

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Workshop Meeting – April 2, 2007 – 8:30 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor

Council Members:

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

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Vicki Smith, Technical Writing Specialist
Chet Hunt, Assistant City Manager
Michael Klein, Waterfront Operations Manager
Ron Wallace, Construction Mgmt Director
Dan Mercer, Public Works Director
David Lykins, Community Services Director
Ann Marie Ricardi, Finance Director
Denise Perez, Human Resources Director
Roger Jacobsen, Marina Compliance Specialist
Jon Sewell
Susan Smith
Joe Karaganis
Linda Penniman
Tanya Trinkaus Glass
Martha Dykman
Theresa Bonness
Erika Hinson
Brian Leiding
George Dondanville
Bill Kroeschell
Ann Ryker
Ted Coine
Dianne Mayberry-Hatt
Jeff Player
Allen Walburn
Henry Kennedy

Dorothy Hirsch
Doug Finlay
Dolph Von Arx
Gloria Kovacs
Margaret Sulick
George Sybert
Clarence Pennington
Lois Selfon
Steve Briggs
George Uding
Tom Trettis
Florence Chandler
Elaine Reed
Judith Chirgwin
Vincent Previti
Rich Housh
Toni Tuttle
Dale Simonson
Dave Ball
Don Wingard
Robert Ellis
Joyce Everett
Marlena Brackebusch
Faron Richards
Sharon Kenny
Media:
Denise Zoldan
Other interested citizens and visitors.

SET AGENDA.....ITEM 2

Council Member Taylor expressed concern regarding Item 7 (City Dock Lease Expirations), noting that she believed this item should be continued to a subsequent regular meeting or considered at an evening meeting wherein charter boat captains would be better able to attend; Council Member Sorey agreed with the suggested evening meeting. Additionally, Miss Taylor requested that the applicable City Council meeting minutes from 2001-02 be included in the meeting packet in order that newer Council Members could be provided background on the issues. Council Member Price suggested that Council hear the staff's presentation planned for that day since action would not be taken at that time. Mayor Barnett pointed out that further discussion of scheduling an evening meeting could also occur.

Consensus to SET THE AGENDA AS PRESENTED

PUBLIC INPUT.....ITEM 3

(8:36 a.m.) **Dorothy Hirsch, 626 Regatta Road**, questioned recent citations issued to Scholten Construction, noting that Tom Scholten is a member of the Code Enforcement Board. Mayor Barnett said that nominations for the Board were to be addressed at the April 18 regular meeting and that this issue would be discussed at that time. **Doug Finlay, 3430 Gulf Shore Boulevard**, said that while he believes a builder should serve on the Code Enforcement Board, the builder appointed should be the best available.

**.....ITEM 4
PATHWAYS RECOMMENDATIONS (SIDEWALKS AND BICYCLE LANES)**

Mayor Barnett began by stressing that no action would be taken at that time and that recommendations from property owner associations would be considered along with other input from citizens. He further noted that dealing with pathways is an expensive project involving millions of dollars, and that Council is well aware of some unique homes, which could be impacted; therefore, every effort would be made to achieve innovative sidewalk installation. Council Member Sorey stated that he believed Council had previously approved a sidewalk policy that sidewalks for Gulf Shore Boulevard had been budgeted for installation that year, but had been postponed until the results from the pathways study were forthcoming. Mr. Sorey ascertained that the objective of the aforementioned study was to obtain a long-term plan for sidewalks and bicycle paths.

Construction Management Director Ron Wallace explained that three public workshops had been held and that the presentation to be given at that meeting had been made before the Presidents' Council, Community Services Advisory Board (CSAB) and the Planning Advisory Board (PAB); therefore, a summation of the data collected and public input could be provided.

John Sewell, of Kimley-Horn and Associates, Inc., gave an electronic presentation (Attachment 1) reviewing the following:

- Preliminary findings;
- A draft bicycle facility policy (Attachment 2), as a companion to the existing sidewalk policy (Attachment 3), which also includes potential changes to add detail to that sidewalk policy (Attachment 4) and other potential programs and policies (Attachment 5);
- A list of project needs, which includes a targeted Phase I for the next five years and specific facility improvements and accompanying costs; and
- Project priorities and the importance of phasing of the project.

Consultant Sewell pointed out that one of the first items considered for the preliminary findings was the recently completed Collier County Pathways Plan, although it did not specifically reflect the needs of the City. Also included in the initial data were existing collector and arterial roadways and existing pedestrian and bicycle facilities. He noted that the roadway grid in Old Naples is actually the most efficient form of transportation.

With regard to schools, Mr. Sewell cited the following as top priorities:

- Safe mid-block crossings on US 41 and Goodlette-Frank Road;
- A plan for safe passage of children to and from school;
- Law enforcement assistance for children walking to and from school;
- Crossing guards at intersections where most needed;
- Proper marking of on-street parking; and
- Improvement of the Eighth Street South crossings near Gulfview Middle School.

Mr. Sewell indicated that, if the recommendations presented at that meeting were implemented, such as moving forward as an initial phase with sidewalks on the Gulf Shore Boulevard corridor and completing sidewalks where gaps exist on main corridors, this would represent an initial phase of the five-year Capital Improvement Program (CIP) at a cost of approximately \$6-million. He explained that the City should begin the application process for grants, research the proportional fair share option through concurrency, and pursue funding assistance from the Safe Routes to Schools program under the Florida Department of Transportation (DOT) which could represent a considerable offset of the aforementioned \$6-million. In response to Council Member Taylor, Consultant Sewell agreed that the areas to and from schools should be addressed first, then Gulf Shore Boulevard followed by sidewalk gaps.

Recess: 9:54 a.m. to 10:09 a.m. It is noted for the record that all Council Members were present when the meeting reconvened.

At that time, Mayor Barnett suggested that Council entertain public comment prior to further discussion of the presentation.

Public Comment: (10:11 a.m.) (It is noted for the record that all documents referenced are contained in the file for this meeting in the City Clerk's Office.) **Dolph Von Arx, 3663 Rum Row**, said that he supports sidewalks on one side of connector streets and feels that two-way bicycle paths are dangerous; he said he is also concerned with the scope of the project as presented. **Gloria Kovacs, no address given**, member of the Board of Directors for Coquina Sands Homeowners Associations, made a statement of support for the pathways plan. She also voiced personal concern for the children traveling to school. **Margaret Sulick, 3295 Fort Charles Drive**, said that while she had concern with the scope of the project as presented, safety for schoolchildren should be the primary concern. She also noted that the landscaping, which currently exists in rights-of-way, is a significant part of the character of the City. In response to Council Member Taylor, Ms. Sulick, a member of the Planning Advisory Board (PAB), stated that when this plan was presented to the PAB, she had suggested that it be separated into one plan for sidewalks and another for bicycle paths. **George Sybert, 352 Sixth Street South**, voiced support for filling in gaps on streets where sidewalks are not complete, noting that, as a physician, he supports walking as healthful exercise. **Clarence Pennington, 3951 Gulf Shore Boulevard North**, said that as a cyclist, he recommended striping bicycle paths with yellow instead of white for greater visibility in order to promote safety. **Lois Selfon, 71 12th Avenue**

South, explained that as a member of the Community Services Advisory Board (CSAB), she had been involved in numerable discussions regarding destination sidewalks and gave a brief history of the project as presented. She said that the proposed pathways are not for racing cyclists but for the safety of recreational cyclists as well as pedestrians and those who must depend on wheelchairs. **Steve Briggs, 107 Broad Avenue South**, urged consideration of the effects of such a program on the historic district, suggesting that the Council consider one-way streets or outright prohibition of vehicular traffic on others; however, 12th Avenue South, between the Fishing Pier and City Dock should be promoted as a connection as it was in the past. He also expressed concern that if pathways are installed along Gulf Shore Boulevard, right-of-way beach parking will be affected. **George Uding, 110 Broad Avenue South**, stated that he had over the years noted what he characterized as a tremendous increase in pedestrian traffic just north of the Fishing Pier and that on Gulf Shore Boulevard had witnessed vehicles cross the center line to avoid parents with strollers walking along the roadway. He said that he strongly supports sidewalks before a pedestrian is seriously injured. **Tom Trettis, Lantern Lane**, stated that, as a recreational cyclist he is concerned with professional riders disobeying traffic laws, that while he supports sidewalks and bicycle paths he feels that the scope of the project as presented is too intense. He also urged preservation of the trees in the rights-of-way. Mr. Trettis also noted concern with what he termed poor procedure by administration, that the evolution of this project should have been reported to the public in a more timely and informative manner. **Florence Chandler, 788 Park Shore Drive**, urged that gaps in sidewalks be filled, that being forced to walk in the street is a safety issue. She also urged that bicycle paths and sidewalks be separate. **Elaine Reed, Naples Historical Society**, urged preservation of the historic district and took the position that sidewalks do not promote historic preservation. **Judith Chirgwin, 112 Tenth Avenue South**, expressed concern regarding the addition of impervious surfaces, especially in the Old Naples area, which presently has drainage problems. **Vincent Previti, 451 Fourth Avenue South**, waived comment. **Rich Housh, 160 Seventh Avenue South**, said that he supports the project as presented. **Susan Smith, 4005 Gulf Shore Boulevard North, #1002**, said that as a runner and a cyclist, she supports safe pathways for recreational use. **Joe Karaganis, 890 Gulf Shore Boulevard South**, provided photographs of vegetation, which he said he believes would be affected with the proposed project, suggesting additional dialogue to determine how the experience of both pedestrians and cyclists could be enhanced in a non-structural way. **Linda Penniman, 611 Portside Drive**, President of the Moorings Property Owner Association, made a statement of support for the project, noting that affected schools should be contacted to ascertain whether the plan meets their students' needs. She also recommended taking into consideration the relationship of pathways to other projects such as street paving and undergrounding of utilities. **Tanya Trinkaus Glass, 455 First Avenue North**, stated that as a pedestrian and cyclist, she uses side streets, not Gulf Shore Boulevard, for safety reasons. She urged the use of yellow striping and signage as well as providing more designated parking for beach access. **Martha Dykman, 5040 Seashell Avenue**, stated that she had been involved in the planning meetings for this project and urged its implementation. **Theresa Bonness, 1555 Ixura Drive**, said that she supports safe bicycle pathways. **Erika Hinson, 347 Central Avenue**, urged placement of sidewalks where citizens and school children most need them to travel safely, but not in the historic district. She suggested educating people to the existing safe routes for pedestrian use. **Brian Leiding, 235 Bahia Point**, said that he supports the project, that safety should override concern for landscaping in the rights-of-way, especially due to the fact that people will walk along areas such as Gulf Shore Boulevard, regardless of

whether there are sidewalks and the roadway must therefore be made safe for them. **Toni Tuttle, 87 Sixth Avenue South**, urged the preservation of Old Naples and expressed concern regarding drainage along Gulf Shore Boulevard with further introduction of impervious materials. She voiced support of education and signage regarding designated bicycle routes. **George Dondanville, 2460 14th Street North**, stressed the need for sidewalks along Gulf Shore Boulevard and supported the creation of a master plan to aid in obtaining grant funding. **Doug Finlay, 3430 Gulf Shore Boulevard North**, noted that the City's fulltime grant coordinator will begin work in the near future and that this should enable the City to obtain additional funding for this project, which he said he supports. **Bill Kroeschell, 272 Mooring Line Drive**, said that he supports sidewalks, which he said he believes would decrease pedestrian accidents. **Alan Ryker, no address given**, provided photographs of parents with strollers, which he said he believes depict the need for sidewalks, noting that sidewalks should be installed where people walk. He also said that the City must retain the services of a sidewalk coordinator. In response to Vice Mayor Nocera, he pointed out that in rights-of-way such as those along Gulf Shore Boulevard with long established landscaping and structures near the roadway, conditional variances could be granted which would allow various types of shielding for the structure. **Dale Simonson, 3400 Gulf Shore Boulevard North**, made a statement supporting the proposed plan. **Dave Ball, 1655 Third Street South and representing Aqualane Shores Association**, stated that his group in general endorses the concept of a comprehensive pathways plan but of major concern is the preservation of the mature tree population and greenspace, as well as the effects on stormwater runoff. **Don Wingard, 130 11th Avenue South**, cautioned that the scope of the plan should be limited to what is actually needed for safety and should build upon existing infrastructure with regard to sidewalks and bicycle paths. As President of the Naples Historical Society, he also urged the preservation of the historic district. **Joyce Everett, 422 Sugar Pine Lane and Robert Ellis, 3553 Gordon Drive**, were not present when called. **Ted Coine, 1727 Alamanda Drive**, expressed concern for the safety of his children when walking or cycling and pointed out that pervious material does exist for use in the construction of sidewalks. **Dianne Mayberry-Hatt, 470 Banyan Boulevard**, expressed support of the project and reminded Council that the rights-of-way belong to all the citizens of Naples. **Dorothy Hirsch, 626 Regatta Road**, said that while she did support the safety of the school children, she was concerned with the possible use of more impervious surfaces. If the pathways are installed, she said, curbing should not be used due to stormwater runoff issues.

Recess: 12:13 p.m. to 1:16 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member MacIlvaine who returned at 1:17 p.m. and Council Member Taylor who returned at 1:20 p.m.

(1:16 p.m. It is noted for the record that prior to the continued consideration of Item 4, a brief review of the remaining agenda for that meeting took place and due to time constraints, Items 5 and 6 were continued to April 16.)

(1:18 p.m. – Item 4 continues) Council Member Price continued the discussion of Item 4 by saying that he believes that education of both pedestrians and cyclists, enforcement of existing laws, and better control of traffic conditions could be done at little or no cost. He also noted that existing bicycle paths could be restriped a different color, to which Council Member Sorey added that in the future, asphalt of a different color could perhaps be used. Mr. Sorey then pointed out that the April 16 workshop will enable Council to finalize the plan, perhaps making it a ten-year instead of five-year plan, and then on April 18 action could be taken. He also listed what he considered the priorities as: safe routes to schools for the children; striping and/or

marking of bicycle paths; signage and education and a sidewalk along the west side of Gulf Shore Boulevard with four-foot widening of the roadway on the east side. Also, to be included in that presentation he said he believes should be a modified sidewalk and bicycle path plan, additional priorities and possible grant funding. Council Member Taylor suggested the redirection of pedestrian traffic away from Gulf Shore Boulevard and Consultant Sewell pointed out that people will take the most direct route when walking regardless of signage.

Council Member Price indicated that his priority listing would be the school safety issues, completing the interconnects in the existing sidewalks and pathways, striping the existing bicycle paths and agreed with Council Member Sorey that communication with the affected neighborhoods is of utmost importance. He added that within five years he believed that a method must be developed for getting people from the City to the Gordon River Greenway, that a path, especially for cyclists, must be established for this purpose. Mr. Price also agreed that the above mentioned Gulf Shore Boulevard sidewalks must be installed due to the use by pedestrians and cyclists.

Further discussion followed regarding the sidewalks versus the historical integrity of the Old Naples area and Council Member Taylor suggested further discussions with the Old Naples Society. Council Member Price noted that the demographics have changed with more and more people walking, running, and cycling, and that safety is of equal importance to the integrity of the area, that sidewalks must be installed where they are needed.

Director Wallace said that he believed that staff should return on April 16 with two plans, one for sidewalks and one for bicycle paths, developed from the input offered during that meeting from Council and the public. These plans should each include a project priority list, a cost estimate for individual projects, potential funding sources which would include funds available in the current budget, specific grants for the school projects, and provide a timeline based upon these parameters (project, cost, available funds).

RIPRAP ORDINANCE RECOMMENDATIONS (Continued to 04/16/07).....ITEM 5
(Continued to 04/16/07)ITEM 6
RECOMMENDATIONS TO PURCHASE PROPERTY (LAND CONSERVATION AND
PRESERVATION TRUST)

CITY DOCK LEASE EXPIRATIONS.....ITEM 7

(3:03 p.m.) Mayor Barnett explained that this item concerned necessary policy decisions regarding the City Dock. City Attorney Robert Pritt gave an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office) detailing various issues and pointing out that three dock leases were due to expire in the near future: two in April and the third in July. Therefore, a policy will be needed with respect to the interaction between the City's waiting list for commercial slips and renewals by existing tenants, as well as the interaction between the waiting list and the transfer or sale of businesses that have leased spaces at the City Dock. He also recommended extending for 30 days the aforementioned leases due to expire in April so as to enable Council to address the matters noted. He then reviewed recent litigation involving commercial leases at the City Dock and referenced his memorandum dated March 28, 2007 (Attachment 6) and presented the following issues for consideration: (It is noted for the record that additional materials provided by staff are contained in the file for this meeting in the City Clerk's Office.)

1. Whether the City should allow persons with expiring commercial leases to enter into new leases without these lessees first being placed on the City's waiting list;
2. With respect to the transfer or sale of a business or vessel at a leased slip at the City Dock whether the purchaser may assume the remaining time on the lease or be required to enter into a new lease for an additional term;
3. The course of action with respect to three specific cases currently before City Council; and
4. Whether any changes should be made to existing lease forms.

City Attorney Pritt next reviewed the following options with respect to new leases:

1. Adopt a policy that, upon expiration of a tenant's current lease, the next person on the waiting list will be offered a lease until that list is exhausted; or
2. Adopt a policy that allows, at the City's option, existing good tenants with stable businesses to enter into a new lease of their commercial slip before considering the next person(s) on the waiting list.

With respect to transfers of a vessel or business, Mr. Pritt listed the following options:

1. Adopt a policy that every commercial dock tenant may assign his or her lease, as part of the sale or transfer of a vessel or business, but that the purchaser may only be allowed the time that is left on the current lease and then the next person on the waiting list will be offered a lease; or
2. Adopt a policy that every commercial dock tenant may assign his or her lease, as part of the transfer of a vessel or business, and that the purchaser may, at the City's option, be given a new lease before considering the next person(s) on the waiting list.

City Attorney Pritt then gave the following recommendations:

1. That Council schedule the issues identified above at a public hearing and as an action item as soon as the April 18 meeting. If the matters at hand cannot be determined by that time, the two tenancies expiring can be extended for a month;
2. That the Council consider the policy issues described above regarding the waiting list vs. existing tenants;
3. That the City's existing lease be revised to reflect the policies of the City; and
4. That the new lease reflect Council's policy decision as to the commercial aspects of the new leases/tenancies with regard to amount of money and length of term.

Waterfront Operations Manager Michael Klein explained that a tenant's conduct under the current lease actually determines whether a new lease would be made available. Such matters as timely payment of rent and whether complaints had occurred are among the determining factors, he added. In response to queries by Council Member Sorey, Mr. Klein said that the charter captains do have City occupational licenses and State fishing licenses, and monthly rental amounts are based upon the length of their slip. Furthermore, City or County residency is a factor only in recreational slip rental, not with reference to commercial spaces, he added.

During discussion that followed, Council Member Taylor pointed out that revenue was not the only consideration and that she believed it important to preserve the commercial aspect of Naples Bay.

Public Comment: (2:52 p.m.) **Jeff Player, 3215 60th Street Southwest**, said that while the offshore fishing fleet had not changed, its location had. He stated that he believes he has been a good commercial tenant at the City Dock and that this is the only remaining facility that can accommodate offshore fishing vessels. He further urged that the lease be as uncomplicated as possible, and in response to Council Member Sorey, suggested that scrutinizing the waiting list would reveal sailboats and fishing boats, not offshore fishing vessels. **Henry Kennedy, no address given**, waived comment at that time. **Allen Walburn, 678 14th Avenue South**, pointed out that he believes that if the City Dock were to remain at all viable as a business location, steps should be taken to retain the charter operations that are already established. He said that he had been a tenant at the City Dock for 25 years and hoped to remain through continued discussion of the issues. In response to Council Member Taylor, Waterfront Operations Manager Klein said that review of a vessel's financial records is part of the criteria before a new lease is offered. **Marlena Brackebusch, 900 Broad Avenue South**, explained that she operates a sailing charter. Pointing out weather as an important factor in the boating industry, she reported that recent storm events, or even the threat of storms, keeps customers away. She also said that the commercial vessels offer residents and visitors an opportunity to be on the water which they wouldn't otherwise have available. With regard to the lease, she pointed out that building a clientele entails years of effort and money must be spent for advertising. Captain Brackebusch also requested that Council reconsider imposing a transfer fee when vessels are sold. **Faron Richards, 1089 Nottingham Drive**, explained that a large commitment in owning a boat is maintenance, especially with the larger commercial fishing boats, and that only the City Dock and Port-O-Call Marina have commercial spaces in Collier County. Captain Richards suggested that those on the waiting list be given first option when one of the current businesses is offered for sale instead of the aforementioned transfer fee. He also expressed appreciation for Council's consideration of an evening meeting, that he had not had a chance to review the packet information and would like to do so.

Mayor Barnett indicated a 7 p.m., April 16 timeframe for the evening meeting which would allow the captains time to return from the day's charter and Council concurred. He asked that the captains provide any additional information which they deem necessary, and added that all options would be considered before any decision regarding the City's policy concerning commercial leases at the City Dock is made. Council Member Sorey requested that City Attorney Pritt provide for consideration a copy of the existing lease and a draft lease for consideration.

Consensus to schedule special meeting regarding this item on April 16 at 7 p.m., and to extend those dock leases due to expire by 30 days thereby enabling affected charter captains to attend the special meeting.

Recess: 3:32 p.m. to 3:47 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.

2007-08 CITY COUNCIL BUDGET PRIORITIES.....ITEM 8

City Manger Robert Lee explained that Council must determine a maximum millage rate in June prior to summer recess. He said that staff's intent was to review existing service levels and ascertain which services could be adjusted to reduce the budget but that the greatest concern lies with the general fund, which would be affected by state actions such as tax reform. Council Member Price stated that it appeared to him that the budget had doubled over the past eight years and that citizens had indicated to him that the level of service is either the same or had actually

decreased. Furthermore, he said that it should be demonstrated why the increases in the budget, such as expenditures involving the pension fund, had been needed. Council Member Sorey suggested a comparison of the applicable budget years. Mr. Price pointed out that a foundation must be presented before a discussion of the level of service could take place, that if there were an area of service that could be decreased in order to reduce costs, Council must be satisfied that it would indeed lower costs. Council Member Taylor suggested a review of items such as capital improvements to verify that such items were still necessary, to which Mr. Price added that with possible changes in taxation imposed on local taxation by the State, ad valorem taxes may not produce as much revenue as they had been in the past. Mr. Price concluded by saying that he did not want to merely justify what is presently being spent but to find opportunities to actually reduce the budget.

Public Comment: (4:03 p.m.) **Henry Kennedy, no address given**, said that while he would support reducing the budget and lowering costs, Council should not do so in the Police and Emergency Services Department (PESD). Mayor Barnett said that he believed the citizens of Naples are accustomed to a certain level of service and cautioned that budget cutting must also take this into consideration. Council Member Price explained that he merely sought to demonstrate accountability to residents and responsiveness to their concerns.

.....**ITEM 9**
REQUEST FOR ATTORNEY/CLIENT SESSION PERTAINING TO JAMES HURLEY V. CITY OF NAPLES PGCS, STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS OFFICE OF JUDGE OF COMPENSATION CLAIMS DISTRICT “M-SOUTH”, CLAIM NUMBER 06-022504EDS. City Attorney Robert Pritt requested that an executive (closed) attorney/client session be conducted, at 9:30 a.m. on Wednesday, April 4, during the City Council regular meeting, to discuss settlement negotiations and strategy related to litigation expenditures in reference to the following pending litigation: JAMES HURLEY v. CITY OF NAPLES PGSC, STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS OFFICE OF JUDGE OF COMPENSATION CLAIMS DISTRICT “M-SOUTH”, CLAIM NUMBER 06-022504EDS. City Attorney Pritt estimated the duration of the session to be 15 minutes. (It is noted for the record that documentation applicable to this request is contained in the file for this meeting in the City Clerk’s Office.)

BRIEFING BY CITY MANAGER.....**ITEM 11**
(4:14 p.m.) (It is noted for the record that copies of the City Manager’s report and other documents referred to are contained in the file for this meeting in the City Clerk’s Office.) City Manager Robert Lee reviewed his letter to County Manager James Mudd requesting funding for 2008 City projects such as Fleischmann Park improvements, Sandpiper Street improvements and the Gordon River Greenway; Council asked him to provide a copy of this letter to County Commissioner Fred Coyle. City Manager Lee also requested clarification regarding the rerouting of truck traffic entering the City westbound on US 41, whether signage should be posted directing trucks onto Tenth Street. He also requested proposed topics for the upcoming joint City Council/Collier County Commission meeting, and Council Member Sorey suggested supplemental funding for the above referenced City projects. Council also requested additional information regarding the recently reported environmental violations at the Edgewater Beach Hotel.

REVIEW OF ITEMS ON THE 04/04/07 REGULAR MEETING AGENDAITEM 12

City Manager Robert Lee indicated that continuation was requested for Item 9 (Variance Petition 07-V1, 1309 Gordon Drive); and Item 13 (Pulling Property update) and Item 14 (vessel speed ordinance) would be withdrawn.

Public Comment: (4:45 p.m.) **Henry Kennedy, no address given**, indicated that he wished to address Council regarding Item 12 (Sandpiper Park) on the April 4 regular meeting agenda. He asserted the only permit issued to date for the project had involved a fence at the location of the original park, that any of the other ongoing construction site activities had not been granted a permit. He also said that plans for the construction had not been made available in the City Council office space in City Hall as requested by Council Member Price on March 21 and expressed disapproval of the recent installation of no trespassing signs around the site. There is concern, he added, the site would no longer be a public park but the entrance to a private development and asked for the funding source of signage replacement. Council Member Price urged Council to read the minutes regarding this item which had been provided in the packet for the April 4 meeting and asked that staff ascertain whether any Certificates of Occupancy (CO's) issued for Naples Bay Resort on the east side of Sandpiper Street were in violation of the PD (Planned Development), which indicated that the parks first be in place. Council Member Taylor requested that photographs be provided so that Council could compare the original condition of the park area and that the developer's plans also be available for review. Council Member Willkomm indicated that he had recently reviewed several documents at the Community Development office which he requested also be made available, and referred to an artist's rendering, dated August 2006, which depicted a sidewalk through the park, and another artist's rendering of the park with a tram path through the park. He further requested construction plans for Council review. City Manager Lee indicated that the petitioner for the adjacent redevelopment project would also be present on April 4 and that staff would review the timeline of events leading up to the above referenced amendments to prior Council direction.

CORRESPONDENCE / COMMUNICATION

Council Member MacIlvaine expressed concern regarding possible legal fees in regard to the vessel speed ordinance (Item 14 on the April 4 regular meeting agenda), noting that City taxpayers were actually funding litigation on both sides of the issue; he suggested therefore an attempt to reach a compromise with Collier County. Council Member Taylor suggested that Tourist Development Council (TDC) advertising not depict practices which do not promote safe environmental practices such as a recent advertising campaign in which personal watercraft were depicted traveling through the Ten Thousand Islands area at a high rate of speed. She asked that a letter regarding this matter be not only forwarded to the TDC but the County Commission and Rookery Bay National Estuarine Research Reserve voicing such concerns. Council Member Price questioned the approval of Crayton Road signage containing directions to Venetian Village, and expressed concern regarding the tone of response by staff at a recent Community Redevelopment Agency Advisory Board (CRAAB) meeting. He also cited recent correspondence from Assistant City Manager Chet Hunt to Senator Saunders (a copy of which is contained in the file for this meeting in the City Clerk's Office) which he deemed inappropriate. Council Member Willkomm urged that Planned Development (PD) criteria be reviewed, especially as applied to a smaller parcel of land, and Council Member Sorey suggested that this be a topic of discussion during a workshop meeting. Council also indicated interest in a review of the use of a super-majority when making determinations in a workshop setting. City Manager Robert Lee indicated this could be done during the first workshop in May.

Consensus to draft a letter to the Tourism Development Council (TDC), County Commissioners, and Rookery Bay National Estuarine Research Reserve voicing concern with the recent marketing plan utilizing personal watercraft in the Ten Thousand Islands area.

Consensus for future workshop regarding Planned Development (PD) usage and super-majority voting.

EXECUTIVE SESSION.....ITEM 10

(5:19 p.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to collective bargaining issues.

Executive Session: 5:19 p.m. to 5:42 p.m. It is noted for the record that all Council Members were present when the meeting reconvened except Mayor Barnett who left following the above executive session.

(5:42 p.m.) Vice Mayor Nocera announced that no action was taken during the above referenced executive session.

ADJOURN.....
5:42 p.m.

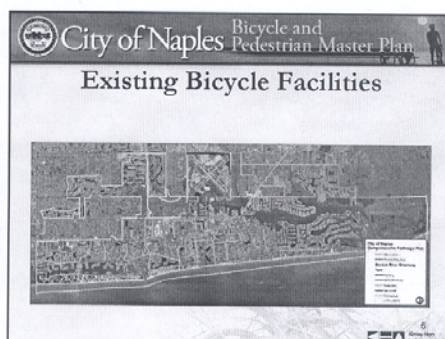
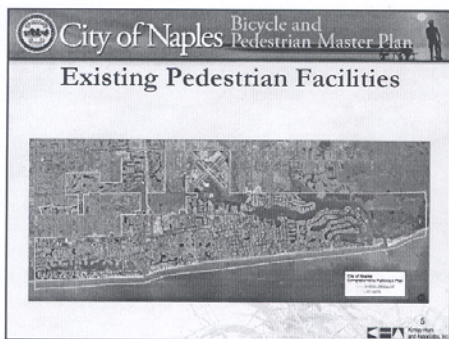
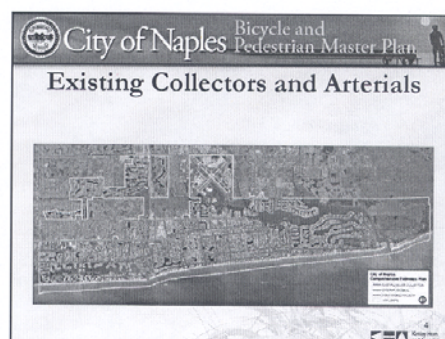
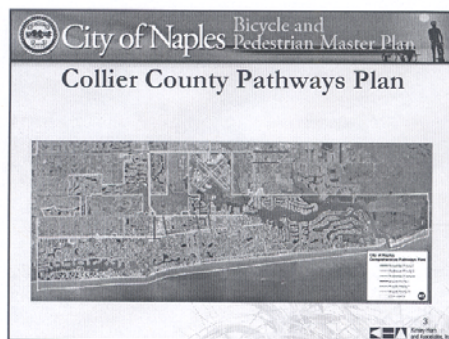
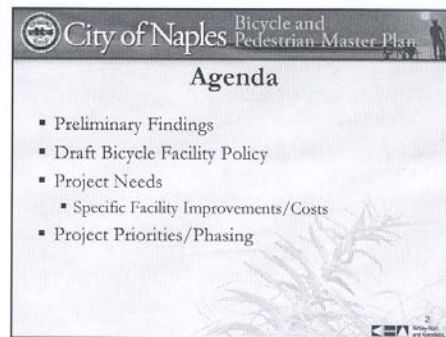
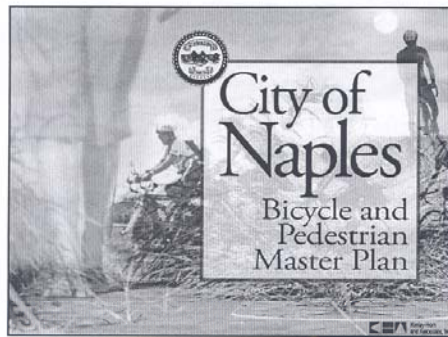
Bill Barnett, Mayor

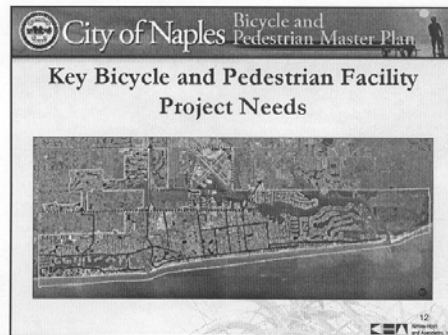
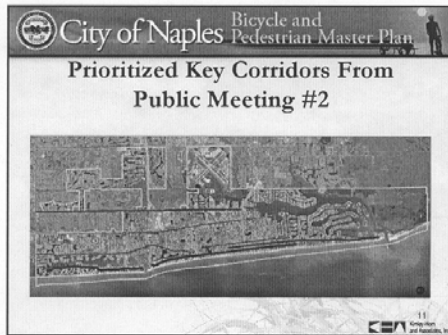
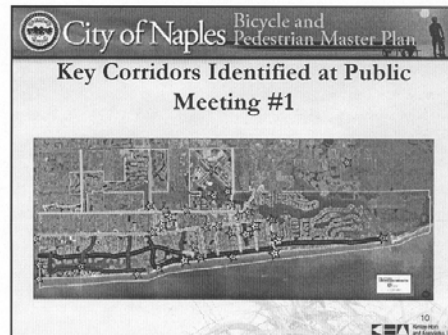
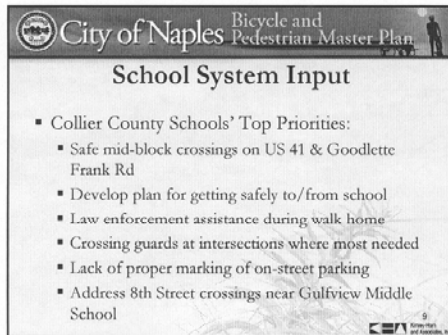
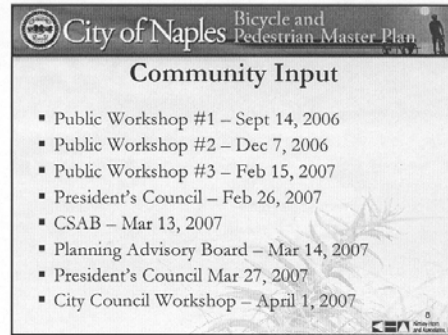
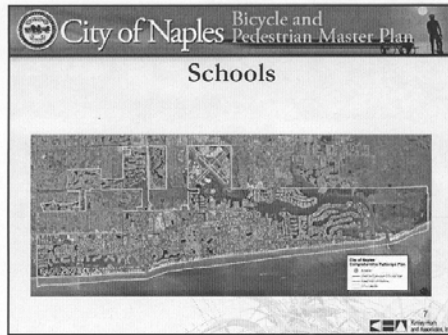
Tara A. Norman, City Clerk

Minutes prepared by:

Vicki Smith, Technical Writing Specialist

Minutes Approved: May 2, 2007





City of Naples Bicycle and Pedestrian Master Plan

Current Sidewalk Policy

- #1: Missing links on collector roads 2 blocks or less in length.
- #2: Missing links on collectors roads greater than 2 blocks in length.
- #3: Complete remaining collector system by installing new sidewalks.
- #4: Neighborhood requests on local streets.

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City of Naples Bicycle and Pedestrian Master Plan

Sidewalk Policy Enhancements

- Assess pedestrian travel to/from schools
- Focus improvements on most used roads and within ¼ mile of schools
- Place a higher priority on elementary and middle schools
- Consider safety concerns
- Add a timeline for completion

14
Simpkins and Associates, Inc.

City of Naples Bicycle and Pedestrian Master Plan

Draft Bicycle Facility Policy

- Bicycle facilities shall be constructed to fill in gaps on all arterial and collector roadways that have been designated as primary routes
- Bicycle facilities shall be constructed in order to provide safe passage to key destinations and public attractions, i.e. schools, parks, beaches, transit stops
- Facilities shall be constructed to provide a recreational/multi modal network thru the city and to regional connections (both E/W & N/S)
- Bicycle facility projects shall be financially feasible within the City's 5-year capital improvements plan and shall be reviewed and evaluated by the City Council annually
- Construction of bicycle lanes shall be coordinated with the City's Pavement Management Policy (currently under development) to reduce overall project costs
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 - • • need to define "facilities", understanding they may not always include widening roads (i.e. signing).
- This is a draft policy subject to City Council review and approval. Uniting the above criteria the following roadways have been designated as potential bike routes based upon public input, roadway classification & existing uses. (Go to maps)

15
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City of Naples Bicycle and Pedestrian Master Plan


Other Potential Programs & Policies

- Create the position of Bicycle and Pedestrian Coordinator
 - Implement the Bicycle and Pedestrian Master Plan
- Annual Progress Report
- Education, Enforcement and Encouragement programs
- Review of site plans for development approvals
- Grants for safety and enhancements
- Implement the Safe Paths to Schools Program
- Coordinate with Collier Co, FDOT and the MPO

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City of Naples Bicycle and Pedestrian Master Plan

Gulf Shore, Gordon, and Crayton Corridor




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City of Naples Bicycle and Pedestrian Master Plan

20th Ave. South

From Gulf Shore Blvd. to Gordon Drive (0.082 Miles)

- Add bike lanes to both sides of road (\$60,918)
- Construct sidewalks (\$30,307)



PROPOSED 20' AVE SECTION W/ CUTTER

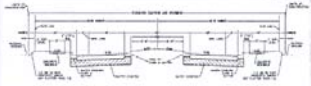
18
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City of Naples Bicycle and Pedestrian Master Plan

Banyan Boulevard

From Gulf Shore Blvd. to Crayton Road (0.168 Miles)

- Designate bike lanes and Construct sidewalks (\$65,641)



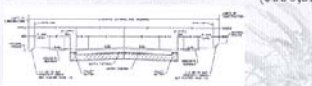
19

City of Naples Bicycle and Pedestrian Master Plan

Crayton Road

From Seagate Drive to Banyan Boulevard (3.411 Miles)

- Add bike lanes/ designate where possible (\$737,065)
- Fill in gaps in sidewalks (\$630,353)



20



City of Naples Bicycle and Pedestrian Master Plan


Gordon Drive

From Broad Ave. South to Kings Town (1.4 Miles)

- Add bike lanes to both sides of road (\$917,828)
- Construct sidewalks (\$517,440)

From Kings Town to Southern Terminus

- Add 'share the road' signs (\$10,000)



22

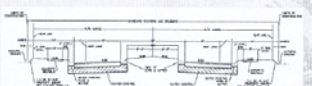


City of Naples Bicycle and Pedestrian Master Plan

Gulf Shore Boulevard North

From North End to Southern End (2.224 Miles)

- Fill sidewalk gaps on either side of road (\$477,892)




24

City of Naples Bicycle and Pedestrian Master Plan

Gulf Shore Boulevard South

From Mooring Line Drive to 20th Ave. South (3.419 Miles)

- Add bike lanes to both sides of road (\$2,698,013)
- Fill sidewalk gaps on both sides of the road (\$763,594)



25
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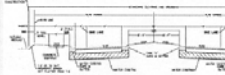


City of Naples Bicycle and Pedestrian Master Plan

Harbour Drive

From Gulf Shore Blvd. to Crayton Rd. (0.357 Miles)

- Designate bike lanes on bridge and construct sidewalks (\$139,487)



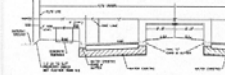
27
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City of Naples Bicycle and Pedestrian Master Plan

Mooring Line Drive

Gulf Shore Blvd. to Crayton Rd. (0.467 Miles)

- Designate bike lanes and construct sidewalks (\$182,466)



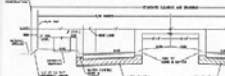
28
City of Naples and Associates, Inc.

City of Naples Bicycle and Pedestrian Master Plan

Park Shore Drive

From Gulf Shore Blvd. to Crayton Rd. (0.285 Miles)


- Designate bike lanes and construct sidewalks (Cost: \$111,355)



29
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City of Naples Bicycle and Pedestrian Master Plan

Restriping and Signing




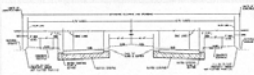
30
City of Naples and Associates, Inc.

City of Naples Bicycle and Pedestrian Master Plan

5th Avenue South

From Gulf Shore Blvd. to US-41

- Add 'Share the Road' Signs (\$5,000)


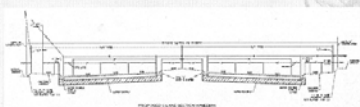
31 City of Naples, FL

City of Naples Bicycle and Pedestrian Master Plan

Goodlette-Frank Road

From 5th Ave. South to Pine Ridge Rd.

- Determine feasibility of multiuse path
- Coordinate with Collier County


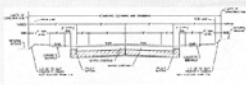
32 City of Naples, FL

City of Naples Bicycle and Pedestrian Master Plan

8th Street

From 7th Avenue North to Broad Avenue South (1.6 Miles)


- Add 'Share the Road' signage (\$12,000)
- Construct sidewalks (\$591,360)

33 City of Naples, FL

City of Naples Bicycle and Pedestrian Master Plan

Regional Connectors




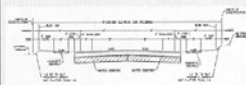
34 City of Naples, FL

City of Naples Bicycle and Pedestrian Master Plan

Cypress Woods Drive

From US-41 to 14th Street North

- Located in Collier County, Coordination for facilities improvements required.


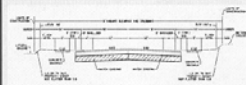
35 City of Naples, FL

City of Naples Bicycle and Pedestrian Master Plan

14th Street North

From Cypress Woods Drive to Solana Road

- Located in Collier County, Coordination for facilities improvements required.

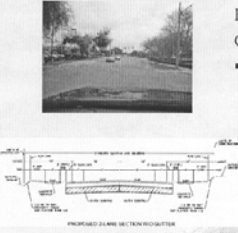
36 City of Naples, FL

City of Naples Bicycle and Pedestrian Master Plan

Solana Road

From 14th Street North to Goodlette-Frank Boulevard

- Located in Collier County, Coordination for facilities improvements required.



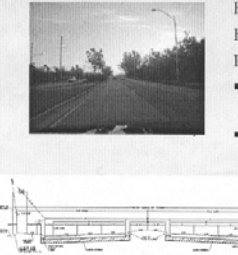
37

City of Naples Bicycle and Pedestrian Master Plan

Golden Gate Parkway

From Goodlette-Frank Boulevard to Airport Pulling Road (1.6 Miles)

- Add bike lanes to both sides of road (\$318,754)
- Fill sidewalk gaps on either side of road (\$184,800)



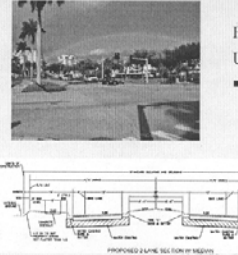
38

City of Naples Bicycle and Pedestrian Master Plan

Parkshore Drive

From Crayton Road to US-41 (0.7 Miles)

- Designate bike lanes and construct sidewalks (\$266,112)

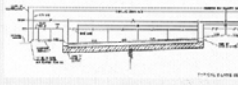


39

City of Naples Bicycle and Pedestrian Master Plan

US 41 South of 5th Avenue


- From Goodlette-Frank Boulevard to Sandpiper Road
- Pedestrian and bicycle facilities already exist



40

City of Naples Bicycle and Pedestrian Master Plan

Missing Links



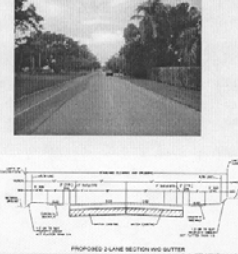
41

City of Naples Bicycle and Pedestrian Master Plan

Broad Avenue South

From Gulf Shore Boulevard to 8th Street (0.7 Miles)

- Add bike lanes to both sides of road (\$483,967)
- Construct sidewalks (\$258,720)



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City of Naples Bicycle and Pedestrian Master Plan

4th Avenue North

From Gulf Shore Boulevard to 8th Street (0.7 Miles)

- Re-striping for bike lanes and construct sidewalks (\$258,720)

PROPOSED 4-LANE SECTION (SEE OUTLET)

City of Naples Bicycle and Pedestrian Master Plan

7th Avenue North

From Gulf Shore Boulevard to Goodlette-Frank Road (1.1 Miles)

- Add missing portion of bike lanes to both sides of road (\$433,177)
- Construct sidewalks (\$406,560)

PROPOSED 4-LANE SECTION (SEE OUTLET)

City of Naples Bicycle and Pedestrian Master Plan

Orchid Drive

From Crayton Road to US-41 (0.5 Miles)

- Add bike lanes to both sides of road (\$243,577)
- Construct sidewalks on south side of road (\$92,400)

PROPOSED 4-LANE SECTION (SEE OUTLET)

City of Naples Bicycle and Pedestrian Master Plan

Fleischmann Boulevard

From US-41 to Goodlette-Frank Road (0.5 Miles)

- Add bike lanes to both sides of road (\$364,481)

PROPOSED 4-LANE SECTION (SEE OUTLET)

City of Naples Bicycle and Pedestrian Master Plan

Mooring Line Drive


From Crayton Road to US-41 (0.4 Miles)

- Designate bike lanes and construct sidewalks (\$156,288)

PROPOSED 4-LANE SECTION (SEE OUTLET)


City of Naples Bicycle and Pedestrian Master Plan

22nd Avenue North



From US-41 to Goodlette-Frank Road (0.5 Miles)

- Add bike lanes to both sides of road (\$470,599)




PROPOSED 2-LANE SECTION WITH GUTTER

49

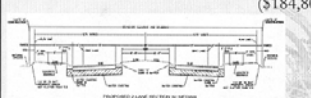
City of Naples Bicycle and Pedestrian Master Plan

Central Avenue



From Gulf Shore Boulevard to Goodlette-Frank Road (1.1 Miles)

- Add bike lanes/designate bike lanes (\$704,975)
- Construct sidewalks (\$184,800)



PROPOSED 2-LANE SECTION WITH SIDEWALK

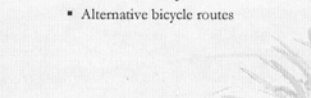
50

City of Naples Bicycle and Pedestrian Master Plan

US 41 North of 5th Ave South

Constrained Facility:

- Possible mitigation:
 - Add signalized mid-block crossings at 2nd Ave North and/or 3rd Ave North
 - Pedestrian overpasses
 - Alternative bicycle routes

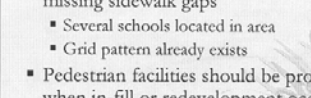


51

City of Naples Bicycle and Pedestrian Master Plan

Main Points from Public Meeting #3

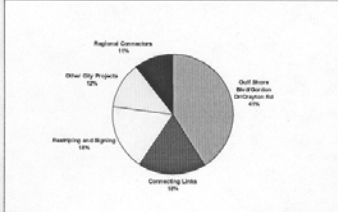
- Gulf Shore Blvd. is the #1 Priority
- Mid-block crossing(s) on US 41 needed
- Old Naples (Historic Naples) priority for missing sidewalk gaps
 - Several schools located in area
 - Grid pattern already exists
- Pedestrian facilities should be provided when in-fill or redevelopment occurs
- Sidewalk on west side of Gulf Shore Blvd. only



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City of Naples Bicycle and Pedestrian Master Plan


Public Meeting #3 Results



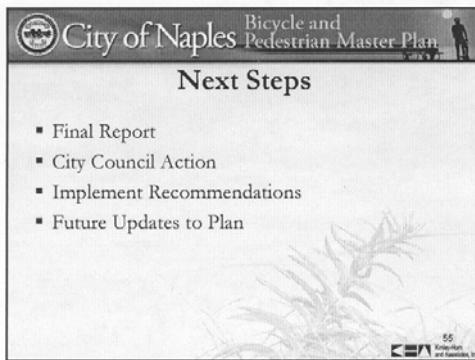
53

City of Naples Bicycle and Pedestrian Master Plan

Public Meeting #3 Results



54





City of Naples

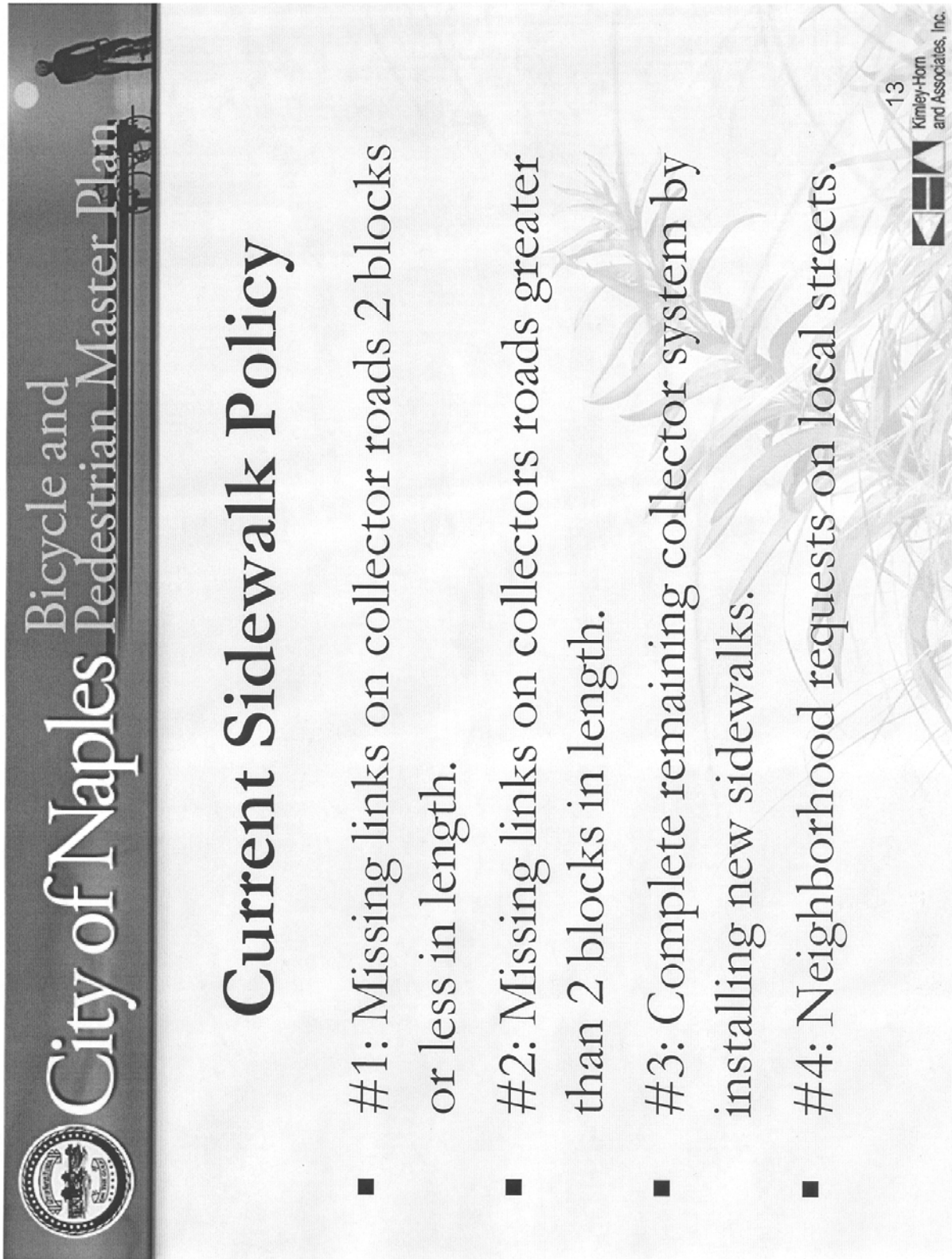
Bicycle and Pedestrian Master Plan

Draft Bicycle Facility Policy



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and Associates, Inc.

- Bicycle facilities shall be constructed to fill in gaps on all arterial and collector roadways that have been designated as primary routes
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- All bicycle facility construction projects shall be designed and constructed using design guidelines as outlined in the Florida Greenbook, AASHTO and the MUTCD (thus will meet ADA requirements)
 - * - need to define "facilities", understanding they may not always include widening roads (i.e. signing).
 - This is a draft policy subject to City Council review and approval. Utilizing the above criteria the following roadways have been designated as potential bike routes based upon public input, roadway classification & existing uses. (Go to maps)




The slide features a header with the City of Naples seal and the title "City of Naples Bicycle and Pedestrian Master Plan" in a serif font. Below the title is a large, bold, sans-serif heading "Current Sidewalk Policy". Underneath this heading is a bulleted list of four items, each preceded by a small square bullet. The background of the slide is a light, textured image of palm fronds. In the bottom right corner, there is a small logo for Kimley-Horn and Associates, Inc., with the number "13" above it.

City of Naples Bicycle and Pedestrian Master Plan

Current Sidewalk Policy

- #1: Missing links on collector roads 2 blocks or less in length.
- #2: Missing links on collectors roads greater than 2 blocks in length.
- #3: Complete remaining collector system by installing new sidewalks.
- #4: Neighborhood requests on local streets.

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and Associates, Inc.



City of Naples Bicycle and Pedestrian Master Plan

Sidewalk Policy Enhancements

- Assess pedestrian travel to/from schools
- Focus improvements on most used roads and within 1/4 mile of schools
- Place a higher priority on elementary and middle schools
- Consider safety concerns
- Add a timeline for completion

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and Associates, Inc.



The slide features a header with the City of Naples seal and the title "City of Naples Bicycle and Pedestrian Master Plan." The main content is titled "Other Potential Programs & Policies" and lists seven bullet points. The background has a faint image of palm trees. The slide is numbered 16 and includes the Kimley-Horn and Associates, Inc. logo.

City of Naples Bicycle and Pedestrian Master Plan

Other Potential Programs & Policies

- Create the position of Bicycle and Pedestrian Coordinator
 - Implement the Bicycle and Pedestrian Master Plan
- Annual Progress Report
- Education, Enforcement and Encouragement programs
- Review of site plans for development approvals
- Grants for safety and enhancements
- Implement the Safe Paths to Schools Program
- Coordinate with Collier Co, FDOT and the MPO

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850 PARK SHORE DRIVE
TRIANON CENTRE - THIRD FLOOR
NAPLES, FL 34103
239.649.2705 DIRECT
239.649.6200 MAIN
239.261.3659 FAX

MEMORANDUM

TO: Hon. Bill Barnett, Mayor &
Naples City Council

FROM: Robert D. Pritt, City Attorney
James D. Fox, Esq.

DATE: March 28, 2007

RE: City Dock Commercial Lease Issues – Workshop Agenda Item #7

Background:

In 2001, the City Council established a new five-year lease and new policies for commercial tenants at the City Dock. Over the course of the next two years every then current tenant signed the 2001 Council-approved lease, with the exception of three tenants¹ who sued the City under the 1999 lease. The litigated tenancies and the 2001 leases are all about to come to an end. The 2001 Council-approved leases are for five (5) years.

No commercial dock tenant has the legal right to force the City to renew their existing lease.

However the City Council has not expressly established a policy with respect to the interaction between the City's waiting list for commercial slips and renewals by existing tenants, or the interaction between the waiting list and the transfer or sale of businesses that have leases at the City dock.

Questions Presented:

1. Should the City allow persons with existing leases to enter into new leases with the City once their current lease expires, without first getting on the City's waiting list?
2. What should the City's policy be with respect to the transfer or sale of a business or boat that has a lease with the City?
 - a. Should the City only allow the purchaser to assume the remaining time on the lease; or

¹ A&B Charters (Allen Walburn), Jeffrey Player, and Byron Thomas.

MEMORANDUM

(PAGE 2 OF 6)

- b. Should the City allow the purchaser to enter into a new lease for an additional term?
3. What should the City do with respect to three specific cases currently before it?
 - a. Capt. Alan Walburn proposes to sell his boat, the Alabama, to Capt. Craig Dafcik. He wants Capt. Dafcik to get a new lease in the existing slip, currently leased to A&B Charters, without getting on, and advancing to top of, the waiting list. The question is whether the City should grant a new lease to Capt. Dafcik even though he is not at the top of the waiting list?² The A&B Lease expires by judicial order on April 20.
 - b. Capt. Jeffrey Player has formally requested that the City allow him to enter into a new lease. Capt. Player's lease expires by judicial order on July 27.
 - c. Capt. Debbie Weber has requested that the City allow her to enter into a new lease. Capt. Weber's lease expires at the end of April. Other leases will expire at various times later this year.
4. What changes, if any, should be authorized by Council to be made to the existing lease forms?

Options (not necessarily exhaustive):

1. With respect to new leases, the City Council may:
 - a) Option 1: Waiting List Prevails – Adopt a policy that, upon expiration of a tenant's current lease, the next person on the waiting list will be offered a lease at the dock until that list is exhausted; or
 - b) Option 2: Existing Tenants Prevail – Adopt a policy that allows existing good tenants with stable businesses to be permitted to enter into a new lease of their commercial dock slip before considering the next person(s) on the waiting list, at the City's option.
2. With respect to transfers of a boat or business, the City Council may:
 - a) Option 1: Waiting List Prevails – Adopt a policy that every commercial dock tenant may assign his or her lease, as part of the sale or transfer of a boat or business, but that purchaser may only get what time is left on the lease (no new lease will be given) and then the next person on the waiting list will be offered a lease at the dock; or

² The Alabama currently docks in slip No. 78 at the City Dock pursuant to a lease between the City and A&B Charters, Inc. (the "A&B Lease"). City Dock records list Capt. Kraig Dafcik as the Captain of the Alabama.²

MEMORANDUM

(PAGE 3 OF 6)

b) Option 2: Existing Tenants Prevail – Adopt a policy that every commercial dock tenant may assign his or her lease, as part of the transfer of a boat or business, and that purchaser may, at the City's option, be given a new lease before considering the next person(s) on the waiting list.

3. If the City's decision is that all current leases are for a maximum of five years only (Option 1), and that all new tenants must first be on the waiting list before they will get a new lease, then the decision in the three specific cases has been made: The City is not giving any current tenant a new lease, nor is the City going to allow persons to circumvent the waiting list by purchasing a business with an existing lease at the City Dock.

If the City's decision is to allow existing tenants to obtain a new lease (Option 2), and to grant new leases upon assignment, then the three specific cases above must be decided on a case-by-case basis, involving other existing City policies and considerations.

4. Regardless of which option is chosen, a new lease form is recommended. The current lease form was approved by Council under contentious circumstances. At that time, commercial tenants were contending that they had a perpetual right to a slip at the dock. Subsequent litigation has dispelled that notion, but has been very expensive. A simple commercial lease is recommended. Such a lease may be better and should be used for all new lease situations. If so, this will be the first time that all commercial dock tenants would be on one Council-approved lease.

Extended Discussion:

In January of 1994, the City Council adopted a commercial dock lease form, by Resolution 94-7108, that expressly prevented a tenant from assigning or transferring his slip. The form lease said:

The Tenant shall not assign or encumber the Lease, nor assign or transfer in any way, interest in the Tenant's business, nor sublet the Premises, or any part thereof, nor use or permit the use of the premises for any purpose other than above provided.

The City Council implicitly abrogated this non-assignment provision one month later when it passed City Ordinance 94-7134 (Rules and Regulations pertaining City Dock). That ordinance refers to a City policy of requiring persons to get on a waiting list to obtain a slip at the City dock.³ It further grants an exception to the waiting list requirement, saying that "the waiting list process is waived" "[i]n the event of a sale or transfer of the charter business." It states in full:

³ Ordinance 94-7134, Section (1)(27).

MEMORANDUM

(PAGE 4 OF 6)

negotiate same with the City. In such cases, the waiting list process is waived. The applicant must submit as part of the application personal and business references, a credit check, and personal references.

This provision in part was greatly decried by many on City council because it allowed people, such as Capt. Player, to essentially purchase a company's lease interest to avoid the City's waiting list.

In 1999 a number of lessees entered into a lease with a former City Manager that included an addendum allowing assignment of slips.

In 2000 the City Council became increasingly aware of issues created by the changes made in 1999 without Council authorization to the City's lease. So, on December 12, 2001, the City Council adopted by resolution a new form lease. That lease, in pertinent part, (1) made it clear that no tenant had the legal right to force the City to renew its lease, and (2) required a purchaser to be given a new lease, which lease could be for up to a five year period:

Lessee shall be permitted to sell Lessee's business and assign the Lease rights and obligations to a new tenant. In such case, the new tenant (purchaser) shall be restricted to operate the purchased business and Lessee's Vessel. This provision authorizes only a bona fide sale of the business. Lessor reserves the right to review documents related to the sale to verify that the sale is bona fide. The transfer fee will be equivalent to 3 year's base rent in effect at the time of the transfer. *The Lessor will execute a new lease not to exceed 5 years with the new Lessee at the then current rental rates.* (emphasis added.)

Resolution 01-9445 at Ex. A, Sect. 5.3:

Ordinance 94-7134 §(1)(27), which allowed assignments, was explicitly abolished by City Ordinance 01-9442, in December 2001. The new ordinance states: "The council will adopt rules and regulations and amendments thereto for the operation and use of the municipal dock by resolution."⁴ Council then adopted new rules and regulations for the City Dock.⁵ Those rules and regulations state in pertinent part that they City will maintain a waiting list for slips at the dock and the process for the assignment of slips. It reads as follows:

B. Slip issuance. A chronological waiting list for both recreational and commercial slip assignments will be maintained and available for public inspection. The department of community services administrative policies and procedures concerning waiting lists are applicable. Any changes or additions to a previously approved and posted waiting list will be submitted to the city council

⁴ Ordinance 01-9442, was codified in Section 78-82(4), City of Naples Code of Ordinances (1994 as amended) and now appears unchanged in Section 42-82(d), City of Naples Code of Ordinances (2006).

⁵ Resolution 01-9443.

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and the city manager for information purposes, with exception of new names added to the list in the order in which they are received.

1. When a slip becomes available in the Municipal Dock it will be offered first to that person highest on the waiting list for that size slip, and if refused, in sequence to the person next on the list. The person highest on the waiting list will be offered any available slip providing the vessel size will not be more or less than allowed for the size of the slip. A formal waiting list selection process has been established by city council, is kept on file with the city clerk and will be utilized as detailed within all applicable Municipal Dock operational policies. Acceptance of a slip must be indicated within 10 days of notification by payment of rent and execution of a lease agreement.

Resolution 01-9443 at Ex. "A", Rules and Regulations for the Municipal Dock and Adjacent Mooring Areas, Section (2)(B) and (2)(B)(1).⁶

Resolution 01-9443 also says the "department of community services administrative policies and procedures concerning waiting lists are applicable." It further states that the "formal waiting list selection process has been established by city council, is kept on file with the city clerk and will be utilized as detailed within all applicable Municipal Dock operational policies."

At that time the City of Naples Community Services Department had in place Policy #0012 (Approved Standard Operating Procedure for Maintaining Waiting List for Municipal Dock Commercial Boat Slip Rentals) (April 14, 2000).⁷ Policy #0012 currently states that the City will maintain a waiting list for commercial slips and does not allow the transfer of a position on the waiting list, stating in pertinent part that:

- If the first available applicant is unable to accept the next available slip, then the first available subsequent applicant will be offered the slip.
- An applicants [sic] position on the waiting list is non transferable to any person or party for any reason.

On January 1, 2003, the City entered into a new submerged land lease for the land under the City Dock. That lease requires, in Section 30(b), that a "minimum of 90 percent of the slips at the marina shall be made available for rent to the public maintained on a 'first-come, first served' basis."⁸ There are 84 slips at the City dock, of which about 46 are recreational slips and 17 are commercial slips. The remaining slips are for a mix of government, law enforcement vessels and transient vessels. For the last 19 years, the City's residential slips have been on

⁶ Resolution 01-9443 was amended in March 2003 by Resolution 03-9994, but no change was made to Section (2).

⁷ That policy has been subsequently amended four times, the most recent amendment being on August 25, 2004, though no change has been made to the waiting list provisions.

⁸ Resolution 03-9981. The language is required by Fla. Adm. Code § 18-21.008(2). Nothing in the Administrative Code, Chapter 253 authorizing the code section, administrative hearings, or Florida case law further defines what is meant by "first-come, first-served."

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month-to-month leases. Existing tenants have been able to renew each month, and when a tenant does not renew, that slip is made available to the next person on the residential waiting list. This policy has to-date fulfilled the “first-come, first-served” requirement of the submerged land lease.

Most recently, the City’s policy regarding the waiting list was argued strongly to the federal court (in litigation the City won) that a lease term should be construed in light of a policy that everyone should have an equal opportunity to obtain new commercial slips as they come open. *Walburn v. City of Naples*, No. 2:04-CV-194-FTM33 DNF (Mid.Dist. Fla. 9/22/2005).

Recommendations:

1. That Council schedule the issues contained herein as a public hearing and action item as soon as the April 18 meeting. If the matters at hand cannot be determined by that time, the two tenancies expiring can be extended for a month.
2. That the Council consider the policy issues described above regarding the waiting list vs. existing tenants.
3. That the City’s existing lease be revised into a new lease to reflect the policies of the City.
4. That the new lease reflect Council’s policy decision as to the commercial aspects of the new leases/tenancies with regard to amount of money and length of term.

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