



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – May 4, 2011 – 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
Buddy Bonollo, Police Officer
Erica Goodwin, Planner
Robin Singer, Planning Director
George Archibald, Traffic Engineer
Michael Bauer, Natural Resources Manager
Bob Middleton, Utilities Director
Gregg Strakaluse, Acting Streets & Stormwater Director
Robert DeCastro
David Alger
Wynn Phillips
Jacques Groenteman
Willie Anthony
Lou Vlasho
Johnny Nocera
Lois Bolin
Marvin Easton

Steven Wigdahl
Lisa Swirda
Matt Kragh
Judith Hester
Alan Ryker
Larry Schultz
John Passidomo
George Dondanville
Michelle Avola
Charles Thomas
Olga Suarez
Pablo Jimenez
Clarence Tears
Mike Regan
Cathy Christopher
Michelle Klinowski
Russ Gowland

Media:

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

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

Pastor Steven Wigdahl, Emmanuel Lutheran Church.

ANNOUNCEMENTS..... ITEM 3

(8:31 a.m.) Vice Mayor Sorey read a proclamation designating the week of May 25th as Water Reuse Week which was accepted by the Director of the Big Cypress Basin, Clarence Tears. Mayor Barnett then presented a proclamation designating the week of May 1st as Municipal

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Clerk Week, accepted by Deputy City Clerk Jessica Rosenberg, and another regarding Bicycle Awareness Month and Bike to Work Week (week of May 16th), accepted by Michelle Avola, Naples Pathways Coalition.

Lou Vlasho, President of the Fifth Avenue South Business Improvement District (FASBID), honored the Greater Naples Chamber of Commerce, its past Chairs, Cathy Christopher and Michelle Klinowski, and the Downtown Naples Association (DNA) and its Executive Director, Lisa Swirida.

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

MOTION by Price to SET THE AGENDA as submitted; 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).

PUBLIC COMMENT ITEM 5

(8:48 a.m.) **Lois Bolin, representing Naples Backyard History**, provided a brief overview of local events in honor of history month (May). **Larry Schultz, 408 16th Avenue South**, referenced a 2009 environmental study funded by Collier County (a copy of which is contained in the file for this meeting in the City Clerk's Office). He said that additional pollution could possibly be caused by the extension of runway 5/23 at the Naples Municipal Airport. He urged that the extension be delayed to allow further investigation of the issue. Following a brief discussion, Council indicated that additional review of the study would be needed prior to any action by the City. In addition, Mr. Schultz confirmed for City Attorney Robert Pritt that the aforementioned study had in fact been sent to the Federal Aviation Administration (FAA) the prior month by his group; no rejection of the material had been received as yet, Mr. Schultz added. **Judith Hester, 345 Galleon Drive**, noted ongoing visibility issues with a hedge in her neighborhood, requesting that the information she had provided to the City Manager's Office be reviewed and appropriate action taken. City Manager William Moss indicated that he was in fact aware of the issue and pointed out that plantings in the City's rights-of-way are citywide; Mayor Barnett added that staff would further research her complaint. (It is noted for the record that Ms. Hester's submittal is contained in the file for this meeting in the City Clerk's Office.)

Recess: 9:09 a.m. to 9:13 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Sulick who returned at 9:14 a.m.

..... ITEM 6

JOINT MEETING WITH THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB). (9:13 a.m.) City Manager William Moss explained that recent controversy had centered on a perception of City involvement when board or committee members participate in such activities as the formation of a business association. Council had requested the joint meeting with the Community Redevelopment Agency Advisory Board (CRAAB) to address resident concerns voiced on April 18th and 20th.

CRAAB Chairman Jacques Groenteman stated that serving the best interests of the community is the driving factor among volunteers who serve on CRAAB, its members being either property owners and/or operate businesses within the redevelopment area, he said. While commending this level of community involvement, various Council Members cautioned that ethics rules and the Sunshine Law (Chapter 286, Florida Statutes) must be carefully followed. When participating in activities outside the purview of CRAAB, disclosures should be made to the effect that a member is acting in a personal interest and not representing CRAAB or the City.

Council attributed the recent controversy regarding the re-designation of the 41-10 (Heart of Naples) District as the Tenth Street/Design District to two factors: a lack of communication with

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interested parties; and the fact that a diverse collection of businesses are present in that area. As a long-standing business owner in the district, CRAAB Member Nocera said that he had observed much controversy overall in the development of the aforementioned area.

Discussion only.

Recess: 9:38 a.m. to 9:46 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

CONSENT AGENDA

APPROVAL OF MINUTES..... ITEM 7-a

April 6, 2011 Regular Meeting minutes; as submitted.

MOTION by Price to APPROVE ITEM 7-a as submitted; 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).

RESOLUTION 11-12884ITEM 7-b(1)

A RESOLUTION APPOINTING ONE MEMBER (NORMAN ROCKLIN) TO THE PUBLIC ART ADVISORY COMMITTEE FOR A FOUR-YEAR TERM COMMENCING ON MAY 16, 2011, AND EXPIRING MAY 15, 2015; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 11-12885ITEM 7-b(2)

A RESOLUTION APPOINTING ONE MEMBER (MERRILL KULLER) TO THE MOORINGS BAY CITIZENS ADVISORY COMMITTEE FOR A THREE-YEAR TERM COMMENCING ON MAY 13, 2011, AND EXPIRING MAY 12, 2014; AND PROVIDING AN EFFECTIVE DATE.

Title not read.

RESOLUTION 11-12886ITEM 7-b(3)

A RESOLUTION APPOINTING ONE MEMBER (MARY STRUTZ) TO THE CARVER FINANCE BOARD OF DIRECTORS FOR A THREE-YEAR TERM COMMENCING ON MAY 21, 2011, AND EXPIRING MAY 20, 2014; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 11-12887ITEM 7-b(4)

A RESOLUTION APPOINTING ONE MEMBER (MICHAEL KLUCK) TO THE DESIGN REVIEW BOARD FOR A THREE-YEAR TERM COMMENCING ON JUNE 1, 2011, AND EXPIRING MAY 31, 2014; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 11-12888ITEM 7-b(5)

A RESOLUTION APPOINTING ONE MEMBER (EUGENE MARTIN) TO THE DESIGN REVIEW BOARD FOR A THREE-YEAR TERM COMMENCING ON JUNE 1, 2011, AND EXPIRING MAY 31, 2014; WAIVING THE TERM LIMIT REQUIREMENT PURSUANT TO SECTION 2-403 OF THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Title not read.

MOTION by Sorey to APPROVE RESOLUTIONS 11-12884, 11-12885, 11-12886, 11-12887 & 11-12888 (Item 7-b) as submitted; 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).

END CONSENT AGENDA

RESOLUTION 11-12889 ITEM 8

A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 11-FWW1 FROM SECTION 56-37(b)(1) OF THE CODE OF ORDINANCES WHICH LIMITS FENCES IN THE FRONT YARD OUTSIDE THE BUILDING ENVELOPE TO 3 FEET IN HEIGHT WITH 18 INCHES OF DECORATIVE METALWORK AND LIMITS FENCE POSTS TO 6 INCHES ABOVE THE FENCE THEY ARE SUPPORTING, LIMITS GATES IN THE FRONT YARD OUTSIDE THE BUILDING ENVELOPE TO 6 FEET IN HEIGHT WITH GATE POSTS EXTENDING 6 INCHES TALLER THAN THE GATE THEY ARE SUPPORTING IN ORDER TO ALLOW A CONCRETE/IRON FENCE TO BE CONSTRUCTED IN THE FRONT YARD OUTSIDE THE BUILDING ENVELOPE, FOR PROPERTY OWNED BY LO EXCLUSIVO, LLC,

(FORMERLY GORDON RIVER APARTMENTS) LOCATED AT 1400 FIFTH AVENUE NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:47 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: Saad, Finlay and Barnett/familiar with the site but no contact; Price, Sulick and Heitmann/visited the site but no contact; and Sorey/visited the site and spoke with Willie Anthony. Planner Erica Goodwin then provided a brief review of the petition as contained in her memorandum dated April 16 (Attachment 1), noting that staff recommended approval

Olga Suarez, representing the petitioner, described the conditions at the Gordon River Apartments complex which had prompted incorporation of a fence to improve safety for the residents in that location by limiting vehicular and pedestrian traffic as well as adding to the aesthetics of the grounds. She further reported that the entrance gates for both vehicles and pedestrians are to be card-activated and Planner Goodwin confirmed that staff had in fact reviewed access for emergency services.

Public Comment: (9:52 a.m.) **Willie Anthony, 559 14th Street North**, while commending the improvements to the property, expressed concern with an electronic gate for pedestrian access, particularly with regard to its use by children. He also said that tenants should not have the perception of being locked in and questioned how emergency evacuation would be handled.

Discussion of the pedestrian gate and other factors followed with the petitioner's agent indicating acceptance of the conditions embodied in the motion below. It was also noted that there is sufficient area to make the necessary modifications in the vehicular gates.

MOTION by Saad to APPROVE RESOLUTION 11-12889 amended as follows:

Section 2-2: "All gates shall swing inward so as not to encumber the public right-of-way."; and adding Section 2-6: "Petitioner shall install a card-activated pedestrian access gate." This motion was 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).

RESOLUTION 11-12890 ITEM 9
A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 11-FWW2 FROM SECTION 56-37(b)(5) OF THE CODE OF ORDINANCES, WHICH REQUIRES THAT GATES AND COLUMNS LOCATED OUTSIDE THE BUILDING ENVELOPE BE MEASURED FROM THE ELEVATION OF THE CROWN OF THE ROAD, IN ORDER TO PERMIT THE GATES AND COLUMNS TO BE MEASURED FROM THE ELEVATION OF THE ADJACENT GRADE, FOR PROPERTY OWNED BY GARY D. AHLQUIST, LOCATED AT 373 GULF SHORE BOULEVARD NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:06 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: Saad, Finlay and Sulick/visited the site and spoke with the petitioner's agent; Price and Heitmann/visited the site but no contact; Barnett/familiar with the site and spoke with the petitioner's agent; and Sorey/visited the site and spoke with the petitioner and his agent. Planning Director Robin Singer briefly introduced the petition, reviewing her memorandum dated April 14 (Attachment 2) and that of Planner Adam Benigni (Attachment 3) which denotes pertinent elevations and heights; staff recommends approval, she added

Attorney John Passidomo, agent for the petitioner, utilized an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office) to display various renderings of the site to aid in visualizing the requested waiver.

Public Comment: (10:13 a.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 11-12890 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).

**ORDINANCE 11-12891 ITEM 10
AN ORDINANCE ADOPTING THE 2010 LEVEL OF SERVICE REPORT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:13 a.m.). Planning Director Robin Singer noted that pursuant to Council direction, the report now acknowledges that the 2010 population statistics had been received from the Census Bureau and that the report would be amended prior to adoption of the annual Capital Improvement Element update; staff would also be reviewing the five-year growth estimates, she stated. In further discussion it was ascertained that no deficiencies in utilities had occurred during the past ten years and staff therefore recommended approval.

Ms. Singer then noted that staff continues to recommend basing the level of service (LOS) on housing units rather than population, especially should population continue to decline.

Public Comment: (10:17 a.m.) None.

MOTION by Sorey to ADOPT ORDINANCE 11-12891 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).

**RESOLUTION 11-12892 ITEM 11
A RESOLUTION DETERMINING RIGHT-OF-WAY PERMIT TO KRISTEN WILLIAMS FOR INSTALLATION AND MAINTENANCE OF BRICK PAVER PARKING AT 287 11TH AVENUE SOUTH; AUTHORIZING THE CITY MANAGER TO APPROVE THE APPLICATION; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:17 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: Finlay, Price, Barnett, Sulick and Heitmann/familiar with the site but no contact; and Saad and Sorey/visited the site but no contact. Traffic Engineer George Archibald briefly reviewed his memorandum dated April 19 (Attachment 4), noting special right-of-way permit conditions which are appended hereto as Attachment 5. Architect Matt Kragh, agent for the petitioner, indicated the petitioner's agreement with the special conditions.

Public Comment: (10:20 a.m.) None.

MOTION by Sulick to APPROVE RESOLUTION 11-12892 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).

**ORDINANCE (First Reading) ITEM 12
AN ORDINANCE RELATING TO STORMWATER MANAGEMENT; AMENDING SECTION 30-331, DEFINITIONS; AMENDING SECTION 30-336, IMPOSITION OF FEES; REPEALING SECTION 30-337, PROPERTY CLASSIFICATIONS, COMPUTATION OF FEES; AMENDING SECTION 30-339, ADJUSTMENT OF FEES, FOR THE PURPOSE OF PROVIDING A METHODOLOGY TO CALCULATE STORMWATER UTILITY FEES FOR MULTI-FAMILY RESIDENTIAL PROPERTIES ON THE BASIS OF IMPERVIOUS AREA AS WELL AS CLARIFYING STORMWATER MANAGEMENT PROVISIONS FOR ALL OTHER PROPERTIES;**

PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:21 a.m.), who then noted a typographical error which was amended as reflected in the motion below.

City Manager William Moss explained that the intent of the proposed ordinance is to alter the methodology of calculating stormwater fees for multi-family residential properties. The fiscal impact is unknown because calculating impervious surface, similarly to that for commercial property, is to be voluntary among multi-family complexes. Should all those eligible take advantage of the option, the negative impact could be as much as \$580,000 per year to the stormwater fund.

Public Comment: (10:25 a.m.) **Marvin Easton, 944 Spyglass Lane**, read a prepared statement detailing his opposition to the proposed amendment due to his belief that citywide flood mitigation should be shared equally by all (Attachment 6). He maintained that the potential funding reduction for multi-family units would result in recovery from all other rate payers. The current monthly fee for a residential unit is fair and appropriate, he said, especially in light of the 30% credit available to qualifying applicants. **Russ Gowland, 4451 Gulf Shore Boulevard North #1604 and President of the Gulf Shore Association of Condominiums**, thanked Council for its consideration of what he termed an equitable stormwater billing system. He urged approval of the ordinance and agreed with Council Member Finlay who had pointed out that many condominiums have large expanses of green space as well as extensive stormwater drainage systems yet continue to pay far greater amounts than that of commercial properties with neither.

Vice Mayor Sorey nevertheless pointed out that the amount of greenspace on a property does not affect stormwater runoff to a great extent once the ground is saturated as the water then sheets off and into the City's stormwater system. He however reiterated his support of the impervious surface calculation application citywide; fees would then be based upon a property's impact to the stormwater issue.

Council Member Sulick stated her opposition to utilizing an impervious surface method to calculate stormwater rates since hardscape on properties is frequently altered. Furthermore, such variations would impede a future rate study and likewise make it difficult to certify an income stream to lenders should the City have a need for financing. Mrs. Sulick said that stormwater is a citywide issue and the original goal of funding stormwater projects must be remembered. Acting Streets & Stormwater Director Gregg Strakaluse confirmed for her that, if approved, the rate for multi-family would be calculated the same as commercial; the 30% reduction would also continue to be offered, he added. City Manager Moss further clarified for her that staff would take into account possible reductions in the stormwater fund balance when planning capital improvement projects for the coming years.

Council Member Finlay reiterated his support of the new calculation and characterized it as fully equitable, proffering a motion for approval which Vice Mayor Sorey seconded.

In response to Council Member Heitmann, City Manager Moss confirmed that other entities use the same per-unit rate basis as the City and Mr. Strakaluse added that he is unaware of any that use impervious surface exclusively. While the latter method is feasible, he said that it would be costly to initiate and difficult to monitor alterations to hardscape. Council Member Sulick agreed, saying that every property owner in the City would need to submit the amount of impervious surface and be responsible to update the City with any changes. Council Member Price also noted his concern regarding the administration of such a structure, adding that his concern is fairness to all those paying stormwater fees and equally sharing in the funding of the \$20-million of necessary stormwater improvements.

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Council Member Saad stated that should the impervious calculation be applied citywide, homeowners would become more cognizant of the stormwater issue and take steps to reduce the amount of impervious material on their property. Council Member Price disagreed, stating that, similar to public safety the handling of stormwater is a citywide problem and should be funded equally by all. Council Member Finlay however maintained that the fee under discussion is to fund a utility and utilities are generally based upon usage.

Vice Mayor Sorey stressed that no rates would be increased with the action under consideration and that the next rate study would be undertaken in two years; the issue of citywide impervious surface calculations would be addressed at that time, he concluded.

MOTION by Finlay to APPROVE THIS ORDINANCE at First Reading amending as follows: Section 30-339(a): “Request for adjustment of the stormwater management utility fee shall may be submitted...”. This motion was seconded by Sorey and carried 4-3, all members present and voting (Finlay-yes, Saad-yes, Sorey-yes, Sulick-no, Heitmann-no, Price-no, Barnett-yes).

Recess: 11:17 a.m. to 11:27 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**CLERK’S TRACKING #11-100011 ITEM 13
AWARDING A CONTRACT TO IMPLEMENT AN ENERGY PROGRAM: VENDOR:
TWENTYFIFTY, LLC, NAPLES, FLORIDA \ COST: \$117,290 \ FUNDING: GRANT –
FLORIDA ENERGY AND CLIMATE COMMISSION (\$117,500 – NON-MATCHING GRANT).**

(11:27 a.m.) Natural Resources Manager Michael Bauer explained that the above noted contract, to be funded via a grant accepted by the City in January 2011, is intended to provide residents and businesses with knowledge regarding ways to reduce energy consumption and thereby save money. The grant will fund the program’s design, delivery and marketing, specific to the City, reaching at least 5,500 residents and recognizing a minimum of 25 businesses as becoming “green” through use of the program’s tenets. No City staff is to be involved, he pointed out. He confirmed for Council Member Finlay that while this program will address energy consumption, it does not in any way replace the need for a City outreach coordinator at some point in the future to additionally provide information regarding mangrove restoration, lake maintenance and many other initiatives in need of public participation.

Council Member Price took issue with the use of federal funding and questioned the accountability for the use of the funds. Dr. Bauer pointed out the savings realized by the City in its first year of applying energy saving measures had amounted to \$250,000. Council Member Heitmann added that her initial reservations had to some degree been allayed by potential energy savings for local businesses. While recommending that the allocations within the program be reviewed for efficiencies, she said that she would support this action, although suggesting close monitoring of reports. City Manager William Moss confirmed for her that the air-conditioning project at the police station had indeed been completed and Council Member Sulick maintained that upgrading of these units is the most cost effective means of reducing energy consumption. Dr. Bauer agreed, noting other types of upgrades such as solar-powered water heaters.

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

MOTION by Barnett to APPROVE THIS ITEM as submitted; seconded by Finlay and carried 4-3, all members present and voting (Finlay-yes, Heitmann-yes, Price-no, Saad-no, Sorey-yes, Sulick-no, Barnett-yes).

..... **ITEM 14**
DISCUSSION / DIRECTION REGARDING EASEMENT AND AGREEMENT FOR BEACH RENOURISHMENT, PLANTING, DUNE RESTORATION, AND PUBLIC BEACH ACCESS BETWEEN COLLIER COUNTY AND CITY OF NAPLES BEACHFRONT PROPERTY OWNERS. (11:42 a.m.) City Manager William Moss reviewed his memorandum dated April 25 (Attachment 7) which outlined Collier County's draft beach renourishment easement (a copy of which is contained in the file for this meeting in the City Clerk's Office). Mr. Moss then noted his six suggestions which had been listed in the aforementioned memorandum for Council's consideration (see Attachment 7, Page 2), summarizing that the City currently has such easements largely in effect from the most recent renourishment effort.

Vice Mayor Sorey explained his ongoing opposition to the County's draft noting that it contains a perpetuity clause which he believes is unnecessary and many residents would not agree to signing it. In addition, he recommended that the ten-year process of renourishment be continued utilizing the City's easement language, valid for 20 years, and inclusion of a provision for the planting of beach vegetation. Council Member Finlay agreed with Mr. Sorey's concern, questioning whether condominium boards of directors could in fact sign such a document for the entire residency of the complex and citing recent court rulings which he said he believes render the easements moot.

Vice Mayor Sorey then reviewed the process by which easements had been obtained in the past and the reasoning of placement of the sand on the privately-owned portions of the beach. City Attorney Robert Pritt indicated that the City is the grantee, which should be the case as the properties lie within its jurisdiction; he also said that in his opinion the current easements would still be valid if they have not reached termination. Additionally, any reference to "temporary" should be deleted, he said, agreeing with the need for additional language regarding beach vegetation. He also cited various case law regarding this issue, noting that a ruling from a Supreme Court case is currently anticipated. Council Member Price agreed, saying that Collier County should be encouraged to acknowledge the existing easements and Mr. Pritt reiterated that those which have expired should be replaced by ones with similar language.

Public Comment: (12:07 p.m.) None.

Consensus that previously granted easements be utilized and, where necessary, new easements be obtained containing the same or similar easement language.

PUBLIC COMMENT
(12:08 p.m.) None.

CORRESPONDENCE AND COMMUNICATIONS.....
(12:08 a.m.) Referencing public comments regarding pedestrian and vehicular visibility during Item 5 above, Vice Mayor Sorey received consensus for a future workshop discussion of plantings in rights-of-way with possible height limitations placed upon the landscaping. He further reported that decreased revenues may adversely impact the South Florida Water Management District's (SFWMD's) budget by as much as 25%.

Citing Mr. Sorey's concerns regarding the 2009 Collier County sediment study referenced during Item 5, City Manager William Moss advised that a cursory review revealed no reference to the airport, the focus having been hydrocarbons generated by stormwater flushing of roadways. The results had included a recommendation that the source of the hotspots be further researched, Mr. Moss said. Natural Resources Manager Michael Bauer indicated that he had reviewed the report and indicated that sediment samples from throughout Collier County had been tested, however, identifying the source of pollutants would necessitate further

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extensive and costly study. In response to Council Member Heitmann, Dr. Bauer clarified that it was his understanding that the County periodically funds such a study but the cost to isolate the sources and address the pollutants is prohibitive. Mrs. Heitmann then recommended that the City and County coordinate such efforts. Following a brief discussion of possible pollutants generated due to the extension of runway 5/23, City Manager Moss agreed to contact the County Manager to ascertain whether follow-up action to the aforementioned study had occurred. City Attorney Robert Pritt also confirmed for Mrs. Heitmann that following the March 16 hearing regarding the runway extension, the entire record had indeed been forwarded to the Federal Aviation Administration (FAA) for consideration as the City's position on the FAA's then pending approval of the environmental assessment study necessary for the runway extension. Dr. Bauer agreed with Council Member Finlay's overview of the above noted sediment study in that the samples would provide historical pollutant data as well as current information from fresh deposits and that the City performs only water quality testing due to the cost and expertise necessary for sediment sampling and testing. Mr. Finlay then observed that the airport does in fact have an extensive stormwater management system which collects runoff from 400 to 500 acres east of Airport-Pulling Road, as well as the roadway sheeting.

Council Member Heitmann then questioned the advisability of inclusion of grants on the Consent Agenda and City Manager Moss explained that this is not routinely done unless the grants are for small amounts. Mrs. Heitmann also noted a home on 14th Avenue South which is apparently being utilized for transient rental and Mr. Moss indicated that staff was in fact aware of the situation but that surrounding neighbors must lodge complaints when disturbances occur. It is believed that the property has multiple owners and these owners utilized the property for short periods of time, he maintained. City Attorney Pritt noted a pending transient rental case which he offered to monitor and Council Member Price advised that the state legislature also is considering bills regarding the issue.

Council Member Price requested a workshop discussion regarding fluoridation of the City's drinking water and recommended that Council be mindful of its demand on staff during the upcoming budget cycle.

Council Member Sulick conveyed Mother's Day wishes and Council Member Saad commended the US Navy Seals on action recently taken against Osama bin Laden.

City Manager Moss received clarification as to the issues for a future workshop discussion regarding the Fifth Avenue South Business Improvement District (FASBID).

ADJOURN
12:57 p.m.

Bill Barnett, Mayor

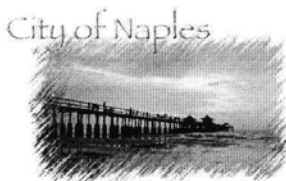
Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist
Minutes Approved: 06/01/11

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: May 4, 2011**

Agenda Section:	Regular	Prepared By: Erica J. Goodwin, Planner II
Agenda Item:	8	Date: April 16, 2011 Department: Planning
		Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
SUBJECT:		
Resolution determining a Fence and Wall Waiver request to allow a concrete/iron fence to be constructed in the front yard outside the building envelope along 5 th Avenue North for property located at 1400 5 th Avenue North.		
SUMMARY:		
City Council is asked to consider a resolution determining Fence and Wall Waiver Petition 11-FWW1 from Section 56-37 (b) (1) of the Code of Ordinances, which limits fences in the front yard outside the building envelope to 3 feet in height with 18 inches of decorative metalwork and limits fence posts to 6 inches above the fence they are supporting, limits gates in the front yard outside the building envelope to 6 feet in height with gate posts extending 6 inches taller than the gate they are supporting in order to allow a concrete/iron fence to be constructed in the front yard outside the building envelope, for property owned by Lo Exclusivo, LLC, (formerly Gordon River Apartments) located at 1400 5 th Avenue North. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.		
BACKGROUND:		
Lo Exclusivo, LLC, the new owner of the Gordon River Apartments, wishes to replace an existing 6 foot tall black chain link fence along the front property line with a new fence/wall. This property received approval of a Variance in 1998 to allow the construction of a 6 foot high chain link fence in the front yard setback. The petitioner would like to replace the black chain link fence with a nicer concrete/iron fence to provide more privacy and security for tenants and to enhance the aesthetics of the site. The proposed gates will be automated to provide security and to decrease traffic flow of vehicles and pedestrians who do not live within the Gordon River Apartments. The petitioner requires a waiver from Section 56-37 (b) (1) of the Code of Ordinances in order to construct a fence and gates which exceed the maximum fence/wall height provided.		
On April 14, 2011, a total of 55 letters were mailed to all property owners located within 500 feet of the subject property. As of the date of this report, there have been no responses or inquiries received.		
File Reference: 11-FWW1		
Petitioner: Lo Exclusivo, LLC		
Agent: Pablo Jimenez, ASA Jimenez Builders, Inc.		
Location: 1400 5 th Avenue North		
Zoning: R3-12, Multifamily District		
RECOMMENDED ACTION:		
Adopt a resolution granting Fence and Wall Waiver Petition 11-FWW1 from Section 56-37 (b) (1) of the Code of Ordinances, which limits fences in the front yard outside the building envelope to 3 feet in height with 18 inches of decorative metalwork and limits fence posts to 6 inches above the fence		



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Agenda Item:		
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<p>RECOMMENDED ACTION:</p> <p>in height with 18 inches of decorative metalwork and limits fence posts to 6 inches above the fence they are supporting, limits gates in the front yard outside the building envelope to 6 feet in height with gate posts extending 6 inches taller than the gate they are supporting in order to allow a concrete/iron fence to be constructed in the front yard outside the building envelope, for property owned by Lo Exclusivo, LLC, (formerly Gordon River Apartments) located at 1400 5th Avenue North, subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The petitioner will submit a current boundary survey and will ensure that the fence is constructed entirely on the subject property. 2. All gates shall swing inward so as not to encumber the public right-of-way. 3. City utilities shall be located as to alignment and depth prior to the installation of fencing and gates. 4. Unless subject to alternative routing, the swale areas between the new fence location and the edge of pavement shall be subject of landscaping/sod placement with detention swales. 5. The external sidewalk along its southwest frontage with 5th Avenue North shall be subject of appropriate repairs/replacement as part of the fence project. 		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: May 4, 2011

Agenda Section:	Regular	Prepared By: Adam A. Benigni, Senior Planner
		Date: April 14, 2011 Department: Planning
Agenda Item:	9	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
SUBJECT:		
Resolution determining a Fence and Wall Waiver request to allow the height measurement for gates and columns to be taken from adjacent grade rather than the elevation of the crown of the road, for property located at 373 Gulf Shore Boulevard North.		
SUMMARY:		
City Council is asked to consider a resolution determining a request for a Fence and Wall Waiver from Section 56-37(b)(5) of the Code of Ordinances, which requires that gates and columns located outside the building envelope be measured from the elevation of the crown of the road, in order to permit the gates and columns to be measured from the elevation of the adjacent grade, for property owned by Gary D. Ahlquist, located at 373 Gulf Shore Boulevard North. In that this is a Quasi Judicial matter, disclosures and the swearing in of those giving testimony are required.		
BACKGROUND:		
<p>The petitioner currently has a valid building permit for the pedestrian and vehicular gates. The maximum allowable height for gates is 6.0 feet as measured from the elevation of the crown of the road and the maximum allowable height for columns is 6.5 feet as measured from the crown of the road. The petitioner's plans, as submitted, showed the correct method of height measurement. During the construction phase, the petitioner noticed the columns and gates would be much shorter than previously expected due to the difference in height of the crown of the road and height of adjacent grade. The grade at the gates and columns varies between 0.91 feet and 2.5 feet higher than the elevation of the crown of the road.</p> <p>The petitioner is requesting that Council approve this fence and wall waiver in order to allow the height measurement to be taken from the adjacent grade at the gates and columns rather than the crown of the road. If the height of gates and columns were measured from the elevation of adjacent grade, rather than from the elevation of the crown of the road, the proposed gates and columns would conform to the maximum height permitted in Section 56-37, Fences, of the Naples Code of Ordinances.</p> <p>On April 14, 2011, a total of 35 letters were mailed to all property owners located within 500 feet of the subject property. There has been one response in favor of the request.</p>		
<p>File Reference: 11-FWW2 Petitioner: Gary D. Ahlquist Agent: John M. Passidomo, Esquire Location: 373 Gulf Shore Boulevard North Zoning: R1-15 Residence District</p>		



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: May 4, 2011

Page Two

Agenda Item: 9		
RECOMMENDED ACTION: Adopt a resolution granting Fence and Wall Waiver Petition 11-FWW2 from Section 56-37 (b) (5) of the Code of Ordinances, which requires that gates and columns located outside the building envelope be measured from the elevation of the crown of the road, in order to permit the gates and columns to be measured from the elevation of the adjacent grade, for property owned by Gary D. Ahlquist, located at 373 Gulf Shore Boulevard North		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		



Memo

Planning

TO: A. William Moss, City Manager
VIA: Robin D. Singer, Planning Director
FROM: Adam A. Benigni, Senior Planner
DATE: April 14, 2011
SUBJECT: Fence and Wall Waiver Petition 11-FWW2

The petitioner currently has a building permit for the pedestrian and vehicular gates. The maximum allowable height for gates is 6.0 feet as measured from the elevation of the crown of the road. The maximum allowable height for columns is 6.5 feet as measured from the crown of the road. The petitioner's plans that were submitted for the gates and gateposts showed the correct height measurement. During the construction phase, the petitioner noticed the columns and gates would be much shorter than previously expected due to the difference in height of the crown of the road and height of adjacent grade. The petitioner is requesting that Council approve this fence and wall waiver in order to allow the height measurement to be taken from the adjacent grade at the columns and gates rather than the crown of the road. The table below shows the proposed heights of the entries as measured from the elevation of the crown of the road. The height of the gates for the vehicular entries is approximately 6 inches taller than the column height. The height of the gates for the pedestrian entries is approximately 8 inches taller than the column height. The height differences for the gates and columns are shown in the last two columns in the chart.

	COR Elevation	Column Height Measured from COR	Gate Height Measured from COR
Ped. Entry #1	4.0 NAVD	6.16 feet	6.83 feet
Vehicular Entry #1	4.0 NAVD	6.90 feet	7.40 feet
Ped. Entry #2	4.2 NAVD	6.46 feet	7.13 feet
Vehicular Entry #2	4.2 NAVD	7.30 feet	7.80 feet
Vehicular Entry #3	4.2 NAVD	7.80 feet	8.30 feet

COR = Crown of Road

If the elevation at adjacent grade was used rather than the elevation at the crown of the road, the proposed heights of the gates and columns would be as follows:

	Grade Elevation	Column Height Measured from Grade	Gate Height Measured from Grade
Ped. Entry #1	6.0 NAVD	4.16 feet	4.83 feet
Vehicular Entry #1	4.95 NAVD	5.50 feet	6.00 feet
Ped. Entry #2	6.7 NAVD	3.96 feet	4.63 feet
Vehicular Entry #2	4.91 NAVD	5.50 feet	6.00 feet
Vehicular Entry #3	5.31 NAVD	5.50 feet	6.00 feet

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

Page 2

If the height of gates and columns were measured from the elevation of adjacent grade, rather than from the elevation of the crown of the road, the proposed gates and columns would conform to the maximum height permitted in Section 56-37, Fences, of the Naples Code of Ordinances.

Section 56-37(e)(2) of the Code of Ordinances outlines the applicability criteria and standards for approval for fence and wall waivers. This is staff's analysis of this request under these criteria and standards.

Applicability

1. **Lot size:** The subject parcel measures approximately .83 acres, or 36,155 square feet. The minimum lot area in the R1-15 district is 15,000 square feet. This property is approximately 2.4 times the size of the minimum lot requirement for the District.
2. **Lot orientation:** The lot fronts on 4th Avenue North, Gulf Shore Boulevard North and the Gulf of Mexico.
3. **Lot location:** The subject property is in the R1-15 residential zoning district.
4. **Orientation and design of structures on the lot:** The main residence is oriented facing 4th Avenue North and is also accessible from Gulf Shore Boulevard North.
5. **Orientation and design of the fence/wall:** There is one pedestrian and one vehicle entry on the east side of the property and one pedestrian and two vehicle entries on the north side of the property. The design and proposed height is compatible and typical of other properties in the area.

Standards for Approval

1. **Safety in regard to the subject property, adjacent properties, streets, alleyways, and water bodies:** The proposed waiver does not create an unsafe condition nor will it create any unsafe condition for any neighboring property.
2. **Visual impact on adjacent properties, streets, alleyways, and water bodies:** The proposed height waiver will allow the petitioner to construct more aesthetically pleasing entries than otherwise could be provided.
3. **Design in relation to other structures on the same lot, adjacent properties, and the neighborhood:** The proposed design would be more aesthetically pleasing than what can currently be constructed on the property. The design is consistent and compatible with entries on other properties in the general area. The heights of the gates and columns, if measured from adjacent grade, would conform to the maximum height permitted in Section 56-37 of the Naples Code of Ordinances.
4. **Impact on ingress and egress:** The requested height waiver will have no significant impact on ingress or egress.

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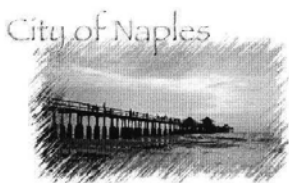
Page 3

5. **Screening, buffering or separation of any nuisance or hazardous feature:** The proposed pedestrian and vehicular entries will not create any nuisance or hazardous features.
6. **Compatibility with adjacent properties:** The design and height of the proposed entries are compatible with nearby properties. The petitioner has requested a waiver for the gate and columns for the entries only. Approval of this petition will not permit the petitioner to install a taller fence or wall that will exceed that height allowed in Section 56-37 of the Naples Code of Ordinances.

AERIAL OF SITE



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**NAPLES CITY COUNCIL AGENDA MEMORANDUM**Regular Meeting Date: **May 4, 2011**

Agenda Section:	Prepared By: George Archibald, Traffic Engineer	
Regular	Date: April 19, 2011	Department: Streets and Stormwater
Agenda Item:	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
11		
SUBJECT:		
Resolution approving Right-of-Way Permit Application 2011-050 submitted by MHK Architecture & Planning for hardscape parking installation in the right-of-way at 287 11 th Avenue South.		
SUMMARY:		
City Council is asked to consider a resolution determining Right-of-Way Permit Application 2011-050 to Kristen Williams for installation and maintenance of brick paver parking at 287 11 th Avenue South; and authorizing the City Manager to execute the Application.		
BACKGROUND:		
<p>The property owner at 287 11th Avenue South is restoring and upgrading a historic home (built in 1911) on the block of 11th Avenue South between 3rd Street and 2nd Street South. Prior to current restoration activities, the home was served by both a garage in the rear and parking located along the 11th Avenue South frontage. Parking on-site in the rear has been expanded as part of the restoration and the property owner by permit application is requesting approval to replace the existing parking in the 11th Avenue South right-of-way. The proposed parking will be confined to the public right-of-way and by Resolution 01-9256, copy attached, requires City Council approval consistent with policies to limit "hardscape" in the public right-of-way. The permit application is attached and staff recommends approval subject to the following considerations: a) within the subject block of 11th Avenue South, 8 of the 12 existing homes are historic and/or are served by similar driveways/parking areas; b) the proposed parking will be brick pavers with complimentary landscaping and special drainage provisions; and c) the property owner shall accept the special conditions attached to the permit. The brick paver parking area would be in lieu of a conforming driveway and parking area on private property.</p> <p>Based on Resolution 01-9256, City Council, at its option, can approve the permit application, can deny the application requiring the area to be landscaped/sodded or can require the driveway to be conforming with parking on private property in lieu of public property.</p>		
RECOMMENDED ACTION:		
Adopt a Resolution approving Right-of-Way Permit Application 2010-050 to Kristen Williams for installation and maintenance of brick paver parking at 287 11 th Avenue South with special conditions as attached; and authorize the City Manager to execute the Application.		
Reviewed by Department Director Gregg Strakaluse	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

CITY OF NAPLES

**SPECIAL R/W PERMIT CONDITIONS
FOR INSTALLATION OF BRICK PAVERS
IN THE CITY RIGHT-OF-WAY**

**@
287 11TH AVENUE SOUTH**

April 2011

SUBJECT: The following are Special Conditions applicable to the use of the public right-of-way for the installation of brick paver parking. These special conditions along with the standard permit conditions shall serve to place the permittee/property owner on notice of their responsibilities and liabilities:

SPECIAL RIGHT-OF-WAY PERMIT CONDITIONS:

1. The permittee shall remain responsible and liable for any and all impacts of the brick paver installation in the public R/W, particularly as it may relate to operation, maintenance and repair of existing and future public and private utilities and public sidewalks. This responsibility shall include the requirement for removal of improvements upon notice of the City due to pending City improvements, utility installations, sidewalk installation, maintenance and/or repair work.
2. Where the permittee or his successor or assign is notified of a need for brick paver removal/relocation due to utility construction, repair, maintenance, improvement, alteration or utility relocation within the right-of-way and no action is taken within the time frame specified by the City's assignee, the City shall cause the permitted parking to be altered, relocated, or removed, with the total expense of such work being borne by the permittee.
3. This approval is for temporary use of the right-of-way for 'hardscape' parking pursuant to City Resolutions 99-8455 & 01-9256 and such approval is permissive and may be subject to reconsideration by the City at any time. The permittee shall take no action, without prior approval, to prohibit the use of the parking space by the public.
4. This approval is not intended to supersede any Naples Code requirement and the permittee shall comply with all applicable Code requirements.
5. The City of Naples shall be relieved of any and all responsibility from damage or liability of damage of any nature arising from work authorized under this permit.
6. By accepting this permit, the permittee recognizes that there are no vested rights to parking in the public right-of-way and agrees to abide by all permit conditions.

Reasonable & intelligent people can look at the same data & reach different conclusions. Public policy is not a matter of right or wrong, but what is appropriate in the specific circumstance. Typically those causing a problem, or benefiting the most from the resolution, are those most likely to pay for that problem resolution.

As an example, only Aqualane Shores & Royal Harbor residents paid for dredging their canals, & only Port Royal residents will be assessed \$1.8M to dredge their canals, although non residents, tourists, & commercial boats also use those canals.

We first determine what is the problem? **There is significant flooding in some city areas caused by clogged storm drains, structures built too close together, structures built below FEMA flood levels, & poorly designed drainage.**

What is the resolution? **Normal storm drain maintenance & CIP funding to replace old pipes, pipes that are too small, install swales, improve drainage, repair or replace pumps.**

What is the cost? **Based on the past few years & projected 5 year expenditures, \$2-3M per year for CIP projects, plus matching grants for some, plus normal citywide maintenance costs.**

Where is the problem? **There is \$10M Basin 5 - Coastland Mall, Lake Park; and \$10.6M Basin 3 - Old Naples, 5th Ave, Broad Ave.**

Who should pay to resolve these problems? **I see two options. Either only the residential & commercial entities in the affected Basins, as is done with the canal dredging. Or the entire city's residential & commercial entities.**

One method proposed by John is based on impervious surface of a home/condo site. This appears to be logical. But is it appropriate, if the homes or condos are not located in the area where the flooding occurs? Thus the impervious surface in one basin, has no relationship, has no relevance what so ever, to the problem cause, nor the problem resolution, in a different basin.

SUPPLEMENT
2 #EASTON

Some Gordon Dr. homes have a large foot print & thus a large impervious surface. But why disregard the amount of grass & landscape around those homes, which absorbs the rain water? It would seem much more appropriate to calculate the impervious surface area as a percentage of the total lot area. **But, you would do this only if, the property had any relevance to the problem.**

R1-15A district homes, have much stricter building setback codes & landscape requirements than the rest of Naples. There is more space to the street, to the waterways in the rear, & between homes, plus more green space requirements, than do homes in the areas that are flooding. R1-15A homes mostly retain the rain water on their own lots. So I do not see the relevance of impervious surface in R1-15A to the Basin 3 & Basin 5 flooding problems.

Sam also suggested using impervious surface. But residents of Gulf Shore Assoc. or Little Harbour are not the cause of the Lake Park flooding, nor are they causing major flooding in their own neighborhoods. Maybe someone can explain **why** a home or condo owner, not in Lake Park, should pay more to solve the \$10M flooding problem in Lake Park, than do the Lake Park residents.

If you decide the problem & resolution is a Neighborhood/Water Basin issue that should be funded by those in the respective Water Basin, then impervious surface in that Neighborhood, may be a valid method of charging.

But, if you decide it as an entire citywide issue that should be funded by all city residential & commercial entities, the current method of charging each residential unit (condo big or small, home big or small) seems most appropriate. Although we may not live in the flooding areas, & most homes & condos are not the cause of the flooding, we do drive in the areas, and we do not want any flooding in Naples. I happen to believe it is an entire city issue. I do not think that Sam & his neighbors, nor those living in Old Naples should have to bear the entire \$20.6 M CIP cost burden that needs to be spent just in Basins 3 & 5.

Another issue is the quality of water flowing into the bay due to the oil & tire rubber on the streets. Maybe charging a fee for each car or truck at a home, or condo, & at any business located in, or doing business in Naples, is more

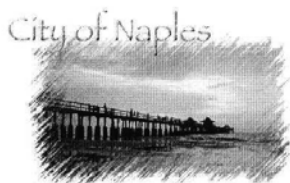
appropriate, than impervious surface. Naples generally has 2-3 people per residence, & 2 cars, no matter the size of the condo or home. Cars & trucks cause this problem, not the home or condo size, & not the lot size. The oil flows on to the impervious Naples city roads, then into the bay.

If the issue is that Condo's, in their entirety, should not pay more than commercial, there is another alternative to consider. Raise the rates on the commercial properties in those areas where the flooding is caused by those specific properties, & then maybe the city can lower all the residential rates, both home & condo.

I hope someone will explain why unrelated impervious surface is an appropriate metric to use to calculate, & pay, to resolve this citywide flooding issue. As I said, reasonable people can look at the same data & reach a different conclusion. So my logic & my view, that this is a city wide issue may be wrong.

If you decide it is a Neighborhood/Water Basin Issue, & therefore only the respective residential & commercial entities in each Water Basin are to be assessed for the CIP's in their specific Water Basin, then an impervious metric may be a part of the formula to determine who pays, and how much, in each water basin.

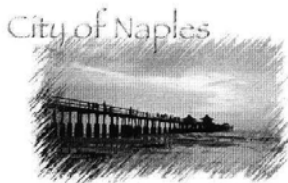
In summary, I do not think it appropriate to fund city wide flood mitigation, by charging homes differently than condos, & charging some condos, differently than other condos. In particular, when the potential funding reduction of \$580,000 per year will have to be made up by increasing the rates for everyone else. It seems to me that a \$12.01 monthly fee for each residential unit is both a very fair amount & an appropriate way to charge for city wide flood mitigation. Also, there already is a procedure available to apply for a 30% credit, reducing the fee to \$8.41 per condo unit, if the condo qualifies by retaining water on their own property.



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: MAY 4, 2011

Agenda Section:	Regular	Prepared By: A. William Moss, City Manager
		Date: April 25, 2011
		Department: City Manager
Agenda Item:	14	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT:		
Discussion of draft Easement Agreement for use between Collier County and beachfront property owners.		
SUMMARY:		
City Council is asked to discuss a draft Easement Agreement for use between Collier County and beachfront property owners requiring the property owners to provide public beach access in exchange for publicly funded major beach renourishment, vegetation planting and dune restoration to the subject property.		
BACKGROUND:		
At the February 9, 2011 Joint City Council / Collier County Board of Commissioners Meeting, County Manager Leo Ochs stated that a County-wide access easement for beach renourishment was being drafted and would come before the Board in the near future. The Board of County Commissioners seeks City Council's input on the Easement Agreement prior to final consideration of the proposed easement.		
On August 16, 2006, City Council accepted 111 easements from beach front property owners in order to commence with a beach renourishment project from the City's northern boundary to approximately 18 th Avenue South. For most properties, the easement was granted for a period of 20 years, and apparently a few were granted for 10 years. The beach restoration easement (attached) grants a temporary beach restoration easement <i>"for enlarging and maintaining the beach and shoreline by filling with compatible sand, for planting and maintaining native dune vegetation, to move, store and remove equipment and supplies, to erect and remove temporary structures on the Easement Property and to perform any other work necessary and incident to the construction of the Collier County Beach Restoration Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions or obstacles within the limits of the Easement Property."</i>		
While the easement specifically cites the "Collier County Beach Restoration Project", the City Manager presumes that, due to the expiration date of the easement, the intent is to allow use of private property for future renourishment projects.		
The Board of County Commissioners is considering easement language that is substantially different from the language contained in the beach restoration easements accepted in 2006. The proposed easement provides that, in exchange for the benefits associated with beach renourishment paid for with public funds, upland private property owners must agree and consent to allow full access to the beach to residents and visitors seaward of the vegetation line. Therefore, the easement not only will allow access to private property for renourishment related projects, it also provides that beach front		

**NAPLES CITY COUNCIL AGENDA MEMORANDUM**Regular Meeting Date: **May 4, 2011**

Page Two

Agenda Item:

14

BACKGROUND (cont.):

property owners, with property ownership to the mean high tide, allow public access to the [dry sand] beach that is considered "private" property. The "use" of the proposed easement agreement includes: *"....for the purpose of accessing and using the recreational beach seaward of the vegetation line, in a manner consistent with traditional use enjoyed by the public at public beaches..."*

While the transmittal letter from Collier County does not explain the purpose of the revised language, it is presumed the intent is to add clarity to long-standing Florida law regarding the public's right to enjoy and use the beach, and the concern that such laws, historically, do not establish finality as to the rights of the public to use the beach and the rights of private property owners to restrict access to and use of their property. The attached article, *Florida Beach Access: Nothing but Wet Sand?*, by S. Brent Spain, and published in the 1999 Journal of Land Use and Environmental Law, further expands on this subject.

While the Board of County Commissioners and advisory committees should be commended for their interest in preserving the right of the public to use the beach, the City Manager suggests that:

- 1) The 2006 easement agreements have allowed beach renourishment projects.
- 2) Private property owners and the public have enjoyed the beach without major conflicts as to the public's right to use and enjoy the beach.
- 3) There is a fair risk that Collier County will not obtain many easement agreements from upland property owners because of the proposed easement language.
- 4) Failure to obtain easements may result in a substantially less successful renourishment due to the by-passing of properties that have not provided an easement.
- 5) There is relatively little risk that the public will be denied access to the dry sand beach by a private property owner.
- 6) Funds used to acquire and record the new easement, and the considerable energy that will be required of City and County staff and elected officials, may be better used to challenge any restrictions to the public's access to the dry sand beach.

RECOMMENDED ACTION:

Discussion and further direction by City Council.

Reviewed by Department Director
A. William Moss

Reviewed by Finance
N/A

Reviewed by City Manager
A. William Moss

City Council Action: