



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Workshop Meeting – October 30, 2006 – 8:30 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor (arrived 8:31 a.m.)

Absent:

Penny Taylor, Council Member

Council Members:

William MacIlvaine
Gary Price, II
John Sorey, III
William Willkomm, III

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Vicki Smith, Technical Writing Specialist
Stephen Weeks, Technology Services Director
David Lykins, Community Services Director
Joe Boscaglia, Parks & Parkways Superintendent
Ann Marie Ricardi, Finance Director
Tara Norman, City Clerk
Robin Singer, Community Development Director
Janet McCracken, Community Services Analyst

Henry Kennedy
Dorothy Hirsch
Sue Smith
Lois Selfon
Sharon Kenny
Dave Ball
Gary Kluckhuhn

Media:

Aisling Swift, Naples Daily News
Other interested citizens and visitors.

SET AGENDA.....ITEM 2

It is noted for the record that no changes were made to the agenda.

PUBLIC INPUTITEM 3

Dorothy Hirsch, 626 Regatta Road, expressed concern relative to public education regarding drainage issues and enforcement of construction site codes. **David Ball, 1655 Third Street South**, urged consideration of allowing emergency generator placement in side yard setbacks for existing homes. **Sue Smith, 11th Avenue South**, requested that the staff provide consistent notification of public meetings and also asked for a definition of what the City considers private property rights. In addition, she also urged fairness in code drafting and administration and questioned allowing the continued construction of mega-houses (homes that are constructed to the maximum allowable lot coverage). City Attorney Robert Pritt however pointed out that the marketplace had created the mega-house issue. He also responded to the effect that minimum requirements only are normally placed within codes, although in communities such as Naples, additional restrictions are often legislated locally. Council asked that City Manager Robert Lee

respond to the queries noted above at the regular meeting that week (November 1). **Sharon Kenny, 411 17th Avenue South**, noting that the concerns expressed by David Ball above indeed involve existing homes, reported that the Planning Advisory Board (PAB) discussions regarding proposed revisions relative to generators did not address that aspect of the issue.

COLLIER PARK OF COMMERCE (Proposed Annexation)ITEM 4

Community Development Director Robin Singer gave an electronic presentation, explaining that the Collier Park of Commerce Property Owners' Association had in June, 2005, approached the City expressing interest in annexation. (It is noted for the record that a printed copy of this presentation and exhibits pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.) The actual petition for annexation was received one year later. The Collier Park of Commerce is located west of Airport-Pulling Road, north of the municipal airport, and consists of approximately 112 acres occupied by offices and light industrial operations. Director Singer noted that an appropriate City zoning category must be established if the property were to be annexed and that some properties within the area are owned by Collier County. With reference to providing municipal services to the area in question, she said that a future upgrade of the City's fire station located at the Naples Airport would be necessary; otherwise, minimal impact would be realized where code enforcement and parks and recreation activities are concerned. Director Singer also said that because Collier Park of Commerce property owners have contracted for solid waste disposal, the City would assume that responsibility within a five-year period as existing contracts expired. She pointed out that the subject owners had agreed to, at their expense, resurface the roadway (Horseshoe Drive only, other roadways are privately maintained) within 18 months of annexation, with the City maintaining the roadway thereafter. The City provides water and the County provides sewer service to the area, she said, a factor that could be discussed if an interlocal boundary agreement were entered into by the two entities.

Finance Director Ann Marie Ricardi continued the presentation by addressing financial impacts of the proposed annexation, (Attachment 1) saying that revenue would include local taxes and franchise fees as well as telecommunication and required occupational license taxes. First year expenditures would include payment to the East Naples Fire District equivalent to the amount currently paid by the property owners in the annexation area and also the hiring of an additional City police officer. She also noted that because the area is made up of commercial properties annexation would not adversely affect the stormwater or streets fund. The water sewer fund, Ms. Ricardi said, would however be negatively affected due to the fact that the City's 25% surcharge for service outside the unincorporated area would no longer be imposed.

Director Singer concluded the presentation by saying that according to the State's newly adopted interlocal service boundary agreement act, the City must by resolution, respond to Collier County's initiating resolution by November 14.

Public Comment: (9:08 a.m.) **Lois Selfon, 71 12th Avenue South**, urged Council to halt all annexation, thereby retaining the small city character of Naples.

Citing the urban services report, Council Member Price said that it did not appear that this particular annexation would favor the citizens of the City, that in fact it appeared to cost the residents over \$500,000. He continued by expressing the view that it is unfair to have raised taxes in this fiscal year and ask present residents to bear an additional financial burden due to

annexation. In response, City Manager Lee provided the following explanations: 1) the majority of these properties are already developed; therefore additional revenue from new construction would not be forthcoming and 2) the millage rate for the East Naples Fire District is 1.5, which the City would continue to pay to the County for the first four years after annexation; the City's millage rate is however 1.245. City Manager Lee concluded by saying that annexation should be considered during the upcoming visioning process for the City. Council Member Sorey agreed, saying he felt the most important issue is the current voluntary annexation policy and that during the visioning process it would be determined exactly what City residents want in this regard, although at that time sentiment in that regard was unknown. He also urged that the City's annexation policy be further refined and that the future policy will be determined by the public making known to what extent it wants annexation to occur. Mr. Sorey also pointed out that annexations would be appropriate if an area had goals and expectations in common with the City and if the area would provide positive financial gains. All advantages and disadvantages must be thoroughly researched, he added, and noted the need to identify not only short term impacts, but those in future decades.

Council Member Willkomm said he believed that City residents did not favor further annexations; therefore he said he could not support going forward in this regard. However he also said that it was incumbent upon the City to seek the views of its citizens in order to develop an annexation policy. Council Member MacIlvaine said that he would vote against an annexation if the impact appeared to be negative, but if the result was to be a positive impact he could then support it. Mayor Barnett clarified that staff was merely seeking direction and characterized the Collier Park of Commerce proposal as a non-aggressive, voluntary annexation about which the City had been approached. In response to Mayor Barnett, City Manager Lee stated that staff sought a determination of whether there was interest on the part of the Council with regard to annexation and, if so, the aforementioned urban services report and responding resolution should proceed to Collier County. He reiterated the requirement that this action must be taken by November 14, and therefore suggested a special meeting on Monday, November 13, to do so. Council Member Price said that he however felt strongly that no annexation be considered until completion of the visioning which would in the future be undertaken by the Council.

Consensus to add proposed annexation of Collier Park of Commerce to November 1, Regular meeting agenda; that staff presentation at that time include a financial summary containing projections at 5, 10, 15 and 20 year intervals; and that Council would then consider its response to Collier County's initiating resolution with regard to this matter.

WILMA TREE REPLACEMENT PROGRAM.....ITEM 5

Community Services Director David Lykins gave an electronic presentation (Attachment 2) reviewing the costs for tree replacement and noting that the total had been less than projected. He also reviewed the tree evaluation summary and pruning considerations as well tree replacement and recovery cost impacts. Director Lykins pointed out that total replacement could begin in December and be completed within this fiscal year, or by June of 2007, with the approval of an additional \$13,381 in the 2006-07 fiscal year since \$500,000 of the total \$513,381 had already been budgeted. Director Lykins reviewed planting site considerations that would increase the chance for survival of healthy specimens and concluded with the following recommendations: by January, cable and brace the six trees found in need of this procedure;

award bids and schedule commencement of the planting program by December; and maintain the current three-year tree trimming program, except for the banyans, with the latter necessitating an additional \$330,000 each year.

Council Member Sorey stated that he felt the annual trimming of the banyan trees should go forward at least once, then staff should review the program with Council in order to make recommendations concerning future trimming. Council Member Willkomm commended staff on its work in this regard and asked whether any consideration had been given to the City growing its own mahogany trees. Parks and Parkways Superintendent Joe Boscaglia pointed out that in the event of a storm, the City would then stand to lose the same amount of stock that would otherwise be held in the investment of commercial nurseries. In response to Council Member Price, Mr. Boscaglia also explained that the staff intended to obtain the best quality mahogany trees although the size of those ultimately procured had been smaller than originally desired. He noted however that if larger trees were available during an upcoming buying trip, he would choose the larger if their quality were acceptable. Council Member Sorey however pointed out that mahoganies grow faster than the live oaks and would soon match them in size; however, he also said that he concurred with Council Member Willkomm that the possibility of the City having its own nursery should at least be researched; nursery stock, he said, would be in containers so that trees could be laid down in preparation of a storm event. Also in response to Mr. Price, City Manager Lee explained that damaged trees noted in the inventory are merely to be monitored and if it were to be deemed necessary for an individual tree to be removed; adjacent property owners and their neighborhood associations would be notified.

Consensus for staff to research the possibility of establishing a City tree farm.

Consensus to move forward with tree replacements and banyan trimming.

Recess: 10:16 a.m. to 10:31 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Willkomm who returned at 10:32 a.m.

PERCENTAGE FOR THE ARTS PROGRAM/ORDINANCEITEM 6

Community Services Director David Lykins gave an electronic presentation (a printed copy is contained in the file for this meeting in the City Clerk's Office) stating that the goal is to use public space for art and that there are presently 36 successful programs of this kind in Florida. He explained that construction of municipal projects and developers of private commercial projects within the City would be required to include allowance for commissioned artwork in each project over \$250,000 or donate a comparable amount for the future acquisition of public art. Initially the proposed amount would be 1% of the total cost for each commercial project in excess of \$250,000, and the artwork would remain the sole property of the private land owner; the same percentage would be applied in conjunction with municipal construction except that the public art would be installed either on-site or elsewhere on City lands. He then explained that the total project cost would be based on square footage and purposed \$1 per square foot instead of calculating 1% of the value of the project so as to simplify the calculation. Director Lykins also reviewed potential sites for public art in the City (Attachment 3), noting that input from the DRB (Design Review Board) and the public had been incorporated into the draft ordinance; he also said that it is consistent with other programs around the state and urged Council's approval.

In response to Council Member Price, Director Lykins explained that the intent of the program is not to merely accumulate a fund but to encourage developers to incorporate art into their

projects. Council Member Sorey said that he felt the definition clause (Sec. 46-52(b)) needed further clarification with regard to commercial or mixed use; although this is referenced later in the ordinance he said it should be stated clearly within that clause as well. He also said he felt the proper time for deposit into the fund would be prior to the issuance of a CO (Certificate of Occupancy) so that the money would not be held for extended periods. Director Lykins explained that this had been included after consulting with other municipalities which had recommended the earlier deposit, and Mr. Sorey said that withholding the CO seemed a simple matter of enforcing a code, but nevertheless urged moving forward with this item.

Council Members Willkomm and MacIlvaine stated that they however felt this to be merely another tax on the building industry, that although the intentions were sound, the public should be afforded an opportunity to vote on the matter as with any other tax.

Public Comment: (10:52 a.m.) **Sharon Kenny, 411 17th Avenue South**, a member of the Public Art Advisory Committee (PAAC), stated that voluminous public input, over a two-year period had in fact been gathered in drafting the proposed ordinance. She also disputed that the percentage for art is a tax, pointing out that it applies only to commercial developers and is an attempt to encourage them to participate in the beautification of the City. She also said that the program sets a standard in order to balance the right to earn money in a positive way and participate in the overall betterment of the community. Ms. Kenny concluded by saying that the art should be designed in conjunction with the project under construction and incorporated into the building; that building design is part of the quality of life in Naples. **Sue Smith, 11th Avenue South**, stated that she strongly opposes the program and agrees with the prior comment that this is merely another tax when including art in projects should instead be voluntary.

Mayor Barnett asked whether Director Lykins had as suggested contacted the coordinator of the public art program in Sacramento, and Director Lykins said that Ms. Bloom had been very supportive and had forwarded information, which he would provide to Council before that week's regular meeting. Mr. Lykins also reported that Sacramento assesses 2% of the total project cost and the director had shared with him her belief that any new program of this kind undergoes what she termed a reluctance period after which it is considered just another part of the building process.

At that time, Council Member Sorey reminded Council that this type of program is not unique to Naples and that other similar cities around the state have implemented them. He also said that Charlie Thomas, who he considers one of the leaders among developers in the City, is in support. Mr. Sorey concluded by noting that this program would raise the standards for the building community and aid in maintaining the quality of life in the City. Council Member MacIlvaine however restated his belief that it is an impact fee and that the inclusion of art should be on a voluntary basis, not mandatory.

Mayor Barnett stated that this ordinance is on the agenda for that Wednesday's regular meeting and further discussion could take place at that time.

BRIEFING BY CITY MANAGER.....ITEM 7
(It is noted for the record that a copy of this report is contained in the file for this meeting in the City Clerk's Office.) City Manager Robert Lee informed Council that the next workshop agenda would include a review of methods for code enforcement, including staff recommendations, and

proposed budget amendments. It would also include a response to Council Member Willkomm's inquiry as to the reasoning for moving the code enforcement function to Police & Emergency Services Department (PESD); however, City Manager Lee did point out at that juncture that the intent had been to expand coverage to an around-the-clock operation and have a greater number of personnel able to actually ticket violators. Furthermore, he noted that an update on enforcement of the commercial trash container ordinance would be included in the supplemental packet information for the regular meeting. He also reported that a presentation on comprehensive pathways would be given on December 7, at 5:00 p.m., at the Norris community Center, which would include the possible reconfiguration of Gulf Shore Boulevard to a one-way thoroughfare. City Manager Lee continued by noting his meeting with Cabinet Aides in Tallahassee and their recommended changes to the proposed ordinance regarding the mooring field at Crayton Cove and that staff would provide additional information before the matter is discussed at the regular meeting. In conclusion, he confirmed that during the October 18, regular meeting, supplemental information provided to the Council for an added item had indeed been contained in the documents provided for the public in the Council Chamber as well as City Clerk's Office information packet prior to that meeting.

REVIEW OF ITEMS ON THE 11/01/06 REGULAR MEETING AGENDA.....ITEM 8

Council determined to add to the agenda Item 20 (Collier Park of Commerce), which is to be heard prior to Item 19 (executive session regarding domestic security issues). Council Member Price requested additional information regarding Item 7-f (ExecuTime time and attendance system), as to the amount of anticipated staff savings and Item 7-h (landscape maintenance agreement), as to the reason payment is being made for outside landscape services. Mayor Barnett noted Item 10 (Rezone Petition 06-R7 and Residential Impact Statement Petition 06-RIS9 regarding Fourth Avenue South and Fourth Street) and referenced an email received from Anita Yehuda (Attachment 4) and Council Member Willkomm requested a review at the regular meeting by the City Attorney of the aforementioned email.

Public Comment: (11:22 a.m.) **Gary Kluckhuhn, 2180 Sandpiper Street**, suggested that housing for essential emergency service personnel be constructed in industrial/commercial zoned areas such as the Collier Park of Commerce. **Dorothy Hirsch, 626 Regatta Road**, stressed the need for the discussion of fines and stricter penalties regarding code enforcement violations on construction sites.

CORRESPONDANCE/COMMUNICATION.....

Council Member Sorey commended City Traffic Engineer George Archibald and other staff members for the positive outcome of the meeting regarding North Road. Mr. Sorey also reminded Council that a code amendment is necessary in order to change the location for emergency generators at existing homes (See Public Comment, Page 1). He also said that \$850,000 would be received from the South Florida Water Management District (SFWMD) for the City's reuse water project and another \$460,000 from the Big Cypress Basin Board; there is also the possibility of being able to use an additional \$100,000 for the project that had been earmarked to study excess water flow exiting from the Golden Gate Canal. Mr. Sorey further asked that staff research the use of the aforementioned grant monies to fund the main feeder line of the project, which would positively impact the cost of the project to all affected residents. Vice Mayor Nocera asked that staff provide an update as to the status of the generator placement issue and Council Member Willkomm asked why no further action had resulted from earlier Council discussions regarding the possible placement of property acquisitions on the November ballot. Mayor Barnett explained that no consensus to direct staff had however been forthcoming.

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on this issue. Mr. Willkomm then reiterated his concern with moving the code enforcement function change, pointing out that occupational licensing is merely a tax and non-regulatory. City Attorney Robert Pritt noted that he was planning a presentation at the next workshop regarding penalties for code violations. Mayor Barnett expressed interest in establishing guidelines for the required, routine testing operation of emergency generators as part of their maintenance, suggesting that certain days and times might be mandated to lower the impact if these units were to be allowed in the side yard setbacks of existing homes; Vice Mayor Nocera agreed. Mayor Barnett also mentioned that 20 acres of the Collier Park of Commerce is undeveloped and questioned whether this property could be used for affordable housing.

ADJOURN
11:51 a.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki Smith, Technical Writing Specialist

Minutes Approved: 12/6/06

City of Naples, Florida General Fund Impact - Annexation Collier Park of Commerce										
	1	2	3	4	5	6	7	8	9	10
	Change FY06-07	Change FY07-08	Change FY08-09	Change FY09-10	Change FY10-11	Change FY11-12	Change FY12-13	Change FY13-14	Change FY14-15	Change FY15-16
General Fund										
Revenue										
Local Taxes at 1.24500	47,767	105,389	114,036	123,159	133,011	143,652	155,145	167,556	180,961	195,437
Electric Franchise Fees	24,590	25,819	25,819	70,594	27,391	28,213	29,066	27,391	28,213	28,060
50% of Telecommunications	8,506	8,884	9,119	9,393	9,675	9,965	10,264	9,675	9,965	10,264
Licenses and Permits	2,350	2,421	2,493	2,568	2,645	2,724	2,806	2,645	2,724	2,806
TOTAL REVENUE	133,303	142,602	151,467	161,713	172,723	184,555	197,274	207,267	221,863	237,567
Expenditures										
Administration	0	0	0	0	0	0	0	0	0	0
Police Services	58,006	60,900	63,945	67,112	70,479	74,024	77,726	70,499	74,024	77,726
Payment to East Naples	122,700	132,516	143,117	154,567	0	0	0	0	0	0
City Fire Department	0	0	0	73,755	77,443	81,315	85,381	89,650	94,132	98,839
TOTAL EXPENDITURES	180,706	193,416	207,062	295,434	147,942	155,339	163,106	160,149	168,156	176,564
Change in General Fund	(47,397)	(50,814)	(55,595)	(133,721)	24,780	29,216	34,168	47,118	53,707	61,003
Cumulative Change		(98,211)	(153,806)	(287,527)	(262,656)	(233,440)	(199,272)	(152,154)	(98,447)	(37,444)
Utility Tax Impact										
Electric Utility Tax	25,044	25,396	26,570	27,367	28,198	29,033	29,904	28,198	29,033	29,904
50% of Telecommunications	8,506	8,884	9,119	9,393	9,675	9,965	10,264	9,675	9,965	10,264
Share of Fire Equip/Building	0	0	0	0	0	0	0	0	0	0
Change in Financial Position	(13,757)	(15,884)	(19,906)	(56,361)	62,643	68,214	74,336	84,981	92,705	101,171
Cumulative		(29,641)	(49,547)	(105,908)	(42,965)	(13,881)	58,456	143,436	236,141	337,312

City of Naples, Florida
Stormwater Fund Impact - Annexation
Collier Park of Commerce

Stormwater Utility Fund		Change	Change	Change	Change	Change	Change	Change	Change	Change	Change	Change
Revenue		FY06-07	FY07-08	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	Change
Change for Services \$4/ERLU/Yr		100,000	180,000	180,000	280,000	180,000	180,000	180,000	180,000	180,000	180,000	180,000
TOTAL REVENUE		100,000	180,000	180,000	180,000	180,000	180,000	180,000	180,000	180,000	180,000	180,000
Expenditures												
Minor Improvements		5,000	5,000	8,820	9,361	9,724	10,210	10,721	11,257	11,820	12,411	12,411
Lake Maintenance		5,000	5,000	20,000	5,000	5,000	20,000	5,000	5,000	20,000	5,000	5,000
TOTAL EXPENDITURES		10,000	10,000	28,820	14,361	14,724	30,210	15,721	16,257	31,820	17,411	17,411
Change in Financial Position		172,000	171,600	171,180	170,739	170,276	169,790	169,279	168,743	168,180	167,589	

City of Naples, Florida
Street Fund Impact - Annexation
Collier Park of Commerce

	Change FY06-07	Change FY07-08	Change FY08-09	Change FY09-10	Change FY10-11	Change FY11-12	Change FY12-13	Change FY13-14	Change FY14-15	Change FY15-16
Street Fund Revenue										
Sales Tax/Revenue Sharing	0	0	0	0	0	0	0	0	0	0
TOTAL REVENUE	0	0	0	0	0	0	0	0	0	0
Expenditures										
Contracted Services Striping	0	9,000	0	0	4,000	0	0	3,000	0	0
Street Lighting Electrical	5,500	6,077	6,259	4,947	4,611	6,840	7,045	7,256	7,474	7,690
Street Light Replacement	0	0	0	0	0	0	0	0	0	0
Annual Sign replacement	0	1,200	0	1,200	0	1,200	0	1,200	0	1,200
TOTAL EXPENDITURES	5,500	11,277	6,259	7,647	10,611	8,040	7,045	7,456	7,474	8,880
Change in Financial Position	(5,500)	(11,277)	(6,259)	(7,647)	(10,611)	(8,040)	(7,045)	(12,456)	(7,474)	(8,880)
Cumulative Change		(17,177)	(23,436)	(31,083)	(41,694)	(49,734)	(56,779)	(69,235)	(76,733)	(85,637)

Streets fund gets money from fuel tax, which will not increase, impact fees and from revenue sharing. Revenue Sharing is a state formula which considers sales tax collections, population and relative ability to raise revenue, and is unlikely to change based on this annexation, but it could.

Wilma Recovery Tree Replacement Program

October 30, 2006

Recovery Components

- Hazard Assessment: Status – 100%
Complete for Key City Streets as Identified by Norm Eassey
- Neighborhood Tours: Status – 100%
Complete – 13 Individual Tours Hosted by City Manager, City's Arborist, and Local Landscape Architect
- Tree Inventory: Status – 100% Complete by Davey Resource Group

Tree Evaluation Summary

- Trees Evaluated for Safety, Pruning, Cabling Bracing or Removal and Replacement
 - Tree Removals Limited to Those Identified as an Imminent Hazard – Evaluated As Needed
- Evaluation Recovery Estimates
 - Trees Requiring Cabling and Bracing (5 Actual)
 - Contractor Scheduled for January 2007 Completion
 - Trees Requiring Restoration Pruning (7,500)
 - Multi-Year Phasing Commenced Oct. 18th

Pruning Considerations

- Banyan Trees
 - Trimmed on 3-Year Scheduled Trimming Cycle
 - The City Annually Budgets \$260,000 – This funds Trimming of 1/3 of all City Hardwoods and 100% of City Palms that are Annually Trimmed
 - Additional \$330,000 Would be Required to Trim Banyans Annually. This is in Addition to Current Annual Funding of \$260,000 to Maintain 100% Annual Palm Trimming and to Retain 1/3 of Remaining Hardwoods on a 3-Year Trimming Cycle

Pruning Considerations Continued

- Davey Resource Group
 - Inventory Confirmed as of May 10th, 529 Banyan Trees Require Annual Trimming as Determined by Norm Eassey and City Arborist – 78% Completion
 - Actual Number of Banyan Trees Requiring Trimming Based on the Completion of the Inventory is 888 – 100% Inventory Completion
 - Current Trimming Funding Allocation \$260,000
 - Additional Trimming Funding Needs \$330,000
 - Annual Trimming Funding Needs \$590,000

Tree Replacement Impacts

- Banyan Trees Replaced with Live Oak:
 - Actual – 83 Trees with 8" Caliper. Installed Cost Estimated \$2,800/Tree – Includes 1 Year Replacement Warranty/Watering
 - Total Costs - \$232,400
- Mahogany Trees Replaced with Mahogany:
 - Actual 56 Trees with 4" Caliper – 16' to 18' Overall Height. Installed Cost Estimated \$1,000/Tree – Includes 1 Year Replacement Warranty/Watering
 - Total Costs - \$56,000

**Wilma Tree
Replacement**

Live Oak

Caliper: 7" – 8"
Height: 26'
Canopy: 14' – 18'
Container: 300 gallon
Cost: \$2,800 each

Location Grown:
Winter Garden, FL



Tree Replacement Impacts Continued

- A Combined Total of 823 Hardwood and Palm Trees Require Replacement that were Lost as a Result of Hurricane Wilma.
- Bid Pricing Completed
- Replacement of all 823 Trees Based on Bid Prices Resulted in Total Cost of \$513,381.
 - Total Cost is Based on Low Bid Utilization of 2 Separate Contractors

Tree Replacement Impacts Continued

- The June 5th Commitment to City Council was to Obtain Reasonably Sized (Caliper and Height) Live Oak and Mahogany Trees.
- Live Oaks are Available in 300 Gallon Containers – Approximately 7" – 8" Caliper, 26' Height, and 14' – 16' Canopy Spread.
- Mahogany's, on Average, are Not Available in Larger Sizes than 100 Gallon, 4" Caliper of the Quality Desired by the City.

Tree Replacement Impacts Continued

- Planting Site Considerations
 - Sidewalk Locations
 - Driveway Locations
 - Underground Utilities
 - Overhead Utilities
 - Resident Plantings
 - Soil Conditions
 - Watering or Irrigation Availability
 - Joint Trees is Sufficiently Established

Tree Recovery Cost Impact Summary

Tree Replacement Costs – Bid Prices

■ Hardwood Replacement	\$325,852
■ Ornamental Replacement	12,945
■ Palm Replacement	<u>174,584</u>
■ Tree Replacement Total	\$513,381
□ Current Budget \$500,000	

Funding Options

- Capital Improvement Project #07F17
 - \$500,000 Budgeted Fiscal Year 2006-07
- Capital Improvement Funding
 - \$500,000 Budgeted in 2007-08 and 2008-09 Fiscal Years Based on Previous Preliminary Est.
- Accelerated Completion
 - Total Wilma Replacement May Be Concluded in one year Contingent on \$13,381 in Additional Capital Funding Being Approved for Expenditure During the 2006-07 Fiscal Year

Funding Options Continued

- **Grants**
 - City of Naples Received Florida Department of Agriculture Wilma Grant of \$35,000
 - This Grant was Utilized to Offset the Cost of the Davy Resource Group Tree Inventory and the Norm Eassey Hazard Assessment
 - No Other Wilma Grants Are Currently Available at This Time
 - When Wilma Grants Become Available – City Will Apply

Tree Replacement Timeline Continued

- **Contractor Scheduling**
 - Successful Bid Contractors are Available Upon Award of Bid
 - Vite & Sons
 - Superior Landscaping Farming
 - Coordinated with Traffic & Seasonal Impacts
 - Commencement December 2006
 - Completion Estimated June 2007

Recommendations

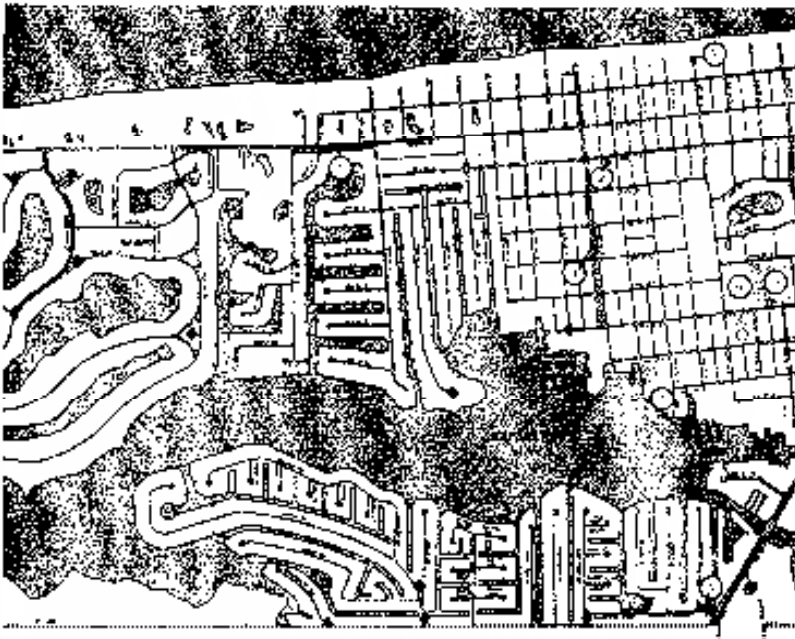
- **Cable and Bracing**
 - 5 Trees Completed by January 2007
- **Planting Program**
 - Award Bid and Schedule Contractor Commencement December 2006
 - Request Council Authorization for Additional \$13,000 City Tax Funding for Planting – Wilma Completion in 1 Year
- **Trimming Program**
 - Maintain Current 3 Year Trimming Program
 - Request Council Authorization for Additional \$330,000 Funding 2007-08 For Annual Trimming of all Banyans

Wilma Recovery Tree Replacement Program

October 30, 2006

Potential Sites for Public Art in Naples

1. Gordon Drive Greenway
2. Rodgers Park
3. Broad Avenue South R-O-W
4. Naples Landings
5. Sandpiper Park
6. Cambier Park
7. 8th Avenue South Beach End
8. Anthony Park
9. Goodlette Frank Linear Park
10. Orchid Linear Park
11. Lowdermilk Park
12. Hedges Family Visitors Center
13. Fleischmann Park
14. U.S. 41 Median
15. Seagate Linear Park



Michael Moose

From: Anita Yehuda [anylaw@optonline.net]
Sent: Sunday, October 29, 2006 3:05 PM
To: City Council
Subject: Fourth & Fourth parking garage

I am attaching for your reference a DRAFT of allegations which will be set forth in a complaint which we plan to file in this matter if the resolution is passed.
Anita Yehuda

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This is an action for injunctive, declaratory and other relief under the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 *et seq.* (hereinafter, "Growth Management Act").

The Parties

Plaintiff, Kensington Gardens Condominium Assoc., Inc. is a Florida not for profit corporation.

Plaintiff, Mondi Group is a New York partnership with an address at 99 Powerhouse Road, Suite 208, Roslyn Heights, New York 11577.

Plaintiff Mondi Group is the owner of a condominium unit in the development known as "Kensington Gardens" located at 480 Fifth Street South, Naples, Florida 34102 (hereinafter, "Kensington Gardens").

Plaintiff, Anita Yehuda is an individual residing in the State of New York with a partnership interest in Mondi Group.

Plaintiff, David Yehuda is an individual residing in the State of New York with a partnership interest in Mondi Group.

Plaintiff, David Yehuda is the President of Kensington Gardens Condominium Assoc., Inc. and a trustee for purposes of prosecuting the present action.

Plaintiff, Anita Yehuda is a trustee of Kensington Gardens Condominium Assoc., Inc. for purposes of prosecuting the present action.

Plaintiff, Igor Levy-Reis is an individual residing at 480 Fifth Street South, Naples, Florida 34102.

Plaintiff, Igor Levy-Reis is the Secretary of Kensington Gardens Condominium Assoc., Inc.

Plaintiff, V-Fox, LLC is a Ohio limited liability company with an address at 5040 Goal Post Lane, Cincinnati, Ohio 45244 and is the owner of a condominium unit at Kensington Gardens.

Plaintiff, Mark Fox is an individual residing in the State of Ohio and a member of V-Fox, LLC.

Plaintiff, Mark Fox is the Treasurer of Kensington Gardens Condominium Assoc., Inc.

Plaintiff, Dr. Laurie E. Moore is an individual residing at 750 Ketch Drive, Naples, Florida 34103 and is the owner of a condominium unit at Kensington Gardens.

Plaintiffs, Ethel Graham and David J. Graham are individuals residing at 4840 West Blvd. Court, Naples, Florida 34103 and are the owners of a condominium unit at Kensington Gardens.

Plaintiffs, Christina and Steven Case are individuals residing at 649 Galleon Drive, Naples, Florida 34102 and are the owners of a condominium unit at Kensington Gardens.

Plaintiff, F. Fred Pezeshkan is an individual with an address at c/o Kraft Construction Co., 2606 South Horseshoe Drive, Naples, Florida 34104 and is the owner of a condominium unit at Kensington Gardens.

Plaintiffs, Lisa and Ben Gary Garmon are individuals residing at 300 Royal Marco Way, Marco Island, Florida 34145 and are owners of a condominium unit at Kensington Gardens.

Plaintiff, Dr. Phillip G. Spiva is an individual with an address at P.O. Box 338, North Brookfield, MA 01535 and is the owner of a condominium unit at Kensington Gardens.

Plaintiff, Daniel V. Landers is an individual residing at 2900 Thomas Avenue South, Minneapolis, Minnesota 55416 and is the owner of a condominium unit at Kensington Gardens.

Plaintiff, Sandra Lee Logelin is an individual residing at 5802 Veron Lane, Edina, Minnesota 55436 and is the owner of a condominium unit at Kensington Gardens.

Plaintiff, William J. Martin is an individual residing at 317 Craig Drive, Lawrenceville, Georgia 30049.

Upon information and belief, defendant, the City of Naples is a municipal corporation.

Upon information and belief, defendant, the City Council of the City of Naples is a

Upon information and belief, defendant, Fourth & Fourth Associates, LLC, 365 Fifth Avenue South, Naples, Florida is a Florida limited liability company.

FIRST CAUSE OF ACTION FOR A DECLARATORY JUDGMENT

Plaintiffs repeat and reallege each and every allegation set forth in Paragraph Nos. 1 through 10 of the Verified Complaint as if fully set forth herein.

Fourth & Fourth Associates, LLC (hereinafter, "Developer") is a "developer" as that term is defined under the Growth Management Act.

The Developer is the owner of three contiguous lots of real property which abut the corners of Fourth Avenue and Fourth Street South in Naples, Florida more particularly described in the attached Exhibit A (hereinafter, "Fourth & Fourth").

Fourth & Fourth abuts Kensington Gardens on the easterly side.

On or about August 1, 2006, the Developer submitted to the City Council and/or its subdivisions a petition to rezone Fourth & Fourth from R3-12 Multifamily Residential to PD-Planned Development in order to allow for 18 residential units and a three-story 321-space parking garage.

Fourth & Fourth falls within the "Fifth Avenue South Special Overlay District," a zoning division within the City of Naples.

The "Fifth Avenue South Special Overlay District" code (hereinafter, "Fifth Avenue Code" or "Code") is part of the City of Naples Land Development Code promulgated pursuant to F.S. § 163.3202 and constitutes and/or is part of a "comprehensive plan" as that term is defined under the Growth Management Act.

In submitting the petition to rezone, the Developer was obligated to demonstrate that the proposed development is consistent with the Fifth Avenue Code and complies with all procedural requirements of the Code, as required by the Growth Management Act.

The Developer failed to demonstrate that the proposed development is consistent with the Fifth Avenue Code and complies with all procedural requirements of the Code as required by the Code, the City of Naples Land Development Code, and the Growth Management Act.

The Developer failed to submit a petition for any waivers from the Fifth Avenue Code as required by the Code, the City of Naples Land Development Code, and the Growth Management Act.

In submitting the petition to rezone without submitting a petition for any waivers from the Fifth Avenue Code, the Developer failed to establish that the proposed development is consistent with the Fifth Avenue Code and complies with all procedural requirements of the Code, as required by the Growth Management Act.

Notice of the hearing relative to the rezone petition to the surrounding property owners mailed on September 1, 2006 was untimely and violated the notice provisions of the Fifth Avenue Code and the City of Naples Land Development Code, Article II, § 46-32(c)(3).

No notice of any petition for a waiver from the Fifth Avenue Code was given to the surrounding property owners in violation of the notice provisions of the Fifth Avenue Code and the City of Naples Land Development Code, Article II, § 46-32(c)(3).

The Naples City Council granted approval of a rezone petition to the Developer for the construction of a proposed 3-story mixed use parking garage on the property located at Fourth Avenue and Fourth Street ("the Approval") as set forth in the Developer's Planned Development Document.

The Approval by the Naples City Council constitutes a "development order" as that term is defined under the Growth Management Act.

The Approval materially alters the use, density and intensity of use on the property which is not consistent with the Fifth Avenue Code and the Naples Land Development Code, including but not limited to the following respects:

The Approval permits construction of a three-story parking garage, in violation of the Code requirement that such parking garages be a maximum of two-stories high. (Fifth Avenue Code, § 58-1134(a)).

The Approval permits a zero setback in the rear of the proposed structure in violation of the Code requirement that the three contiguous lots which make up Fourth & Fourth be set back a minimum of 40 feet for most of the length of the contiguous lots. (Fifth Avenue Code §§ 58-1133(c); 58-1134(b);).

The Approval permits a parking structure which spans a substantial portion of the length and width of the three contiguous lots which make up Fourth & Fourth in violation of the Code and regulating plan's designation of less than half of Fourth & Fourth as a parking garage. (Fifth Avenue Code, § 58-1133(g); Exhibit A annexed thereto).

The Approval permits construction of a parking garage which contains 321 parking spaces in violation of the Code and regulating plan's designation of a parking garage which is limited in size and use to approximately 100 parking spaces. (Fifth Avenue Code, §§ 58-1134(a) & (b); 58-1133(c) & (g); Exhibit A annexed thereto).

The Approval permits construction and use by the public of a parking garage which will significantly impact traffic in surrounding residential

neighborhoods in violation of the Code's requirement that "no significant traffic impacts will be added to surrounding residential neighborhoods." (Fifth Avenue Code § 58-1131).

The Approval permits and/or does not prevent use of a public parking garage during hours other than 8:00 a.m. to 9:00 p.m. in violation of the requirement that "standard hours of operation shall be 8:00 a.m. to 9:00 p.m." and without consideration of adverse impacts to adjacent residences as required under the Code and City of Naples Land Development Code, Article V., § 56-153.

The Approval permits construction of a building whose rear facade fails to contain a transition line at the top of the 1st story in violation of the Code. (Fifth Avenue Code § 58-1134(a)).

The Approval permits construction of a structure whose rear will act as the parking garage's only entrance and which violates the intent and/or provisions of the Code requiring that buildings have their principal pedestrian entrance on the frontage line, thereby violating the requirement that buildings relate to the pedestrian (Fifth Avenue Code §§ 58-1131; 58-1134(b)).

The Approval permits construction of a large public parking garage in a largely residential area and, more particularly, directly adjacent to a residential property in violation of the Code's requirement that buildings within the 5th Avenue District "be compatible with each other." (Fifth Avenue Code §§ 58-1131; 58-1134(b)).

Plaintiffs are "aggrieved or adversely affected parties" by the Approval as that term is used in the Growth Management Act.

As a result of the above, Plaintiffs are entitled to a declaration that the Approval materially alters the use or density or intensity of use on Fourth & Fourth which is not consistent with the City of Naples Land Development Code and the Fifth Avenue District Code to Plaintiffs' detriment.

SECOND CAUSE OF ACTION FOR RESCISSION OF THE APPROVAL

Plaintiffs repeat and reallege each and every allegation set forth in Paragraph Nos. 1 through _____ of the Verified Complaint as if fully set forth herein.

As a result of the above, Plaintiffs are entitled to a rescission of the Approval on the grounds that it materially alters the use or density or intensity of use on Fourth & Fourth which is not consistent with the City of Naples Land Development Code and the Fifth Avenue District Code to Plaintiffs' detriment.

THIRD CAUSE OF ACTION FOR AN INJUNCTION

Plaintiffs repeat and reallege each and every allegation set forth in Paragraph Nos. 1 through _____ of the Verified Complaint as if fully set forth herein.

As a result of the above, Plaintiffs are entitled to an injunction against enforcement of the Approval and against construction of the building on the grounds that the Approval materially alters the use or density or intensity of use on Fourth & Fourth which is not consistent with the City of Naples Land Development Code and the Fifth Avenue District Code to Plaintiffs' detriment.

FOURTH CAUSE OF ACTION FOR DAMAGES

Plaintiffs repeat and reallege each and every allegation set forth in Paragraph Nos. 1 through _____ of the Verified Complaint as if fully set forth herein.

As a result of the above, Plaintiffs are entitled to _____ damages, including costs and attorneys' fees, and other expenses associated inter alia, in opposing the granting of the Approval and prosecution of this action.

WHEREFORE, Plaintiffs demand judgment:

1. Declaring that the Approval materially alters the use or density or intensity of use on Fourth & Fourth which is not consistent with the City of Naples Land Development Code and the Fifth Avenue District Code to Plaintiffs' detriment;
2. Rescission of the Approval on the grounds that it materially alters the use or density or intensity of use on Fourth & Fourth which is not consistent with the City of Naples Land Development Code and the Fifth Avenue District Code to Plaintiffs' detriment;
3. An injunction against enforcement of the Approval on the grounds that the Approval materially alters the use or density or intensity of use on Fourth & Fourth which is not consistent with the City of Naples Land Development Code and the Fifth Avenue District Code to Plaintiffs' detriment;
4. Damages, including costs and attorneys' fees, and other expenses associated inter alia, in opposing the granting of the Approval and prosecution of this action; and
5. Such other and further relief as shall be equitable and proper.