

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – September 5, 2007 – 9:00 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
Tara Norman, City Clerk
Stephen Weeks, Technology Services Director
Vicki Smith, Technical Writing Specialist
Russell Adams, CRA Executive Director
Dan Mercer, Public Works Director
Bob Middleton, Utilities Director
Denise Perez, Human Resources Director
Linda Tanner-Bevard, Sr Human Resources Generalist
Lori Parsons, Risk Manager
Ann Marie Ricardi, Finance Director
Victor Morales, Chief of Police & Emergency Services
Adam Benigni, Planner II
Robin Singer, Community Development Director
Erica Goodwin, Planner II
George Archibald, Traffic Engineer
Sandeep Dasari, Plans Review Engineer
Michael Little, Zoning Enforcement Inspector
James Slapp, Deputy Chief/PESD
Clarence Tears
Patrick White
Charles Thomas
Mark Wood

Phil Simcosky
Everett Thayer
Rex Storter
Stephen Burgess
Dorothy Hirsch
Christian Andrea
Carl Suarez
Henry Kennedy
Doris Reynolds
Jennifer Hecker
Greg Brisson
Falconer Jones III
Joss Nageon De Lestang
Jon Kukk
John Passidomo
Sue Smith
Judith Chirgwin
Freddy Velez
Jason Lammer
Jim Boula

Media:

Jenna Buzzacco, Naples Daily News
Other interested citizens and visitors

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

Pastor Phil Simcosky, East Naples Baptist Church

ANNOUNCEMENTSITEM 3

- Employee Service Awards - presented by City Manager Robert Lee and various Department Directors. (It is noted for the record that a list of those individuals receiving awards is contained in the file for this meeting in the City Clerk's Office.)
- Water Reuse Week in Florida – Big Cypress Basin Board Director Clarence Tears was presented a proclamation read by Council Member Sorey. The State of Florida has declared the week of September 9th as Water Reuse Week and the City of Naples urged its citizens to conserve this natural resource Mr. Sorey said. Mr. Tears thanked the City for its efforts, noting that the area is a leading force in the State with regard to reuse water implementation.

SET AGENDA (add or remove items)ITEM 4

MOTION by Nocera to SET THE AGENDA continuing Item 13 (Naples High School sign) and Item 18 (Police Pension amendment) to 09/10/07; removing from Consent Agenda for separate discussion Items 8-j (Iler Planning Group update of Community Redevelopment Plan), 8-n (agreements with golf courses for reuse water) and 8-q (rescheduling of Council Meetings); withdrawing Item 19 (anchorage ordinance) at the request of staff; and adding Item 20 (letter to State of Florida regarding annexation of Keewaydin Island). This motion was seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....ITEM 5

(9:31 a.m.) **Carl Suarez, 479 Rudder Road**, said that he supports the proposed stormwater drainage ordinance (see Item 16 below). **Everett Thayer, 1690 Avion Place**, expressed appreciation for the improvements to North Road but also indicated ongoing concern with regard to the storage on the airport property of rock for construction purposes. **Rex Storter, 1500 Nautilus Road**, voiced concern regarding the installation of a chain link fence in a front yard in his neighborhood, which he said he believes is a violation of the Code of Ordinances. Following a brief exchange with Council, this issue was added to the September 17 workshop agenda for additional discussion. **Attorney John Passidomo, representing Barron Collier Companies**, stated that he wished to discuss a land use decision related to construction of the proposed municipal parking garage on Eighth Street South and Sixth Avenue. (It is noted for the record that this matter involved consideration of an exchange of property between the City and the Collier interests so that the proposed parking garage would be positioned on Ninth Street South on land currently held by Collier and that the Collier interests would then receive a comparable sized parcel fronting on Eighth Street South. Please see the meeting of the Community Redevelopment Agency/CRA held on September 4, 2007.) Mr. Passidomo said that in June the City staff and architects had been directed to collaborate with the Barron Collier Companies to pursue the possibility of a land swap. This had resulted in a proposal, he said, that would achieve the following goals: 1) The same garage plan can be constructed either oriented toward the western or eastern side of the site; 2) The project would remain on schedule and within budget; 3) A cost savings would be realized by eliminating the flex space previously considered for the Eighth Street side of the structure; 4) Parking space capacity would be maximized; and 5) The proposal would conform to the urban design concepts of the Fifth Avenue South Overlay

District. In addition, the proposal would, he said, ensure a continued relationship between the site and Cambier Park immediately across Eighth Street, in that commercial space compatible with the park could be housed in the Collier's building. To that end, Barron Collier Companies had engaged their own architects to develop a plan, he said, and also asserted that the land swap as well as the Collier proposal had received the recommendation of the City's CRA Executive Director as well as the Fifth Avenue South Action Committee (FASAC) and the Community Redevelopment Agency Advisory Board (CRAAB). Therefore, Mr. Passidomo requested an opportunity to negotiate the contract for the property exchange transaction, which had been submitted to the CRA Executive Director on August 24; this would subsequently be presented to the Council in an open public meeting. (Later in the discussion Council Member Sorey pointed out that the staff had to date not been able to commence negotiation since the City's legal advisor was not available until the CRA had acted on a waiver of conflict involving City Attorney Robert Pritt which had taken place the day before.) In conclusion, Mr. Passidomo said that despite the CRA's action the day before, it had been his clients' understanding that in light of presentations to the City's various boards the matter of the property exchange had been settled. He estimated that negotiations could however be completed and a proposed contract provided to the Council in a two-week period (September 19 regular meeting).

In further discussion, it was determined that the Council was free to act on this matter since the prior consideration had been in the forum of the CRA; however, it would be necessary to add an item to that day's agenda by a five-sevenths vote in order to consider Attorney Passidomo's proposal. Council Member Sorey noted that Architect Andrea Clark-Brown had indicated at the CRA meeting that her work could proceed on either Scheme B (land swap proposal) or Scheme C (as approved by the CRA positioning the parking garage directly on Eighth Street South).

Council Member MacIlvaine (Chair of the CRA) however, pointed out that there had been a unanimous decision by the CRA to proceed with Scheme C for the garage and took the position that no further information had been presented that would call for a reconsideration. However, Mayor Barnett pointed out that because of the direction to staff to investigate a land swap with the Collier interests, the process should nevertheless be completed by the Council hearing the Collier proposal. Council Member MacIlvaine disagreed, but Council Member Sorey also indicated a desire for information from staff's meetings with Collier representatives, including the handling of spaces in the garage which would be utilized by the Collier project. He also cited his interpretation of comments by Doris Reynolds, a citizen who spoke against the property exchange, stating that he believed Mrs. Reynolds had indicated that the site should remain a surface parking lot, not contain a garage (See also Page 21). Mr. Sorey said that he therefore supported the Council's hearing any additional information that would enable a decision in the interests of the entire community. Mr. Sorey made a motion that the agenda of that meeting be amended to consider Attorney Passidomo's proposal. This motion was seconded by Council Member Taylor; however, additional discussion ensued prior to the Council's voting on the motion.

Council Member Willkomm however contended that merely by allowing a proposal to be investigated, there was no obligation on the part of the Council to go forward in some particular manner; he said he would object very strongly if this were the case. Attorney Passidomo stressed that no entitlement had been perceived on the part of his clients who merely assert that it

is in the community's interest to conclude a public airing of the matter. He further said that public comment at the CRA meeting the day before had been closed although a motion that would have allowed negotiations on the land swap had been repudiated. Council Member MacIlvaine, however, took issue with this position, pointing out that the Collier interests had requested to speak only when it was apparent that the CRA was going to choose another alternative (Scheme C). Council Member Taylor said that closing debate was the prerogative of the chair but that she had confirmed with City Attorney Robert Pritt that Robert's Rules of Order allow the body to overrule the chair although no one at the CRA meeting had attempted to do so. However, she said that Barron Collier Companies' proposal should in fact be heard for the benefit of the public, even though a time delay in commencement of the project could in fact preclude contract negotiations.

Council then further discussed the process whereby items are first heard by the CRA and then passed on to the City Council for final action. At that time Mayor Barnett deemed that action on the motion above to add an item to the agenda would be held in abeyance until the public comment portion of the agenda had been completed, noting that two individuals who had registered had however not yet been afforded an opportunity to speak. **Sue Smith, 11th Avenue South, Naples, Florida**, took issue with reconsideration of the parking garage placement and pointed out that if a property exchange had in fact been pursued by the staff it confirmed her belief that the staff tends to act apart from the public view. Mrs. Smith defended the action by CRA Chair MacIlvaine to close public comment and contended that the issue should not be reopened by virtue of the fact that Council Member Sorey, Vice Mayor Nocera and Mayor Barnett favor it. This issue, she asserted, is no different from other occasions when the Council takes a final action and debate is closed to those who may not agree with that action. In conclusion, she said she was confused and dismayed that Council would be contemplating reopening the matter of the placement of the parking garage and characterized it as a sad moment for the community. Vice Mayor Nocera however disagreed, citing the Council's willingness to fairly hear the opinions of citizens and said that Attorney Passidomo had not received the same consideration at the prior day's CRA meeting. Council Member MacIlvaine however expressed strong disagreement. In conclusion, Mrs. Smith stated her dismay that the Collier interests, whose ancestor was the county's namesake, would not want the people of the community to retain a parking lot that was used in conjunction with Cambier Park across the street, expressing doubt that a commercial building would be more desirable in that location than the planned parking garage.

Council Member Taylor said that confusion occurs when the Council sits in its capacity as the CRA which had been the case the day before. She however distinguished the request made by Attorney Passidomo in that it was presented to the City Council and not the CRA, pointing out that it is a requirement that the City Council subsequently act separately from when the body sits as the CRA. This, she said, would occur two weeks hence. During additional discussion with City Attorney Robert Pritt and City Manager Robert Lee it was determined that, notwithstanding action by the CRA, the City Council may at its option still act on the same issue. **Judith Chirgwin, 112 Tenth Avenue South**, was critical of Attorney Passidomo's having been given more than the five minutes prescribed for and enforced on other public speakers. She therefore characterized the situation as irregular and urged that the Council be as strict with Mr. Passidomo as everyone else. Mayor Barnett, however, said that the speaker time limit is extended when

Council Members ask questions or enter into dialog with an individual. Ms. Chirgwin however said that the nature of the item under discussion dictates that it be placed on a published agenda.

Mayor Barnett then addressed the process which had occurred at the CRA meeting the day before, indicating his support for the manner in which public comment had been handled by Mr. MacIlvaine as chair of the meeting, citing Mr. MacIlvaine's statement that public comment had been closed and that Attorney Passidomo had not filed a request slip in time to be heard. He then announced that public comment had also been closed for that day's meeting. Council Member Sorey also indicated his support for Mr. MacIlvaine's actions, but he also maintained that with sufficient support the matter could be considered from the standpoint of whether the staff would bring to Council a contract for a property exchange with Barron Collier Companies. Council Member Price said he believed due process would be served if City Council were to be provided information, even though he said he did not believe it would sway him from his prior decision with reference to placement of the parking garage (Scheme C).

At this point Council Member Sorey, the motion maker, clarified the proposed action in that by adding the item to the agenda it would allow Council to consider whether to direct staff to bring forward a final contract. Prior to the vote, City Attorney Pritt explained, in response to Council Member Taylor, that a policy in fact exists wherein redevelopment matters are first considered by the CRA which makes a recommendation to Council for final action. However, some variation has occurred, he added, and there had been some mention of reconsidering this policy due to its redundancy.

Council Member Price took issue with placing an item on the agenda that was generated during the public comment portion of the meeting; however, he said that he believed a consensus to place the item on the next meeting's agenda would be appropriate. City Attorney Pritt confirmed that for Council to direct staff in this regard the matter should be added to the agenda by the required five-sevenths vote.

MOTION by Sorey to ADD AN ITEM TO THE AGENDA OF THIS MEETING to consider the proposal made by Attorney John Passidomo on behalf of Barron Collier Companies. This motion was seconded by Taylor and failed 3-4 (five-sevenths vote being required) (Willkomm-no, Price-no, Taylor-yes, Sorey-yes, Nocera-yes, MacIlvaine-no, Barnett-yes).

City Manager Robert Lee pointed out what he characterized as inconsistencies in application of a policy wherein the CRA first considers matters and then passes them on to City Council; therefore, he recommended further discussion in this regard. However, expenditures are generally handled in this manner, he added, but gave an example of the recent appointment of the CRA Executive Director as an exception.

Mayor Barnett announced that the Council would call a lunch recess from noon to 1:00 p.m.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 8-a
August 13, 2007, Workshop and August 15, 2007, Regular Meeting; as submitted.

SPECIAL EVENTS ITEM 8-b
1) Naples Music Festival – benefit for The Garden of Hope and Courage – Third Street Shopping District – 04/06/08.

2) Annual Taste of Collier festival – Taste of Collier, Inc. – Bayfront – 05/04/08.

3) The Great Dock Canoe Race – Great Dock Canoe Race, Inc. – Crayton Cove – 05/10/08.

4) (Amended Event – originally approved 04/18/07) Pre-season Sidewalk Sale and Entertainment – Village on Venetian Bay – amending dates from 08/31/07, 09/01/07, 09/02/07 to 09/07/07 and 09/08/07.

5) 20k Race – Gulf Coast Runners – Crayton Road and Mooring Line Drive – 09/30/07.

RESOLUTION 07-11742.....ITEM 8-c
A RESOLUTION APPROVING A MARINE PERMIT APPLICATION TO DREDGE ALONG THE SEAWALL WITHIN THE EAST FORK OF THE GORDON RIVER AT 1500 5TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11743.....ITEM 8-d
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ANYTOWN T.C. LLC DBA ANYTOWN TREE, FOR ANNUAL CITYWIDE TREE REMOVAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11744.....ITEM 8-e
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND BANNERMAN LANDSCAPING, INC., FOR PLACEMENT OF MULCH THROUGHOUT THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11745.....ITEM 8-f
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND SPONSELLER NURSERY, INC. DBA GATOR LANDSCAPING TO PROVIDE CITYWIDE TREE PLANTING AND TRANSPLANTING SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11746.....ITEM 8-g
A RESOLUTION WAIVING COMPETITIVE BIDDING AND APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH LUMEC C/O R. J. STEEDMAN, INC., FOR THE PURCHASE OF ADDITIONAL STREET LIGHTS ON U.S. 41 FROM 7TH AVENUE NORTH TO FLEISCHMANN BOULEVARD AS PART OF THE CONTINUATION OF THE GATEWAY PROJECT EXPANSION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11747.....ITEM 8-h
A RESOLUTION APPROVING PAYMENT TO VISIONAIR FOR THE FISCAL YEAR 2007-2008 REQUIRED SOFTWARE MAINTENANCE SERVICES FOR THE POLICE AND EMERGENCY SERVICES DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11748.....ITEM 8-i
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES AIRPORT AUTHORITY AND THE CITY OF NAPLES WHICH ESTABLISHES PROCEDURES AND CONDITIONS FOR PROVIDING POLICE SERVICES AT THE NAPLES MUNICIPAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11749..... ITEM 8-k
A RESOLUTION AMENDING THE PROJECTED PREMIUM WITH DELTA DENTAL FOR GROUP DENTAL INSURANCE TO CITY EMPLOYEES FOR THE PERIOD JANUARY 1, 2006 THROUGH SEPTEMBER 30, 2007, AS APPROVED BY RESOLUTION 05-11022; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11750.....ITEM 8-l
A RESOLUTION APPROVING RENEWAL OF GROUP DENTAL INSURANCE WITH DELTA DENTAL FOR A TWO-YEAR PERIOD; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11751..... ITEM 8-m
A RESOLUTION APPROVING THE CITY'S PROPERTY, LIABILITY, AND WORKERS' COMPENSATION INSURANCE PROGRAM, PROVIDING FOR THE PAYMENT OF PREMIUMS AND ESTABLISHING THE SELF-INSURANCE LOSS FUND FOR FISCAL YEAR 2007-08; AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11752.....ITEM 8-o
A RESOLUTION APPROVING A THIRD AMENDMENT TO THE AGREEMENT WITH KYLE CONSTRUCTION, INC., FOR THE EMERGENCY REPLACEMENT OF TWO VALVES AT THE WASTEWATER TREATMENT PLANT; APPROVE AMENDING THE FISCAL YEAR 2006-07 BUDGET AS ADOPTED BY ORDINANCE 06-11363; AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT TO AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11753..... ITEM 8-p
A RESOLUTION APPROVING A LEASE AGREEMENT WITH BROMPTON ROAD PARTNERS, LLC, FOR EMPLOYEE OFF SITE PARKING OR SPECIAL EVENTS OFF SITE PARKING AT GRAND CENTRAL STATION (NKA RENAISSANCE VILLAGE); AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Nocera to APPROVE CONSENT AGENDA except Items 8-j, 8-n, and 8-q; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

END CONSENT AGENDA

RESOLUTION 07-11754..... ITEM 8-j
A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND ILER PLANNING GROUP, INC FOR PROFESSIONAL CONSULTING SERVICES FOR UPDATING THE 1994 COMMUNITY REDEVELOPMENT PLAN; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:37 a.m.). CRA Executive Director Russell Adams said that while the extent of the expenditure is significant, he believed that for the level of effort and the period of time involved, it is a reasonable expenditure if compared to the cost of hiring a qualified staff member for this purpose. He also cited a greater likelihood of objectivity and creativity by using the services of individuals with considerable experience in this type of work. He therefore recommended approval of the

contract under consideration. In response to Council Member Taylor, Mr. Adams indicated that the initial budgeted amount had been merely an estimate made early in the process. Miss Taylor also ascertained that updating the Community Redevelopment Plan is required by law and that expenditures from Tax Increment Financing (TIF) revenues could not be made within the redevelopment district unless projects are listed in the approved plan. However, Mr. Adams said he believed that the parking garage proposed for Eighth Street South and Sixth Avenue was included in the original plan designed by Andres Duany. In further dialog with Miss Taylor, Mr. Adams said he believed that improvements to the Four Corners (US 41 and Fifth Avenue South) and the River Park neighborhood had however not been included in the initial version. Council Member Taylor urged that these items therefore be identified. However, in response to Council Member Price, Mr. Adams said that he was unsure that an actual deadline had been imposed for completion of the revised Community Redevelopment Plan.

Council Member Willkomm suggested that if the cost proposed by the Iler firm was higher than budgeted, the City negotiate with the firm ranked in the second position. City Manager Robert Lee explained that when the \$75,000 had been budgeted the scope of work had not yet been drafted; however, in addition to the \$75,000, the budget had also included \$100,000 for the River Park master plan. He further explained that under the requirements of the Consultants Competitive Negotiations Act (CCNA) a ranking had been approved by Council and negotiations entered into with the top ranked firm. At this stage, the Council could however determine that the project would not go forward or direct staff to begin negotiations with the second-place firm. Nevertheless, he urged Council to go forward with the required update of the 1994 plan. City Manager Lee further said that while there were occasions when work like this can be done with existing staff, in this case it is recommended that a consultant be used and that the contract be awarded to the Iler Group.

Public Comment: (10:44 a.m.) None.

MOTION by MacIlvaine to APPROVE RESOLUTION 07-11754 amended to refer to “River Park Needs Assessment” instead of “River Park Master Plan”.

This motion was seconded by Sorey and carried 5-2 (Willkomm-yes, MacIlvaine-yes, Price-no, Sorey-yes, Nocera-yes, Taylor-no, Barnett-yes).

RESOLUTION 07-11755..... ITEM 8-n
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SEND NOTICES TO VARIOUS GOLF COURSES INDICATING THE CITY’S INTENTION NOT TO EXTEND CURRENT AGREEMENTS FOR THE DELIVERY AND USE OF RECLAIMED IRRIGATION WATER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:45 a.m.) who said that he recommended against clauses in the contracts which provide for self-executing renewal. This type of wording can prove difficult, he said, because the window of opportunity for discontinuation can be overlooked in long-term contracts. In this instance the City must act within the prescribed 180 day period in order to advise of non-renewal of contracts currently in force with the various golf courses for provision of reuse irrigation water. This however would not preclude new contracts being signed following negotiation, he added. Council Member Sorey said that he had asked that this item be discussed separately from the Consent Agenda to assure that Council is comfortable with the process which he also recommended include a courtesy call in addition to merely providing a mailed notice to the various golf courses involved.

City Manager Robert Lee concurred, reiterating the City Attorney's point that it was not the City's intent to discontinue its relationship with these entities but merely to provide notice regarding the current agreement although new rates would be implied.

It is noted for the record that Mayor Barnett and Council Member Price left the meeting at 10:48 a.m. and returned at 10:49 a.m. and 10:53 a.m. respectively; they were not present for the following vote.

City Attorney Pritt also reiterated his concern that automatic extension provisions should not be included in any future contracts.

Public Comment: (10:49 a.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 07-11755 as submitted; seconded by Taylor and carried 5-0 (MacIlvaine-yes, Nocera-yes, Price-absent, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-absent).

RESOLUTION 07-11756..... ITEM 8-q
A RESOLUTION RESCHEDULING THE NOVEMBER 21, 2007 REGULAR CITY COUNCIL MEETING TO NOVEMBER 14, 2007; RESCHEDULING THE JANUARY 2, 2008 REGULAR CITY COUNCIL MEETING TO JANUARY 9, 2008; RESCHEDULING THE JANUARY 16, 2008 REGULAR CITY COUNCIL MEETING TO JANUARY 23, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:49 a.m.). In response to Council Member Taylor, City Clerk Tara Norman addressed the swearing-in of Council Members after the general election which for 2008 has been rescheduled for January 29 to coincide with the State Presidential Preference Primary. Mrs. Norman explained that even though the City's election date had changed, the terms of office for City Council Members had not; therefore, terms would still expire as of the first Tuesday in February and that the swearing-in ceremony could therefore be held on the following day, Wednesday, February 6. In addition, City Clerk Norman pointed out that it was not recommended that further local law amendments be made because of the likelihood that statutory changes affecting elections would continue to be made over time. She also mentioned the required two-day delay in declaration of election results which is imposed to allow for those casting provisional ballots to provide further evidence to the Supervisor of Elections that a ballot should be counted. Nevertheless, this too would be accommodated prior to the February 6 swearing-in ceremony, she added. City Attorney Pritt concurred, underscoring that changing the dates of Council terms would, as in the previous election, require a provisional swearing-in due to the aforementioned statutory waiting period to declare election results.

Public Comment: (10:54 a.m.) None.

MOTION by Taylor to APPROVE RESOLUTION 07-11756 as submitted; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 07-11757..... ITEM 9
A RESOLUTION DETERMINING PETITION 07-SD2 FOR PRELIMINARY AND FINAL PLAT APPROVAL IN ORDER TO SUBTRACT APPROXIMATELY 13,470 SQUARE FEET FROM 2255 MARINA DRIVE AND ADD THE PARCEL TO THE PROPERTY LOCATED AT 820 JAMAICA LANE, ALL LOCATED IN THE R1-10 ZONING DISTRICT, MORE FULLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:54 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer

testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/no contact; Price, Nocera, MacIlvaine, and Sorey/visited the site but no other contact; and Barnett and Taylor/familiar with the site but no contact.

Attorney Patrick White, agent for the petitioner, indicated that Mark Wood, a professional surveyor whose firm performed the plat work, was also present and available to respond to questions. He said that the petition had resulted from a thorough review of the City's subdivision regulations and that the proposal could be more readily understood as a lot split to remove a portion of a conforming, previously platted lot and add it to another lot of the same type. The goal, he added, was to increase one lot by 13,500 square feet so that an existing single-family home could be modified without the necessity of applying for variances. This will however not affect the Comprehensive Plan future land use map since one, low-density residential use will remain on the site, Mr. White added; in addition R1-10 Residential Zoning District requirements will also continue to be met as it applies to lot size. He cited a favorable recommendation from the City staff as well as the Planning Advisory Board (PAB) and mentioned that no public infrastructure changes would be required.

Council Member MacIlvaine requested further information as to the configuration of the proposed new lot; Attorney White illustrated on a site map the area in question and indicated that it could be considered lollypop-shaped (see Attachment 1), pointing out that lands were actually being derived from two adjacent subdivisions. However, he also clarified that one lot only was being created through the reconfiguration of the original lot and additional area. Community Development Director Robin Singer noted that the petition before Council constituted both preliminary and final approval, and confirmed staff and PAB favorable recommendations.

Public Comment: (11:03 a.m.) None.

MOTION by Nocera to **APPROVE RESOLUTION 07-11757** as submitted; seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

EXECUTIVE SESSION.....ITEM 6
(11:05 a.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to John A. Pulling, Jr., as Personal Representative of the Estate of John A. Pulling, Sr. v. City of Naples, Circuit Court Case No. 07-268-CA.

Executive Session: 11:06 a.m. to 12:01 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.
(12:01 p.m.)

MOTION by Taylor to **ACCEPT THE MEDIATED SETTLEMENT AGREEMENT AS PRESENTED** with regard to litigation pertaining to John A. Pulling, Jr., as Personal Representative of the Estate of John A. Pulling, Sr. v. City of Naples, Circuit Court Case No. 07-268 CA. This motion was seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Recess: 12:02 p.m. to 12:14 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.

EXECUTIVE SESSION.....ITEM 7
(12:14 p.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to Board of Trustees North Naples Fire Control District v. Board of Trustees City of Naples Firefighters Pension Fund and City of Naples, Collier County Circuit Court Case No. 03-4910CA.

Executive Session: 12:15 p.m. to 12:33 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.

(12:33 p.m.) No action was taken regarding Item 7.

Recess: 12:33 p.m. to 1:00 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 1:06 p.m., Council Member Willkomm who returned at 1:08 p.m., and Vice Mayor Nocera who returned at 1:10 p.m.

RESOLUTION 07-11758.....ITEM 10
A RESOLUTION DETERMINING PETITION 07-SD3 FOR FINAL PLAT APPROVAL IN ORDER TO CREATE AN ADDITIONAL SINGLE-FAMILY LOT IN THE R1-7.5 ZONING DISTRICT AT 350 6TH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Robert Lee (1:00 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Price, Barnett and Sorey/visited the site but no other contact; and Taylor/no contact. It is noted for the record that when Council Members Willkomm and MacIlvaine entered the meeting each indicated that he had had no contact with reference to this petition; Vice Mayor Nocera stated that he was familiar with the property but had had no contact.

Mayor Barnett ascertained from Planner Adam Benigni that, although notified, the petitioner was not present at the meeting. However, Steve Burgess (sworn separately) appeared on behalf of the petitioner and indicated that he is employed by Q. Grady Minor & Associates and was the surveyor of record on the proposed plat. He said that the petitioner, Gary Lau, had been unable to attend.

Mr. Benigni then described the petition as a final subdivision plat application, noting that the Planning Advisory Board (PAB) in 2006 had recommended denial although the City Council had subsequently approved the preliminary plat by a unanimous vote. Furthermore, the ownership of the parcel had changed in the interim so that to construct a dwelling on one of the parcels, final subdivision plat approval is required. Staff had recommended approval of the current petition, Mr. Benigni confirmed, although it was noted that the PAB had again recommended denial.

Mr. Burgess then clarified that although the resolution under consideration requires that a non-conforming structure is to be removed, this structure had already been demolished and removed from the site which is now vacant. He noted that R1-7.5 residential zoning would apply to any new structure. Mr. Burgess then displayed a diagram of the parcels (Attachment 2) and indicated that, as configured, both lots would be conforming and therefore any building permit application submitted would meet setback requirements. He subsequently explained that the site had been

one platted parcel containing a single dwelling unit. Community Development Director Robin Singer also clarified that the petition was in essence a lot split, and that current regulations require that a petitioner undergo a subdivision process before City Council; otherwise, an administrative process is available for non-conforming lots if the reconfiguration would result in their being conforming.

Planner Benigni confirmed that the structure that would have created a nonconformity had been demolished. However, he added, there is no provision in the Code of Ordinances which prohibits creation of a flag lot (Parcel B) even though Council had indicated a desire to discuss a prohibition of this type of configuration.

City Attorney Pritt quoted the following passage from Code Section 54-31: “Subdivisions which have received preliminary plan approval may proceed in accordance with development standards which were in effect at the time of the preliminary plan approval with the following exceptions ... construction plan after a year ... development within five years.” Therefore, Mr. Pritt noted, if Council had conveyed preliminary approval and if there were no changes in the characteristics of the subdivision, the petitioner could proceed in accordance with the Code.

In response to Council Member Price, additional clarifications were made; namely, that City staff had worked with the petitioner to incorporate various dedications on the plat and that the City staff (Traffic Engineer George Archibald) had indicated concurrence with what was proposed. Planner Benigni stated that the diagram dated August 20, 2007, is in fact the final version of the plat. (It is noted for the record that this and other materials provided are contained in the file for this meeting in the City Clerk’s Office.) Mr. Burgess also noted the location of a drainage easement (see Attachment 2) which had been incorporated in an effort to meet what was anticipated to be contained in a future code dealing with flag lots. Council Member MacIlvaine said that he maintained a philosophical concern that the density would be doubled on what had been a single parcel which he said did not comport with his vision for that section of the community. Council Member Taylor said that she was however not confident of this configuration, particularly in light of stormwater regulations currently under consideration. However, City Attorney Pritt stressed that any stormwater regulations which are subsequently amended would not apply to this parcel. He also confirmed for Council Member Price that, absent a code provision to the contrary, lot configurations of this type can be approved.

Public Comment: (1:27 p.m.) None.

MOTION by Price to APPROVE RESOLUTION 07-11758 as submitted; seconded by Willkomm and carried 6-1, all members present and voting (Taylor-yes, Nocera-yes, MacIlvaine-no, Price-yes, Sorey-yes, Willkomm-yes, Barnett-yes).

During and following the above vote, various Council Members stressed the importance for staff to provide an amendment to the Code of Ordinances to address flag lots, Council Member Sorey urging that this be accomplished in October. City Attorney Pritt, however, emphasized the importance of the Council receiving data reflecting the current situation with reference to flag lots, which he said he believed had been in existence in the community since the 1920’s, especially in Old Naples. Council Member Price reiterated a prior comment by Council Member MacIlvaine that lot splits like the one just enacted represent a means to increase density. City Manager Lee offered to provide a City map marked with flag lots and to provide other relevant

statistical information for Council's consideration. Council then identified the following issues which were deemed negative impacts of flag lots: ability to place a second structure behind another with the only street frontage being an extended driveway; density; aesthetics; and stormwater drainage.

RESOLUTION 07-11759.....ITEM 11

A RESOLUTION DETERMINING PETITION 07-WD1 FOR A WAIVER OF DISTANCE IN ORDER TO OBTAIN AN ALCOHOLIC BEVERAGE LICENSE WITHIN 500 FEET OF ANOTHER ESTABLISHED LICENSEE THAT SERVES ALCOHOL IN THE "D" DOWNTOWN ZONING DISTRICT AT 470 TAMiami TRAIL NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:35 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony who had not already done so; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/no contact; Price, MacIlvaine, and Sorey/visited the site but no contact; Barnett and Taylor/familiar with the site but no contact; and Nocera/visited the site and owns property one block away but no contact. Community Development Director Robin Singer explained that staff recommends approval of this petition as presented. Jason Lammer, agent for the petitioner, noted the support for the petition by such nearby establishments as Aurelio's.

Public Comment: (1:37 p.m.) None.

MOTION by Nocera to APPROVE RESOLUTION 07-11759 as submitted; seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 07-11760.....ITEM 12

A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 07-RIS12 AND LIVE ENTERTAINMENT PETITION 07-LE6 FOR THE GRILL CLUB CHURRASCARIA LOCATED AT 492 BAYFRONT PLACE, MORE FULLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID LIVE ENTERTAINMENT PERMIT; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:37 p.m.) This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony who had not already done so; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Barnett/familiar with the site but no contact; Sorey/visited the site but no contact; and Willkomm, Price, Nocera, Taylor, and MacIlvaine/no contact. Planner Adam Benigni indicated that staff recommended approval of the petition as presented. In response to Council Member Taylor, Freddy Velez, agent for the petitioner, said that although the name and concept of the establishment would be changed to reflect as above, the owner and hours of operation would remain the same. City Attorney Pritt recommended deletion of the section directing recording of the resolution since it was his opinion this is not required by law, therefore, he recommended this be abolished wherever possible.

Public Comment: (1:40 p.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 07-11760 amended as follows: deleting requirement for recordation by City Clerk. This motion was seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**RESOLUTION (Continued to 09/19/07 – see Item 4 above)ITEM 13
A RESOLUTION DETERMINING VARIANCE PETITION 07-V7 FROM SECTION 50-35 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH LIMITS THE SIZE AND NUMBER OF SIGNS IN ORDER TO ALLOW AN ADDITIONAL 636 SQUARE FOOT SIGN AND APPROVAL OF ALL EXISTING SIGNS UNDER A SIGN PROGRAM AT NAPLES HIGH SCHOOL PROPERTY LOCATED AT 1100 GOLDEN EAGLE CIRCLE, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**ORDINANCE (First Reading).....ITEM 14
AN ORDINANCE RELATING TO VARIANCE CRITERIA; AMENDING SUBSECTION (c) OF SECTION 46-37, VARIANCES TO ZONING REQUIREMENTS, OF THE CODE OF ORDINANCES, CITY OF NAPLES FOR THE PURPOSE OF CHANGING FROM A PROCESS OF REQUIRING MANDATORY FINDINGS FOR GRANTING OF VARIANCES TO A PROCESS OF CONSIDERING CERTAIN CRITERIA; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:42 p.m.). Community Development Director Robin Singer explained that this amendment was in response to Council’s discussions as to the best method to address requests for zoning variances. Initially three variance criteria had to be met, she said, and in October were modified to three optional criteria and nine mandatory standards. The ordinance currently under discussion reflects two mandatory criteria and eight standards to be met for approval of a variance. In response to Council Member Price, City Attorney Pritt clarified that the phrase “consider and determine” means that Council would consider the criteria and then determine or reach a conclusion of law based upon that consideration. Council Member Willkomm expressed discomfort at the possibility that this amendment would actually negate parameters for the consideration of a variance and indicated that he would therefore not support such a change; Council Member MacIlvaine agreed. Council Member Sorey however indicated his understanding that prior to the amendment under consideration, it had been virtually impossible to grant a variance in the few instances that he had determined a legitimate reason for granting one had existed. Mr. Willkomm said that while he agreed with Mr. Sorey’s position, he maintained his opposition to the amendment. Council Member Price in addition expressed the belief that the reasoning behind the changes had been Council’s frustration that at times it could not apply its judgment.

In response to additional questioning by Council Member Willkomm, City Attorney Pritt explained that with the proposed changes, the ordinance would be very similar to that of Collier County in that instead of meeting mandatory criteria and/or standards, the Council would evaluate whether criteria had been met prior to making a determination. He suggested that Council ascertain standards with which it is comfortable and then apply them. Mr. Price noted that although he had been an advocate for the amendment under consideration, he also agreed with City Attorney Pritt’s comment that a variance should be difficult to grant and that perhaps this situation had aided in retaining the uniqueness of Naples. Mr. Sorey concluded that his support for the changes was due to the fact that certain variances could not be granted despite the fact that he truly felt a particular variance to be

appropriate. He said that Council should either change the requirements or not grant variances. Following a brief discussion regarding the levy of the changes the motion below was proffered.

Public Comment: (2:02 p.m.) **Dorothy Hirsch, 626 Regatta Road**, stated that unintended consequences must be considered when lessening the difficulty in obtaining a variance; that professionals will be less vigilant with regard to error, and the homeowner held responsible, and neighbors adversely affected also. Mayor Barnett stated that he believed the changes gave Council additional flexibility in its interpretation of a variance petition, to which City Attorney Pritt added that this was the intent of a variance procedure being included within the code.

MOTION by Sorey to APPROVE THIS ORDINANCE on First Reading; seconded by Taylor and carried 4-3, all members present and voting (Nocera-yes, Sorey-yes, Taylor-yes, MacIlvaine-no, Willkomm-no, Price-no, Barnett-yes).

ORDINANCE (First Reading).....ITEM 15
AN ORDINANCE RELATING TO FENCES AND WALLS; ADDING SUBSECTIONS (b)(1)4., (b)(5)c. AND (c)(2)e. TO SECTION 56-37 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF REMOVING CONFLICTS BETWEEN THE CODE OF ORDINANCES AND THE BUILDING CODE FOR POOL SAFETY FENCES AND ALLOWING A DIFFERENT BASE POINT OF MEASUREMENT FOR RESIDENTIAL PROPERTIES ABUTTING NON-RESIDENTIAL PROPERTIES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:07 p.m.). Community Development Director Robin Singer explained that this text amendment addresses two issues involving fences on residential properties. The first is intended to remove any conflict between the City's code and the Florida Building Code with respect to pool safety barriers. She said that the City allows fences in required front yards to a height of 36 inches above grade with an additional 18 inches for decorative wrought iron. State law, however, requires pool safety barriers to measure 48 inches and contain no openings or horizontal elements on the outside of the fence that may allow a child to climb it. In instances where pools meet the front setback line on double fronted properties, such as corner lots, it is difficult to surround the pools with the required barrier. Therefore, Ms. Singer said, staff recommends a relaxation of the height limitation to allow a fence or wall to encroach five feet into a required front yard on the aforementioned double fronted lot at a height not to exceed the minimum 48 inches. In referencing prior discussion of chain link fencing (see Item 5 above), Ms. Singer noted that its use would not be allowed in this instance.

Ms. Singer stated that the second issue addressed is the point of measurement for fences and walls where residential properties abut nonresidential. Currently the code requires that the height be measured from the lower grade either inside or outside the fence or wall, she said, and therefore staff recommends this be amended to reflect measurement from the higher grade so as to afford increased privacy. She added that this would apply both to the residential and nonresidential property.

Council Member Price expressed concern that these amendments would encourage the ongoing maximum build out of properties in the community, that by allowing the encroachment into the front yard setback, the quality of life standard would once again become an issue. He pointed out that homeowners should install pools within the allowable area and setbacks which would

result in fencing without the encroachment. Ms. Singer agreed, although she stated that pool covers were another safety measure available but her concern had been that these covers are not always replaced after use, which also raises safety issues. She also said that City Attorney Pritt had reminded her that State regulations overrule the City's code in such situations. Council Member Willkomm pointed out that he believed the encroachment was to allow the pool deck since the pool could only be built to the setback and Council Member Sorey added that the deck is allowed to encroach into the setback, therefore the City's code should be consistent with the State's.

Public Comment: (2:16 p.m.) **Christian Andrea, Collier County**, stated that his firm designs homes which have side courtyards as above referenced and that he supported this ordinance with the provision that landscaping accompany the fencing to enhance the aesthetics of the home.

MOTION by Sorey to APPROVE THIS ORDINANCE on First Reading; seconded by Taylor and carried 5-2, all members present and voting (Willkomm-no, Nocera-yes, MacIlvaine-yes, Taylor-yes, Price-no, Sorey-yes, Barnett-yes).

Recess: 2:19 p.m. to 2:30 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.

ORDINANCE (Continued to 10/03/07 – see motion below)ITEM 16
AN ORDINANCE REGARDING STORMWATER; AMENDING SECTION 16-51, DEFINITIONS, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ADDING DEFINITIONS FOR SPECIFIC DRAINAGE TERMS; ADDING SECTION 16-115, STORMWATER CONSTRUCTION STANDARDS, FOR THE PURPOSE OF ESTABLISHING STORMWATER CONSTRUCTION STANDARDS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER PROVISION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:30 p.m.). (It is noted for the record that all materials referenced throughout this item are contained in the file for this meeting in the City Clerk's Office.) Community Development Director Robin Singer explained that the intent of this ordinance is to provide relief from flooding to properties adjacent to homes built to the higher Federal Emergency Management Agency (FEMA) elevations. Following that week's workshop discussion, two inches of detention over the impervious surface area remains in the ordinance as a standard and references to 18-inches maximum grade above the crown of the street for all property outside of the building footprint was deleted.

In response to Council Member Sorey, Ms. Singer noted that Best Management Practices (BMP's) had indeed been incorporated into the ordinance as recommended by William Musser, Wastewater Consultant. Traffic Engineer George Archibald agreed, adding that the South Florida Water Management District's (SFWMD) criteria creates varying levels of credit for differing designs of retention/detention systems, along with guidelines contained in the City's Comprehensive Plan. Mr. Sorey stated that these would aid designers in formulating their systems to meet the new standards while offering various inherent incentives. Council Member Taylor pointed out the Mr. Musser had recommended that the minimum of detention over the impervious surface be elevated to 2.5 inches which she supports. Mr. Sorey noted that the SFWMD criterion was 2.5 inches over the impervious surface area or 1 inch over the entire lot, whichever is greater, but voiced support of the existing 2 inches.

Public Comment: (2:36 p.m.) **Jennifer Hecker, Conservancy of Southwest Florida**, commended the ordinance, referencing materials she provided to Council she noted that adoption of such an ordinance is a recommended practice of the Environmental Protection Agency (EPA-Policy 63). She pointed out that the SFWMD was proposing new legislation which the Conservancy supports and which would revise current stormwater treatment criteria in the permitting of new development in the region; and asked Council's support for that measure. The Florida EPA is also currently developing statewide stormwater regulations, she said, stressing that the City should become involved in this endeavor due to its local impact. In response to City Attorney Robert Pritt, Ms. Hecker stated that SFWMD's BMP rule was currently in draft form, although the manual would be released within the next four weeks. City Attorney Pritt noted that until this is completed, no changes in the local language in this regard could be made. Mr. Archibald stated that with regard to water quality the City adheres to the SFWMD standards as reflected in the Comprehensive Plan. **Greg Brisson, 49 Mentor Drive**, expressed appreciation for the clarification provided by Consultant William Musser at that week's workshop, but took the position that the ordinance under discussion would not address flooding. He said that he therefore strongly recommended the completion and implementation of the City's stormwater master plan; he also recommended obtaining input from various design professionals in the building industry to aid in achieving an ordinance which can be understood, implemented, and then appropriately used for inspection. **Falconer Jones, III, 1255 Cobia Court**, agreed with the prior speaker, that the ordinance will improve water quality but not deal with quantity, that it is his belief that this ordinance places the responsibility of stormwater management onto the property owner. Referencing his memo to Council, he argued against adoption until certain issues are addressed. He further said that the best methods for retrofitting the existing City system were as follows: improve swales with better catch basins to slow drainage, educate the community as to the appropriateness of standing water in the grass under certain conditions, and utilize environmental berms along the waterways. He also cautioned that with the proposed amendment, staff must have a completed process to facilitate permitting. In response to Council Member Sorey, he indicated that he believed a timeframe must be established for all properties, that over the next ten to twenty years all must incorporate a half-inch of treatment prior to runoff entering the City's stormwater system. Additionally, if given additional time prior to adoption, Mr. Jones said that he would support the inclusion of the most up-to-date version of BMP's available, that some latitude must exist when establishing design standards and that staff's decisions must be supported when rendered. **Joss Nageon De Lestang, 2375 Tamiami Trail North, Suite 207**, stated that as an engineer he stressed that the proposed ordinance will not address stormwater quantity, only quality, that with the high water table in the City, requiring half an inch detained on site will prove to be very beneficial. He suggested retaining water from side yards and detaining the remainder in a type of two-tiered system which he said he believed would prove to be more effective. He agreed with the prior speaker that the ordinance should be delayed until additional input could be obtained, that with the limited amount of space available between the high water table and the surface of the ground, the number of design options is limited. **Jon Kukuk, 3535 Gordon Drive**, City Design Review Board (DRB) Chairman, agreed with prior speakers that items still remained in the ordinance which are in need of improvement such as clarifying the credit system, including the environmental and right-of-way swales, and with regard to the maintenance; he however agreed with the 50/50 concept (50% of the system above and 50% below ground). He then referenced the Comprehensive Development Code (CDC), Section 16-154(b)(4), which states that drainage plans shall be consistent with local and regional drainage requirements and that facilities shall be designed to prevent the discharge of

excess runoff onto adjacent properties. Therefore, the rules exist and must be enforced, he added. In response to Council Member Taylor, he said that “triggers” must be established with regard to rehabilitating existing systems such as if a new seawall or riprap is installed, then an environmental swale must be constructed at the same time, if a remodel is over a certain amount of square footage, or if a new driveway or new landscaping is installed, then this would trigger the installation of a certain amount of retention/detention on site. **Dorothy Hirsch, 626 Regatta Road**, urged the adoption of this ordinance, noting her recent contact with a local Department of Environmental Agency (DEP) representative who had voiced agreement with the ordinance; its intent is to protect adjacent properties from flooding in a storm event, she added, and suggested that a tax incentive be offered for the retrofitting of existing properties.

Council Member Price said that following discussion at that week’s workshop, he does not believe the ordinance reflects the degree of responsibility that is indeed possible. Furthermore, the application and interpretation of credits for the use of best practices is not contained in the ordinance, he said, explaining that this would increase the degree of difficulty encountered by staff in the implementation of the ordinance. Therefore, he suggested a 30-day delay in which to allow input from a strategic committee of interested parties. Vice Mayor Nocera agreed that the ordinance was not ready for adoption at that time. In response, Council Member Willkomm however stated support of the ordinance, explaining that he believed it to be an appropriate starting point in addressing the stormwater issue.

Council Member Taylor said that she believed the ordinance to be a framework, that recommendations by Consultant William Musser and the design community should be incorporated and sent to Mr. Musser for his review, to which Council Member MacIlvaine agreed, saying that he also supported the aforementioned 30-day delay and the 2.5 inches of detention on site. In response to Council Member Sorey, City Attorney Pritt indicated that a zoning in progress notification could be established, but that in his opinion, this ordinance had been under consideration and the public had been duly notified with each discussion or hearing of it. Mr. Sorey agreed with the involvement of Mr. Musser, suggesting that he aid in the actual amending of the ordinance, along with staff and any other interested parties who wished to offer input. The ordinance could then be reviewed for first reading on October 3, and second reading on October 17, with adjustment at that time to reflect the 30-day reduction of the effective date. Miss Taylor suggested that any interested parties, including Council Members and the design community, contact City Manager Lee within 48 hours with comments or recommendations for consideration; Council agreed, and the following motion was proffered.

MOTION by Sorey to CONTINUE THIS ORDINANCE to 10/03/07 (as First Reading) so as to incorporate issues discussed with additional input from all parties to be provided to staff within 48 hours. This motion was seconded by MacIlvaine and carried 6-1, all members present and voting (Sorey-yes, Price-yes, MacIlvaine-yes, Willkomm-no, Taylor-yes, Nocera-yes, Barnett-yes).

**ORDINANCE (First Reading) (Continued to 10/17/07 – see motion below).....ITEM 17
AN ORDINANCE RELATING TO SIGNS; AMENDING THE DEFINITION OF “SIGN”
IN ARTICLE II, SECTION 50-32 OF THE CODE OF ORDINANCES, CITY OF NAPLES;
AMENDING SECTION 50-37 OF SAID CODE TO AMEND THE PROVISIONS FOR
PROHIBITED VEHICLES WITH SIGNS AND TO ADD A PROHIBITION AGAINST
CERTAIN VESSELS WITH SIGNS; PROVIDING FOR REPEAL OF SECTION 50-41 OF**

SAID CODE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:37 p.m.). Community Development Director Robin Singer explained that this amendment was initiated in response to complaints against commercial vehicles parked in such a manner that they functioned as signage; currently no provisions exist within the Code of Ordinances to address the allowable hours for such activity. City Attorney Pritt added that a review of definitions of signage had revealed the need for changes which include vessel signage also. Ms. Singer continued that a vehicle could park in front of a private business as long as a service is being provided, although if parked for longer than two consecutive hours, or four hours in a 24-hour period, then the intent is assumed to be for signage purposes.

It is noted for the record that Council Member Sorey left the meeting at 3:38 p.m. and returned at 3:46 p.m.

During discussion of Section 50-37(9), which addresses the above referenced time constraints, City Manager Robert Lee stated that it is the vehicles that park for days at a time which are the issue. City Attorney Pritt indicated that if Council felt the restrictions to be too stringent, then the language should be amended, although discretion could be used by staff, restrictions should be enforced as approved. In response to Council, Zoning Enforcement Inspector Michael Little explained that current language is opinion based, that clarification is needed by staff as to what is allowable and what is a violation.

Council Member MacIlvaine pointed out that he believed this ordinance to be a tool to aid staff in the use of its judgment when issuing violations. Vice Mayor Nocera said that he was concerned that businesses with signage on their vehicles, parked upon their property, are the ones that will be ticketed, such as recently occurred with Speedy Blueprinting, therefore he could not support the restrictive hours for parking. City Manager Lee added that care must be taken that the latitude given to the enforcement staff is not at odds with the person who filed the complaint, that many times a complainant will be well aware of the code and therefore aware when it is not strictly enforced. Council indicated that while desiring to offer staff latitude for decision making, it also did not want legitimate business vehicular parking to be cited, that it is those abusing the system that are the target of this ordinance.

Deputy Chief of Police & Emergency Services (PESD) James Slapp explained that while his department is neither for nor against this ordinance, it must be enforceable when responding to complaints. City Manager Lee noted that some code enforcement is proactive and suggested this ordinance be treated as Item 16 above, continuing it and allowing additional input by Council and interested parties.

In response to Council Member Price, City Attorney Pritt indicated that the language regarding charter boats and water taxi signage had been pre-existing in the code and had not been amended.

Public Comment: (3:56 p.m. **Henry Kennedy, Naples**, nevertheless expressed concern with the reference to vessel signage, asking whether if a boat were for sale, would a sign reflecting this be allowed with the adoption of this ordinance. He said the ordinance is too far reaching and he could not support it as drafted.

Council Member Willkomm stated that he believed this ordinance would address what he termed the serial abuser, that violations would be cited only in response to valid complaints and that he

supported its approval; Council Member MacIlvaine agreed and the motion appearing below was proffered. In response to Council Member Price, Deputy Chief Slapp explained that in the past when complaints had been received it had proven difficult to enforce the requirements or to achieve compliance due to the current language. With regard to vessel signage, City Attorney Pritt reviewed Section 50-37(12) addressing the issue and offered his interpretation that a for sale sign on a boat for the purpose of indicating that vessel available for purchase would be allowable, although if the sign indicated other vessels for sale, this would be considered a violation.

MOTION by Willkomm to APPROVE THIS ORDINANCE on First Reading; seconded by MacIlvaine and failed 3-4, all members present and voting (Sorey-yes, Price-no, Willkomm-yes, Nocera-no, MacIlvaine-yes, Taylor-no, Barnett-no).

While the above motion failed, various Council Members voiced support for the ordinance if it could be amended to address their above referenced concerns, especially with regard to the timeframe a vehicle is allowed to be parked on a premise and vessel signage. At that time Council Member Price offered the motion below for reconsideration (per Resolution 98-8218, a copy of which is available in the City Clerk's Office).

MOTION by Price to RECONSIDER THIS ORDINANCE on First Reading; seconded by Barnett and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Council requested that staff review the above discussion, glean Council's concerns and return at the October 17 regular meeting with the ordinance amended accordingly. Council Member Sorey added that the intent of the ordinance should be to halt the flagrant violators that abuse the system, not penalize those merely attempting to conduct their businesses.

MOTION by Price to CONTINUE THIS ORDINANCE on First Reading to 10/17/07; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**ORDINANCE (First Reading) (Continued to 09/19/07 – see Item 4 above)ITEM 18
AN ORDINANCE PERTAINING TO THE POLICE OFFICERS' PENSION AND
RETIREMENT SYSTEM; AMENDING SECTION 29-271, DEFINITIONS; SUBSECTION
(2) OF SECTION 29-273, MAINTENANCE OF FUND; SECTION 29-311,
CONTRIBUTIONS; AND SUBSECTION (2) OF SECTION 29-312, REQUIREMENTS
FOR RETIREMENT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER
PROVISION AND AN EFFECTIVE DATE. Title not read.**

**ORDINANCE (Withdrawn – see Item 4 above)ITEM 19
AN ORDINANCE PERTAINING TO WATERWAYS; AMENDING SECTION 42-81,
DEFINITIONS; SECTION 42-141, DEFINITIONS; SECTION 42-142(a),
PROHIBITIONS ON MOORING AND ANCHORING; SECTION 42-143(5), (6) AND (7)
RULES AND REGULATIONS; SECTION 42-144, MOORING RENTAL RATE;
SECTION 42-145, MOORINGS SIGNAGE; OF THE CODE OF ORDINANCES, CITY
OF NAPLES, FOR THE PURPOSE OF AMENDING RULES AND REGULATIONS
FOR WATERWAYS FACILITIES AND RESOURCES; PROVIDING A
SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title not read.**

**ADDED ITEM (See Item 4 above)ITEM 20
AUTHORIZATION FOR MAYOR TO VIA LETTER REQUEST COMMENT FROM
THE STATE OF FLORIDA REGARDING POSSIBLE ANNEXATION OF
KEEWAYDIN ISLAND AS IT RELATES TO STATE LANDS IN THAT LOCATION.**

(4:19 p.m.) City Attorney Robert Pritt read into the record the draft of a letter (Attachment 3) to be sent to the State of Florida Board of Trustees of the Internal Improvement Trust Fund (TIITF) regarding the City's proposed annexation of Keewaydin Island, which in large part is held in State jurisdiction. In response to Council, Attorney Pritt cautioned against corresponding with island property owners prior to a response from the State.

MOTION by Willkomm to AUTHORIZE SENDING OF LETTER, SUBSTANTIALLY IN THE PRESENT DRAFT FORM, TO THE BOARD OF TRUSTEES OF THE INTERNAL TRUST FUND (TIITF). This motion was seconded by Price and unanimously carried, all members present and voting (MacIvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

In response to City Manager Robert Lee, City Attorney Pritt amended the letter to reflect as follows: Sixth paragraph, "...incorporated ~~unincorporated~~ portion of the island...".

PUBLIC COMMENT.....

(4:25 p.m.) **Henry Kennedy, Naples**, referencing the memorandum dated August 23, 2007 from Attorney Segundo Fernandez to staff (Attachment 4), questioned the wisdom of the City agreeing to enforce possible Florida Department of Environmental Protection (FDEP) rules regarding anchoring outside of the City's lease area for the mooring field in Naples Bay. Noting that week's workshop and Council's discussion regarding this issue and the quitclaim deed (see Attachment 4), City Manager Robert Lee indicated that clarification would be provided by Attorney Fernandez in written form as soon as possible. Vice Mayor Nocera asked that amplification regarding anchoring for the City's traditional Great Dock Canoe Race be included within the aforementioned response. Council Member Price requested that a timeline of mandates received from the FDEP be provided also. **Doris Reynolds, 620 Sixth Avenue North**, referencing earlier comments by Council Member Sorey (see Item 6 above) stated that she wished to clarify her position during public comment of that week's workshop. She explained that she wished to be on the record as a supporter for a parking garage at Eighth Avenue and Sixth Street South, not merely a parking lot as presently exists. She urged Council to adhere to its decision regarding the design for the aforementioned parking garage. Council Member Sorey apologized for any misunderstanding and voiced his appreciation for citizens such as her attending meetings and aiding Council in its decision making.

CORRESPONDENCE AND COMMUNICATIONS.....

(4:36 p.m.) Council Member Sorey requested the scheduling of a discussion regarding the recordation of various City documents and Council Member Taylor suggested additional discussion of the location of the speaker's podium and recommended that town meetings should be held in 2008. Council Member Price supported Miss Taylor's comment regarding town meetings, referencing his involvement in recent meetings held by citizens. Council Member Willkomm read into the record his response regarding Naples Airport Authority (NAA) issues (a copy is contained in the file for this meeting in the City Clerk's Office). Noting the lack of Council support in pursuing the subject further, Mr. Willkomm stated that although he was disappointed, he would consider the matter closed.

ADJOURN
4:56 p.m.

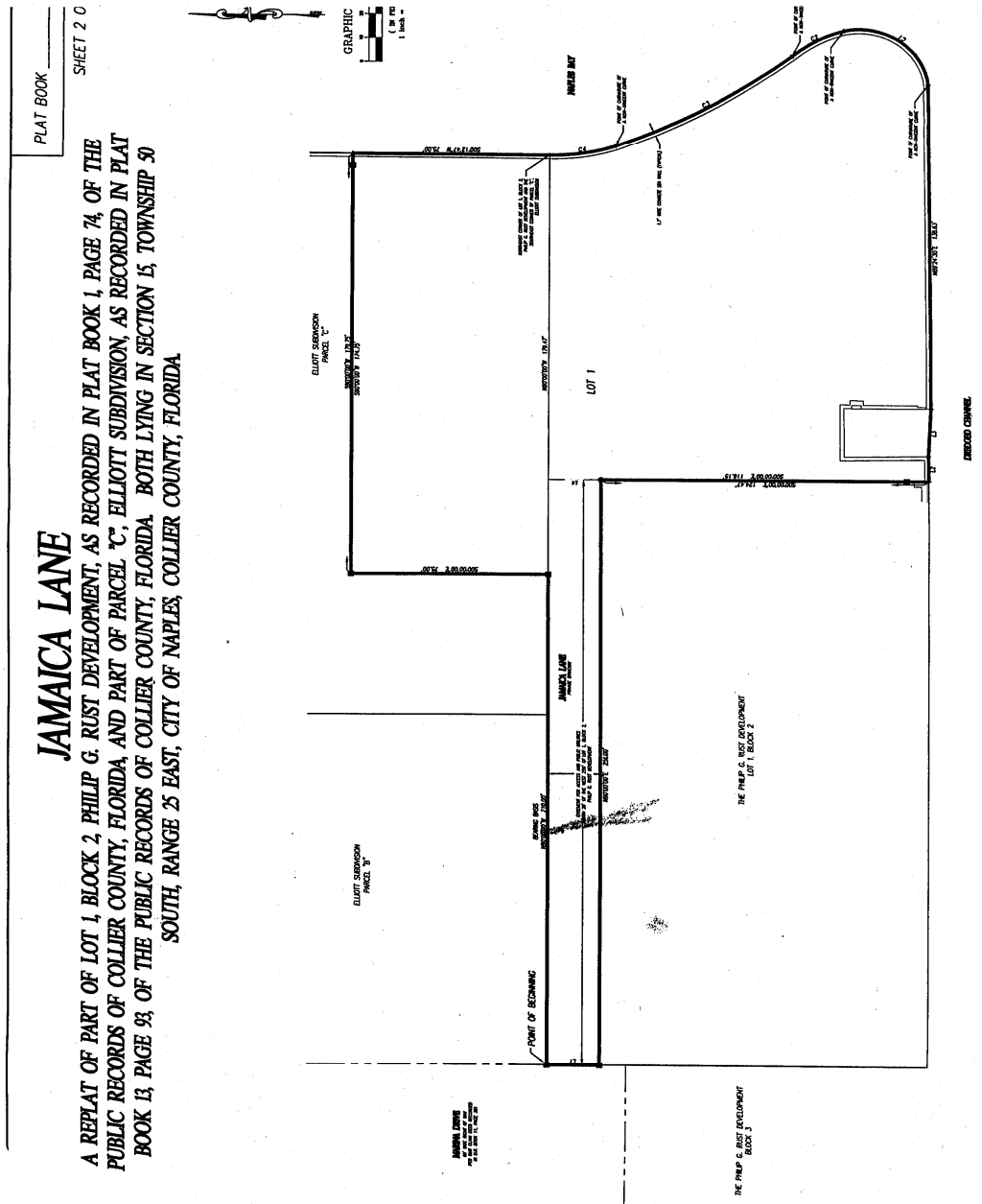
Bill Barnett, Mayor

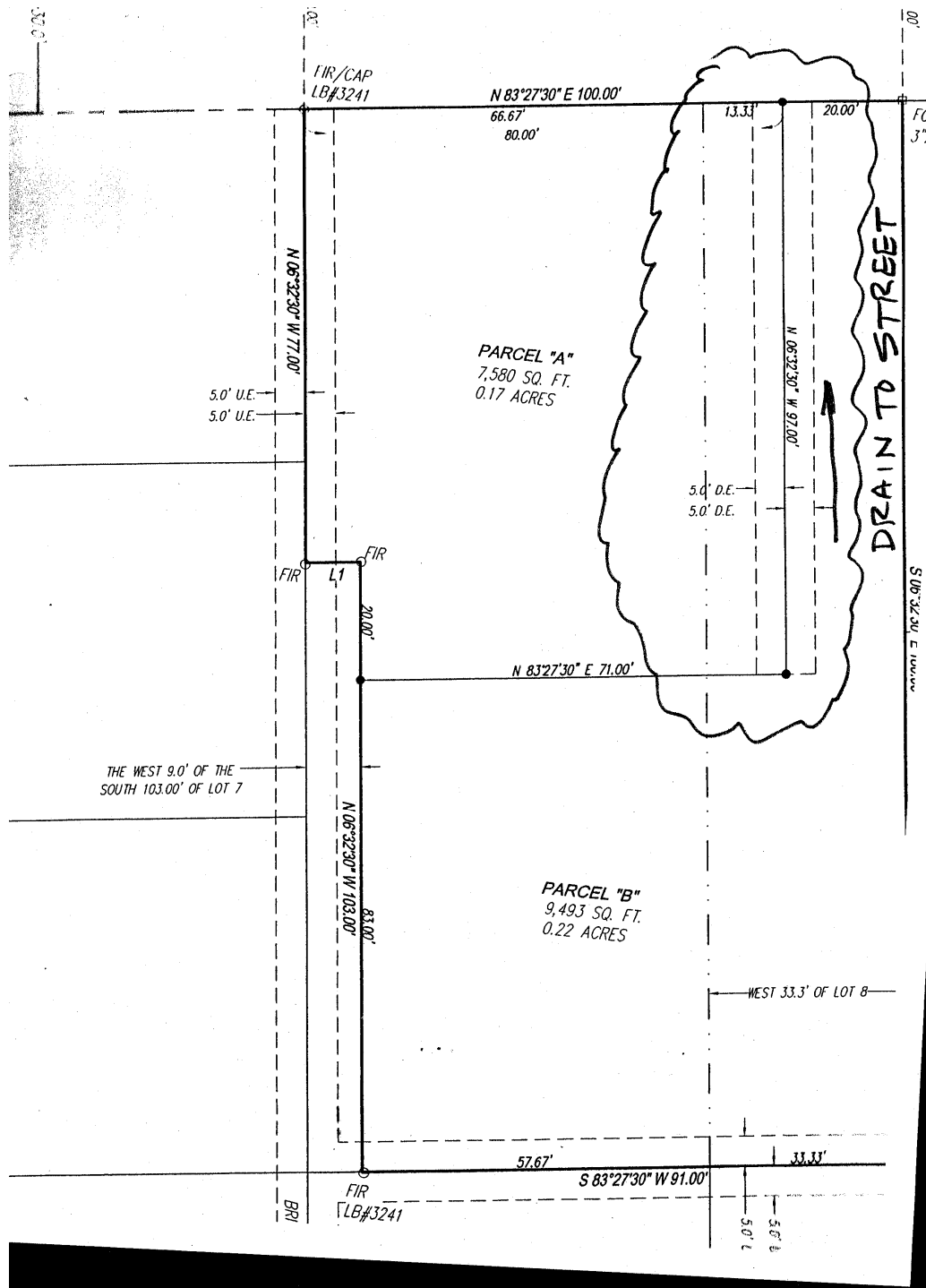
Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 10/3/07





DRAFT

September 5, 2007

The Honorable Charlie Crist, Governor, and
Board of Trustees of the Internal Improvement Trust Fund
State of Florida
PL-05 The Capitol
Tallahassee, FL 32399-0001

Re: City of Naples Proposed annexation of the remainder of
Keewaydin Island

Dear Governor Crist and Board of Trustees:

The City Council of the City of Naples is considering the annexation of the remainder of Keewaydin Island to the City. Currently the northern 37% of the island is in the City. Immediately to the south is property owned by the Trustees of the Internal Improvement Trust Fund (TIITF) and devoted to use a part of the Rookery Bay National Estuarine Research Preserve. To the south of that parcel are approximately 103 separate parcels, of which are owned by the Trustees of the Internal Improvement Trust Fund (see attached map and parcel IDs). Approximately 85% of the area to be annexed is owned by the Trustees of the Internal Improvement Trust Fund.

The annexation statutes appear to require the State's consent to annexation (§171.0413(5) and (6) Fla. Stat.) in certain cases where more than 50% of the land area is owned by the State. (This is not clear, and the Attorney General's office has opined to the contrary on similar matters.) According to the Collier County Supervisor of Elections, there is only one elector at this time whose registration is not current.

One of the reasons for annexation is to unite the unincorporated part of the island with the incorporated portion so that the entire island would be under the unified jurisdiction of the City of Naples.

Another reason for annexation is that it would allow the City to have better input into the current and future uses of the island to ensure that it does not exceed its carrying capacity, and to ensure island-wide coordination of planning, zoning, and land use and development.

A third rationale is to better integrate the rest of the island with the City including the Port Royal area across Gordon Pass from Gordon Pass for the northern portion of the island.

These are potential benefits to the State, as well as the private property owners. The City provides police and fire protection for the unincorporated portion of the island already, including marine patrol and emergency services. These services could either continue to be provided by the current providers (Sheriff, DEP, Collier County Emergency Services, Isles of Capri Fire District, or be assumed by the City).

The most important rationale is the need to respect the wishes of the adjacent private owners, to choose their local sovereign. A private property owner group is interested in the prospect of annexation and the City will be working with that group in seeking consents from the majority of private property owners. We realize that the State enjoys a general primacy in the use of its own property, and the City understands and respects that sovereignty.

Our staff will be happy to work with your staff to answer any questions and to provide any technical information required.

Sincerely,

Bill Barnett
Mayor

MEMORANDUM

**ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL**

To: Dave Lykins
Dr. Mike Bauer, Mike Klein

From: Segundo J. Fernandez
Timothy P. Atkinson

Date: August 23, 2007

Re: Environmental Resource Permit and Sovereignty
Submerged Lands Lease Applications

Consent Order (OGC No. 05-1002-11-DF), Temporary Use Agreement (BOT No. 110338375), Consent Order (OGC No. 05-0061-11-DF), and Temporary Use Agreement (BOT No. 110024505), require the City of Naples to obtain a Sovereign Submerged Land Lease and Environmental Resource Permit (ERP) for its mooring field and docks in Naples Bay. The applications have been processed by FDEP and are ready to go before the Board of Trustees of the Internal Improvement Trust Fund for approval.

We have provided the FDEP staff with a revised Board of Trustees agenda item that details the facilities and authorizations, including the conditions for issuance of the lease and permit. We expect to hear back from FDEP counsel Bud Vielhauer early next week on the revised agenda. These matters will likely go before the Board at the end of September 2007 but it may be at one of the October 2007 meetings. We will let you know as soon as it is placed on the calendar.

The draft agenda specifies that the City has agreed to assist in the enforcement of FDEP rules, if adopted in the future, which prohibit mooring and anchoring on sovereignty submerged lands in the bay outside of the lease area. Once FDEP rules are adopted, and a mutual assistance agreement is executed, City law enforcement officers will assist in the enforcement of the rules. No local ordinance need be adopted, if at all, until such time as such FDEP rules are adopted in the future. We have attached a copy of the draft agenda items

Memorandum to Dave Lykins and Dr. Mark Bauer
August 23, 2007
Page 2 of 2

hereto (one version is a clean-copy and the other version is a strike-thru / underlined version).

The draft agenda item also includes a special approval condition that requires the City to issue a quitclaim deed to the Board of Trustees for all submerged lands waterward of the mean high water line within the area the City leases from the Board of Trustees for the mooring areas consisting of the North Mooring Area, the South Mooring Area, and the City Marina.

Also, you have inquired about whether our fees will exceed the amount authorized by the City Commission. We can assure you that our fees will not exceed the agreed-upon amount of \$50,000 for these matters through the presentation of the lease and permit before the Board of Trustees. Please let us know if you have any questions. Thank you.

Attachments.