



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – April 21, 2010 – 8:29 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL..... ITEM 1

Present:

Bill Barnett, Mayor
John Sorey, III, Vice Mayor

Council Members:

Douglas Finlay
Teresa Heitmann
Gary Price, II
Samuel Saad, III
Margaret Sulick

Also Present:

William Moss, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Roger Reinke, Assistant City Manager
Vicki Smith, Technical Writing Specialist
Jessica Rosenberg, Deputy City Clerk
David Lykins, Community Services Director
Mireidy Fernandez, Planner
Robert Middleton, Utilities Director
Michael Bauer, Natural Resources Manager
Ron Wallace, Streets & Stormwater Director
Adam Benigni, Planner
Clarence Tears
Richard Yovanovich
Jacques Groentenman

Mike Carlson
Amber Crooks
Andrew McElwaine
Lisa Swirda
Everett Thayer
Barbara Jean Moore
Shawn Smith
Susan Calkins-Ritas
Judith Hushon
Aaron Knott
Jon Finstrom

Media:

Eric Staats, Naples Daily News
Jenna Buzzacco-Foerster, Naples Daily News
Other interested citizens and visitors

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

Pastor Mike Carlson, Berean Baptist Church.

ANNOUNCEMENTS..... ITEM 3

Mayor Barnett read proclamations regarding the following:

- Red Hat Day – April 25;
- Motorcycle Safety Awareness Month – May; and
- National Tartan Day – April 6.

Council Member Price then announced that April is also Autism Awareness Month, citing the results of a recent Center for Disease Control (CDC) report regarding what he characterized as the staggering number of children afflicted by this condition.

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

MOTION by Sorey to SET THE AGENDA removing Items 6-b(3) (1st Annual Tenth Street / Design District Push Mower Race and 6-b(4) (City Fest) from the Consent Agenda for separate discussion; and continuing Items 14, 15 and 16 (pension system amendments). This motion was seconded by Price and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

PUBLIC COMMENT ITEM 5

(8:41 a.m.) None.

SPECIAL EVENTITEM 6-b(3)

1ST ANNUAL TENTH STREET / DESIGN DISTRICT (41-10 / HEART OF NAPLES) PUSH MOWER RACE – 41-10 STREET DESIGN DISTRICT / CITY FEST – TENTH STREET BETWEEN CENTRAL AVENUE AND FIFTH AVENUE NORTH – 05/01/10. Council Member Price explained that he had requested discussion of this item separate from the Consent Agenda due to an apparent renaming of the area commonly known as the 41/10 or Heart of Naples District. He noted that various people affected had indicated that they had had no input and that many businesses have nothing in common with design. He said that while he was not opposed to branding of the area, it should have been discussed at the Council level. Council Member Sulick, who had participated on a committee formed at Council's direction to develop a pedestrian walking map, explained that the City had been divided into readily identifiable districts. Due to the recent influx of design, antique and interior decorating businesses in the Tenth Street area, the design district designation had been used; business owners had been favorable, she added. Mr. Price nevertheless maintained that because various other types of businesses, such as medical, were considering the area, the designation of Tenth Street / Design District may be a disincentive.

Public Comment: (8:46 a.m.) **Jacques Groenteman, Chairman of the Community Redevelopment Agency Advisory Board (CRAAB)**, said that quick action had been necessary due to the impending City Fest; CRAAB intends to discuss the matter the following week. He further urged Council to support the street closure (see Item 6-b(4) below) as the businesses in the area are looking forward to such an event occurring in that district. In response to Vice Mayor Sorey, he stressed that the special event, not the renaming of the area, was the item seeking Council approval and that CRAAB would strive to involve the 200 business owners of the area in the branding of their district. Council Member Heitmann urged that all business and property owners be contacted and involved.

In further discussion, City Manager William Moss recommended that map printing await the outcome of the CRAAB meeting on April 26; Council Member Sulick agreed.

Vice Mayor Sorey then proffered the motion reflected below, including the amended street closure contained in the e-mail dated April 20 (a copy of which is contained in the file for this meeting in the City Clerk's Office) noted by Council Member Price.

MOTION by Sorey to APPROVE THIS ITEM amending the street closure to begin at First Avenue North to Fifth Avenue North along Tenth Street; seconded by Heitmann and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

SPECIAL EVENTITEM 6-b(4)

CITY FEST BLOCK PARTY – DOWNTOWN NAPLES ASSOCIATION (DNA) – FIFTH AVENUE SOUTH FROM THIRD STREET SOUTH TO NINTH STREET SOUTH – 05/07/10. Council Member Price explained that he had originally thought that this event would begin at an

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earlier time to allow families to attend, with the festivities continuing into the evening for older attendees. Due to the fact that the street closure permit from the FDOT (Florida Department of Transportation) had already been approved, from 7:00 p.m. to 10:00 p.m. (with an additional one-half hour for post-event clean-up), he proffered the motion reflected below, amending the timeframe to correspond with the permit.

In response to Council Member Sulick, Community Services Director David Lykins pointed out that the Downtown Naples Association (DNA) would be monitoring licensing of those businesses serving food and/or alcoholic beverages outside their premises. DNA representative Lisa Swirda also pointed out that each business along Fifth Avenue South was being encouraged to remain open that evening and participate in some manner in the festivities.

Public Comment: (8:59 a.m.) None.

MOTION by Price to APPROVE THIS ITEM amending time to 7:00 p.m. to 10:00 p.m.; seconded by Barnett and carried 6-1, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-no, Barnett-yes).

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 6-A

March 15, 2010 Workshop, March 17, 2010 Regular and April 7, 2010 Regular; as submitted.

SPECIAL EVENTS.....ITEM 6-b

1) Fourth of July Parade – 2010 - City of Naples – Third Street South to Fifth Avenue South – 07/03/10.

2) Fourth of July fireworks – 2010 – City of Naples – Fishing Pier – 07/04/10.

3) See above.

4) See above.

5) City Fest Dance Party – Naples Working Waterfront Association – Tin City covered parking area – 05/15/10.

RESOLUTION 10-12650.....ITEM 6-c

A RESOLUTION APPROVING A SOUTHWEST FLORIDA MULTI-AGENCY GANG TASK FORCE MUTUAL AID AGREEMENT AND MEMORANDUM OF UNDERSTANDING; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND MEMORANDUM OF UNDERSTANDING; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 10-12651.....ITEM 6-d

A RESOLUTION ACCEPTING AN EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT FROM THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT FOR A TRAFFIC CONTROL TRAILER MOUNTED MESSAGE BOARD FOR REDUCING CRIME AND IMPROVING PUBLIC SAFETY; AUTHORIZING THE MAYOR TO EXECUTE THE CERTIFICATION OF ACCEPTANCE/REQUEST FOR PAYMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 10-12652.....ITEM 6-e

A RESOLUTION GRANTING UTILITY EASEMENTS TO FLORIDA POWER & LIGHT COMPANY LOCATED ON TRACTS 124, 125 AND 127, UNIT 71, GOLDEN GATE ESTATES TO PROVIDE POWER BETWEEN WELLS 421 AND 425 IN THE GOLDEN GATE WELLFIELD; AUTHORIZING THE MAYOR TO EXECUTE THE UTILITY EASEMENTS; DIRECTING THE CITY CLERK TO RECORD THE EASEMENTS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 10-12653 ITEM 6-f
A RESOLUTION ACCEPTING A UTILITY EASEMENT CONTAINING 3 PARCELS OF LAND FROM COLLIER COUNTY FOR ACCESS TO UTILITY FACILITIES WITHIN FREEDOM PARK (ALSO KNOWN AS THE GORDON RIVER WATER QUALITY PARK PROJECT) LOCATED AT THE NORTHEAST CORNER OF GOLDEN GATE PARKWAY AND GOODLETTE-FRANK ROAD; ACCEPTING A BILL OF SALE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 10-12654 ITEM 6-g
A RESOLUTION ACCEPTING A PUBLIC PEDESTRIAN WATERFRONT ACCESS EASEMENT FROM CARIBBEAN VENTURE OF NAPLES, LLC AS REQUIRED IN THE PLANNED DEVELOPMENT DOCUMENT FOR THE BRIDGES AT GORDON RIVER; DIRECTING THE CITY CLERK TO RECORD THE PUBLIC PEDESTRIAN WATERFRONT ACCESS EASEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Price to APPROVE CONSENT AGENDA except Items 6-b(3) and 6-b(4); seconded by Sulick and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

END CONSENT AGENDA

..... ITEM 7
AUTHORIZING THE MAYOR TO SUBMIT A LETTER TO THE US ENVIRONMENTAL PROTECTION AGENCY (EPA) OPPOSING THE PROPOSED NUMERIC NUTRIENT CRITERIA. (9:00 a.m.) City Manager William Moss noted the staff's opinion that while the subject criteria apply to upstream freshwater runoff pollutants, saltwater criteria are expected to contain even more stringent numeric values. Staff believes that significant compliance costs would be experienced by the City, prompting the recommendation of the City's opposition to the Environmental Protection Agency's (EPA's) proposed numeric nutrient criteria, he concluded.
Public Comment: (9:01 a.m.) **Susan Calkins-Ritas, 740 High Pines Drive**, expressed her strong support for criteria to control pollutants entering upstream freshwater, citing the economic stake for coastal communities such as Naples. She stated that she would be willing to fund efforts in cleaning up the water. **Judith Hushon, PhD, 1659 Chinaberry Court**, stated that as an environmental toxicologist, she viewed the EPA criteria as scientifically sound and based on data from Florida waters that had been deemed healthy. Ten other states have adopted similar guidelines, she said, noting that the west coast had not experienced red tide in 2008 because it had been extremely dry with little runoff. Enforceable numeric criteria must be implemented, despite additional cost to residents. **Aaron Knott, 745 Regency Reserve Circle, #5203**, also supported the criteria explaining that they had been drafted to address differing bodies of water and that the pollution would eventually affect his property values.

Andrew McElwaine, president of the Conservancy of Southwest Florida, commended the City's engineering analysis, but stressed that the City of Naples would be alone in its opposition to the criteria, save Collier County and therefore recommended instead joining with the City of Sanibel Island in rendering no opinion whatsoever. Council Member Heitmann, as the City's representative on the Southwest Florida Regional Planning Council (SFRPC), asked that Council take this factor into consideration, pointing out that Collier County is the only SFRPC member not to adopt a fertilizer ordinance. It is the County's upstream runoff polluting Naples Bay, she added. Standards must be set which will encourage the City and the County to work together to alleviate the problems existing in Naples Bay, she added. Council Member Price recommended that the City not take a position at that time, citing an ongoing conflict between the EPA and the Florida Department of Environmental Protection (FDEP) as reflected in a recently received e-mail regarding the use of the US Geological Survey's SPARROW (Spatially

Referenced Regressions on Watershed Attributes) modeling (a copy of which is contained in the file for this meeting in the City Clerk's Office).

Amber Crooks, also representing the Conservancy, utilized an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office) to further explain the Conservancy's support of the EPA's proposed numeric nutrient criteria (see Attachment 1 for excerpted text of the presentation). Ms. Crooks highlighted health risks from algae blooms such as red tide as well as the economic value of restoring Florida's waters, stressing the 20-year compliance provision within the criteria. The proposed standards are generalized for screening purposes, she said, and are not intended to be specific to any body of water; nevertheless, more detailed standards (TMDL's / Total Maximum Daily Loads) may be developed as a subsequent measure, she added. Furthermore, should waterbodies reach the BMAP (Best Management Action Plan) load-reduction phase, credits are to be applied to entities which have implemented restoration efforts; in this regard she cited the City's fertilizer ordinance, swale program, phasing out of septic tanks, and retrofitting of its wastewater treatment plant. Ms. Crooks also stated the Conservancy's position that the EPA criteria are based upon sound scientific data and not applicable to stormwater ponds or drinking (potable) water; potable water may exceed the proposed criteria with regard to phosphorus, due to the fact that it is an additive which prevents pipe corrosion, as well as other additives. In addition, she said that the proposed regulations do not apply to end-of-pipe effluent but apply to the receiving waterbodies and therefore allow for mixing, or dilution, prior to determining compliance. She recommended that the City contact other municipalities who support the criteria although facing similar challenges.

Ron Wallace, Streets & Stormwater Director, provided a brief overview of his memorandum dated April 7 (Attachment 2) which contained information received regarding the impact to the City and its residents as a result of the proposed EPA criteria. It is noted for the record that a printed copy of Mr. Wallace's electronic presentation is contained in the file for this meeting in the City Clerk's Office.) Of primary concern to the staff is the fact that while the current regulations address only freshwater, those for coastal and estuaries (saltwater), which will be even more rigorous, are expected in the coming year, Mr. Wallace said. Furthermore, the regulatory agency responsible for Florida's environmental resources (FDEP) questions the allowable numeric nutrient levels from the standpoint of the methodology utilized in development. The South Florida Water Management District (SFWMD) and the Florida Stormwater Association (FSA) which are also regulatory in nature, are also challenging the proposal, stressing that the issue is not stricter regulation of water quality measures nor the removal of nutrients, but the data upon which the proposal is based and the ability of jurisdictions to implement the regulations, Mr. Wallace stated. Many of those organizations listed as supporters are private environmental entities which are not responsible for either implementation or the cost thereof, he stressed.

Mr. Wallace then reviewed the FDEP's published concerns, as well as those of the FSA (Attachment 3, Page 1), adding that 80% of the lakes and waterbodies referenced by the EPA data as currently pristine waters, would become impaired with the enactment of criteria because their nutrient levels exceed those mandated by the proposal. Nevertheless, he explained that the EPA seemed to be working more closely with the FDEP which had extended its public comment period to April 28th, and delayed the regulations for coastal waters and estuaries.

Mr. Wallace then reviewed the City's current potable and irrigation (reclaimed, reuse or alternative) water levels of total nitrogen (TN) and total phosphorus (TP), pointing out that

should the proposed nutrient levels be approved, the City's potable water would no longer be allowed for irrigation use as its TP level exceeds the currently proposed level due to the aforementioned need to add phosphorus as an anticorrosive to protect the lines (Attachment 3, Page 2). While the City's potable water is considered safe to drink, a glass of the same water could not be emptied in a freshwater lake. He further observed that the City also provides potable water outside its boundaries to sites located along canals and therefore questioned whether the City would be liable for runoff into the waterways should its potable water be utilized for irrigation; this is among the unanswered questions such as whether stormwater lakes would be re-designated as freshwater lakes. Furthermore, the City's irrigation water system and advanced wastewater treatment plant would also be impacted, he said, even though the latter operates under a NPDES (*National Pollutant Discharge Elimination System which was developed by the EPA beginning in 1990*) permit; currently its TN and TP levels are well below those mandated, but the TN levels would exceed those proposed, he added. Another concern of staff is that while Naples Bay is considered impaired for dissolved oxygen, copper, iron, and fecal coliform, TN and TP levels are within limits and should the criteria under discussion be adopted as currently drafted, the result would be the City spending funds to treat the TN and TP issue rather than continuing its endeavor to improve the actual water quality concerns in the bay.

In addition, staff does not concur with the position that the criteria would not apply to the point of discharge of the City's stormwater and irrigation water runoff and its unused effluent from the Wastewater Treatment Plant, into Naples Bay; all of which are currently regulated by TMDL's established by the FDEP and/or EPA but not automatically grandfathered as acceptable under the draft criteria. Once saltwater criteria are established in 2011, a special petition process to the EPA / FDEP would be undergone for site specific alternative criteria for each TMDL and without guarantee of approval, Mr. Wallace explained. If approved, then the City's TMDL would remain effective; if denied the new EPA criteria would be applied. In summation, he stressed that these coastal waters and estuary nutrient criteria would have major impact to the City-and therefore staff recommends that a letter citing the City's opposition be dispatched, not disparaging the need for improved water quality standards, but taking a position that mandates must be supported by data which is scientifically sound, attainable, and economically feasible. He cautioned that should the City not make some comment on the record to the EPA, and then find it necessary to seek relief of these measures, the EPA may respond that concerns should have been brought to its attention prior to enactment.

In response to Council Member Sulick, Mr. Wallace confirmed that prior to EPA involvement, the FDEP had been developing a BMAP in conjunction with TMDL's to address water quality issues within watersheds rather than individual waterways/waterbodies. The intent of the FDEP standards had been to address issues on a site specific basis and within geographic regions, he said, taking into account changing soil conditions and land uses when developing its nutrient criteria. There is also a concern, he added, that the EPA criteria would in fact not improve water quality in the majority of cases because the criteria do not specifically address the issues of a particular waterbody.

Council Member Finlay noted receipt of an e-mail from David Tomasko (expert on seagrass), who had indicated his general support of the EPA criteria but questioned the downstream protection values and opined that they should be developed from a Florida-based approach. (It is noted for the record that a copy of the aforementioned e-mail is contained in the file for this meeting in the City Clerk's Office.) In response to Mr. Finlay, Ms. Crooks reiterated the Conservancy's opinion that the City's NPDES permits do not contain end-of-pipe effluent

requirements, recommending that the City undertake modeling of the affected waterbody which the effluent enters to ascertain whether it would continue to be compliant.

Utilities Director Robert Middleton further clarified that the wastewater treatment plant NPDES permit expires in December 2011 and it is expected that whatever criteria is adopted will then be applicable upon its renewal. The potable water plant however has what is considered an open permit, Mr. Middleton continued, which is based upon the design of the plant and remains effective unless the intent of operation of the plant is amended. In response to Vice Mayor Sorey, he indicated that he would research the potable water's phosphorus level prior to the addition of that to deter corrosion in the lines, adding that it does contain a certain amount of naturally occurring phosphorus. Mr. Middleton then pointed out that the City's plant operates with lime-softening technology and therefore limited as to what chemicals can be utilized, noting that many such systems in the state had converted to reverse osmosis (RO) treatment.

Mr. Wallace reiterated that due to significant unknown factors both with regard to the criteria and implementation, the information had been provided to allow Council to consider informing the EPA of the City's concerns during its formal public input period.

MOTION by Price DIRECTING THE MAYOR TO TRANSMIT TO THE EPA AND FDEP A LETTER REFLECTING THE CITY'S COMMITMENT TO IMPROVING WATER QUALITY AND ITS SUPPORT OF NUMERIC NUTRIENT CRITERIA WHICH REFLECT REASONABLE, SCIENTIFIC, QUANTITATIVE AND VERIFIABLE STANDARDS. This motion was seconded by Sorey and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Saad-yes, Sorey-yes, Price-yes, Sulick-yes, Barnett-yes).(EPA comment period concludes 04/28/10, therefore letter draft to be circulated to Council Members who will provide their comments individually to the City Manager.)

Recess: 10:15 a.m. to 10:27 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 10-12655 ITEM 8
A RESOLUTION DECLARING A STATE OF SHORELINE EMERGENCY ALONG APPROXIMATELY 1,000 FEET OF SHORELINE NEAR SEAGATE DRIVE AND 1,200 FEET SOUTH OF DOCTORS PASS DUE TO SEVERE BEACH EROSION IN ORDER TO FACILITATE COLLIER COUNTY'S EMERGENCY BEACH RENOURISHMENT PROJECT; DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO THE SECRETARY OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND TO THE COLLIER COUNTY BOARD OF COMMISSIONERS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:28 a.m.). Referencing diagrams of the beach renourishment plans, Vice Mayor Sorey, also the Chair of Collier County's Coastal Advisory Committee (CAC), pointed out that significant erosion had occurred along an area south of Doctors Pass (Attachment 4) as well as in the Park Shore area (Attachment 5). The plan involves matching the fill depicted on the two templates which reflect the renourishment accomplished during the most recent effort and that while the cost per cubic foot of sand is a factor (approximately 20,000 cubic yards to the north and another 10,000 for the southern effort), mobilization cost for the required conveyors had been key in the decision-making process as to the amount of sand to be deposited in both sites. Initially only the minimum replacement of the sand had been planned, he said, but it had been determined that this quantity would most probably last at best one year. He then reviewed the process for trucking the sand and pointed out that the severity of the erosion, as well as the impending turtle nesting season, had made the project urgent, noting a May 15 deadline for the renourishment permit

being in place. Should the Florida Department of Environmental Protection (FDEP) not respond favorably by that date, then the emergency declaration would allow sand to be placed only from the mean high water line, landward.

Council Member Finlay expressed frustration that approximately 8,000 cubic yards of sand had accumulated just to the north of Doctors Pass, 500 feet from the site, but could not be utilized for the renourishment and Vice Mayor Sorey explained that during a prior dredge project, the FDEP had prohibited use of this sand due to its opinion that it would migrate to the hard bottom. Vice Mayor Sorey further observed that while the FDEP would not allow the construction of groins on the beach, the request for an artificial reef, which would break the northwesterly wave action that carries the sand away, was under discussion as a long-term solution as well as modeling of the removal of the rock groins located in the Seagate area. In response to Council Member Saad, he added that the FDEP has supported artificial reefs in the past.

Public Comment: (10:39 a.m.) **Hans Gruenberg, representing the Gulf Shore Property Owners Association (GSPOA)**, commended Vice Mayor Sorey and Council Member Finlay for their efforts in the issuance of the emergency declaration, urging that a letter be forwarded to the Collier County Board of County Commissioners opposing any further diversion of Tourist Development Council (TDC) beach renourishment funding into marketing campaigns. **David Addison, Conservancy of Southwest Florida biologist**, noted his approval of the proposed removal of the rock groin and cautioned that the renourishment effort under discussion should be delayed until October thereby avoiding sea turtle nesting season. Vice Mayor Sorey explained that a commitment had been made to complete the project prior to ~~the peak June 15~~ (beginning of the official nesting season) and further noted that no trucks would be allowed on the beach, but rather a conveyor would move the sand along the beach. Mayor Barnett offered to supply Mr. Addison with the information regarding this item that had been provided to Council and Vice Mayor Sorey urged Mr. Addison to attend the upcoming CAC meeting.

Scrivener's
error

MOTION by Price to APPROVE RESOLUTION 10-12655 as submitted;
seconded by Finlay and unanimously carried, all members present and
voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-
yes, Barnett-yes).

Following the above vote, Vice Mayor Sorey noted that The Chateau, the third building south of Doctors Pass, continues to refuse to plant required vegetation. This aids in retaining the sand, he explained, and therefore that section of beach will not be renourished. Mayor Barnett said that he had confirmed this. In response to Council Member Sulick, Vice Mayor Sorey stated that if no agreement is reached, along the section of beach seaward of the Chateau, sand will be placed from the mean high water line, out to the water, creating an indentation although some sand will migrate and eventually is expected to even the beach surface, unless wave action further scours that section. The concern is that a major renourishment is scheduled in two to three years and should their opposition to vegetation continue, that section of the beach will be affected to an even greater degree. Mr. Gruenberg noted that his association had also attempted to achieve cooperation from The Chateau.

RESOLUTION 10-12656 ITEM 9
A RESOLUTION DETERMINING OUTDOOR LIVE ENTERTAINMENT PETITION 10-LE2 AND
RESIDENTIAL IMPACT STATEMENT PETITION 10-RIS4 FOR NAPLES HARBOUR YACHT
CLUB LOCATED AT 475 NORTH ROAD, MORE FULLY DESCRIBED HEREIN; AND
PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:50 a.m.), who then noted that Attorney Donald Pickworth would serve as the City's legal counsel for this matter due to a representation conflict with regard to his firm, Roetzel & Andress.

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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: Saad/ visited the site and spoke with the general manager and petitioner's agent; Finlay, Sorey and Price/visited the site and spoke with the petitioner's agent; Barnett and Sulick/visited the site; and Heitmann/familiar with the site. In addition, each Council Member disclosed contact with residents adjacent to the site in question. Planner Mireidy Fernandez provided a brief overview of the petition, noting that staff recommends indoor live entertainment only with doors and windows closed on the second floor, as well as the condition that the members-only status as a private club be reflected at the premises and in any advertisement.

Attorney Richard Yovanovich, agent for the petitioner, displayed a diagram of the site (Attachment 6), pointing out that although the outdoor entertainment would have been located near the spa and as far as possible from the adjacent residences, the petitioner would be willing to move the Friday evening performances inside. This offer was based on a test of outdoor speakers which had been faintly audible at the fence buffering the marina and the residential area. He further offered to submit to a trial approval in an effort to alleviate residents' noise concerns. Council Member Sulick raised the issue of club operations and membership requirements. Mr. Yovanovich assured Council that it is made clear to those taking advantage of two-week temporary memberships that they are expected to join as a social member in order to continue to utilize the facilities. Although there had been no requirement, it had been the initial intent that members also be boaters; however, current economic conditions necessitated the addition of social memberships.

Referencing the staff report (a copy of which is contained in the file for this meeting in the City Clerk's Office), Council Member Finlay noted that Ordinance 09-12581 automatically allows live entertainment to continue until midnight on Friday and Saturday. Attorney Pickworth however stated that so long as the petitioner waived the benefit of that ordinance, Council could set live entertainment hours as desired and require the petitioner to submit a new request should extended hours be proposed in the future. Mrs. Sulick reiterated her concern that outdoor live entertainment would indeed impact nearby residents.

Public Comment: (11:11 a.m.) **Everett Thayer, 1690 Avion Place, Barbara Jean Moore, 1585 Airway Drive, and Delores Gamble, 1575 Airway Drive,** expressed concern not only with noise generated by outdoor entertainment, but also with incremental increases in activity on the site with accompanying traffic. Although the neighbors had previously agreed to hours of operation beyond those of the prior marina, the City had granted additional hours. **Shawn Smith, 1560 Port Avenue,** supported the request, presenting a petition reflecting additional neighborhood support (Attachment 7) and pointing out that many are members and utilize the facility on a regular basis.

Council Member Price then proffered the motion reflected below, which Council Member Saad seconded. Mr. Saad said that he had received a temporary membership card when visiting the site and this card had indeed reflected an expiration date. He indicated that he had also been informed that a social membership would be required should he wish to continue to utilize the facility. In response to Mr. Saad, Mr. Yovanovich confirmed that custom mufflers had been ordered for the marina's forklifts to address noise from back-up alarms. In conclusion, Mr. Saad stated that he had spoken with a number of the residents who had indicated that the club was indeed used as a community gathering place and therefore his second to the aforementioned motion.

MOTION by Price to **APPROVE RESOLUTION 10-12656** amending as follows: Section 3(1): “Live entertainment shall consist of ~~indoor live entertainment~~ a maximum of 3 musicians to be located indoors in the second floor of the club on Friday from 6:00 p.m. to 9:00 p.m. and outdoors (or indoors if inclement weather) on the south/southwest corner of the outdoor patio from 2:00 p.m. to 7:00 p.m. on Saturday and Sunday. Any extension of these hours shall require the submittal of a new live entertainment petition application as Petitioner waived benefit of extended hours as provided under Ordinance 09-12581.” This motion was seconded by Saad and carried 4-3, all members present and voting (Price-yes, Sorey-yes, Sulick-no, Saad-yes, Finlay-no, Heitmann-no, Barnett-yes).

ORDINANCE (First Reading)..... ITEM 10
AN ORDINANCE RELATING TO PROPERTY MAINTENANCE; AMENDING SUBSECTION (b)(2)c. OF SECTION 16-284 OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF ALLOWING DOCKS, DRIVEWAYS, ACCESS WAYS, ACCESS AISLES, FENCES AND WALLS TO REMAIN ON VACANT LOTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager William Moss (11:35 a.m.). Planner Adam Benigni provided a brief overview, noting the addition of access ways and access aisles to the list of improvements allowed to remain on-site due to the definition of driveway (the paved area leading from the edge of a street pavement to the access way at the property line); staff recommends approval, he added.

Public Comment: (11:36 a.m.) None.

MOTION by Price to **APPROVE THIS ORDINANCE** on First Reading as submitted; seconded by Saad and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12657 ITEM 11
A RESOLUTION AMENDING THE 2009-10 BUDGET ADOPTED BY ORDINANCE 09-12519 FOR MIDYEAR BUDGET ADJUSTMENTS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:36 a.m.). City Manager William Moss briefly reviewed an April 4 memorandum by Finance Director Ann Marie Ricardi (Attachment 8) and in response to Vice Mayor Sorey, confirmed that Council would be advised in June regarding the potential elimination of meter reader positions with conversion to electronic water meters. Mr. Moss also clarified for Council Member Finlay that the General Fund line item entitled as Contingency Funds, is authorized via Council and that he would provide the amount remaining following the amendment under discussion at a later time as he did not have that information available. He then reviewed the funding sources for each amendment (see Attachment 8, Page 2) for Council Member Heitmann and confirmed for Council Member Saad that staff was indeed qualified to perform the upgrade noted in the aforementioned memorandum regarding the Solid Waste trucks. City Manager Moss also indicated that while the installation of the HVAC system for the Police Department building was not yet completed, the contractors had been working diligently to address issues with the water coolant entering into the underground system and operating as designed.

Public Comment: (11:42 a.m.) None.

MOTION by Finlay to **APPROVE RESOLUTION 10-12657** as submitted; seconded by Price and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

NO ACTION TAKEN (see consensus below) ITEM 12
AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR A STATE OF FLORIDA ENVIRONMENTAL RESOURCE PERMIT TO CONSTRUCT A HABITAT ISLAND IN NAPLES BAY; AND AUTHORIZING THE USE OF EAST NAPLES BAY SPECIAL TAXING DISTRICT FUNDS IN AN AMOUNT BETWEEN \$10,000 TO \$15,000 FOR THE PERMITTING PROCESS.

–(11:43 a.m.) Natural Resources Manager Michael Bauer briefly reviewed portions of his memorandum dated April 12 (Attachment 9) pointing out that the East Naples Bay Advisory Committee (ENBAC) did not support its funding of the application process due to the realization that the cost could approximate \$50,000 rather than the original estimate of \$10,000 to \$15,000. Dr. Bauer therefore recommended revisiting the matter in a few months. He then discussed what is believed to be the genesis of the objection raised by the Florida Department of Environmental Protection (FDEP) and the two-year moratorium imposed by the Governor and Cabinet as Trustees of the Internal Improvement Trust Fund (TIITF) in August, 2009. (See the meeting file for a letter from FDEP Secretary Michael Sole) However, he said that he believed it to be vitally important for the City to have a habitat island permit in place for future dredging projects. Council Member Finlay noted that Port Royal may indeed have a dredging project in the near future, and Council Member Price suggested that the City request clarification from the state with regard to the moratorium, indicating that the City would have projects that would involve years of planning and habitat islands would indeed be a focus.

Public Comment: (11:50 a.m.) None.

Consensus to contact Governor / Cabinet to obtain clarification of continued habitat island moratorium.

RESOLUTION 10-12658 ITEM 13-a
A RESOLUTION ENDORSING A CANDIDATE TO REPRESENT THE CITY OF NAPLES ON THE CITIZENS ADVISORY COMMITTEE FOR THE COLLIER METROPOLITAN PLANNING ORGANIZATION; DIRECTING THAT THE APPLICATION/RESUME SUBMITTED BY SAID CANDIDATE BE FORWARDED TO THE METROPOLITAN PLANNING ORGANIZATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:52 a.m.).

Public Comment: (11:52 a.m.) None.

MOTION by Sorey TO APPROVE RESOLUTION 10-12658 ENDORSING MATTHEW KRAGH unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12659 ITEM 13-b
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR THE BALANCE OF A THREE-YEAR TERM CONCLUDING APRIL 20, 2011; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:52 a.m.).

Public Comment: (11:53 a.m.) None.

MOTION by Finlay to APPROVE RESOLUTION 10-12659 APPOINTING MICHELLE MCLEOD unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12660 ITEM 13-c
A RESOLUTION APPOINTING ONE CITY RESIDENT TO THE PUBLIC ART ADVISORY COMMITTEE FOR THE BALANCE OF A FOUR-YEAR TERM CONCLUDING MAY 15, 2011; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:53 a.m.).

Public Comment: (11:53 a.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 10-12660 APPOINTING NORMAN ROCKLIN** unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12661ITEM 13-d(1)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2010, AND CONCLUDING APRIL 30, 2013; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:53 a.m.).
Public Comment: (11:54 a.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 10-12661 APPOINTING JAMES MELICAN** unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12662ITEM 13-d(2)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2010, AND CONCLUDING APRIL 30, 2013; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:54 a.m.).
Public Comment: (11:54 a.m.) None.

MOTION by Finlay to **APPROVE RESOLUTION 10-12662 REAPPOINTING WAFAA ASSAD** unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12663ITEM 13-d(3)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2010, AND CONCLUDING APRIL 30, 2013; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:54 a.m.).
Public Comment: (11:55 a.m.) None.

MOTION by Price to **APPROVE RESOLUTION 10-12663 REAPPOINTING DAVID BALL** unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 10-12664ITEM 13-d(4)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2010, AND CONCLUDING APRIL 30, 2013; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:55 a.m.).
Public Comment: (11:55 a.m.) None.

MOTION by Barnett to **APPROVE RESOLUTION 10-12664 REAPPOINTING GLORIA KOVACS** unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

ORDINANCE (First Reading / Continued / see Item 4 above) ITEM 14
AN ORDINANCE PERTAINING TO THE RETIREMENT SYSTEM SET FORTH IN ARTICLE III OF CHAPTER 29; AMENDING SECTION 29-67, DEFINITIONS, SECTION 29-120, INVESTMENT OF ASSETS, AND AMENDING AND CLARIFYING SECTION 29-128, QUALIFIED PENSION FUND OF THE CODE OF ORDINANCES, CITY OF NAPLES FOR THE PURPOSE OF MAINTAINING ITS STATUS AS A QUALIFIED PLAN UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title not read.

ORDINANCE (First Reading / Continued / see Item 4 above) ITEM 15
AN ORDINANCE RELATING TO THE FIREFIGHTERS' PENSION AND RETIREMENT
SYSTEM; AMENDING SECTION 29-191, DEFINITIONS; AMENDING SECTION 29-212(1),
POWERS; AMENDING SECTION 29-233(b), OPTIONAL FORMS OF RETIREMENT
INCOME; DELETING SECTION 29-233(c); AMENDING SECTION 29-239, TERMINATION OF
PLAN; AMENDING AND CLARIFYING SECTION 29-242, OTHER DISTRIBUTIONS;
PROVIDING FOR COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA;
AMENDING SECTION 29-244, ASSIGNMENTS PROHIBITED; PROVIDING A
SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title not
read.

ORDINANCE (First Reading / Continued / see Item 4 above) ITEM 16
AN ORDINANCE RELATING TO THE POLICE OFFICERS' PENSION AND RETIREMENT
SYSTEM; AMENDING SECTION 29-271, DEFINITIONS; AMENDING SECTION 29-292(1),
POWERS; AMENDING SECTION 29-315(b), OPTIONAL FORMS OF RETIREMENT
INCOME; DELETING SECTION 29-315(c); AMENDING SECTION 29-321, TERMINATION OF
THE PLAN; AMENDING AND CLARIFYING SECTION 29-324, OTHER DISTRIBUTIONS;
PROVIDING FOR COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA;
AMENDING SECTION 29-326, ASSIGNMENTS PROHIBITED; PROVIDING A
SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title not
read.

PUBLIC COMMENT
None.

CORRESPONDENCE AND COMMUNICATIONS.....
(11:55 a.m.) In recognition of Administrative Professionals Day, Council Member Saad noted those who serve on the City staff and those in his personal law firm. He then stated that with regard to the prior discussion of the noise ordinance (see Item 9 above), although the public complaint process is unfortunate, it is also necessary unless establishments with entertainment were constantly monitored by code enforcement staff or police officers. A brief discussion followed during which it was noted that verifying complaints is at times the issue and that most often it is those residential areas abutting commercial that are impacted. Responding to comments that many residents do not wish to lodge complaints against businesses which they patronize, Mayor Barnett indicated that an e-mail could be sent to him, or any other Council Member, which could then be forwarded to the City Manager for action.

Council Member Price commended staff for the completeness of Council packet preparation but urged that electronic transmittal continue to be studied. He cited his attendance at a Florida League of Cities governance seminar and urged that the Comprehensive Plan be kept in the forefront to guide all decision-making, as well as cost / benefit analyses which are to be provided for future spending requests. Mr. Price then asked whether Council would have the opportunity to provide advance input into the budgeting process and City Manager William Moss said that an extensive, day-long workshop would be held in June. In response to Council Member Heitmann, Mr. Moss further explained a Capital Improvement Plan (CIP) was at that time being developed taking into account projected revenue and expenditures over the coming five-years; staff, and Council, should be submitting any requests or ideas for consideration, he added. Mr. Price then indicated his support of a specific revenue expectation discussion, and expressed concern with excessive pension and employee costs in relation to declining revenues.

Council Member Sulick further explained that with regard to the pedestrian map (see Item 6-b(3) above), the intent had merely been to provide easily identifiable districts for visitors. She

City Council Regular Meeting – April 21, 2010 – 8:29 a.m.

pointed out that Tin City is now referred to as The Waterfront, and that she supported the rebranding of a district if it becomes more all encompassing. Council Member Price stated that while he supports the map and the name, he had expressed his concern only with the lack of a public process in developing the identifier referred to as the Tenth Street / Design District. He however thanked Mrs. Sulick for her involvement with the map committee; Council Member Heitmann agreed.

In response to Council Member Heitmann, Mr. Moss provided a brief review of the budgetary town hall meeting held the prior week and Mrs. Heitmann urged that the practice be continued with an emphasis on notification thereby possibly increasing attendance. City Manager Moss also clarified for Mrs. Heitmann that funding for all budget amendments is contained within the existing budget and that only Council has the authority to transfer assets from one budgetary fund to another, as well as to add capital projects. Mrs. Heitmann agreed to meet with Mr. Moss for further information requested with regard to change orders and work authorizations. She also noted that week's workshop discussion regarding acquisition of greenspace, pointing out that the Comprehensive Plan should also be reviewed for future land use issues and facility expansions in this regard.

Vice Mayor Sorey requested an update of conditions at the City Dock, including slip rentals and long-term structural improvements needed. He also requested that all operating funds be included in the budgetary review process to allow the Council to ascertain the total cost of services to residents. He then expressed appreciation to Council on its response to difficult issues and its support regarding emergency beach renourishment (see Item 8 above). Mayor Barnett concluded by noting the Drug Free Collier panel discussion on underage drinking at Naples High School that evening.

ADJOURN
12:39 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 05/05/10

Excepted comments from Conservancy presentation by Amber Crook / Item 7 / 04/21/10

Slide 1, and 2 no comments

Slide 3:

Nutrients (Nitrogen and Phosphorus) are naturally-occurring elements within our aquatic ecosystems, however excess nutrients from overuse of fertilizers, both residential and agricultural, discharges from waste-water treatment plants, and stormwater runoff can have negative consequences on our natural resources, our health and our quality of life. Harmful algal blooms (HAB's), such as red tide, are one result of nutrient pollution. HAB's causing fish kills and threatening marine life by consuming all oxygen in the water and through release of toxins. Algal blooms can block sunlight, killing seagrasses which provide habitat, protection, and food for a multitude of marine fish and wildlife.

Harmful algal blooms also pose a human health threat. Simply through skin contact, inhalation, or by eating shellfish at your local restaurant, citizens can be affected with skin and respiratory irritation, rashes, eye/ear infections. In rare cases, HAB's have resulted in more serious complications requiring hospitalization and use of ventilators.

Not only do these HAB's create a huge risk for our unique Florida environment, pose a health threat, and affect our quality of life, but they also put a strain on our economy.

Slide 4:

Our beaches generate over \$19 billion per year. Our beach tourism generates about \$600 million in state sales taxes and more than 500,000 jobs. Sports fishing alone generates an estimated \$6 billion dollars per year and supports at least 100,000 jobs.

Given the economic benefit we gain from having and maintaining clean water, the real costs of water quality protection are with inaction, of not preventing pollution. Estimated economic impacts from harmful algal blooms are at least \$15-25 million per year for the state of Florida alone.

Need I not mention, also the aesthetic, recreational and quality of life value we all gain from having clean water. The proposed numeric nutrient criteria are vital to keep our waters healthy.

Slide 5:

However, currently, all 10 of our Southwest Florida estuaries are impaired- with 43 to 100 percent of their total watershed area currently classified as impaired for nutrients! In this map, you can see –in orange- portions of the Naples Bay watershed and other nearby watersheds that already do not meet state water quality standards for nutrient-induced pollution.

This is not simply a problem plaguing Florida. Many areas, across the country are experiencing water quality problems as a result of nutrient pollution. EPA determined over 10 years ago that the narrative standard approach was an ineffective means to regulate nutrient pollution, and suggested that states adopt numeric criteria.

Slide 6:

Cost for compliance will be substantial for plants currently dumping effluent that hasn't been filtered and treated very well. In the Chesapeake, it cost an average of \$3-4 dollars

per 1,000 gallons for such treatment. For municipality like the City of Naples, who have already gone to Advanced Wastewater Treatment, the costs will be far less. Meeting this criteria will not require reverse osmosis but may involve less costly chemical treatment or biological uptake systems to be added if other nutrient reductions can't be made more cheaply to offset the load.

However, since the Gordon River and Naples Bay are already out of compliance - impaired for low dissolved oxygen with the causative pollutant of nutrients, these nutrient reductions would be required regardless of the proposed numeric nutrient criteria.

Slide 7:

Watershed wide

The proposed EPA criteria are economically feasible. It is often said that an ounce of prevention is worth a pound of cure, and so it is with nutrient pollution as well. While under a dollar a pound to purchase, removing nutrients such as nitrogen – after the fact – typically ranges from \$55-\$100 dollars per pound. Despite claims of these standards being cost prohibitive, keeping pollution out of water through low impact development design, more stormwater retention and treatment, and more agricultural Best Management Practices implementation is the most cost effective pollution control approach – especially when compared against the enormous costs of intercepting and cleaning up such pollution after it enters our waterways. In fact, in other areas of the country already moving towards compliance with numeric nutrient criteria, costs generally run only approximately \$3 more per 1,000 gallons. Also, every pound of pollution that does not enter city limits through proper source control, is a pound that the City will not be financially responsible for removing – offsetting reductions required to meet downstream water quality goals. The enormous costs in lost real estate and tourism revenue, if nutrient pollution is not adequately regulated, need to be included in any cost-benefit analysis of this proposal as well.

Slide 8:

We just wanted to illustrate how the current water quality regulations work. Numeric water quality standards, such as these proposed, provide quantitative guidance as to the pollution limit for protecting our public health and safety, and the integrity of our environment.

Standards are generalized for screening purposes, and are not meant to be waterbody-specific. More detailed waterbody-specific water quality standards (also known as TMDL's) MAY be developed in a subsequent step.

When a waterbody fails to meet standards, it will not necessarily result in a burdensome compliance action such as more stringent permit requirements.

A violation would have to follow the path outlined in yellow in order for that to occur, and it can take over 10 years + to even get to that implementation point where loading reductions must be taken.

Even when impaired waterbodies do get to the BMAP load-reduction phase, credits are given to entities where they have made restoration efforts as the City has through implementing a fertilizer ordinance, its swale work, phasing out septic tanks, and retrofitting wastewater treatment plants.

Slide 9

Due to the inherent flexibility of the water quality regulatory system that allows for mixing zones, site specific alternative criteria exemptions, as well as the 20-year expanded compliance timeline offered in the EPA proposal, these standards are attainable from an implementation perspective as well.

This expanded timeline, is proposed to allow time for affected polluters to implement the necessary measures to comply with the new rules. This would allow incremental water quality stair steps goals for reducing nutrient pollution.

Areas needing restoration from nutrient pollution will have 20 years to buy necessary upgrades, to lower their pollution, and to meet the final goal, on attainable step at a time.

Slide 10:

Goals to limit and reduce nutrient pollution in the Naples Bay watershed would dovetail well with the City's "20 year road map" to meet its swimmable and fishable goals and restore the Bay.

Supporting these numeric nutrient criteria would be an additional proactive measure taken by the City, along with your swale work, your stringent fertilizer ordinance, and your landscapers training program. The City has taken proactive steps to deal with your stormwater systems, your potable water issues. These numeric nutrient criteria could help steer the City's 20 year plan to ensure healthy surface waters, including waters free from nutrient pollution.

Slide 11:

Not only are these proposed standards attainable and implementable, but they are also appropriate and based on science.

The EPA has used over 80,000 Florida water quality samples that it obtained from FDEP in creating these proposed criteria.

The proposed standards are not only based on extensive data and a scientifically sound rationale, they are almost identical to those developed (but never adopted) by the Florida DEP itself back in 2008.

(The proposed streams criteria were created based on scientifically sound rationale using the total nitrogen and total phosphorus measurements, as well as Stream Condition Indices, from healthy streams and rivers. The proposed chl-a, TN, and TP canals criteria helps to ensure that our canals meeting their designated uses, their capacity as areas for recreation, the fish and wildlife that utilize them, and to protect the downstream waters they flow into.)

Slide 12

Numeric standards are also appropriate because they are easier to apply to determine when waterbodies are trouble before manifestations of their decline emerge.

Currently, the DEP rules determine nutrient pollution by assessing subjectively if an "imbalance in...flora and fauna" has occurred.

This is extremely difficult to apply for effective water quality regulation. We cannot effectively control what we cannot effectively measure.

Just as numeric speed limits are needed to determine what a safe driving speed is, numeric nutrient criteria are needed to protect human and aquatic life uses in our waters.

Slide 13

Nearly every other pollutant in Florida is regulated by a numeric standard. For example, there is a set numeric amount of ammonia and arsenic allowed in waterbodies as illustrated in the excerpt from Florida's water quality standards table shown here.

These proposed numeric nutrient criteria are proposed on the grounds of sound science and would be more sophisticated criteria than other pollutants because the criteria include varying criteria depending on the region of location and type of waterbody, for example, acidic lakes versus alkaline lakes. Therefore, these criteria are not "one size-fits-all".

Slide 14

And finally, these criteria are not applicable to stormwater ponds or to drinking water.

By Florida statute,[1] state surface water quality standards do not apply within a stormwater management system. Likewise, US law provides that these criteria apply to receiving waters, not drinking water. Nutrient concentrations in potable water may exceed the proposed criteria, not because of the water itself, but due to a phosphorus additive in our drinking water, which is added for preventing pipe corrosion. There are alternatives for preventing pipe corrosion other than this additive.

These criteria are not applied to END OF THE PIPE effluent from point sources. The criteria are intended for the receiving waterbodies and therefore allow for a mixing, or dilution, prior to determining compliance.

[1] § 373.4142

Slide 15:

And finally, these criteria are not applicable to stormwater ponds or to drinking water.

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These criteria are not applied to END OF THE PIPE effluent from point sources. The criteria are intended for the receiving waterbodies and therefore allow for a mixing, or dilution, prior to determining compliance.

[1] § 373.4142

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: April 21, 2010**

Agenda Section: Regular	Prepared By: Ron Wallace, Director Date: April 7, 2010	Department: Streets and Stormwater
Agenda Item: 7	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
SUBJECT: Opposition to the Numeric Nutrient Criteria (NNC) proposed by the U.S. Environmental Protection Agency (EPA).		
SUMMARY: City Council is asked to consider authorizing the Mayor to submit a letter to the U.S. Environmental Protection Agency opposing the proposed Numeric Nutrient Criteria citing the validity of EPA's methodology, the appropriateness of the standards, the associated economic impacts and the realistic ability for compliance. This subject was deferred from the April 7, 2010 meeting at the request of the Conservancy of Southwest Florida.		
BACKGROUND: The Florida Department of Environmental Protection, the Florida Stormwater Association and many other organizations and local governments are concerned with the proposed Numeric Nutrient Criteria (NCC) developed by the EPA for receiving water bodies in the State of Florida. The nutrient criteria relate to Total Nitrogen and Total Phosphorus and the criteria levels proposed are considered too general (not geographically based), too simplistic, too stringent and fiscally unattainable. Below are some of the specific impacts to the operation of the City's wastewater treatment, reclaimed water and stormwater systems:		
Wastewater Treatment Plant (Reclaimed Water): Reclaimed water application requires a backup disposal method for unused reclaimed water. Florida Statutes allows direct Advanced Waste Treatment (AWT) discharge into the Gordon River as a backup (30% of the year). The City's Wastewater Treatment Plant (WWTP) was rebuilt to meet the stringent AWT criteria. While the Integrated Water Resources Plan should eventually eliminate treated effluent discharge to the Gordon River, lack of irrigation water demand in the near-term (such as the current excessive rains during this dry season) may necessitate occasional discharge to the River. The proposed NNC could not be achieved with discharge to impaired waters. This means that one of the major methods Florida has used to eliminate direct discharge (reclaimed water) in the last 10 years would not be allowed in watersheds with impaired waters, unless backup deep well injection or large storage is used. The City's Advanced Waste Treatment design, combined with a new membrane filtration system, should allow attainment of the proposed NCC standards. This treatment process would involve a significant capital investment and would increase operating and maintenance expenses due to high energy costs and periodic replacement of membrane filters.		
The Wastewater Treatment Facility's treated effluent water that is discharged to the Gordon River contains an average annual 2.1 mg/l total nitrogen and 0.41 mg/l phosphorous. The numeric criteria proposed for South Florida canals are 1.6 mg/l total nitrogen and 0.042 mg/l phosphorous. Assuming the proposed criteria applies to the City's receiving waters, the current treatment process		

City of Naples

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date:** April 21, 2010**Page Two**

Agenda Item:

7

BACKGROUND (cont.):

cannot attain the proposed numeric nutrient levels. The estimated cost to retro-fit the Wastewater Treatment Plant is approximately \$30 million dollars. The capital and operating costs to meet proposed standards, assuming they can be met with current technology, may increase a customer utility bill by up to 20%.

Potable Water: As with the reclaimed water, the City's potable water is used for irrigation which, in turn, runs off through the stormwater system to surface waters. Due to the use of phosphorus and ammonia in the water treatment process, it is likely that even the potable water could not be used for irrigation without changes to the water treatment process. No cost estimate is available.

Stormwater Point Sources: Stormwater discharges from a pipe or confined ditch within a permitted MS4 (Municipal Separate Storm Sewer System) are considered point sources according to the Clean Water Act. The levels proposed for Nitrogen and Phosphorus vary dependent on the classification of the receiving body. EPA's proposal would require that no surface water discharge (point source or MS4) will be allowed into nutrient impaired waters without extremely high levels of treatment with long-term maintenance, energy consumption and carbon emission costs and consequences. Assuming the proposed criteria applies to the City's receiving waters, the cost and practicality of conforming to these standards would be most likely unattainable, or attainable at great cost to property owners.

To support a Federal policy with financially onerous consequences to our citizens, there should be great environmental benefit supported by scientific analysis. EPA's proposed NCC, although based to a large degree on FDEP data and analyses, does not provide sufficient scientific validation to warrant the significant fiscal consequences to surface water discharges in Florida, nor do the data demonstrate that Florida waters need nutrient protection to this degree.

Attached are the comments and concerns prepared by the FDEP and Florida Stormwater Association for reference.

RECOMMENDED ACTION:

City Council authorize the Mayor to formally submit a letter to the EPA opposing the proposed Numeric Nutrient Criteria citing the validity of EPA's methodology, the appropriateness of the standards, the associated economic impacts and the realistic ability for compliance.

Reviewed by Department Director
Ron WallaceReviewed by Finance
N/AReviewed by City Manager
A. William Moss

City Council Action:

DEP's Main Published Concerns

- **EPA's stream criteria for protection of downstream estuaries are not scientifically valid**
 - Method to determine allowable load is not scientifically valid
 - Presumes all Florida estuaries are impaired, and existing data and research demonstrates this to not be accurate
 - Target established for protection of coastal waters is arbitrary based on mid-point between current loads and oversimplified calculation of background loads
- **EPA's Application of "Reference Approach" for stream criteria is not appropriate**
- **EPA's Nitrate-Nitrite Criterion for Springs is not adequately protective**
- **EPA's Chlorophyll a Criteria for clear, acidic lakes is not linked to a biological response**
- **Protection of Downstream Lakes is too simplistic**
- **EPA's Chlorophyll a Criteria for South Florida Canals is not appropriate**
- **EPA's estimate of economic costs is inadequate**

General Comments From The Florida Stormwater Association

- **Criteria Must Be Realistic**
- **Criteria Must Be Appropriate**
- **Criteria Must Be Attainable**
- **Criteria Must Be Practicable**
- **Criteria Must Be Implementable**

City's Potable Water

- Existing levels of TN and TP in the City's drinking water:

- Total Nitrogen 0.56 mg/l

- Phosphorous 0.26 mg/l

- EPA's proposed criteria for freshwater lakes and canals:

- Total Nitrogen 1.6 mg/l

- Phosphorous 0.042 mg/l

The City's Drinking water exceeds the levels for Phosphorous and may not be able to be used for irrigation

City's Reuse Water

- The limits for TN and P in the WWTP existing NPDES permit are 3.0 mg/l TN and 0.8 mg/l P as annual averages.

- The annual average through February 2010 in the City's reuse water is:

- Total Nitrogen 2.1 mg/l

- Phosphorous 0.41 mg/l

(well below the NPDES requirements)

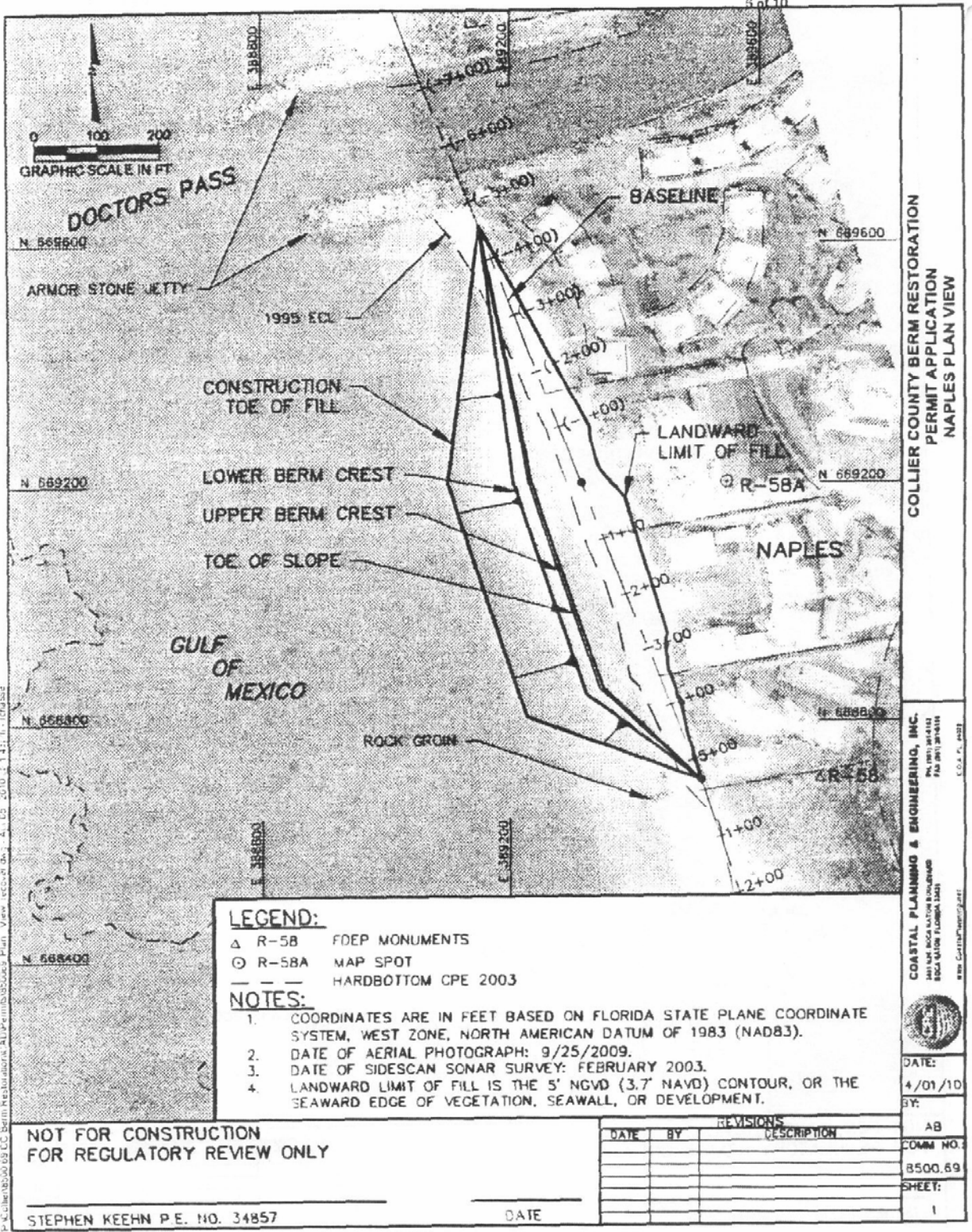
- Again EPA's proposed criteria for freshwater lakes and canals:

- Total Nitrogen 1.6 mg/l

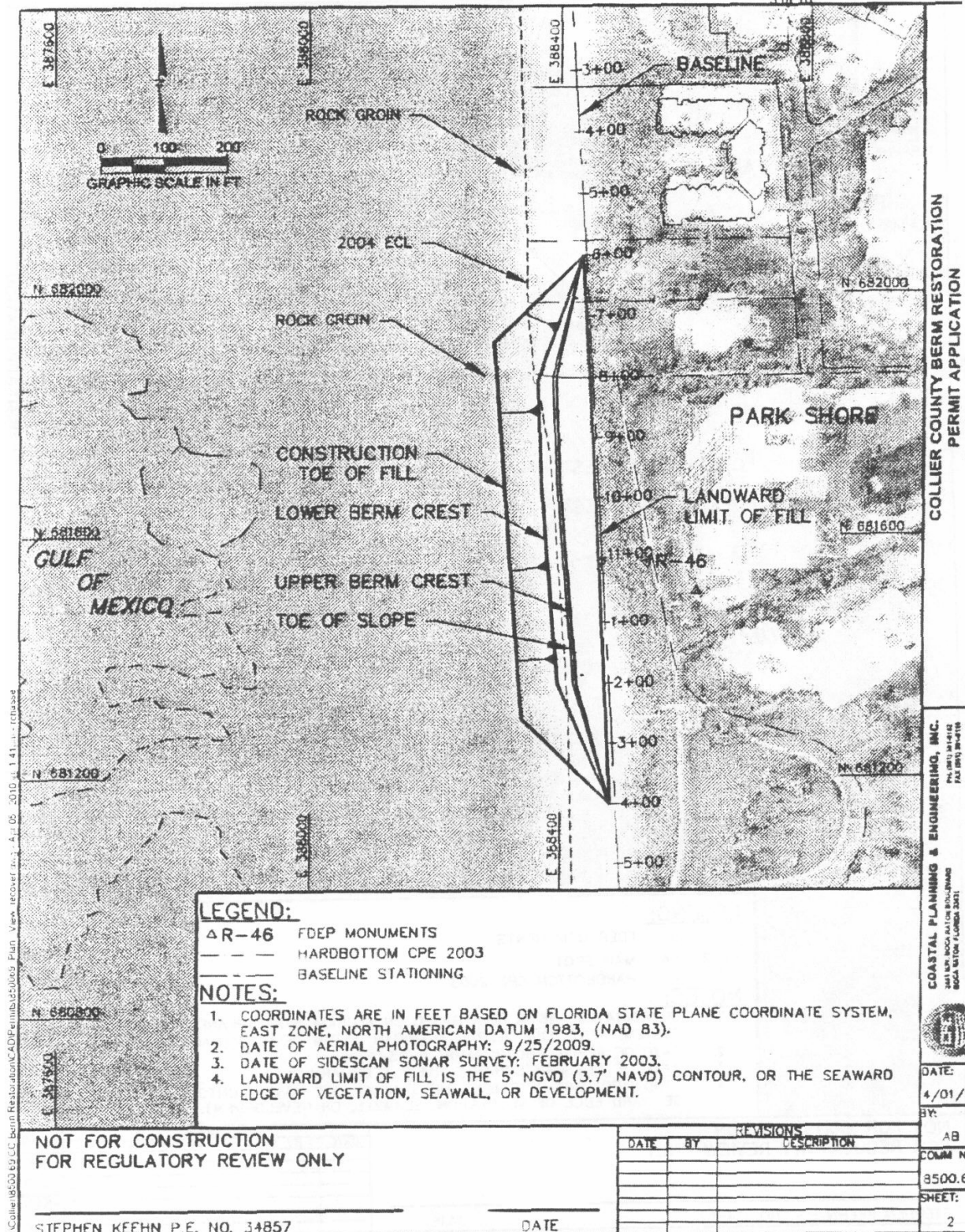
- Phosphorous 0.042 mg/l

(well above EPA's requirements)

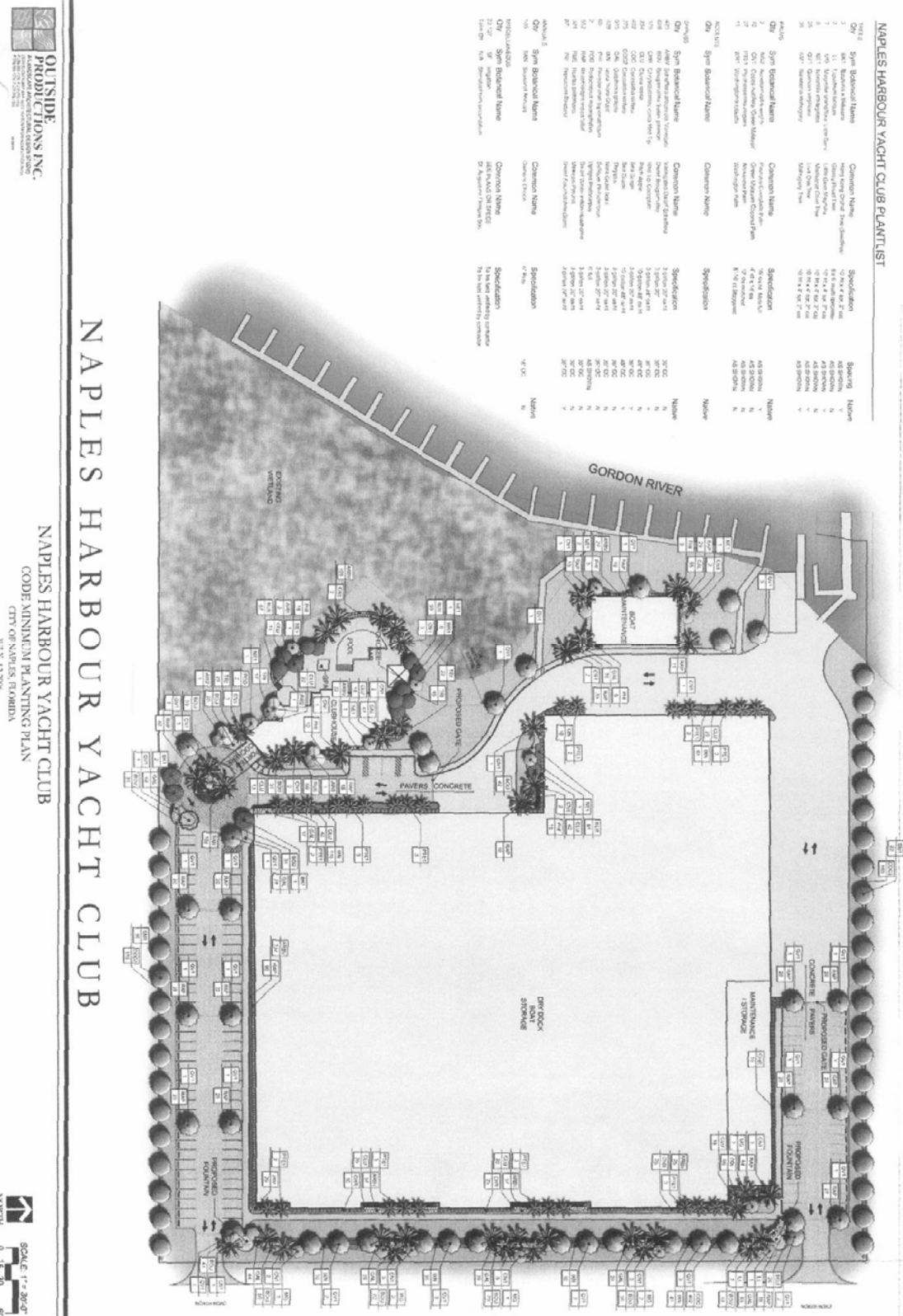
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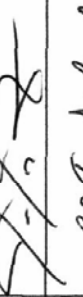
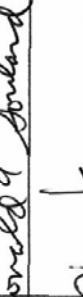


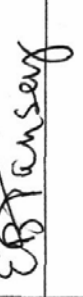

#9 Petitioner ①



#9 P.C. - SHAWN SMITH

Petition to Grant Access for Live / Orchestrated Music at Naples Harbour Yacht Club

Petition summary and background	<p>The undersigned, the residents of Avion Park, located adjacent to the property known as Naples Harbor Yacht Club, being legal and lawful land owners hereby petition the City Of Naples for the right to the following:</p> <ul style="list-style-type: none"> • We have no objection to live / orchestrated music for the purpose of local entertainment • We have no further objection for the normal use and operation of live / orchestrated music being played within the hours of 12:00 pm and 10:00 pm Monday through Saturday, and on Sundays from noon until 9:00 pm. • It is our further understanding by signing and endorsing this petition, that our intent is for the endorsement of live / orchestrated music only
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to ":

Printed Name	Signature	Address	Comment	Date
Shawn and Nyseem Smith		1560 Port Ave.	# 265-6646	4/20/10
Kristi Zammit		1610 Port Ave	#465-1244	
Trevor Tibbstra		1620 Avion Place	* 289-2716	4/20/10
Ron Souland		1595 Avion Place	# 641-4079	4/20/10
Tony Carter				
Doug (Kip) and Diane Warner		1580 Port Ave		4/20/10
Lisa Hendrickson		1555 Airway		4/20/10
Bruce Tansey		1634 Avion PL		4/20/2010

CITY OF NAPLES



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: April 21, 2010

Agenda Section:	Regular	Prepared By: Ann Marie S. Ricardi, Director
		Date: April 4, 2010 Department: Finance
Agenda Item:	11	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT: Resolution to approve a budget amendment related to the General Fund, Solid Waste Fund, and Building Department Fund.		
SUMMARY: City Council is asked to consider a budget amendment in the total amount of \$538,090 related to the General Fund, Solid Waste Fund, and Building Department Fund.		
BACKGROUND: Typically around midyear, City staff begins to gather budgetary issues that were either missed in the adopted budget or where circumstances had changed. This year, there are several items that require either a budget amendment or are brought forth for consideration because they are desired. Staff is also aware of at least two other budget amendments that will be coming to Council at a later date.		
<p>The following items affecting the General Fund for \$163,090 are included in the budget amendment:</p> <ul style="list-style-type: none"> • \$109,840 reduction in ad valorem revenue, due to the Value Adjustment Board decreasing property values from \$16,383,741,720 to \$16,290,651,458. • \$31,000 in small operating equipment for the Fire Department, as requested for FY 09-10 but not added into the total budget. In the prior year, it had been included as a CIP, but due to its nature was to be moved to the operating budget for FY 09-10. Apparently in the change, it was overlooked. This amount represents the ongoing replacement of nozzles, hoses, and other equipment that gets worn out in the line of service. In the future, the line item will be included in the annual operating budget. • \$7,250 in professional services in the Fire Department for an architect to aid in the review of Fire Station 1 and for a professional review of the Fire Department's ISO procedures. • \$15,000 in the Police Department's water/sewer line item due to the delayed completion of a HVAC upgrade project <p>For the Building Department - \$5,000 is requested to fund a summer temporary worker for plans scanning.</p> <p>In the Solid Waste Fund, \$70,000 is requested to perform a summer upgrade on two front loading garbage trucks, previously planned for replacement in 2011 (\$35,000 each). The trucks are typically about \$240,000 each, and this upgrade of the body and hydraulics will extend their life by an additional four to six years, keeping them looking presentable and operating well. The engines and chassis of these trucks are still in excellent condition.</p> <p>In the Water Sewer Fund, \$300,000 is requested to complete the East Naples Automated Meter Reading project, including areas off Bayshore, Poinciana Village, Hawks Ridge and Naples Bath & Tennis. This request will acquire approximately 1900-2300 electronic read components, allowing the project to continue through slower summer months, and even enhancing it into the southern end of the City.</p>		

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**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: April 21, 2010****Page Two**

Agenda Section:	Prepared By: Ann Marie S. Ricardi, Director	
Regular	Date: April 4, 2010	Department: Finance
Agenda Item:	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
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BACKGROUND (cont.):

The impact of this project is significant, as it is adjusting the meters from three different types of reads (manual, Orion Electronic and Itron) to electronic read. Completing this change will reduce the amount of time it takes to read meters in East Naples from four days to less than one. After the area is converted, staff will move the focus to the City's southern end. Concurrent with this project, routes are being better aligned.

As a reminder, all the meters on the City's system are Badger meters, but there are three different settings:

- I – No electronic metering device
- II – Itron electronic reading transmitter (ERT)
- III – Orion electronic reading transmitter (ERT)

For the City, the Orion ERTs proved to be better over the years; therefore, moving away from Itron is the utmost priority, and making entire cycles consistent, with either ERTs or manual, will enhance efficiency. Other advantages to electronic reading are the elimination of human error and the enhancement of employee safety.

There are two items not included in this budget amendment that will be soon forthcoming. First, in the General Fund, the City budgeted for employee labor costs to decrease. However, the decrease for police officers has not been achieved through the collective bargaining process. The 2009-10 impact depends upon continued negotiations. The second item is in the Solid Waste Fund related to the single stream recycling program. That project will be brought forth to Council in the near future with estimated costs, with a funding source to be the fund balance in the Solid Waste Fund.

In addition, the cold winter caused an extremely low revenue collections experience in the Beach Fund, and the Dock Fund has also exhibited revenue challenges. The Beach Fund budgeted for a surplus, as did the Dock Fund, but the revenue shortages will be monitored to ensure revenue covers expenditures.

FUNDING SOURCE:

The General Fund will use Contingency in the amount of \$163,090
 The Building Department amendment will use fund balance in the amount of \$5,000
 The Solid Waste Fund will use fund balance in the amount of \$70,000
 The Water Sewer Fund will use fund balance in the amount of \$300,000

RECOMMENDED ACTION:

City Council adopt a resolution amending the 2009-10 Budget adopted by ordinance 09-12519 for midyear budget adjustments in the total amount of \$538,090 for the General Fund, Solid Waste Fund, Building Department Fund and Solid Waste Fund.

Reviewed by Department Director Ann Marie Ricardi	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: April 21, 2010**

Agenda Section: Regular	Prepared By: Michael R. Bauer, Natural Resources Manager Date: April 12, 2010 Department: City Manager
Agenda Item: 12	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT: Consider authorizing submittal of an application for a State of Florida Environmental Resource Permit to construct a habitat island in Naples Bay utilizing funds from the East Naples Bay Special Taxing District.	
SUMMARY: City Council is asked to consider approving the submittal of an application for a State of Florida Environmental Resource Permit to construct a habitat island in Naples Bay and authorizing use of East Naples Bay Special Taxing District funds for the permitting process. This subject matter was discussed on April 7, 2010 and continued to this meeting.	
BACKGROUND: The East Naples Bay Special Taxing District canals were last dredged almost 20 years ago and an accumulation of silt and sediment, in addition to rock outcrops not removed during the last dredging, are impacting navigation. The estimated cost to carry out dredging the canals in the Taxing District is approximately \$2.8 million. Of this \$2.8 million, approximately \$1 million is associated with the disposal of the dredge materials. This cost can be reduced by using some of the materials to create habitat islands in Naples Bay Early in the process of designing the dredging project, staff brought up the concept of utilizing dredged materials to build islands in Naples Bay. In addition to saving costs involved in removing dredged material to a landfill, these islands would create habitat for fish and birds while also providing additional vegetation to filter pollution from the Bay's waters and supplementing the City's efforts to protect and restore oysters, seagrasses, and mangroves. Some residents were opposed to the concept as they felt it would affect their views, and the concept of habitat islands was dropped from the dredging project rather than initiate unnecessary conflict. City Council has expressed an interest in the concept as the basic idea remains both valuable and viable. Staff has delineated a suitable site for island creation in the southeastern part of the Bay that will not affect views and is devoid of estuarine life. An island at this particular location would not only further goals to restore oysters, seagrasses and mangroves, but also act as a barrier to a natural area of the Bay by providing it with protection from excess wave energy. Permitting costs were estimated to be in the range of \$10,000 to \$15,000, but, these estimates may be too low as explained below. Utilizing dredged material to create habitat islands is a means of disposing of the materials that could save the Taxing District over \$100,000 when compared with removing the material to a landfill.	
This subject was discussed by City Council on April 7, 2010. Council requested:	
1. Information from the Florida Department of Environmental Protection (DEP) concerning the moratorium on spoil island construction set by the Governor and Cabinet and whether it would apply to the Naples Bay habitat island, and	

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**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: April 21, 2010****Page Two**

Agenda Section:	Prepared By: Michael R. Bauer, Natural Resources Manager	
Regular	Date: April 12, 2010	Department: City Manager
Agenda Item:	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
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BACKGROUND:

2. Input from the East Naples Bay Advisory Committee (ENBAC) concerning spending Tax District funds to pay for the permitting process.

On April 12, 2010, Jon Iglehart, Regional Director, Southwest Florida office of DEP, indicated that had discussed this matter with FDEP headquarters in Tallahassee. FDEP's conclusion was that the moratorium does not apply to habitat projects like the Naples Bay proposal. The moratorium directed at marine islands created to provide structural protection. However, Mr. Iglehart also stated that in further conversation with DEP Secretary Michael Sole, the Secretary indicated that he would prefer that the City not make a formal application for a permit at this particular time.

The ENBAC discussed the matter at their April 7, 2010 meeting. Bryan Flynn, an Engineer with PBS&J, the City's consulting engineering firm for the East Naples Bay dredging project who has worked on the construction of several habitat islands, gave a presentation on the interface between the dredging project and habitat island construction. He indicated that the cost of permitting for an island could be in the \$50,000 range, much higher than DEP's original estimation of \$10,000 to \$15,000. He also indicated there could be a timing issue regarding obtaining the permit in time to accept the dredged material. He further stated it was too late in the process to amend the permit now, that we should obtain the permit, and then think about amending it to create the island. The ENBAC reached consensus in that they agreed the habitat island was a worthwhile environmental project to improve Naples Bay, but they did not think that providing funding for a permit was worth the risk of potentially being denied that permit or of missing the time window to accept the dredge materials. They also suggested that, since many of the City's residents would share in the benefit of a habitat island, that the District could partner with other neighborhoods and the City to fund permit application.

FUNDING SOURCE:

Ordinance Number 87-5330 states that the East Naples Bay Special Taxing District was created to provide maintenance dredging in the channels and waterways within the boundaries of the District and to do all things reasonably necessary to provide for the dredging. These services are to be provided through taxes levied on properties within the District.

Therefore, as creating habitat islands is a benefit to the environment by both lowering land deposition and by creating new estuarine habitat, it would be appropriate to utilize East Naples Bay Special Taxing District funds in the approximate amount of \$50,000 to obtain a permit for the creation of habitat islands from materials dredged within the Taxing District boundaries.

RECOMMENDED ACTION:

Discussion and further direction.

Reviewed by Department Director
Roger ReinkeReviewed by Finance
Ann Marie RicardiReviewed by City Manager
A. William Moss

City Council Action: