another excluding fire protection. **Alan Horton, 7023 Greentree Drive**, noted that he is a Pelican Bay resident and former Naples Daily News editor. He stated that he had editorialized in favor of phased annexation, including Pelican Bay, and expressed the belief that because Naples is the heart of Collier County, what is good for Naples is good for the entire area. Former Mayor Edwin Putzell, he said, had believed that without phased annexations, the City would be diminished over time by growth outside, ultimately dwarfing and isolating the City. He then likened the issues such as high-rises, height restrictions, commercial interests and beach access

to those pertaining to the previous Park Shore annexation. Likening Pelican Bay annexation to a corporate merger or acquisition, Mr. Horton noted that the following must be considered: 1) whether the City would financially benefit from the annexation; 2) whether it would be a strategic opportunity; 3) whether annexation would provide efficiencies; 4) whether annexation would provide a competitive advantage; and 5) whether the two entities are culturally compatible. He then expressed the view that the City would greatly benefit from annexation, and urged Council to place the matter on the ballot. Mr. Horton expressed assurance that not all questions would be answered prior to the vote because, even with the most extensive due diligence, unexpected issues arise. **Orly Stolls, Operations Chief of NNFD**, offered to respond to any operational questions that Council might have for NNFD, including the current level of service provided to Pelican Bay residents versus the level of service being proposed. **Frank Messana, 17382 Castle Harbour Drive**, and **Allan Grossman, 633 Bridgway Lane**, declined to speak when called. **Pat Barton, 605 Palm Circle East**, expressed support for annexation, stating that it would be both economically and philosophically beneficial for both entities. She then expressed the desire for Council to inform City and Pelican Bay residents and afford them the opportunity to vote on the matter. **John Iazzo, 6573 Marissa Loop #1902**, said that he had been a full-time resident of Pelican Bay for ten years and urged that Council allow Pelican Bay and City residents to vote on annexation. He then predicted that Collier County's population would one day exceed one million and stated that as the County grows, so must the City. **Ted Raia, 7117 Pelican Bay Boulevard**, noting service with the Pelican Bay Property Owners Association and the Pelican Bay Service Division, said that he supported annexation. He said that former Mayor Bonnie MacKenzie had in 2003 expressed support for Pelican Bay annexation. Annexation, he added, is about governance, rather than fire services, police protection or landscaping and predicted that Pelican Bay would become a major asset to the City. He noted that Pelican Bay had a solid infrastructure, and that numerous residents of Pelican Bay volunteer for nonprofit activities. He requested that the annexation ordinance be submitted for referendum and noted that the 42-foot height restriction is not an issue because Pelican Bay would obey all City ordinances. **Libbie Bramson, 353 Carlton Place**, noting that she had been a full-time resident of Pelican Bay since 1999, stated that the City represents a well-run community, professionally managed, and whose City Council represents the interests of all residents. She then explained that Pelican Bay Foundation is Pelican Bay's master homeowners association and, as such, is the primary spokesperson for residents. Should annexation occur, she said that: 1) Pelican Bay would become a seamless integrated part of the City; 2) Pelican Bay residents, as citizens of Naples, would be subject to its rules and regulations; 3) the City would be responsible for all permitting and land development regulation; and 4) the Foundation would continue to operate and maintain foundation-owned private property such as the tennis courts and beach trams. After annexation, she added, the City would interact with the Foundation in the same manner that it interacts with other homeowner associations throughout Naples. She then urged Council to pass the ordinance to place annexation on the ballot in February. For Pelican Bay, the issue of responsive, responsible governance is an overriding concern, she continued. For Naples, annexation represents: 1) the addition of a \$4.8 billion tax base; 2) operating gains of up to \$45 million across a ten-year period; and 3) an increased share of State and federal funding. **Merlin Lickhalter, 6825 Grenadier Boulevard**, noted that he and his wife are full-time residents of Pelican Bay and that he is the United Arts Council representative on the City's Public Arts Advisory Committee. He pointed out that the City of Naples is responsive to the desires of the community and that the Cap D'Antibes and County irrigation water lawsuits had been filed to protect the rights of the citizens of Pelican Bay. He further asserted that the Pelican

Bay Foundation, which had paid the legal fees for the annexation process and obtained the property owners' consent for annexation, would be responsible for 100% of any legal fees for lawsuits, whether ongoing or future. Mr. Lickhalter subsequently requested that Council approve the ordinance and allow annexation to be voted on by the community. **Martha Dykman, 5040 Seashell Avenue**, expressed continued support for annexation. She said that there would be no impact on City facilities because Pelican Bay has provided its own facilities and in fact contains more beach access than any community other than the City of Naples. She also asserted that 5,000 Pelican Bay registered voters could not overtake the City, which has 15,000 registered voters. She urged Council to allow the people affected by annexation to make the decision by placing it on the ballot for the February election. Mrs. Dykman subsequently expressed the view that Council Member Taylor and Vice Mayor Wiseman had at the onset made their decision as to whether to support annexation. In response to Mrs. Dykman, Vice Mayor Wiseman asserted that she had in fact maintained an open mind and continued to seek answers that she had not yet received. Council Member Taylor added that Pelican Bay funds renourishment of its beach because the State considers it a private beach; therefore, there is no beach access. **Ross Obley, 802 Slashpine Court**, a Pelican Bay resident, reported that he had been responsible for the development of Pelican Bay for Westinghouse, as well as Pelicans Nest and Gateway in Lee County. He then expressed the desire that Pelican Bay become part of the City of Naples. Although numerous meetings and symposia had occurred over a number of years regarding the most attractive and appropriate governance for Pelican Bay, he said, this had been the first time that there had been substantial communitywide agreement. Joining with the City of Naples would be appropriate for Pelican Bay and the City, he added, since both have related issues and similar demographics. Mr. Obley expressed the views that Collier County government had restricted and attacked Pelican Bay residents and that Pelican Bay and the City are at risk for detrimental County intrusion unless they join together. **Gerhard Seblatnigg, Chairman of the Pelican Bay Foundation**, apologized for the untimely submission of a document the previous day (Attachment 6) and attributed the delay to Hurricane Wilma. He then said that he had suggested that the City, Pelican Bay Foundation, and NNFD cooperatively negotiate a solution. Regarding the three proposals, he explained that the first had been contained in the USR; the second being an alternative of cost sharing; and the third had been in response to Council's concerns regarding a potential deficit due to annexation. Mr. Seblatnigg advised that it had never been the Foundation's intent to assess its members for fire protection, rather that the City would do so. Any arrangement made between the City and NNFD would be submitted to Pelican Bay residents, with an explanation of cost implications, and they would then be urged to vote for annexation. In response to Council Member Taylor's earlier comment, he stated that, like the remainder of the entire State, Pelican Bay beaches are not private. The renourishment issue, he added, had to do with the distance from public access, not whether the beach was private or public. **Henry Kennedy, 1580 Pelican Avenue**, took the position that the same questions had been asked for six months with no answers forthcoming; issues include cost of annexation and beach access. He then indicated that he was undecided regarding annexation, although he supported the voters deciding the matter. Mr. Kennedy nevertheless expressed the desire that the vote be delayed until the necessary information, including legal issues, had been provided. History, he added, had indicated that when voters are uncertain, they vote in opposition.

In further response to Council Member Taylor, Mr. Seblatnigg explained that of the five boardwalks in Pelican Bay, two are private and three are public. Of the three public boardwalks,

the Registry Resort and the County share one, a second is located at the Ritz-Carlton, and the third is located in the north parking lot; the Foundation members own the two private boardwalks in the center of Pelican Bay. He then stated that access to the Ritz-Carlton boardwalk is limited to guests of the hotel and restaurant. If annexed, the private boardwalks would remain private, Mr. Seblattnigg said.

In response to Mayor Barnett regarding Case 3 of the scenarios provided by the Foundation (Attachment 6), Mr. Seblattnigg stated that he presumed that fire protection would be assessed by the City Council, and would continue to be included in property tax bills.

In response to Council Member Taylor, Vice Mayor Wiseman confirmed that the County was required to approve expansion of the Planned Development (PD) for the Waterside Shops and expressed uncertainty as to the plans for constructing a parking garage in that location. She then clarified that the City's sole involvement had been to consider the impacts on City streets.

Council Member Taylor inquired as to whether the County owned the parking lot south of the Registry, at Clam Pass. City Manager Lee confirmed that the County owned the two entryways, and explained that, should annexation occur, according to special legal counsel David Tolces, the County would retain responsibility for maintaining the entryways. Council Member Taylor further inquired as to whether the annexation of Pelican Bay would preclude the County's constructing a parking garage at Clam Pass, and City Attorney Pritt advised that prior to construction, the County would be required to obtain City building permits. Vice Mayor Wiseman predicted that the County would most likely then obtain a County permit prior to the effective date of annexation. Council Member Sorey requested that the issue be researched and a legal opinion proffered as to the implications of constructing a parking garage.

Council Member Sorey also noted that Council had previously conceded that the 42-foot height restriction would apply to Pelican Bay, and that current beach access would not be modified. He then stated that beaches belong to the State, and there is no preclusion from anyone walking on any beach. He then stated that, although the City would financially benefit from the annexation, due diligence must be completed prior to Council voting on a properly prepared ordinance.

Mayor Barnett said that he had consistently maintained that the voters should determine whether to annex Pelican Bay, and that every question be answered if possible, although certain questions would, however, continue to be unanswerable. He then requested that City Manager Lee and staff submit a proposal to NNFD that would be acceptable to the City. Mayor Barnett anticipated that first reading of an annexation would occur two weeks hence. In response to Vice Mayor Wiseman, Mayor Barnett stated that the City's special counsel would be present at the next meeting to respond to such issues as the secession date of fire service. City Manager Lee stated that special counsel David Tolces, having previously referenced the date of the NNFD special act as well as the date the statutes became effective, had opined that the matter would require determination by a third party such as the courts. He then said that he would request that Attorney Tolces further clarify his legal opinion at the next meeting.

Although Mayor Barnett and various Council Members concurred that a written offer of .5 mill should be proffered to NNFD, Council Member Taylor asserted that the written offer should mirror that which is contained in the USR.

City Manager Lee advised that he would provide Council Members with Attorney Tolces's legal opinion regarding feasibility of establishing two fire taxing districts, one for the City and one for Pelican Bay. City Attorney Pritt agreed that establishing two fire taxing districts would require a special assessment rather than a tax. City Manager Lee indicated that while ad valorem tax must be consistent for all City residents, various special assessments could be based on the selected items, such as fire service. Council Member Nocera stated that he had always contended that the problem would be solved if Pelican Bay were willing to pay an extra millage amount. City Attorney Pritt cautioned against characterizing something as an assessment that is actually a tax. City Manager Lee stated that special assessments would be based upon the number of residential and commercial units rather than market value of property. Council Member MacIlvaine asserted that City residents would not tolerate this option because if property taxes were assessed based upon a fixed rate rather than property value, all City residents would pay the same rate.

Consensus for staff to: 1) expeditiously obtain the opinion of special legal counsel regarding three options for fire protection submitted by the Pelican Bay Foundation (See Attachment 6); 2) request the presence of City's annexation attorney, David Tolces, at the 11/16/05 Regular Meeting; and 3) submit a written offer of .5 mills to the North Naples Fire District.

MOTION by Sorey to CONTINUE FIRST READING OF THE ORDINANCE TO 11/16/05 REGULAR MEETING, AT 1:00 P.M. *This motion was seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).*

PUBLIC COMMENT.....

(1:34 p.m.) **Andrew Dickman, Conservancy of Southwest Florida**, noted that a 2004 referendum had overwhelmingly supported raising \$40 million for County purchase of 166 acres known as the Caribbean Gardens/Zoo (Fleischmann Property); a Blue Ribbon Committee had envisioned a central park connecting to the Conservancy's parcel. The Fleischmann family, having been unable to reach an agreement with the County as to price, had accepted an offer from the Trust for Public Lands (TPL) in the amount of \$67.5 million, understanding that the County would purchase 130 acres, and that other parcels would be sold to private parties, one of which contains seven acres directly west of the Conservancy's holdings. In response to TPL, the Conservancy indicated that it would be interested in purchasing the property, Mr. Dickman said, the organization desiring to preserve the upland scrub and an estimated 70 active tortoise burrows, as well as integrating the Blue Ribbon Committee's concept of a central park, and creating public access to the Gordon River and to Goodlette-Frank Road. He however expressed concern that Collier County had indicated a desire to purchase the same parcel for affordable housing. TPL, he said, had expressed concern that if it did not agree to sell the seven acres to the County, the County might refuse to also purchase the larger parcel of 130 acres. Mr. Dickman therefore requested that the Council encourage the Board of County Commissioners (BCC) to terminate its interest in affordable housing, allowing the Conservancy to purchase the seven-acre parcel, and to support the Blue Ribbon Committee's vision of a central park. In response to Mayor Barnett, Mr. Dickman stated that the County had offered TPL \$4 million, the same offer as made by the Conservancy.

Mr. Dickman confirmed for Council Member Taylor that the Conservancy had agreed to provide public access to the Gordon River, whereas public access would be restricted should the County

purchase the property to construct affordable housing. Council Member Taylor inquired as to whether a Council resolution could be drafted. Council Member Sorey suggested drafting a letter, recommending that the parcel be sold to the Conservancy for public access and conservation; Council Member MacIlvaine concurred. Vice Mayor Wiseman, noting that she supported Mayor Barnett conferring with Collier County Commissioner Fred Coyle on the matter, cautioned against taking formal action with insufficient information and expressed the view that doing so would convey to the public that the City does not support affordable housing.

In response to Council Member Sorey, Mr. Dickman expressed the view that the County had selected the parcel in question, as opposed to other available parcels, because TPL had sold other parcels for higher than market value, enabling it to reduce the price of this parcel to within an amount that the County could accommodate. Council Member Taylor noted that the Blue Ribbon Committee had expressed disappointment that the County would consider purchasing the parcel in question for affordable housing.

In response to Mayor Barnett, City Manager Robert Lee reported that he had in fact contacted County Manager Jim Mudd the day before regarding the matter, and that Mr. Mudd had indicated that the County was considering purchasing the seven acres for less than 100 units of affordable housing and that the Conservancy's offer had been less than the value of the land.

Vice Mayor Wiseman subsequently expressed support for Mayor Barnett drafting a letter stating that: 1) Mr. Dickman had come before Council expressing concern regarding purchase of the seven acre parcel; 2) Council Members are concerned about the matter; 3) Council would appreciate being kept apprised of BCC's intentions; and 4) that City Council in no way objects to affordable housing. Council Member Sorey recommended that correspondence indicate that City Council desires that the County acquire land for affordable housing elsewhere. Council Member Taylor asserted that the issue is public access to land that 73% of the entire County had voted to preserve for open space, rather than affordable housing. In response to Mayor Barnett, she confirmed that the letter should primarily address the aforementioned information. Council Member Price expressed the view that many issues that had previously been responded to via correspondence should have been discussed in conversations, and supported Mayor Barnett conferring with Commissioner Coyle.

During further discussion, the following consensus was reached:

Consensus for Mayor Barnett to convey to Collier County Commissioner Fred Coyle Council's position recommending that a certain seven-acre parcel within the Caribbean Gardens/Zoo (Fleischmann Property) be sold to the Conservancy for public access and conservation of said property and that it not to be used for affordable housing as proposed.

CORRESPONDENCE AND COMMUNICATIONS.....

Council Member MacIlvaine provided eminent domain ordinance language (Attachment 7) to City Attorney Robert Pritt, while requesting that it be reviewed and considered for implementation. Mayor Barnett concurred with Council Member Sorey's recommendation that it be discussed at a future workshop.

Mayor Barnett reported that Stanley Cann, District One Secretary, Florida Department of Transportation, would that day be announcing that the funding had been received to expand I-75 to six lanes from Naples to Fort Myers.

City Manager Robert Lee confirmed for Council Member Nocera that staff would be reviewing fence heights.

Council Member Nocera, noting the recent hurricane, urged that discussions resume with Florida Power & Light (FPL) regarding undergrounding electric power, perhaps completing a section at a time. He further recommended that residents of Royal Harbor and Aqualane Shores be informed of their options. Mayor Barnett expressed the view that discussions could not resume until FPL finishes storm clean-up, and requested that staff investigate funding methods for undergrounding electric power. Council Member Sorey noted that the City had not yet received the information promised by FPL representative Grover Whidden some six weeks prior. City Manager Lee pointed out the special assessment procedure previously approved by Council, and said that he believed the Royal Harbor subdivision had been pursuing funding via that process. Also, in assessing viability for undergrounding, FPL considers each area individually, determining barriers and availability of rights-of-way, he added.

In response to Council Member Nocera, City Attorney Pritt reported that the matter involving the Travalia quit claim deed had been referred to another attorney due to a conflict of interest involving Roetzel & Andress. However, he said that he understood that Dr. Silvio Travalia's legal counsel had not yet completed the necessary work.

Council Member Nocera asked whether removal of vegetative debris from waterways could be expedited. City Manager Lee said he would confer with staff, and that areas involving safety issues would be addressed immediately.

Council Member Nocera suggested acquiring a new dais for the Council Chamber along with implementing electronic transmission of meeting packets. City Manager Lee pointed out that converting to electronic packets would be a policy decision to be made by Council, noting that, when previously considered, there had been a difference of opinion in this regard. Council Member Taylor requested that staff obtain information regarding reading speed of paper versus electronic documents. Council Member Nocera also indicated that the current configuration of the Council Chamber entryway allows for meetings to be disrupted and urged renovation of Council Chamber to correct this problem through addition of an anteroom of some type. Mayor Barnett expressed doubt that this would be effective.

City Manager Lee commended staff for exemplary recovery efforts following Hurricane Wilma.

ADJOURN
2:02 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Elizabeth Rogers, Recording Specialist

Minutes Approved: 12/07/05

City of Naples



NAPLES CITY COUNCIL AGENDA MEMORANDUM

CONSIDER FENCE AND WALL WAIVER PETITION 05-FWW4 FOR PROPERTY LOCATED AT 266 15TH AVENUE SOUTH IN ORDER TO PERMIT A 10' 4" WALL IN THE SIDE SETBACK AREA ALONG THE SOUTH PROPERTY LINE

MEETING OF NOVEMBER 2, 2005 - QUASI-JUDICIAL - AGENDA ITEM 8
CONTINUED FROM OCTOBER 5, 2005 REGULAR MEETING

SUBMITTED BY CITY MANAGER DR. ROBERT E. LEE 

RECOMMENDATION: City Council deny Fence and Wall Waiver Petition 05-FWW4 for the proposed wall.

AUTHORIZATION: Section 110-37(e)(2) describes the criteria and process for a Standard Waiver from Fence and Wall Requirements.

BACKGROUND: The subject property is located in the R1-10 district on the southwest corner of 15th Avenue South and 3rd Street South. The subject property obtained a building permit to construct a north facing home with a patio, koi pond and wall on the south side of the property. Prior to permit approval a letter was submitted from the adjacent property owner to the south indicating their permission to construct a wall that exceeds the height permitted by code along the south property line. After construction of the wall and house had commenced, the height of the wall was brought to the attention of the Community Development Department. In checking the records and investigating how the plans had been approved, it was determined that the wall height had been approved in error and that the wall must be reduced in height or a waiver would be required. Despite the error in approving the plans and the letter from the adjacent property owner, there do not appear to be unique circumstances that would warrant the granting of the waiver. The recommendation for denial of this waiver is based on a lack of consistency with the standards for fence and wall waivers or unique conditions on this property.

FILE REFERENCE: 05-FWW4

PETITIONER: Mrs. Lavern Gaynor

AGENT FOR PETITIONER: Mr. John Remington - A. Vernon Allen Builder, Inc.

LOCATION: 266 15th Avenue South

ZONING: R1-10

PUBLIC NOTICE/COMMENT: The Planning Division mailed 69 notification letters to property owners within 500 feet of the subject site on July 14, 2005. Two letters have been received in response to the notice and are included with this petition. A letter from the adjacent property owner to the south was submitted at the time of building permit review.

CITY COUNCIL ACTION:



Memo

Community Development

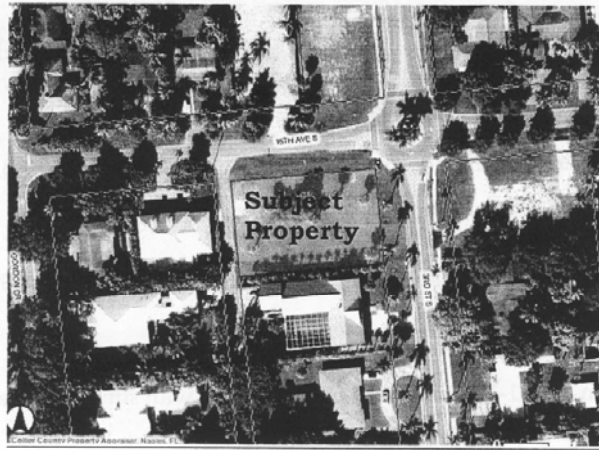
Building and Zoning • Planning • Code Enforcement • GIS

TO: Dr. Robert E. Lee, City Manager
FROM: Robin D. Singer, Community Development Director
DATE: August 8, 2005
SUBJECT: Fence and Wall Waiver Petition 05-FWW4
Gaynor Residence located at 266 15th Avenue South

Please find attached Petition 05-FWW4 for consideration of a waiver of the Fence and Wall requirements of Section 110-37 of the Naples Code of Ordinances. A staff report, location map, and standards for consideration of a waiver are also attached. If you have any questions or require additional information, please contact me. Thank you.

Ethics above all else... Service to others before self... Quality in all that we do.

05-FWW4
Page 2



05-FWW4
Page 3

Section 110-37(e)(2) of the Code of Ordinances outlines that certain fence and wall requirements may be waived due to special factors related to, but not limited to, the following:

1. Lot size:

The property dimensions are approximately 110' x 165' for a total of 18,150 square feet, or 0.4166 acres.

2. Lot orientation:

The property is a corner lot fronting on both 15th Avenue South and 3rd Street South with an alley to the rear (west).

3. Lot location:

The property is in the R1-10 district and is surrounded with similar single family homes.

4. Orientation and design of structures on the lot:

A new single family home is under construction on the subject property. The home is designed to face north on 15th Avenue South. A porch, patio and large koi pond will occupy the south side adjacent to the wall. This area was designed to minimize the difference between the finished floor elevation of the home and the elevation of the patio.

5. Orientation and design of the wall:

The depth and design of the koi pond requires a fence or wall barrier at least 36 inches in height from the patio/planter elevation and at least 48 inches above outside adjacent grade. Code requirements limit the wall height to 6'-0" as measured from the outside grade. According to the petitioner's plans the wall at its highest point will measure approximately 5'-0" to 7'-0" feet above the inside patio/planter. While the petitioner's plans indicate a 10'-4" total height from the outside grade, staff measured a maximum height of less than 10'-0". A reduction of 2'-0" to 4'-0" could be accomplished to meet the barrier requirements and bring the wall into compliance with code.

05-FWW4
Page 4

According to Section 110-37 of the Code, the following factors are to be considered by City Council in granting a waiver from fence and wall requirements:

1. Safety:

The permitted 6'-0" wall height would provide adequate security as on any property in the City.

2. Visual impact:

The proposed wall drops in height as it extends towards 3rd Street South and the alley on the west side of the property. The visual impact on the adjacent property is significant.

3. Design:

The wall is a stucco finished concrete block structure. Caps have been provided on the east and west ends of the wall where the height is reduced. There is no added visual interest. The agent for the petitioner proposed to plant a dense vine to reduce the impact of the wall. However, there is not enough space to allow plantings that will reduce the perceived height or impact of the wall.

4. Impact on ingress and egress:

The wall is proposed along an interior side lot line and is setback from either the east and west property lines. No impact on ingress or egress is anticipated.

5. Screening/buffering:

Plantings, consisting of a dense growing vine, are proposed on the outside of the wall. As stated above, this will not be adequate to diminish the impact of the wall. The wall faces the side of another single family home where buffering requirements would be minimal.

6. Compatibility:

Staff did not observe similar walls in the area. This wall does not appear to be compatible with development in the area.



1025 FIRST AVENUE SOUTH
NAPLES, FL 34102

AIA 000 3662
239-281-8949
FAX 239-281-6163

FACSIMILE COVER SHEET

DATE: 7-9-04
TO: PAUL BOLLENBACK; CITY OF NAPLES
FROM: JOHN G
PROJECT NAME: MRS. L. GAYNOT-RESID PROJECT #: GA: 0924

- RECIPIENT'S FAX PHONE # 213-5025
- PAGES INCLUDING COVER SHEET 8
- PLEASE CALL (239) 261-6949 IF YOU DO NOT RECEIVE ALL PAGES
- COMMENTS:

PAUL;

WE ARE AWARE OF THE FENCE ORDINANCE AND NEED SOME HELP AND/OR DIRECTION.

THE DIFFERENCE FROM NATURAL GRADE TO THE FIN. FLOOR IS 6'-6 1/4" !

A PHOTO OF THE NEIGHBOR TO THE SOUTH IS INCLUDED TO ILLUSTRATE THE SITUATION. THIS NEIGHBOR HAS REQUESTED OUR DEALING WITH THE PRIVATE WALL AS SHOWN IN SKETCH "OPTION 1".

PLEASE DIRECT US AS TO THE "PLANNING DIRECTORS" RECOMMENDATION FOR US TO PROCEED. (IE: ADMINISTRATIVE DECISION, VARIANCE, SUPPORT IT, AGAINST IT, ETC.). I'D BE HAPPY TO STOP-IN TO DISCUSS IT.

THANKS! JG

cc: A. VERN ALLEN

Petitioner's
Exhibit 1

11/2/05

7 pp.

MICHAEL T. LENZ
1544 3RD STREET SOUTH
NAPLES, FLORIDA 34102

June 23, 2004
Mr. Marty Conant, Building Office
City of Naples Building Department
295 Riverside Court
Naples, Florida 34102

Re: Privacy wall on shared (side) property line

Dear Mr. Conant,

Yesterday we met our new neighbor, Mrs. Lavern Gaynor and her contractor, landscape architect and architect. We appreciate her sharing the plans and expressing concern for features common to our property.

After discussing several options we feel we would request and support a taller side-yard privacy wall between our properties, as it is our preference as well.

Currently a 6'-0" tall wall from natural grade (elevation 5.2 NGVD) is allowed but too low for privacy and security due to a finish floor that is at elevation 11.0' and a low site.

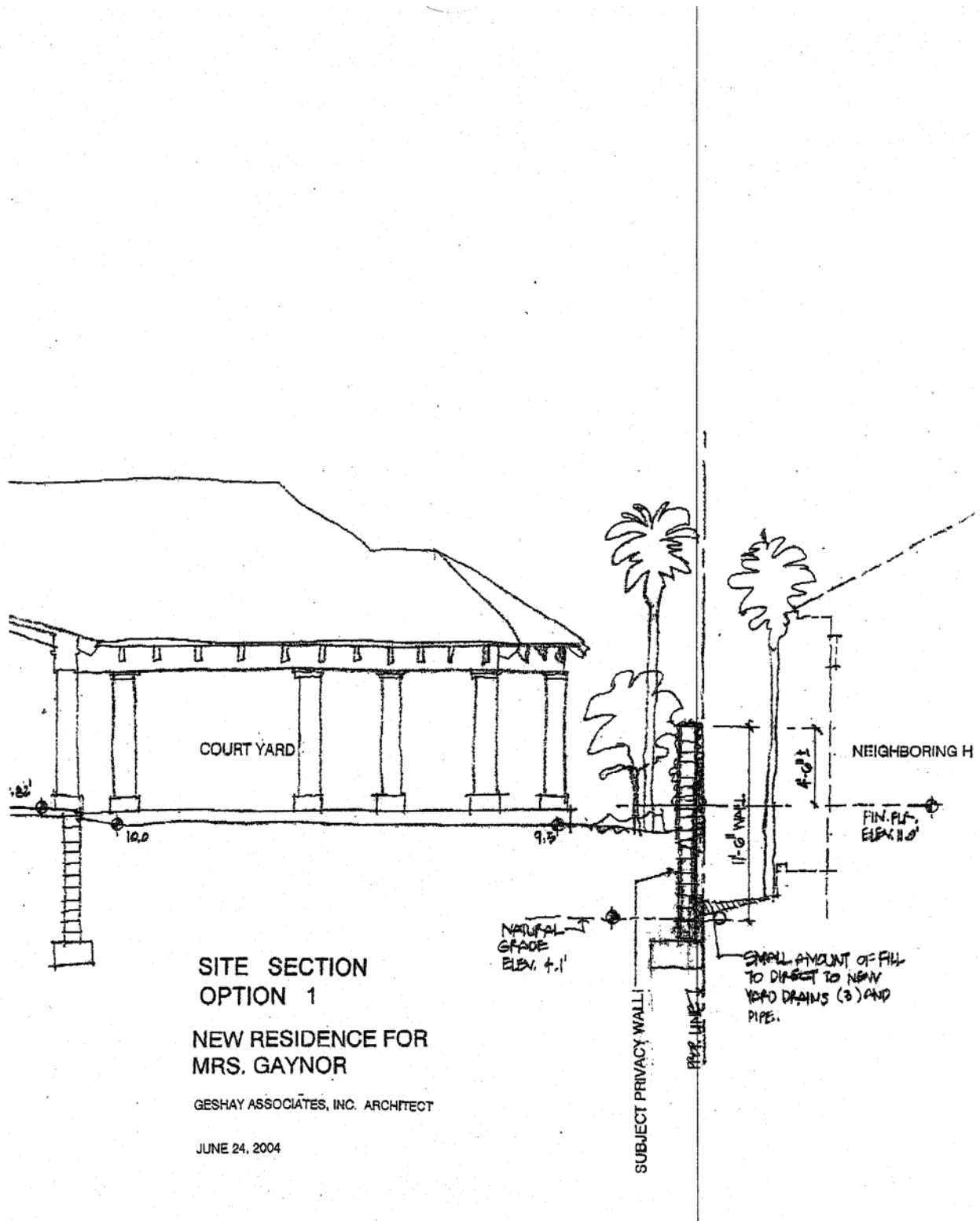
We actually would prefer a taller CBS wall at 11.5' above natural grade in lieu of lower walls, hedges and other high maintenance and evasive options. Part of the work for the wall would include yard drains to relieve the run off of water on our side to be directed to the alley.

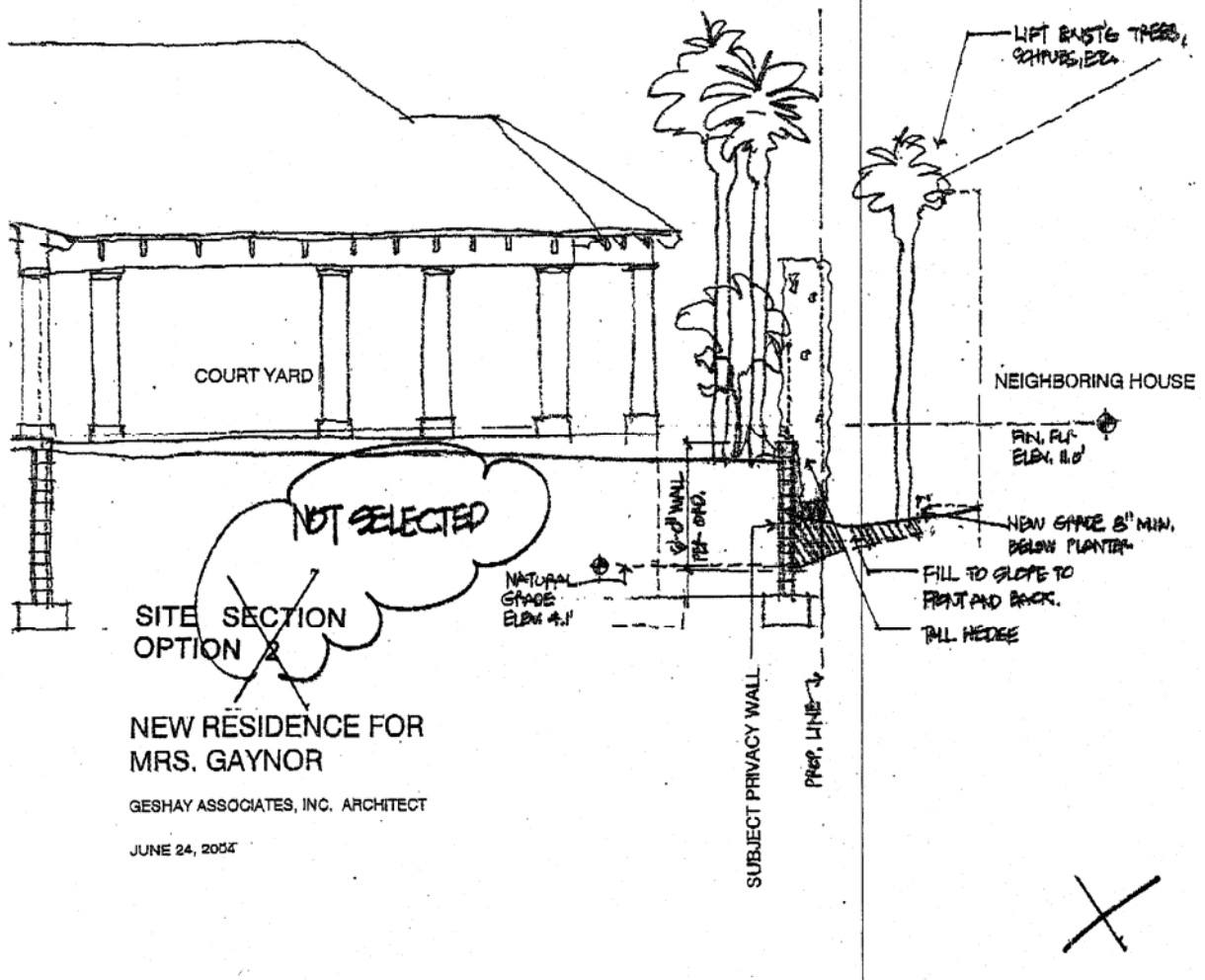
Should Mrs. Gaynor be required a decision by the City or even a variance for this wall we would support her pursuing it.

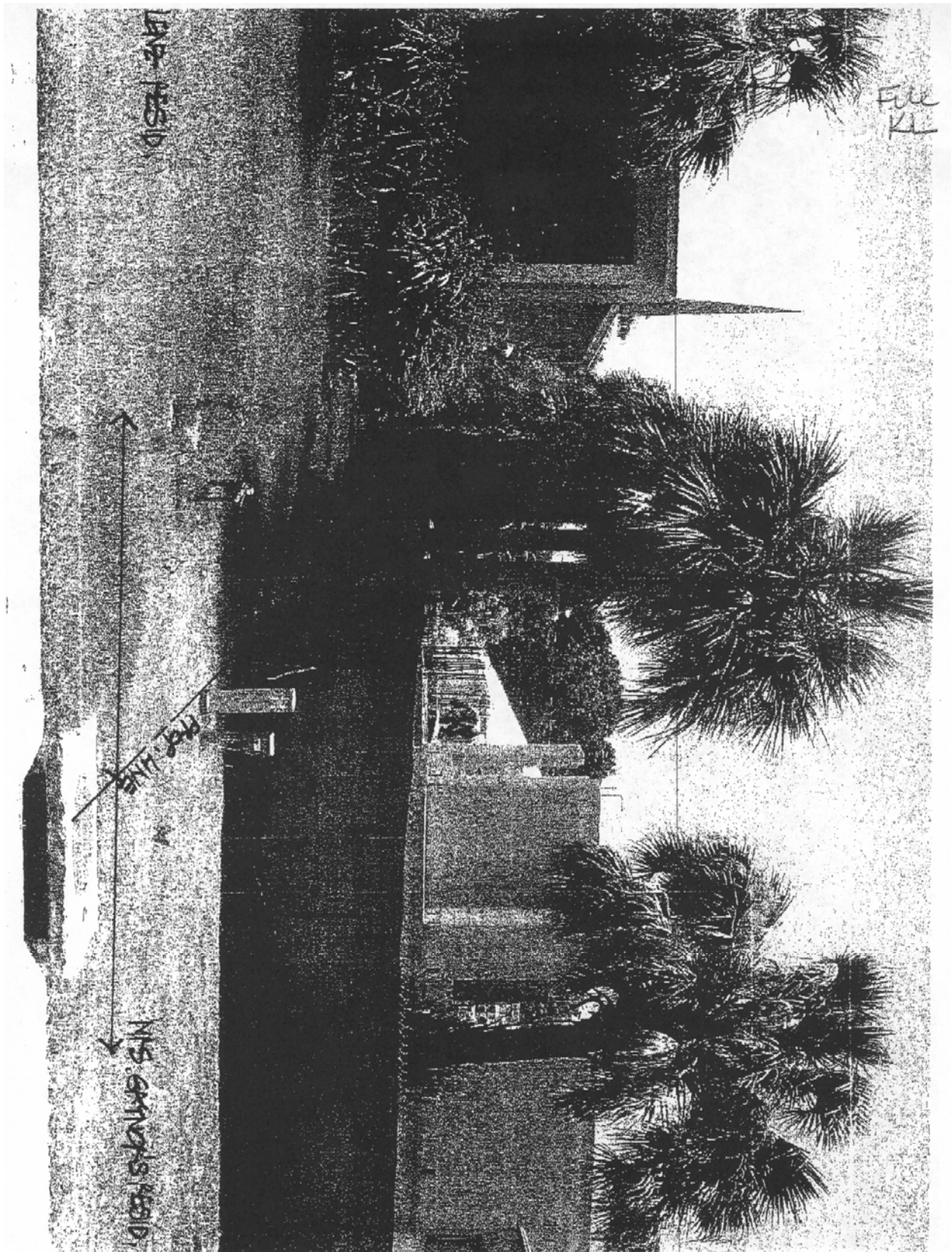
Sincerely,

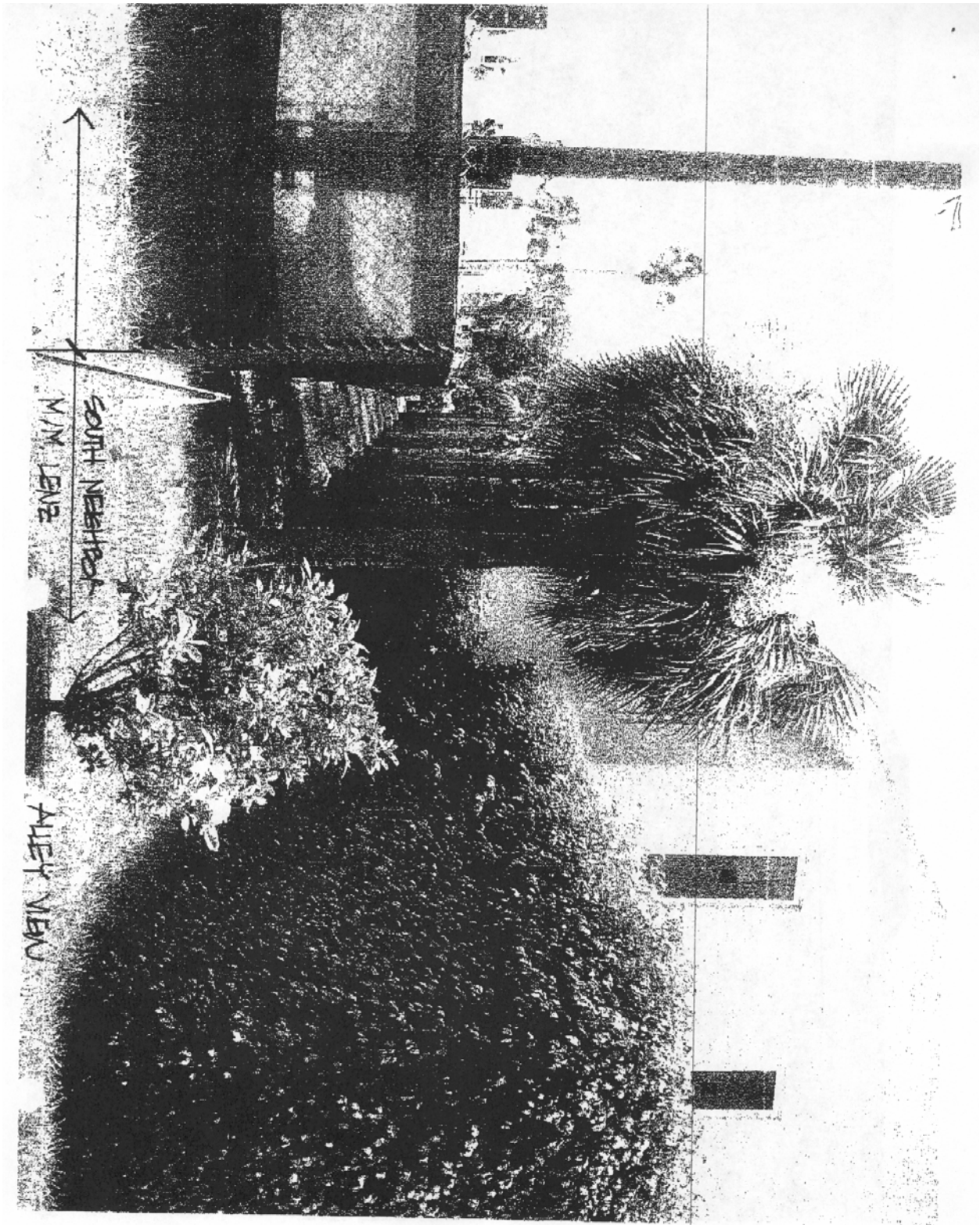


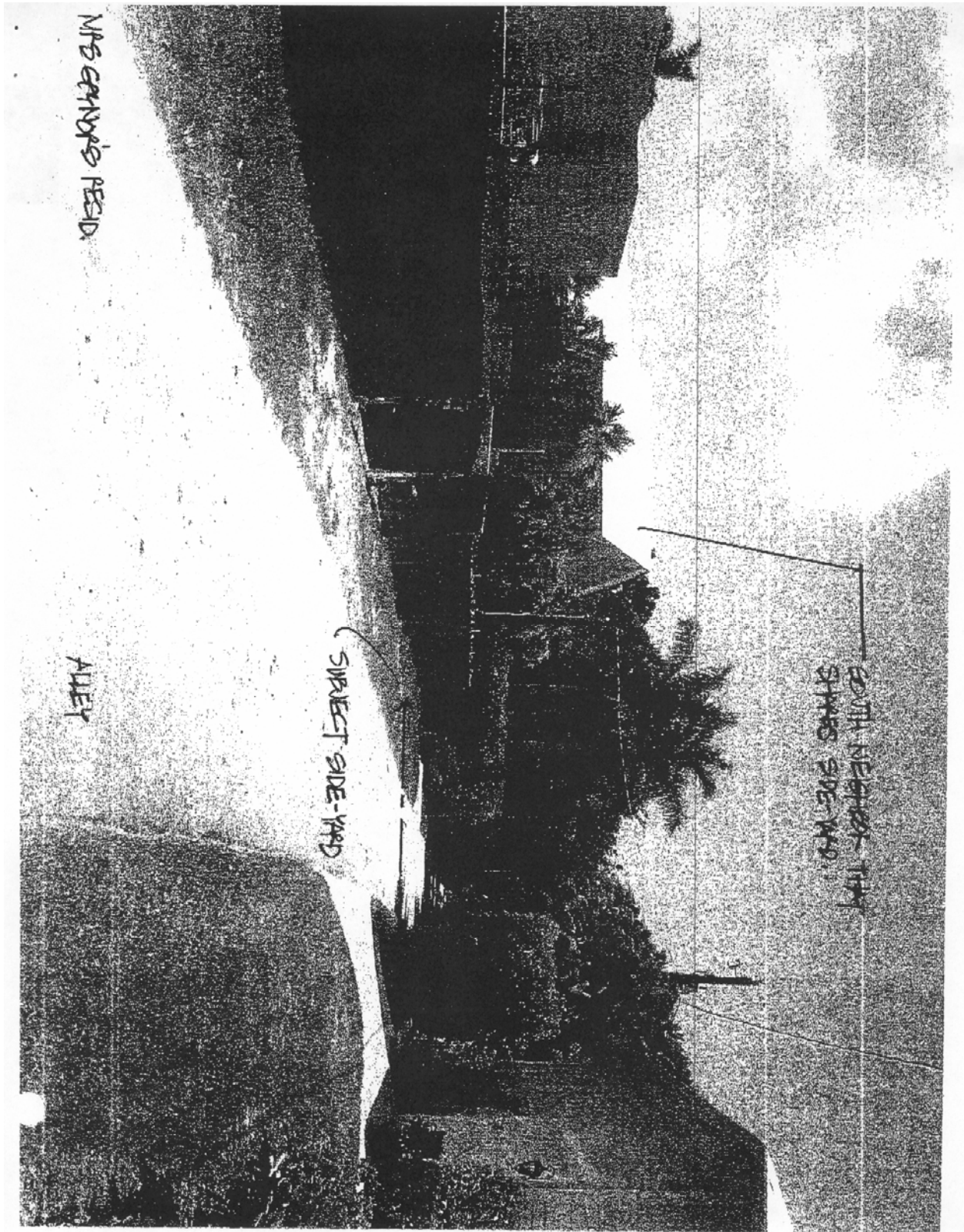
Michael Lenz













CITY OF NAPLES BUILDING PERMIT

Application Number 04-00402910 Date 8/24/04
 Pin number 404020
 Property Address 266 15TH AVE S
 FOLIO/PARCEL NUMBER: 01831760000
 Section-Township-Range: 09-50-25
 Tenant nbr, name GAYNOR, LAVERN
 Application description . . . FENCE/WALL
 Subdivision Name AQUALANE SHORES UNIT 3
 Property Use SINGLE-FAMILY RESIDENCE
 Property Zoning R1-10 RESIDENCE DISTRICT
 Application valuation 30000

Owner	Contractor
GAYNOR, LAVERN N	A VERNON ALLEN BUILD-CGC008673
800 ADMIRALTY PARADE	1175 1ST AVE S
NAPLES FL 341020000	NAPLES FL 341026212
	(941) 261-5300

----- Structure Information CONCRETE BLOCK RETAINING WALL-125' LINEA-----

Fence Type	CONCRETE BLOCK EXPOSED	
Other struct info	COASTAL BUILDING ZONE	Y
	SEAWARD OF CCCL	CCCL (NO)
	FLOOD ZONE HAZARD AREA	AE-11 FLOOD ZON
	NOC REQUIRED (Y/N)	YES-082404
	PROP OWNRS ASSOC (Y/N)	N

Permit ACCESSORY STRUCTURE TYPE II
 Additional desc . . .
 Phone Access Code . 841791
 Permit Fee 70.00 Plan Check Fee . . . 10.50
 Issue Date 8/24/04 Valuation 0
 Expiration Date . . . 8/24/05

Qty	Unit Charge	Per	Extension
		BASE FEE	70.00

Fee summary	Charged	Paid	Credited	Due
Permit Fee Total	70.00	70.00	.00	.00

CONTRACTOR SIGNATURE

APPROVED BY BUILDING OFFICIAL
 ISSUED BY *[Signature]*

Petitioner's Exhibit 2 11/2/05



CITY OF NAPLES
BUILDING PERMIT

Application Number	04-00402910	Page	2
Pin number	404020	Date	8/24/04
Plan Check Total	10.50	10.50	.00
Grand Total	80.50	80.50	.00

CONTRACTOR SIGNATURE

APPROVED BY BUILDING OFFICIAL
ISSUED BY



1

Koi Pond with Wall (yellow house next door)

Petitioner's Exhibit 3
11/2/05 7 PP



2
Koi Pond with Wall (yellow house next door)



3
From Alley - Wall hidden by vegetation





5
From 3rd Avenue S. - Adjacent neighbor to
left, wall, Gaynor Home on right





FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME WISEMAN, TAMELA EADY	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Naples City Council
MAILING ADDRESS P.O. Box 460	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY Naples	COUNTY Collier
DATE ON WHICH VOTE OCCURRED 11/2/05	NAME OF POLITICAL SUBDIVISION: City of Naples
	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTERESTI, Tamela Wiseman, hereby disclose that on 11/2, 2005:

(a) A measure came or will come before my agency which (check one)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☒ inured to the special gain or loss of my relative, husband John Wiseman;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Item 12 - Regular Council Meeting 11/2/05

Bayfront, Inc. opposed the petition. CORE Construction, of which my husband is President, has a contractual relationship with Bayfront, Inc., which could result in at least an appearance of a conflict.

Date Filed

11/2/05

Signature

Tamela Eady

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



Pelican Bay Foundation, Inc.

RECEIVED

NOV 01 2005

CITY MANAGERS OFFICE



October 31, 2005

Mayor Bill Barnett and Members of the Naples City Council
City Hall
735 Eighth Street South
Naples, FL, 34102

Dear Mayor Barnett and Council Members:

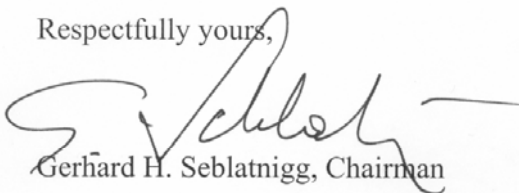
In recent City Council workshops and meetings during which annexation was discussed, concerns were expressed about a number of issues.

Please allow us this opportunity to address those concerns and to make some specific proposals.

Our comments are given on the accompanying sheets.

We continue to feel that annexation would be highly beneficial to both the City of Naples and Pelican Bay – a true "win, win" situation – and we urge the City Council to approve the ordinance of annexation and place the final decision in the hands of the voters.

Respectfully yours,



Gerhard H. Seblatnigg, Chairman



Kyle R. Kinney, President

Pelican Bay Foundation, Inc. • 6251 Pelican Bay Boulevard • Naples, Florida 34108
(239) 597-8081 • (239) 597-6802 FAX • E-Mail: memberservices@pelicanbay.org

FIRE PROTECTION

We know that some of you are concerned about the deficit that would result from the first 4 years after annexation.

The deficit would be due to the City's paying for continued service from the North Naples Fire District (NNFD) for this four-year period (Case 1 on the accompanying sheet).

The Pelican Bay Foundation offers for your consideration some alternatives that would eliminate this deficit.

The first alternative (Case 2 on the accompanying sheet) involves retaining NNFD indefinitely, with the City and Pelican Bay sharing the annual cost. With Case 2, **the \$4 million deficit would turn into a \$10 million surplus after 4 years and a \$31 million gain after 10 years** (based on the City's 8%/yr. growth model).

The second alternative (Case 3) involves replacing the NNFD with City service as proposed in the Annexation Report. In the Case 3 scenario, **Pelican Bay would cover the deficit during the 4-year transition period, resulting in a 10-year gain of \$31 million for the City.**

Both alternatives would be beneficial for Pelican Bay residents, whose resulting tax and service costs would be lower with the City than they are now with the County.

The Foundation endorses both of these plans as means to eliminate the four- year deficit resulting from annexation.

OPTIONS FOR FIRE PROTECTION

- Case 1 - Current City plan. City pays 1.000 mil to NNFD for four years, then installs its own fire service.
- Case 2 - 50/50 co-pay: NNFD fire service continues indefinitely. Pelican Bay continues to pay 1.000 mil in exchange for City tax reduction = ½ of NNFD cost.
- Case 3 - Pelican Bay covers deficit for 4 years, after which City installs its own fire service.

FINANCIAL IMPACT

	Cumulative City Gain/Loss (\$million)*		Cost Impact On Pelican Bay Residents**	
	<u>After 4 yrs.</u>	<u>After 10 yrs.</u>	<u>Remain In County</u>	<u>Annexed By City</u>
Case 1	-\$3.7	+\$27	\$ 10,212	\$ 9,663
Case 2	+10	+31	10,212	9,988
Case 3	0	+31	10,212	9,723

* Based on Pelican Bay Annexation Report, Attachment 5, 8%/yr. growth model. (Note that deficit is also eliminated in Cases 2 & 3 using other growth models.)

** Model based on 2005 taxes, \$750,000 property value, \$2,000 annual electricity bill and \$1,000 annual phone bill.

HEIGHT RESTRICTIONS

In past meetings, there has been a good bit of discussion about whether Pelican Bay should be exempt from the 42-foot height restriction that applies to commercial buildings in the City.

Most in Pelican Bay feel that there should be no exception. That is, if Pelican Bay is annexed, the height restriction should apply.

The Pelican Bay Foundation urges the City to stand firm and put annexation on the ballot with no stipulations about height restrictions.

GOVERNMENT CONFLICTS

There is apparent confusion about what the role of the Pelican Bay Foundation would be in City government if annexation occurred.

The Foundation is the master homeowners association of Pelican Bay. As such, it is the primary spokesman for the residents.

The Foundation is responsible for three things:

- 1) Managing and maintaining the common areas
 - Community center, beach restaurants, tennis courts, etc.
- 2) Providing community services
 - Foundation cards, guest passes, transportation, etc.
- 3) Enforcing the general and neighborhood protective covenants -largely zoning codes established by the original developer of Pelican Bay

As indicated in the Annexation Report, the City would be responsible: for all permitting and land development regulations.

The City would interact with Pelican Bay in much the same way it deals with other homeowner associations in the City.

There would be no conflict in matters of government.

LEGAL EXPENSES

We have heard over the past month or so that Pelican Bay is very litigious and that the City would have to pay its legal bills if it annexed.

Let us try to set the record straight.

We're not litigious at all.

The past two years have been very unusual.

Lawsuits filed by Pelican Bay during this period have been in response to outside threats -construction of a monstrous and incongruous building (Cap d'Antibes) and the county's threat to cut off irrigation water if we annexed.

We filed these lawsuits to protect our rights, as any community would have done.

We didn't start these actions. We responded to outside threats.

We also paid legal fees for moving the annexation process forward -that is, obtaining property consent, as required by Florida law.

All of these legal costs are the responsibility of the Pelican Bay Foundation, the master homeowners association of the community.

The City will not be saddled with legal fees for ongoing or future lawsuits brought by the Foundation. Those costs will be borne entirely by the Foundation.

Model Charter Provision or Ordinance for Local Governing Body

The following three provisions may be adopted as charter amendments to a municipal charter. The first and second provisions do essentially the same thing, while the third provision can be adopted separately or with either provision one or two. A number of cities are considering adopting provisions similar to the first and second types of provision. The language in the first model provision is modeled after the language of the statute that permitted the condemnations in the Kelo case. The third type of provision, prohibiting transfer to private parties, has been adopted by Mesa, Arizona.

Prohibiting Eminent Domain for Private Business

Notwithstanding any other provision of law, neither this City nor any of its subdivisions shall use eminent domain to take private property without the consent of the owner to be used for private commercial, financial, retail, or industrial enterprise, except that property may be transferred or leased (1) to private entities that are public utilities or common carriers and (2) to private entities that occupy an incidental area within a public project, such as a retail establishment on the ground floor of a public building.

Prohibiting Eminent Domain for Economic Development

Notwithstanding any other provision of law, neither this City nor any of its subdivisions shall use eminent domain to take private property without the consent of the owner to be used for economic development.

Economic Development--The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership, such as for a road, hospital or military base; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a harmful use of the land, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property.

Prohibiting Transfer of Condemned Property to Private Parties

Notwithstanding any other provision of law, private property acquired through eminent domain without the consent of the owner shall not be dedicated, sold, leased in substantial part, or otherwise transferred to a private person, partnership, corporation, or any other entity for a period of ten (10) years following the acquisition of the property by the City, except that property may be transferred or leased (1) to private entities that are public utilities or common carriers and (2) to private entities that occupy an incidental area in a public project, such as a retail establishment on the ground floor of a public building.

Prepared by the Institute for Justice
July 13, 2005