



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – May 6, 2009 – 8:30 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Penny Taylor, Vice Mayor

Council Members:

Teresa Heitmann
Gary Price, II
John Sorey, III
Margaret Sulick
William Willkomm, III

Also Present:

William Moss, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Roger Reinke, Assistant City Manager
Vicki Smith, Technical Writing Specialist
Greg Givens, Grant Coordinator
David Lykins, Community Services Director
Ann Marie Ricardi, Finance Director
Michael Klein, Waterfront Operations Manager
Michael Bauer, Natural Resources Manager
Robert Middleton, Utilities Director
Robin Singer, Planning Director
Adam Benigni, Planner
Mireidy Fernandez, Planner
Gregg Strakaluse, Engineering Manager
Donald Pickworth, Attorney
Joss Nageon De Lestang
Lois Selfon
Sharon Kenny

Michael Vannicola
Rich Housh
Erika Hinson
Lisa Swirda
Sue Smith
John Remington
Annabelle Johnson
John Bartoldus
Douglas Voss
Nancy Morgan
Joan Flanigan
Theresa Warner
Charles Kirker
Nina Kirker
John Mueller
Harold Weeks

Media:

Jenna Buzzacco, Naples Daily News
Other interested citizens and visitors

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

Father Michael Vannicola, Saint Ann Catholic Church.

ANNOUNCEMENTSITEM 3

The following were presented by Mayor Barnett:

- Mental Health Awareness Month Proclamation – Month of May;
- National Association of Insurance Women Week Proclamation – May 17 through 23;
- Distinguished Budget Presentation Award – Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association (GFOA) to the City’s Finance Department.

SET AGENDA (add or remove items).....ITEM 4

MOTION by Taylor to ***SET THE AGENDA*** as submitted; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....ITEM 5

(8:40 a.m.) None.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 7-a

March 30, 2009 Workshop and April 1, 2009 Regular; as submitted.

SPECIAL EVENTS ITEM 7-b

1) Summer Jazz Concert Series – Naples Beach Hotel and Golf Club – Watkins Lawn – 06/13/09, 07/18/09, 08/22/09 and 09/19/09.

RESOLUTION 09-12426.....ITEM 7-c

A RESOLUTION ACCEPTING THE CARIBBEAN CONSERVATION CORPORATION SEA TURTLE GRANTS PROGRAM GRANT FOR THE NAPLES SEA TURTLE PUBLIC AWARENESS EDUCATION PROGRAM; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Sorey to ***APPROVE CONSENT AGENDA*** as submitted; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

END CONSENT AGENDA

RESOLUTION 09-12427.....ITEM 8

A RESOLUTION NAMING PUBLIC PROPERTY LOCATED AT 1010 FIFTH AVENUE NORTH AS “CAMBRIDGE/PERRY PARK”; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:39 a.m.).

Public Comment: (8:39 a.m.) None.

MOTION by Taylor to ***APPROVE RESOLUTION 09-12427*** as submitted; seconded by Sorey and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

It is noted for the record that Vice Mayor Taylor left at 8:40 a.m. and did not return until 11:24 a.m. during Correspondence and Communications below.

SOLAR POWER PRESENTATIONITEM 9

City Manager William Moss introduced Naples resident Rich Housh, who utilized an electronic presentation during which he reviewed recent developments within the alternative power industry. (It is noted for the record that a printed copy of Mr. Housh’s presentation is contained in the file for this meeting in the City Clerk’s Office.) Following a brief overview of his company, Juice Technologies, LLC, which provides energy consulting and advanced analytic services for utility scale renewable energy projects (*renewable energy is energy generated from*

natural resources such as sunlight, wind, rain, tides, biomass and geothermal heat), he presented his proposal for a private/public partnership for placement of a 500Kw photovoltaic (*generates electricity directly from sunlight*) solar panel array on the City’s Wastewater Treatment Plant property. Florida Power & Light (FPL) had declined an offer to participate, Mr. Housh said, but communication with FPL would continue. Mr. Housh proposed that the City would apply for grant funding for 50% of the cost of the facility and the company would match that 50% and develop, own and operate the facility. Benefits to the City would be a sustainable, renewable, clean energy source, reduction of its carbon footprint as well as reducing its dependency on fossil fuels, with a 5% reduction in energy costs realized. Council Member Sorey added that staff continued to work with Mr. Housh on possible State grant funding and would proceed with an application should Council agree.

Mr. Housh also suggested that a small photovoltaic array could be installed at City Hall or Cambier Park with ongoing monitoring of the amount of electricity generated. In response to Council Member Price, Mr. Housh agreed that a 30-year vision and strategy should be developed with a realistic goal and mandated target in regard to lowering of the carbon footprint of the City. The best way to save energy is conservation, Mr. Housh pointed out, explaining that items which consume energy should be turned off when not in use. Council Member Sorey concluded by saying that unfortunately state mandates with regard to renewable energy requirements would be necessary to generate interest by energy suppliers, such as FPL, in contributing to such projects.

Public Comment: (9:02 a.m.) None.

Direction that staff should proceed with grant application process.

It is noted for the record that due to a potential appearance of conflict, Attorney Donald Pickworth would be representing the City during consideration of Item 10 below.

**RESOLUTION 09-12428.....ITEM 10
A RESOLUTION DETERMINING EASEMENT VACATION PETITION 09-EV1 TO
VACATE THE SOUTHERLY 10 FEET OF A PLATTED 20-FOOT GRASS ALLEY
WITH AN EAST/WEST ORIENTATION TO CREATE A BUFFER FROM A NEARBY
COMMERCIAL BUILDING FOR AN ALLEY LOCATED NORTH OF 655 FIRST
AVENUE NORTH AND ADJACENT TO 135 SEVENTH STREET NORTH, MORE
FULLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN;
AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:02 a.m.) who clarified that this item would be considered legislative, not quasi-judicial. City Manager William Moss indicated that this item had been continued from the April 15 regular meeting, noting the memorandum dated April 21 from Traffic Engineer George Archibald (Attachment 1) which contained an analysis of the easement vacation.

Engineer John Remington of the Sater Group and representing the petitioner, clarified that the homeowner adjacent to his client’s property had agreed to sign a statement that no additional construction would occur in the side yard setback of 7.5 feet from the now existing property line. In response to Council Member Sorey, Planning Director Robin Singer confirmed that the 17.5 foot rear setback cited in the resolution was correct due to the subject lot being on the corner.

Council Member Sulick requested that in the future staff provide plats rather than photographs so that exact setbacks and the like can be discerned. Ms. Singer also clarified for Mrs. Sulick that the lot fronting Seventh Street North could, without an easement vacation, install a buffer and

fence with certain rights-of-way approvals; however, this would not be the case for a carport. She further noted that the adjacent property, which fronts First Avenue North, had indicated an interest in constructing a pool and the vacation would allow additional buffering from the commercial property to the rear. Mrs. Sulick proffered a motion for denial which was however not seconded. Final action appears below.

Public Comment: (9:11 a.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 09-12428** as submitted; seconded by Heitmann and carried 5-1 (Sorey-yes, Price-yes, Heitmann-yes, Willkomm-yes, Taylor-absent, Sulick-no, Barnett-yes)

RESOLUTION 09-12429.....ITEM 11

A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 09-LE7 FOR INDOOR LIVE ENTERTAINMENT FOR UNDER THE SHADY PALM PUB LOCATED AT 210 NINTH STREET NORTH, MORE FULLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (9:12 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; Sulick, Barnett and Heitmann/familiar with the site but no contact; and Price and Sorey/visited the site but no contact. Planner Adam Benigni provided a brief overview of the petition, noting that staff recommended approval.

Public Comment: (9:13 a.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 09-12429** as submitted; seconded by Barnett and carried 6-0 (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 09-12432.....ITEM 12

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND MDM SERVICES, INC., TO PROVIDE RELINING OF FUEL TANKS AT THE CITY DOCK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (9:14 a.m.). City Manager William Moss explained that 1983 state mandates require secondary containment for underground fuel storage tanks to be in place by December 31, 2009; this is accomplished via replacement or lining of existing single-wall tanks. Staff had previously earmarked \$300,000 to replace the tanks although a cost of \$109,810 was offered by MDM Services for the lining process. In further discussion with Waterfront Operations Manager Michael Klein it was determined that the item would be continued until later in the meeting until further warranty information could be provided. Mr. Klein also confirmed that the originally planned, above ground concrete tank would be operational longer but the degree of extended life was not known. In response to Council Member Sorey, Mr. Klein explained that while a mobile fueling service could provide fuel to the charter vessels moored at the City Dock during the relining process, provision to fuel other water craft would not be possible for the interim.

Consensus to CONTINUE THIS ITEM UNTIL LATER IN THE MEETING TO ALLOW STAFF TO CONTACT THE CONTRACTOR REGARDING WARRANTY INFORMATION.

**RESOLUTION (continued – see motion below)ITEM 13
A RESOLUTION APPROVING A POLICY ESTABLISHING REVIEW AND APPROVAL
CRITERIA FOR SPECIAL EVENTS CONDUCTED WITHIN THE CITY; AND
PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:20 a.m.).
City Manager William Moss explained that the proposed policy had been developed over the past
six months during numerous discussions by Council and the Community Services Advisory Board
(CSAB).

Public Comment: (9:21 a.m.) **Annabelle Johnson, 3765 Weymouth Circle and President of
the Naples Artcrafters,** characterized the proposed increase in charges for booths as an impact fee
and too costly for her group to continue their shows in Cambier Park. She also noted that the art
program funding provided to local schools by Naples Artcrafters would also become doubtful if
booth fees were raised. **John Bartoldus, 3250 Tenth Street North; Douglas Voss, 50 Third
Street; Nancy Morgan, 26660 Egrets Landing Drive, #202, Bonita Springs; and Joan Flanigan,
510 Third Avenue South,** also members of the Naples Artcrafters, supported Ms. Johnson’s
comments. **Sue Smith, 11th Avenue South,** expressed appreciation to the Naples Artcrafters and
supported their continued use of Cambier Park, stating that it would be a great loss to the
community should their art shows be relocated outside the City. **Theresa Warner, 1308 Venetian
Way, and Charles Kirker, 148 Estelle Avenue,** waived comment. **Nina Kirker, 148 Estelle
Avenue,** also a member of the Naples Artcrafters, noted that as a resident of the City, she could not
support the fee increases as proposed. Many of the Artcrafters members are elderly and on fixed
incomes, she pointed out, and many members may no longer be able to participate should the fees
be increased.

Council Member Sorey expressed concurrence with members of the public with regard to the fee
increases, suggesting that a two-tiered system be developed charging \$35.00 to for-profit
organizations and \$10.00 for non-profit groups; Council Member Heitmann agreed. In response to
Council Member Price, Community Services Director David Lykins explained that no estimate of
potential revenue from booth fee increases had been made. The intent, he added, had been merely
to obtain revenue from the commercial events with two-day closures of Fifth Avenue South, thereby
offsetting a portion of the maintenance of the street and Cambier Park. Mr. Price however took the
position that the cost for such maintenance must be known and expenses cut to the degree possible
prior to considering any fee increase; the possibility of entities such as the Naples Artcrafters not
being able to afford the use of Cambier Park is not acceptable, he added. City Manager Moss
pointed out that this policy had however not been in response to budgetary issues but had been
brought forward by the CSAB as a means of recouping maintenance costs for use of Fifth Avenue
South and Cambier Park by those utilizing these facilities for such activities.

Council Member Sulick expressed support for the intent of the CSAB with regard to the
recommendations under discussion, and Mr. Lykins explained that 95% to 98% of activities
scheduled are non-profit and that only a minor reduction in the number of special event permit
applications had been realized for 2009-10. With regard to the Naples Artcrafters, Mrs. Sulick
asked whether the group undertook regular fundraising to offset its expenses, suggesting that the
Woman’s Club be approached for use of its parking lot for art exhibits and shows; Mrs. Sulick also
mentioned the Bayfront complex which has art galleries. Other venues are available and Council’s
focus should be the responsible use of the City’s assets, she added, pointing out that those using
facilities should aid in funding their maintenance. Council Member Willkomm agreed.

Council Member Sorey proffered a motion for approval, modifying booth fees to reflect a two-tiered system as above stated. However, Mayor Barnett noted that CSAB Chair Lois Selfon was present and wished to address Council. Mrs. Selfon clarified that the booth fee increases were to apply to all facility users, not merely those represented before Council at that meeting, noting that she had personally offered the Naples Artcrafters an \$800 contribution to defray its first park fee of the coming season and urged that they pursue fundraising in the interim; if the booth fees are not increased, she cautioned, the taxpayers of the City would continue to totally fund the maintenance of Cambier Park and Fifth Avenue South.

In response to Council Member Sulick, Mr. Lykins clarified that while the two art shows regularly scheduled on Fifth Avenue South are commercially organized, the Downtown Naples Association (DNA), a non-profit entity, applies for the permit; however, recently other entities which are commercial had inquired with regard to using City facilities for shows. Mrs. Sulick recommended that all users be charged a \$25.00 booth fee. Mr. Lykins also clarified for Council Member Heitmann that some users pay a park rental fee and would therefore be exempt from the recommended electrical use fee, and that some groups do not use electric whatsoever.

Council Member Price reiterated the need for information relative to the City's cost for special events and the resulting maintenance impact so that decision-making could go forward; he therefore recommended a continuance. Council Member Sorey agreed and withdrew his motion as noted above. In further discussion Mr. Price clarified that he did not require exact numbers for each event, but an aggregate for services provided by the City for special events, offset by known revenue. Council Member Sulick added that with over 300 special events per year in Cambier Park, Third Street South and Fifth Avenue South, those placing this additional stress on these facilities and resources should fund maintenance; with current economics, the City taxpayers cannot continue to subsidize these organizations, she cautioned.

Mrs. Selfon further commented that the CSAB had provided the policy as a tool to facilitate Council's decision-making, balancing the needs of the special event applicants with those of City residents in terms of quality of life and bearing the burden of funding by tax revenues of the special events. Any costs of special events not allotted to the applicants will be borne by the taxpayers, she added. She also pointed out that costs such as those requested by Council Member Price above had indeed been provided to the CSAB early in the process of developing the policy currently before Council.

Recess: 10:20 a.m. to 10:31 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Item 13 continued.

In response to Council Member Sorey, Council Member Price agreed to work with staff to ascertain the cost of the special events as referenced above for presentation on May 20.

MOTION by Sorey to CONTINUE THIS ITEM TO MAY 20, 2009 REGULAR MEETING; seconded by Price and carried 4-2 (Heitmann-yes, Price-yes, Sorey-yes, Sulick-no, Taylor-absent, Willkomm-no, Barnett-yes).

(It is noted for the record that this item was reconsidered later in the meeting during Correspondence and Communications (see Page 10).)

RESOLUTION 09-12430.....ITEM 6
A FINAL ASSESSMENT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPLES FLORIDA, RELATING TO A NON-AD VALOREM SPECIAL ASSESSMENT WITHIN THE AREA OF THE CITY DESCRIBED HEREIN FOR THE PURPOSE OF PAYING THE COST OF THE WEST NAPLES BAY CANAL DREDGING PROJECT; PAYING OTHER PROJECT, FINANCING AND COLLECTION COSTS RELATED TO THE WEST NAPLES BAY CANAL DREDGING PROJECT AND THE NON-AD VALOREM SPECIAL ASSESSMENT; ESTABLISHING THE METHOD OF ASSESSING THE COSTS OF THE IMPROVEMENTS AGAINST THE REAL PROPERTY THAT WILL BE SPECIALLY BENEFITED THEREBY, SPECIFYING THE NUMBER OF YEARS SAID ASSESSMENT IS TO BE LEVIED; ALLOWING FOR THE PREPAYMENT OF THE SPECIAL ASSESSMENT; APPROVING AN ASSESSMENT ROLL; PROVIDING FOR CERTAIN OTHER AUTHORIZATIONS AND DELEGATIONS OF AUTHORITY IN RELATION THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:33 a.m.).

Public Comment: (10:34 a.m.) **John Mueller, 880 17th Avenue South**, explained that his property abuts Duck Canal and is subject to the above assessment. The dredging was to have been to minus 5 feet mean low water (MLW / *lowest water level averaged over many tidal cycles*) but his boat, at 4 feet, 8 inches, strikes bottom at times, he said, pointing out that his home is three lots in from Naples Bay and it is costly to repair the boat's rudder each time it is damaged. Mr. Mueller commended Streets & Stormwater Director Ron Wallace for his assistance but requested that the issue be addressed prior to the levying of the assessment. **Sharon Kenny, President of Aqualane Shores Association**, agreed with the prior speaker that larger boats are still encountering areas which are not navigable, possibly due to remaining rock. In response to the public speakers, Director Wallace briefly reviewed the process by which the dredge depths are confirmed, noting that rock removal is problematic. The target depth had been minus 6 feet NGVD (National Geodetic Vertical Datum/ *the zero point in elevation measurement*), not MLW as above referenced (*the conversion of depths from NGVD to MLW can be made by adding a half-foot*). While numerous post-dredge surveys had been undertaken, Mr. Wallace said, it would be possible to have areas which were not on the survey grid and varied in depth enough to affect boating. The dredge permit limits over-dredging to six inches and therefore caution must be taken with repeated spoil removal, as well as the fact that the contracted amount of materials to be removed had been confirmed by the City as removed.

In response to Council Member Price, Mr. Wallace explained that when a complaint had been received, the subject area had been surveyed; the cost to mobilize for additional dredging at this point would not be cost effective, however. If an area is known to be non-navigable, it can be avoided, he added. Furthermore, Mr. Wallace explained that during the dredge operation, the contractor would dive to locate the rock and then indicate to the hydraulic rock hammer operator the location on which to focus.

Mr. Wallace indicated that he would communicate further with concerned boaters and confirm elevations in problem areas, noting that markers would require approval prior to placement, and City Attorney Pritt pointed out that additional prohibition of waterway signage could soon be enacted at the State level.

MOTION by *Sorey* to ***APPROVE RESOLUTION 09-12430*** as submitted; seconded by *Willkomm* and carried 6-0 (*Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-absent, Willkomm-yes, Barnett-yes*).

It is noted for the record that Council Member Heitmann left the meeting following the above vote and returned at 10:58 a.m. during consideration of Item 15 below.

RESOLUTION 09-12431.....ITEM 14

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND GULFSHORE ENGINEERING, INC., TO PROVIDE PROFESSIONAL DESIGN, ENGINEERING, AND PERMITTING SERVICES FOR BASIN V, PHASE 3; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:52 a.m.). Streets & Stormwater Director Ron Wallace explained that Basin V is the Lake Park area extending to north of Naples High School. The existing South Florida Water Management District (SFWMD) grant must be utilized quickly and the engineering firm confirmed that the stormwater improvements selected could be designed and permitted within the next 120 days. In response to Council Member Sulick, Mr. Wallace confirmed that due to the City’s swale restoration program as well as others, water quality credit requirements will be met with regard to obtaining permitting for a large portion of Basin V improvements.

Public Comment: (10:55 a.m.) None.

MOTION by *Sulick* to ***APPROVE RESOLUTION 09-12431*** as submitted; seconded by *Price* and carried 4-0 (*Heitmann-absent, Price-yes, Sorey-yes, Sulick-yes, Taylor-absent, Willkomm-yes, Barnett-yes*).

ORDINANCE (First Reading).....ITEM 15

AN ORDINANCE REPEALING SECTION 2-601(c) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO ELIMINATE THE REQUIREMENT FOR AN “AUDIT ANALYST” TO PROVIDE AN AUDIT IN ADDITION TO THE INDEPENDENT AUDIT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:57 a.m.). Council Member Sorey proffered a motion for approval; Council Member Willkomm seconded.

Council Member Price said that he supported an independent audit every four years, but Finance Director Ann Marie Ricardi pointed out that the yearly audit of the City’s finances includes review of all aspects cited in the current ordinance. Council Member Heitmann however agreed with Mr. Price.

Public Comment: (11:01 a.m.) **Sue Smith, 11th Avenue South**, noted her presence during the ongoing issues of 1991-92 when the ordinance had been adopted and said that she supported the ordinance as it exists. She also questioned why the required independent audit analysis had not been considered on the four year cycle. City Manager William Moss pointed out that Council has the authority to request such an audit at any time, with or without the ordinance under discussion. Ms. Ricardi also explained for Mr. Price that state law mandates that auditing firms be rotated every three to five years and that the City’s firm is retained on a three year cycle. City Attorney Pritt agreed, noting that the ordinance under discussion would actually be viewed as more of a policy, that a resolution could be drafted and accomplish the same intent with regard to an independent audit request. In response to Mr. Price, Ms. Ricardi confirmed that the yearly audit encompasses all items cited for deletion with repeal of the four-year audit requirement, except liability and

performance bonding (Section 2-601(c)(3)(b)); City Manager Moss added that these items would in fact be considered purchasing, not finance.

MOTION by Sorey to **APPROVE THIS ORDINANCE** on First Reading as submitted; seconded by Willkomm and carried 4-2 (Taylor-absent, Willkomm-yes, Sorey-yes, Sulick-yes, Heitmann-no, Price-no, Barnett-yes)

RESOLUTION 09-12432 (continued from above-see Page 4).....ITEM 12 (11:13 a.m.) Waterfront Operations Manager Michael Klein indicated that he had obtained the requested warranty information, and that both installation and materials are covered for 30 years providing corrosion does not occur from outside the tanks and that required inspections are undertaken. Should repairs occur the warranties are however not extended, he added. (It is noted for the record that a copy of both warranties is contained in the file for this meeting in the City Clerk's Office.) City Attorney Pritt recommended that the warranties be appended to the contract as reflected in the motion below.

Public Comment: (11:20 a.m.) None.

MOTION by Willkomm to **APPROVE RESOLUTION 09-12432** as amended, appending warranty information to the contract. This motion was seconded by Sorey and carried 6-0 (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 09-12433.....ITEM 16-a
A RESOLUTION CONFIRMING THE APPOINTMENT OF ONE BARGAINING UNIT MEMBER TO THE BOARD OF TRUSTEES OF THE GENERAL EMPLOYEES' RETIREMENT SYSTEM FOR THE BALANCE OF A FOUR-YEAR TERM EXPIRING FEBRUARY 6, 2011; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:17 a.m.). Deputy City Clerk Jessica Rosenberg explained that the appointment had been made by City Manager William Moss and was in need of confirmation by Council.

Public Comment: (11:17 a.m.) None.

MOTION by Price to **APPROVE RESOLUTION 09-12433 NOMINATING JOHN GARDELLA** which carried 6-0 (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 09-12434.....ITEM 16-b
A RESOLUTION APPOINTING ONE MEMBER TO THE DESIGN REVIEW BOARD FOR A THREE-YEAR TERM COMMENCING JUNE 1, 2009, AND CONCLUDING MAY 31, 2012; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:17 a.m.). Deputy City Clerk Jessica Rosenberg noted that incumbent David Suero had withdrawn from consideration for a second term and the nominations reflected below were forthcoming.

Public Comment: (11:18 a.m.) None.

MOTION by Heitmann to **APPROVE RESOLUTION 09-12434 NOMINATING JAMES KRALL** FAILED 3-3 (Sorey-no, Price-yes, Willkomm-no, Sulick-yes, Heitmann-yes, Taylor-absent, Barnett-no).

MOTION by Willkomm to **APPROVE RESOLUTION 09-12434 NOMINATING ARTHUR NEUMANN** which carried 4-2 (Price-no, Sorey-yes, Sulick-yes, Willkomm-yes, Taylor-absent, Heitmann-no, Barnett-yes).

It is noted for the record that Vice Mayor Taylor returned at 11:24 a.m. during Correspondence and Communications below.

CORRESPONDENCE AND COMMUNICATIONS.....

(11:20 a.m.) Council Member Sorey pointed out that City residents have an interest in the upcoming Collier County Board of Commissioners meeting with regard to Clam Bay issues, therefore, he suggested that an item be placed on the next regular meeting agenda. He also noted consideration by the Tourist Development Council (TDC) with regard to increasing the tourist/bed tax to raise revenue for advertising, stating that his concern involves funding which would be diverted from beach renourishment; Council Member Sulick agreed. Referencing Item 13 above, Mr. Sorey recommended that incremental cost differentials in booth fee calculations for special events between Fifth Avenue South and Cambier Park be taken into consideration with regard to Council Member Price’s analysis. Council Member Heitmann noted concern that enforcement of regulations be consistent along Fifth Avenue South with regard to the use of neon signs, umbrellas, and the like, also pointing out that the clocks on buildings were inoperable on that street. Council Member Price expressed concern with regard to dredging of Spring Lake and aid being offered by nearby residents requesting a plan to do so. City Manager William Moss indicated that this topic would be scheduled on an upcoming workshop agenda. Vice Mayor Taylor, noting the continuance of Item 13 above to May 20, requested that it be reconsidered and instead continued to June 3 due to her planned absence on the prior date for her daughter’s wedding.

MOTION by Sorey to RECONSIDER ITEM 13; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

MOTION by Sorey to CONTINUE ITEM 13 TO JUNE 3, 2009; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Vice Mayor Taylor further noted concerns of the Lake Park Property Owners Association regarding an upcoming conditional use permit for a church parking lot in that area; she requested that they be allowed to pose questions regarding zoning to the City Attorney. Mayor Barnett suggested that the questions be sent to the City Manager for consideration. In conclusion, she expressed concern by the Lake Park neighborhood that parking would occur at the Sixth Lane linear park and Betsy Jones Park, noting the offer of an initiative by the neighborhood to begin adding plantings in the linear park. Mayor Barnett provided an update on the Fifth Avenue South property owners meeting with Andres Duany’s representative and requested that City Manager Moss be allowed to attend future meetings; Council concurred.

PUBLIC COMMENT.....

(11:50 p.m.) None.

Recess: 11:51 a.m. to 12:01 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened. It is also noted that both executive sessions reflected below were considered consecutively.

EXECUTIVE SESSION.....ITEM 17

EXECUTIVE SESSION TO DISCUSS SECURITY OF CITY UTILITY FACILITIES.

EXECUTIVE SESSION.....ITEM 18

EXECUTIVE SESSION TO DISCUSS STATUS OF NEGOTIATIONS WITH THE PROFESSIONAL FIREFIGHTERS OF NAPLES, IAFF LOCAL 2174; AMERICAN

**FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME),
COUNCIL 79, LOCAL 2017; FRATERNAL ORDER OF POLICE, LODGE 38; AND
FRATERNAL ORDER OF POLICE, SUPERVISORS BARGAINING UNIT.**

**Executive Session: 12:02 p.m. to 1:33 p.m. It is noted for the record that the same Council
Members were present when the meeting reconvened.**

No action announced.

ADJOURN.....
1:37 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 06/03/09



Memo

Engineering

TO: A. William Moss, City Manager
THROUGH: Robin D. Singer, Planning Director
FROM: George Archibald, Traffic Engineer
DATE: April 21, 2009
SUBJECT: Administrative Analysis of Vacation Petition 09-EV1

SUBJECT: In processing Vacation Petition 09-EV-1 of a 10' platted unimproved alley that involves two developed single family lots (655 1st Avenue North & 135 7th Street North), the following information is provided to create a public records perspective of existing conditions and provide sufficient background for an administrative recommendation and for legislative consideration.

DEDICATION SECTION

1. Type and creation of existing dedication (Fee/Easement):

The subject existing alley was platted per the plat of the 'Town of Naples' with a width of 20 feet in fee ownership to the public with the City of Naples currently representing the public's interest in the alley and with adjacent property owners retaining a reversionary right to the common center of the alley. The purpose and function of the original alley was to provide secondary public access to adjacent properties and to allow for utilities. The vacation application, pursuant to Florida Statute 177, is for the purpose of vacating the public access function when and where public access is not provided and/or needed present and future.

2. Prior Land-Use (Platting/Re-Platting/Vacation):

Since original platting of the alley, there has been no re-platting but there has been a vacation of the north 10 feet of the east-west alley for the distance of 190+ feet. This vacation per City Resolution #3747 in 1981 relinquished the fee ownership rights of the north 10 feet but retained a utility easement over the vacated 10 feet. Per the referenced 1981 vacation resolution, the north property owner became the owner and responsible party to maintain the north 10 feet of the alley and was also required to construct a vegetative buffer consistent with development plans for the office-commercial use project on the remainder of the property (Note: north side of the alley-680 2nd Avenue North).

3. Land-Use Encumbrances (Zoning/Vesting/Permitting/Variances):

The two properties on the south side of the remaining 10' alley are

residential and zoned R1-7.5 Single Family and has been subject of single family development on two properties (Note: Petitioner addresses are above).

The west parcel has frontage on 1st Avenue North, on an existing 20' north-south alley and on the existing 10' east-west alley; the east parcel has frontage on 7th Street North and the existing 10' east-west alley. Property on the north is zoned 'M' Medical and has been subject of commercial development as noted above. No noted vesting and/or variance issues have been identified other the above noted vacation.

4. Legal Ownership Rights (Reversionary Rights/Zoning Implications):

The properties fronting on the subject alley retain reversionary rights to the center of the alley. The prior vacation allowed the north 10 feet of the alley to be transferred to the property on the north side of the alley. The proposed vacation of the south side of the alley allows transfer of the south 10 feet to the two properties with a total frontage of 190 feet. The zoning implications of such a vacation typically impact setbacks and typically allow an enlarged development footprint. The current setbacks for the two residential properties are shown on the attached Sketch-Setback Exhibit #1; setbacks, if the vacation application is approved, are shown on attached Setback Exhibit #2. As noted, there is a change in the setback on the alley side for the platted property fronting 7th Street. The impact of this change in setback is upon the alley and the commercial property; this impact is partially nullified by the property owner's commitment to allow existing setbacks to functionally remain which assures that the utility function of the alley is not impacted by approval of the vacation.

USE-OPERATION-IMPROVEMENT SECTION

1. Listing of Uses & Operations (Prior-Present-Future):

a) Access (Primary/Secondary): The subject east-west alley is confined between 7th Street and the north-south alley (Note: a continuous alley between public streets). The east-west alley as originally platted (20' in width) could have functioned in providing secondary access to adjacent properties and with the current width of 10 feet can continue to provide secondary access although such access will be constrained and only provide benefit to the adjacent properties requesting the vacation. Records do not indicate that the alley historically (past and present) provided such access. By submittal of the vacation application, the owners are indicating no desire for the City to construct an alley for public or private access.

b) Connectivity (System Uses): As indicated above, the alley has never functioned to provide access to the adjacent properties, nor has the alley ever been used for public access and/or connecting access for public use/benefit. A review of the future need for connectivity has not identified a public need or use of the alley for such access with the notation that an easement provides connectivity access for existing and future utility functions.

c) Services (Solid Waste/Tel/Cable/Gas): The alleys within the subject platted Block could be improved to provide rear alley solid waste service. There are no indications that any such service has ever been provided nor any such service will be requested or be cost-effective to provide in the future (Note: historic service has been via the adjacent public streets and such service is considered more cost effective than service from the subject alley, if available). The alley, whether in fee ownership or in easement control, provides for utility/telephone/cable services.

Such services are projected to remain necessary and accordingly can be provided via casement (Note: an improved alley, if provided, would potentially increase the cost of providing the noted utility services).

d) Utilities (Water/Sewer/Re-Use): The existing alley contains a gravity sewer system; relocation of the sewer lines is not cost effective. Water service is provided via the adjacent public streets and adjacent north-south alley; no water service is provided via the east-west alley. As noted above, the alley, whether in fee ownership or in easement control, remains equally available for the installation, maintenance and operation of existing and future public and private utilities. Because the utilities are not subject to street improvements, actual utility operations may be at an advantage in not being subject of restoration/repair of alley improvements. Actual controls of such utilities, public and private, remain available to the City via the existing permitting procedures set forth in the Naples Code.

2. Listing of Improvements (Prior-Present-Future):

Access: There are no records of access improvements having been provided in the alley by the City. The referenced vacation petition application, if approved would assure the City would not incur the cost of future access improvements with City tax dollars.

Connectivity: No such improvements for public access, past-present-future, have been identified.

Services: As concluded from information above, existing and future services are not anticipated to be impacted by any change in the status of the alley from fee ownership to easement control.

Utilities: As concluded from information above, existing and future utilities are not anticipated to be impacted by any change in the status of the alley from fee ownership to easement control.

ASSET and LIABILITY SECTION

1. Assets (Prior-Present-Future):

Public Facilities/Estimated Value-Benefit: The alley, as noted above, does not contain any assets (street/drainage/landscaping-typical value varies between \$5000 and \$15,000) reflecting City-wide tax expenditures. Future City-wide tax expenditures for City alley improvements would be eliminated by the approval of the proposed vacation.

Public Utilities/Services and Private Facilities/Estimated Value-Benefit: Existing public and private utilities, past-present-future, are not identified to be impacted should the status of the alley change from fee ownership to

easement control. The value of the existing facilities and/or additions to such facilities is not expected to change as a result of the proposed vacation application, if approved or denied (Note: this is confirmed by the receipt of letters of 'no objection' from utilities).

2. Liabilities (Prior-Present-Future):

Public Facilities/Estimated Value-Benefit: The City, as fee owner of the south 10 feet of alley, is responsible and liable as the 'property owner' for operations, improvements and maintenance of the alley. Since there is no record of such improvements other than the installation and operation of the gravity sewer system, City fee ownership liability is currently limited by the unimproved condition and by the limited use for utilities. Liability risk is generally covered by City-wide insurance and by statutory immunity. The replacement of ownership responsibility by easement control would reduce liability exposure but not by any substantial amount.

Private Facilities/Estimated Value-Benefit: Liability related to private utilities, past-present-future, is not identified to change should the status of the alley change or remain the same. Utility access and ability to maintain and expand facilities remain subject to City permitting.

CONCLUSION and RECOMMENDATION

From the above analysis, the advantages of retaining the alley for future public access are not substantial (Note: no identified alleyway system impacts; no change in lot access; no alley access improvements; no impacts to utilities). The economic benefit to the City for vacating the alley is the potential of eliminating the cost of future alley construction and the cost of alley maintenance over time. In 'weighing' the two alternatives, there are potentially greater differential monetary benefits in approving the vacation, transferring the fee ownership and assuring that a future public alley is not constructed with public dollars that would provide little or no public benefit. Should the vacation petition be approved, the conditions of retaining the easement control and maintaining setback controls are both recommended and a necessity due to existing utilities.

GFA/21Apr09

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