



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

**Moorings Bay Citizens Advisory Committee
February 26, 2008 – 9:00 a.m.**

Chairman Finlay called the meeting to order and presided.

ROLL CALLITEM 1

Present:

- Doug Finlay, Chairman
- William Kroeschell, Vice Chairman
- Michael Bozzo
- Albert Katz
- Merrill Kuller

Also Present:

- Michael Bauer, Natural Resources Manager
- Rachael McLean, Technical Writing Specialist
- Monique Krist, Administrative Specialist
- Jon Staiger
- Buzz Adams

Other interested citizens and visitors.

ELECTION OF CHAIR AND VICE CHAIR.....ITEM 6

After consideration of Item 5 (see below), Member Finlay suggested that the Committee postpone election of Chairman and Vice Chairman to the end of that day’s meeting or to the following meeting; however, further discussion ensued. Natural Resources Manager Michael Bauer explained that the Committee is required to conduct an election at the beginning of each calendar year. He also noted the upcoming term expiration for Members Kroeschell, Bozzo, and Finlay in April, Member Kuller in May, and Member Katz in June. Member Finlay however pointed out that he is term-limited and ineligible for reappointment. In response to Member Katz, Dr. Bauer agreed to obtain additional information regarding the reappointment process, noting that appointments have three year terms. Member Kroeschell noted that it may be necessary for those seeking reappointment to interview with City Council, although that had not been done in the past.

MOTION by Kroeschell to ELECT Member Finlay as Chairman; seconded by Katz and unanimously carried, all members present and voting (Bozzo-yes, Katz-yes, Kroeschell-yes, Kuller-yes, Finlay-yes).

MOTION by Katz to ELECT Member Kroeschell as Vice Chairman; seconded by Kuller and unanimously carried, all members present and voting (Bozzo-yes, Katz-yes, Kroeschell-yes, Kuller-yes, Finlay-yes).

ANNOUNCEMENTSITEM 2

Natural Resources Manager Michael Bauer distributed two memorandums from City Attorney Robert Pritt, which pertain to water quality testing in Moorings Bay and the pier permit granted

at 270 Spring Line Drive. (It is noted for the record that copies of the above referenced documents are contained in the file for this meeting in the City Clerk’s Office.) Chairman Finlay recommended that Members review the documents for discussion at the following meeting.

ITEMS TO BE ADDEDITEM 3
None.

APPROVAL OF MINUTESITEM 4
Member Katz requested correction of two scrivener’s errors in the January 15, 2008, meeting minutes, as embodied in the motion below.

MOTION by Kroeschell to APPROVE the November 30, 2007, and December 18, 2007, meeting minutes as submitted and to APPROVE the January 15, 2008, meeting minutes as amended: (Page 3 Line 42: the Moorings Bay Property Owner Association) and (Page 4, Line 45: Mr. Beumel Breumel). This motion was seconded by Kuller and unanimously carried, all members present and voting (Bozzo-yes, Katz-yes, Kroeschell-yes, Kuller-yes, Finlay-yes).

FINANCIAL REPORTSITEM 5

Chairman Finlay noted that the December financial report had not been reviewed by the Committee at the January 15 meeting. Natural Resources Manager Michael Bauer explained that the following financial report would likely reflect an expenditure of approximately \$3,000 for the purchase and installation of buoys to demarcate the presence of shoaling and ruler gauges/levels at the Mooring Line Drive, Harbour Drive, and Park Shore Drive Bridges. Dr. Bauer also said he believed the United States Coast Guard (USCG) had replaced Marker 1, at no charge to the taxing district. Member Kuller requested that a member of the Finance Department attend the following meeting to clarify the inclusion of taxing district funds in the general fund for the purpose of accounting and investment. Chairman Finlay noted that investment risk is shared by all entities represented in the pool, including the taxing district.

MOTION by Katz to ACCEPT the December and January financial reports; seconded by Kroeschell and unanimously carried, all members present and voting (Bozzo-yes, Katz-yes, Kroeschell-yes, Kuller-yes, Finlay-yes).

DOCK/ACCESS CHANNEL REGULATIONSITEM 7

Chairman Finlay explained that he had invited former Natural Resources Manager Jon Staiger to attend that day’s meeting to provide background information pertaining to Sections 52-96 and 56-93 of the Code of Ordinances, which address the location of the Moorings Bay access channel and regulations concerning construction of piers and docks. Mr. Finlay also reviewed data from the 1987 Preliminary Engineering Report for the Moorings Bay Municipal Service Taxing District (a copy of which is contained in the file for this meeting in the City Clerk’s Office), including information regarding navigability in Moorings Bay and heavy metal sediment analysis. He noted that the report addressed permitting, including state regulations prohibiting maintenance dredge depths below six or seven feet mean low water (MLW/ the lowest water level averaged over many tidal cycles).

Dr. Staiger provided a brief overview of the establishment of the Moorings Bay and East Naples Bay special taxing districts, noting that at the time the State had not yet set threshold values for heavy metal sediment contamination. He explained that several of the metals present at that time could be attributed to stormwater runoff and briefly described the disposal methods utilized for the contaminated sediment. Dr. Staiger informed the Committee that Bob Crawford, of Suboceanic Consultants, had significant involvement in the previous dredging project, in addition to participating in other projects for both the City and the Save the Bays organization from the mid-1980s to 2000.

Chairman Finlay noted that at the time of the perimeter dredging in Moorings Bay, approximately 30% of the channel area was dredged. In further discussion, Dr. Staiger identified several areas which at that time required dredging and explained that a channel width of 20 feet was sufficient due to the small number of vessels utilizing the Bay. He also noted that the width was feasible, from the perspective of construction, given that most of the channel is wedge-shaped. Dr. Staiger further explained that the Committee at that time wished to designate the channel utilizing Mr. Crawford's series of aerial photographs, because the dredging was not continuous. In drafting the ordinances, he said, he attempted to generalize the location of the channel, which he described as meandering, although in most cases it was approximately 15 feet offshore, unless there was a dock present. The Committee at that time insisted that the ordinance prohibit construction of docks and piers that encroach into the channel, he explained, noting that the size of the flood tide shoal was also a concern. In further discussion, Chairman Finlay agreed that in certain areas an extended dock length would not impede navigation, while in other areas it would. Vice Chairman Kroeschell noted that the bathymetric surveys of Moorings Bay performed by Bill Lazear, of the Save the Bays organization, indicate silting in the area near 270 Spring Line Drive. He therefore questioned whether the channel's location should be determined by the depiction on the aerial photographs or its actual location at the present time. Vice Chairman Kroeschell further stated that former Chairman Ron Pennington had maintained that the channel's location is identified on the aerial photographs and the property owner is obliged to dredge, if insufficient depth prevents access to the channel. He however acknowledged that it is unclear who is responsible for dredging silted areas. Dr. Staiger said he believed the taxing district bears the responsibility for dredging silted areas, because it had created the channel. As an alternative to dredging, he noted that it also possible for the taxing district to mark the meandering locations in order to clarify the present location of the channel, rather than fund relocation of the channel to its previous position. The Florida Department of Environmental Protection (DEP) prefers alternatives to dredging that reduce the disturbance to the water body and other effects, he explained.

In response to Member Bozzo, Dr. Staiger explained that, in his position as Natural Resources Manager, he utilized dividers and the given scale to ascertain approximate measurements on the series of aerial photographs depicting the channel. Dr. Bauer noted that he followed a similar method; although, he said, he is not convinced that the channel was ever very close to the shoreline near 270 Spring Line Drive. He said this is because the adjacent property to the south had an existing 40-foot pier at the time of dredging, and the one to the north also had an existing pier; therefore, it is unlikely that the contractor actually dredged near the shoreline between the two piers. Dr. Staiger agreed. In further discussion, Dr. Bauer referred the Committee to City Attorney Robert Pritt's memorandum on this matter (a copy of which is contained in the file for this meeting in the City Clerk's Office). Vice Chairman Kroeschell nevertheless stressed that the text of the ordinance states that the channel lies generally 15 to 20 feet offshore. In response to Chairman Finlay, Dr. Staiger confirmed that within the last few years he had contacted Building Official Paul Bollenback to encourage utilization of the aerial photographs when considering pier permit applications. He also confirmed that, during the prior dredging, the channel was dredged 50 to 60 feet from the shoreline in some areas due to the inability of the equipment to operate in confined spaces, such as corners.

Member Bozzo expressed concern with utilizing depth measurements to identify the current location of the channel. Chairman Finlay also pointed out that depth is not mentioned in the ordinances that refer to the perimeter channel. The Committee then entered into a brief discussion pertaining to the accuracy of the channel as depicted on the series of aerial

photographs, questioning whether bathymetric data or the drawing of the channel on the aerials should prevail.

Member Katz suggested that the Committee recommend revisions to the Code of Ordinances in order to clarify the matter. Vice Chairman Kroeschell however disagreed, describing the current ordinances as satisfactory. In response to Chairman Finlay, Dr. Staiger explained that he had allowed property owners to provide bathymetric data to determine the channel location, which would prevail if it differed from the depiction on the aerials. Dr. Bauer expressed concern that any clarification would likely require a textual description of the perimeter channel's location at all points throughout Moorings Bay. Chairman Finlay noted that an expensive alternative is to perform maintenance dredging of the channel in order to return it to its state in 1991. In further discussion, Member Bozzo observed that although the ordinance references the aerial photographs, it does not instruct staff to utilize them with regard to permit approvals.

The Committee briefly discussed the issue of pier configuration and related terminology, notably marginal pier, L-shape, T-shape, shore normal, catwalk, walkway, and dock. Dr. Staiger explained that the Committee, at the time of drafting the ordinances, was concerned that individuals were attempting to create additional backyard recreational space using large decks and piers, which shade the shoreline habitat and create an environmental issue. He clarified that a marginal dock, or wharf, is attached to the seawall and may extend five feet. A shore parallel L- or T-shape pier is also acceptable, he said, but he did believe the Committee had never fully resolved issues surrounding the permissibility of catwalks. Dr. Staiger informed the Committee that in narrow corners of Moorings Bay, U-shape docks extending straight into the water were permitted, due to a restrictive shoreline and resulting challenges to navigation.

Vice Chairman Kroeschell provided the Committee with definitions for the terms catwalk and outboard (a copy of which is contained in the file for this meeting in the City Clerk's Office), stressing that the reference point is the vessel, not the shore. Many subdivisions in the City, Dr. Staiger said, have a wharf limit line platted, which is essentially five feet parallel to the property line, extending into the adjacent body of water.

Member Bozzo utilized a set of drawings to further discuss permitted configurations with Dr. Staiger (a copy of which is contained in the file for this meeting in the City Clerk's Office). Both Drs. Bauer and Staiger agreed that the various configurations were permissible under the Code. Dr. Bauer however indicated that the piers labeled "C" and "U" would be permissible in his opinion only if the catwalk is located outboard of the lift. Dr. Staiger explained that catwalks positioned outboard of the lift had been prohibited to prevent creation of sufficient space on the outside of the catwalk to moor another vessel, which may encroach into the channel. In response to Committee inquiry, Dr. Staiger said he believed the pier configuration at 270 Spring Line Drive conformed to the regulations set forth in the Code of Ordinances; Vice Chairman Kroeschell however disagreed. In further discussion, Dr. Staiger noted that the regulations may require revision in order to reflect current trends in usage and configuration.

Chairman Finlay expressed appreciation to Dr. Staiger for attending that day's meeting and providing historical information pertaining to this issue. In further discussion of the ordinances, Dr. Staiger noted that vast revisions would likely be unnecessary but clarification of terminology may be helpful. He also suggested that the Committee consider prevailing design standards for docks and piers, if either ordinance is revised in the future. Members Katz and Kroeschell suggested that the Committee designate an allowable width for catwalks; Dr. Staiger said he

believed a catwalk is typically two to three feet wide, in terms of dock construction. Vice Chairman Kroeschell also noted that pilings can be wrapped to address concerns regarding leeching of chemicals into the water.

CITIZEN CORRESPONDENCE REGARDING 270 SPRING LINE DRIVE.....ITEM 8

Chairman Finlay stated that he had received an email from City Attorney Robert Pritt (a copy of which is contained in the file for this meeting in the City Clerk’s Office), which confirmed that the Committee does not have jurisdiction or an obligation to take action, with regard to the pier constructed at 270 Spring Line Drive. He further explained that City Attorney Pritt had advised the Committee to refrain from taking action regardless of its willingness to delve into the matter.

Public Comment: (10:29 a.m.) **Buzz Adams, 320 Spring Line Drive**, said he did not wish to address the email from City Attorney Pritt, but stressed that Section 52-96 of the Code of Ordinances does not describe the location of the channel using the term “generally.” He also pointed out that the Committee has the power to grant exceptions to the regulations set forth in the Code upon submission of a petition to the City Manager. Mr. Adams also asserted that the pier constructed at 270 Spring Line Drive is in violation, because an exception had not been granted prior to permitting. He urged the Committee to adhere to the Code. Vice Chairman Kroeschell agreed with his position, noting that he disagreed with City Attorney Pritt’s opinion on this matter.

Chairman Finlay said he believed the permit should have been submitted to the Committee for review, due to its encroachment on the channel; he however indicated that he likely would have supported approval for the exception. He stressed that the Committee has no jurisdiction in the matter, given that the pier had been permitted and constructed; Member Katz concurred.

PROPOSAL TO CITY COUNCIL.....ITEM 9

Chairman Finlay stated that he had submitted a proposal to City Council and City Manager William Moss, which expressed the Committee’s desire to revise Sections 52-96 and 56-93 of the Code of Ordinances to clarify regulations concerning pier construction in the Moorings Bay system. The letter, he said, also requested advice or direction with regard to the possibility of instituting water quality testing, noting that City Attorney Robert Pritt had addressed the water quality issue in his February 24 memorandum. (Copies of both documents are contained in the file for this meeting in the City Clerk’s Office.) Chairman Finlay suggested that Members review the memorandum in preparation for further discussion at the next meeting.

RESERVE AND ADMINISTRATIVE CHARGE.....ITEM 10

Noting his upcoming term expiration, Chairman Finlay explained that he wanted to provide background information for the Committee due to the possibility that the City may consider assessing the taxing district an administrative charge. He noted that this had been attempted previously, but former Committee Chairman Ron Pennington had been strongly opposed. Member Katz noted that Mr. Pennington had recently contacted staff via email to express his position in this regard. (It is noted for the record that a copy of this correspondence is contained in the file for this meeting in the City Clerk’s Office.)

Chairman Finlay also noted that Finance Director Ann Marie Ricardi had responded to his email inquiry (a copy of which is contained in the file for this meeting in the City Clerk’s Office) with regard to the investment of taxing district funds. He pointed out that district funds are invested with the entire City’s pool; therefore, the risk of investment, which he described as nominal, is shared equally.

PASS APPROACH CHANNEL SHOALING.....ITEM 11

Natural Resources Manager Michael Bauer explained that the request for qualifications (RFQ) had been issued to obtain engineering, design, and permitting services for three areas of shoaling: near Marker 14 north of Doctors Pass, near Beacon House condominium, and the southern extension of the flood tide shoal. He further noted that Member Katz had participated in the selection committee, which had ranked the nine responding firms, and negotiations will proceed with the top-ranked firm. Dr. Bauer also informed the Committee that he had initially contacted three local dredging firms to perform the work, but that each had requested engineering data regarding the quantity of sediment to be removed.

In response to Member Katz, Dr. Bauer explained the RFQ process, noting that the selection committee reviews and ranks the qualifications of the firms, rather than considering bids or other cost factors. Once City Council approves the ranking, the City enters into negotiations with the top-ranked firm, although if an agreement cannot be reached, negotiations may commence with the second-ranked firm. The RFQ process, he clarified, is required by both state and federal law.

Member Katz briefly explained the process employed by the selection committee to rank the qualifications of the nine firms. Chairman Finlay noted that the RFQ process ensures that the firm selected to perform the work is qualified and able to complete the project. In response to Member Kuller, Dr. Bauer confirmed that the project timeline is yet undetermined, due to the length of the permitting process. Chairman Finlay expressed concern regarding the time frame for completion, pointing out that the areas under discussion for spot dredging would be included in the Doctors Pass project. Member Katz predicted that dredging of Doctors Pass would occur in approximately two years, but pointed out the immediate need for spot dredging. He also noted that any area spot-dredged may be eliminated from the Doctors Pass dredge, in order to avoid duplication. Chairman Finlay however stressed that although the taxing district must fund any spot dredging, the Collier County Tourist Development Council (TDC) provides reimbursement for the Doctors Pass dredging. Dr. Bauer noted that the annual survey of Doctors Pass is underway, and additional information will be available soon. Chairman Finlay urged staff to ensure that the spot dredging project proceeds as expeditiously as possible.

Chairman Finlay also noted he had contacted Waterfront Operations Manager Mike Klein to inform him that a recently installed buoy needed to be relocated further south. He also questioned the positioning of the new buoy near Beacon House condominium, which may require relocation approximately 50 feet westward.

NORTH JETTY CONTRACTITEM 12

Natural Resources Manager Michael Bauer stated that the Florida Department of Environmental Protection (DEP) is currently reviewing the permit application, although one request for additional information had been issued.

NO WAKE SIGNAGEITEM 13

Natural Resources Manager Michael Bauer informed the Committee that installation of appropriate signage had been completed.

PUBLIC COMMENTSITEM 14

None.

MEMBER COMMENTSITEM 15

Noting that the Committee had solicited advice from City Attorney Robert Pritt, Member Katz questioned whether the taxing district is charged for the issuance of legal opinions. Chairman Finlay said he believed it to be a City expense; Natural Resources Manager Michael Bauer concurred.

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In response to Member Bozzo, Dr. Bauer recommended that the Committee review City Attorney Pritt’s February 25 memorandum (See Item 7) prior to further discussion of the pier constructed at 270 Spring Line Drive.

Chairman Finlay informed the Committee that City Council will review water quality issues pertaining to Moorings Bay and Clam Bay at its workshop on May 5. In further discussion of water quality, Dr. Bauer confirmed that the City is now able to provide input to the entities involved in the management of the Clam Bay estuary.

NEXT MEETINGITEM 16

Chairman Finlay announced that the next meeting is scheduled for March 11, 2008.

ADJOURNITEM 17

10:55 a.m.

Doug Finlay, Chairman

Michael Bauer, Ph.D.
Natural Resources Manager

Minutes prepared by:

Rachael McLean, Technical Writing Specialist

Minutes Approved: April 15, 2008