



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – August 16, 2006 – 9:00 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL ITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor

Council Members:

William MacIlvaine
Gary Price, II
John Sorey, III
Penny Taylor
William Willkomm, III

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Victor Morales, Emergency Services Director
Tara Norman, City Clerk
Vicki Smith, Technical Writing Specialist
Robin Singer, Community Development Director
Stephen Olmsted, Planning Administrator
Paul Bollenback, Building Official
Dan Mercer, Public Works Director
Tony McIlwain, Planner II

Jason Stephens
Jennifer Stephens
Carl Suarez
Harold Oldak
Dorothy Hirsch
Jill Oldak
James Clare
Gary Kluckhuhn
Valerie Tausch
Judith Chirgwin
Mike Riley

Terry Green
Steve Kinney
Kris Dane
Frank Perrucci
Henry Kennedy
Dave Bedtelyon
Chris Lecroy
Richard Yovanovich
Tim Rushing
Henry Johnson

Jada Anastasia
Nicole Lombillo
John Passidomo
Dave Wainscott
Charles Thomas
Burt Guirado
Media:
Aisling Swift, Naples Daily News

Other interested citizens and visitors.

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

Pastor Michael McKellar, Naples Church of God

ANNOUNCEMENTS ITEM 3

None.

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

MOTION by Nocera to SET THE AGENDA continuing Item 6-o (Carver Apartment lease amendment) and Item 11 (Live Entertainment Petition 06-LE2 and Residential Impact Statement Petition 06-RIS6 – Joseph Pappaceno) until the September 6, 2006, regular meeting; withdrawing Item 10 (Variance Petition 06-V7 – Dennis R. Egudi); and adding Items 19 (appointment to Carver Finance Board) and 20 (City Attorney request for executive sessions). This motion was seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....ITEM 5

(9:04 a.m.) **Carl Suarez, 479 Rudder Road**, expressed concern regarding the proposed millage rate increase and asked why it was deemed necessary. City Manager Robert Lee enumerated such factors as Hurricane Wilma recovery and a transfer into the streets fund of over \$1 million to underwrite resurfacing as well as a \$700,000 police and fire pension expenditure and a property insurance rate increase of approximately 300%. City Manager Lee further noted employee health insurance and salary increases approximating \$2 million as additional causes. Council Member Sorey pointed out that prior to budget approval, two public hearings are scheduled, one on September 6, and the other on September 20, both at 5:05 p.m. Mr. Suarez then addressed the building inspection process, stressing that improvements must be made or someone held accountable when variance requests are then necessitated. (It is noted for the record that Mr. Suarez initially indicated that he wished to comment regarding the variance request listed as Item 7 on that day’s agenda. City Attorney Robert Pritt however indicated that due to the quasi-judicial nature of this item, all testimony must be under oath and heard within the proceeding itself.) **Frank Perrucci, 1848 Harbor Place**, suggested that stormwater be captured for non-potable uses. Council Member Taylor pointed out that it was her belief that staff is currently researching the possibility of requiring commercial property to install holding tanks for capturing stormwater.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 6-a

June 5, 2006; Workshop, June 5, 2006; Special Meeting, June 7, 2006; Regular Meeting, June 12; 2006, Workshop, and June 14, 2006, Regular Meeting, as submitted. (It is noted for the record that later in the meeting this item was reconsidered at the request of Council Member Taylor so that minute approval could be continued to the next meeting.)

SPECIAL EVENTS ITEM 6-b

- 1) Downtown Naples Fall Art and Stone Crab Festival – Fifth Avenue South Association – Fifth Avenue South and Park Street – 10/21/06, 10/22/06 (*Amended request – originally submitted to City Council on 10/05/05 as Downtown Naples Fall Art Festival and Sidewalk Sale scheduled for 10/14/06, 1015/06*).
- 2) Naples Daily News Jazz Band Concert – Community Services Department Cultural Arts Program – Cambier Park Bandshell – 10/15/06.
- 3) Philharmonic Orchestra Concert – Community Services Department Cultural Arts Program – Cambier Park Bandshell – 10/29/06.
- 4) Wine and Cheese Reception – Greater Naples Leadership – Sugden Plaza – 11/01/06.
- 5) Youth Sailing Regatta – Naples Community Sailing Center – Lowdermilk Park – 11/11/06, 11/12/06.
- 6) “Festival of Lights” – Third Street South Association – Third Street South Shopping District – 11/20/06.

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- 7) Thursdays on Third (2006) – Third Street South Association – Third Street South Association – Third Street South Shopping District - 11/02/06, 11/09/06, 11/16/06, 11/30/06, 12/07/06, 12/14/06, 12/21/06, 12/28/06.
- 8) “Celebration of Lights” – Third Street South Association – Third Street South Shopping District – 11/21/06, 11/22/06, 11/24/06, 11/25/06.
- 9) “Thursdays on Third” (2007) – Third Street South Association – Third Street South Shopping District - 01/04/07, 01/11/07, 01/18/07, 01/25/07, 02/01/07, 02/08/07, 02/15/07, 02/22/07, 03/01/07, 03/08/07, 03/15/07, 03/22/07, 03/29/07, 04/05/07, 04/12/07, 04/19/07, 04/26/07, 05/03/07, 05/10/07, 05/17/07, 05/24/07, 05/31/07.
- 10) Music Makers Concert – Community Services Department Cultural Arts Program –Cambier Park Bandshell - 01/07/07, 04/22/07.
- 11) Naples Concert Band Concert – Community Services Department Cultural Arts Program – Cambier Park Bandshell – 01/14/07, 02/04/07, 03/18/07.
- 12) Gulf Coast Big Band Concert – Community Services Department Cultural Arts Program – Cambier Park Bandshell – 01/21/07, 02/11/07, 03/11/07, 04/01/07.
- 13) Naples Patriotic Moment – Merrill Lynch – Sugden Plaza – 01/21/07, 01/22/07, 01/23/07, 01/28/07, 01/29/07, 01/30/07, 02/04/07, 02/05/07, 02/06/07, 02/11/07, 02/12/07, 02/13/07, 02/18/07, 02/19/07, 02/20/07, 02/25/07, 02/26/07, 02/27/07, 03/04/07, 03/05/07, 03/06/07, 03/11/07, 03/12/07, 03/13/07, 03/18/07, 03/19/07, 03/20/07, 03/25/07, 03/26/07, 03/27/07, 04/01/07, 04/02/07, 04/03/07.
- 14) Naples Daily News Jazz Band Concert – Community Services Department Cultural Arts Program – Cambier Park Bandshell – 01/28/07, 02/18/07, 03/25/07, 04/15/07, 05/13/07.
- 15) Naples National Art Festival – Naples Art Association – Cambier Park – 02/24/07, 02/25/07.
- 16) 19th Annual Depot Antique Auto Show – Naples / Marco Island Antique Auto Club – Naples Depot – 03/03/07.
- 17) Marco Island Strummers Concert – Community Development Department Cultural Arts Program – Cambier Park Bandshell – 05/06/07.
- 18) 4th of July Fireworks (2007) – City of Naples – Naples Pier – 07/04/07.
- 19) 4th of July Parade (2007) – City of Naples – Third Street South and Fifth Avenue South 07/04/07.
- 20) Heart Walk – American Heart Association – Cambier Park – 11/17/07.
- 21) Christmas Parade (2007) – City of Naples – Third Street South and Fifth Avenue South – 12/11/07.
- 22) New Year’s Eve Fireworks (2007) – City of Naples – Naples Pier – 12/31/07.
- 23) Halloween Party (private) – John Cox – 13th Street North – 10/31/06.
- 24) Wedding – Inn on Fifth – Inn on Fifth Courtyard – 11/04/06.
- 25) Concert in the Park – Center Point Community Church – Cambier Park Bandshell – 09/16/06.
- 26) Art Festival – Naples Art Association Tenth Street South – 11/25/06, 11/26/06.

RESOLUTION 06-11270.....ITEM 6-c
A RESOLUTION APPROVING A SECOND AMENDMENT TO THE PURCHASE AND SALE OF GOODS AGREEMENT BETWEEN THE CITY OF NAPLES AND EVANS OIL COMPANY, INC., TO PROVIDE ADDITIONAL GASOLINE AND DIESEL FUEL TO THE NAPLES CITY DOCK; AMENDING THE 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11271..... ITEM 6-d
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962, FOR THE PURPOSE OF APPROPRIATING FUNDING FOR AN INCREASE IN PROFESSIONAL SERVICES AT ARTHUR L. ALLEN TENNIS CENTER; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11272.....ITEM 6-e
A RESOLUTION ACCEPTING EASEMENTS FROM PROPERTY OWNERS ADJACENT TO GULF OF MEXICO BEACHES IN CONJUNCTION WITH THE 2006 COLLIER COUNTY BEACH RENOURISHMENT PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11273..... ITEM 6-f
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND BONNESS, INC., FOR THE CONSTRUCTION OF A FIVE (5) FOOT WIDE SIDEWALK ON BOTH SIDES OF NEAPOLITAN WAY TO CRAYTON ROAD FROM WEST BLVD. ON THE NORTH SIDE (APPROXIMATELY 1,450 LF) AND BELAIR LANE ON THE SOUTH SIDE (APPROXIMATELY 1,200 LF); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11274.....ITEM 6-g
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND LAS CONSTRUCTION CORPORATION FOR THE SIDEWALK IMPROVEMENTS ON 9TH STREET SOUTH BETWEEN 8TH AVENUE SOUTH AND 10TH AVENUE SOUTH; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11275..... ITEM 6-h
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND VANDERBILT BAY CONSTRUCTION, INC., FOR ROOF REPLACEMENT AT NAPLES POLICE AND EMERGENCY SERVICES BUILDING; AMENDING THE FY 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11276.....ITEM 6-i
A RESOLUTION APPROVING CONTRACT AMENDMENTS FOR PLAN ADMINISTRATION SERVICES FOR THE CITY OF NAPLES SUPPLEMENTAL RETIREMENT PLAN WITH NATIONWIDE (FORMERLY PEBSCO), AS ADOPTED BY RESOLUTION 95-7381, TO REDUCE ASSET MANAGEMENT FEES AND TO UPDATE THE FEE STRUCTURE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11277..... ITEM 6-j
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2005-06 BUDGET AND CIP AS APPROVED BY ORDINANCE 05-10962 FOR PURCHASE OF A PLOTTER; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11278.....ITEM 6-k(1)
A RESOLUTION APPROVING A THIRD AMENDMENT TO THE CONSULTING SERVICES AGREEMENT WITH CAPRI ENGINEERING, LLC, TO CONTINUE THE PROFESSIONAL INSPECTOR SERVICES FOR THE CITY'S COMMUNITY DEVELOPMENT DEPARTMENT; AMENDING THE FY 2005-06 BUDGET ADOPTED

BY ORDINANCE 05-10962; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11279.....ITEM 6-k(2)
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND AARONS STAFF TO PROVIDE STRUCTURAL PLAN REVIEW SERVICES FOR THE COMMUNITY DEVELOPMENT DEPARTMENT; AMENDING THE FY 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11280.....ITEM 6-k(3)
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND MAGUIRE ENGINEERING SERVICES, INC., TO PROVIDE MECHANICAL AND PLUMBING PLAN REVIEW SERVICES FOR THE COMMUNITY DEVELOPMENT DEPARTMENT; AMENDING THE FY 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10952; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11281.....ITEM 6-l
A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE CITY MANAGER IN ENTERING INTO A PURCHASE AND SALE OF GOODS AGREEMENT BETWEEN THE CITY OF NAPLES AND STEELE TRUCK CENTER, INC., FOR AN EMERGENCY EXPENDITURE IN ORDER TO PURCHASE TWO RECYCLING COLLECTION TRUCKS; AMENDING THE FY 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11282.....ITEM 6-m(1)
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE PURCHASE AND SALE OF GOODS AGREEMENT EXTENDING THE AGREEMENT PERIOD WITH EVANS OIL COMPANY, INC., FOR THE PURCHASE OF ADDITIONAL GASOLINE AND DIESEL FUEL; AMENDING THE 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962; AUTHORIZING THE CITY MANAGER TO EXECUTE THIS FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11283.....ITEM 6-m(2)
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT WITH NATIONAL TRANSPORT, INC. D/B/A PRODUCTION TIRE FOR TIRES AND TIRE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11284..... ITEM 6-n
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT AMONG THE CITIES OF PORT ORANGE, NAPLES AND PANAMA CITY MUTUALLY COOPERATING TO COORDINATE PRE-DISASTER PLANNING; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Continued – see item 4)ITEM 6-o
A RESOLUTION RELATING TO THE GEORGE WASHINGTON CARVER APARTMENTS PROPERTY; APPROVAL OF THE SECOND AMENDMENT TO LEASE AGREEMENT TO EXTEND THE GROUND LEASE TERM TO AUGUST 1, 2056; APPROVAL OF THE AMENDMENT TO AMENDED AND RESTATED GROUND SUBLEASE TO EXTEND THE TERM OF THE GROUND SUBLEASE TO JULY 1, 2056; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11285..... ITEM 6-p
A RESOLUTION APPROVING ACTION STEPS FOR IMPROVEMENTS TO THE RIVER PARK NEIGHBORHOOD; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11286..... ITEM 6-q
A RESOLUTION APPROVING THE DESIGN PLAN PREPARED BY GOETZ & STROPES AS PART OF UPDATING THE 5TH AVENUE LANDSCAPE DESIGN, INCLUDING SPRING LAKE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Nocera to APPROVE CONSENT AGENDA except Item 6-o; seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

MOTION by Willkomm to RECONSIDER CONSENT AGENDA ITEM 6-a; seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes)

MOTION by Taylor to CONTINUE CONSENT AGENDA ITEM 6-a TO SEPTEMBER 6, 2006; seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

END CONSENT AGENDA

RESOLUTION 06-11287..... ITEM 7
A RESOLUTION DETERMINING VARIANCE PETITION 06-V8 FROM SECTION 102-176 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES A MINIMUM FRONT YARD OF 30 FEET, IN ORDER TO PERMIT THE CONSTRUCTION OF A HOME TO ENCROACH 14 FEET, 4 INCHES INTO THE REQUIRED FRONT YARD AT 1680 DOLPHIN COURT, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:24 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/visited the site, spoke with adjacent property owner and Landscape Architect Russell Bencaz, received various emails from the public, spoke with City Attorney Robert Pritt and City Manager Robert Lee, and reviewed the video of the Planning Advisory Board (PAB) meeting of July 12, 2006; Price/visited the site, spoke with petitioner’s agent, spoke with Rex Storter and City Manager Robert Lee, reviewed video of the PAB meeting of July 12, and received emails from the public; Nocera/visited the site, spoke with the petitioner, and received emails from the public; Barnett/visited the site, received emails from the public and spoke with the petitioner, petitioner’s agent and petitioner’s builder; Taylor/visited the site, spoke with petitioner’s agent and City Manager Robert Lee, and received email from the public; MacIlvaine/visited the site, spoke with petitioner’s agent, neighbors and City staff, and received emails from the public; and Sorey/visited the site, spoke with petitioner’s agent, neighbors, and City staff, received emails from the public, reviewed video of the PAB meeting referenced above and spoke with Mark Nourse, general contractor.

City Manager Robert Lee explained that Community Development Director Robin Singer would introduce the item, then the petitioner’s agent, Richard Yovanovich, would give his presentation, with staff following Mr. Yovanovich. Director Singer indicated that this variance deals with a

front yard setback requirement, the measurement having been taken from the chord rather than the property line. This action resulted in an intrusion of 14 feet, 2.4 inches into the required front yard setback of 30 feet.

Attorney Richard Yovanovich, representing the petitioners Jason and Jennifer Stephens, indicated that in addition to the Stephenses, contractor Tim Rushing, architect David Wainscott, and Henry Johnson, the Wainscott attorney, were present to respond to Council as needed. He explained that the variance footage impacts the garage, the entrance to the home, and another room. He took the position that the City had in fact been an active participant in the development of this issue, pointing out that the plans approved by the City clearly depict the location not only of the property line but the chord line, the point from which the front yard setback had been measured. Mr. Yovanovich then outlined a chronology of events (Attachment 1), explaining that this is the first home the petitioners had undertaken to build and that because the designer of the home, South Florida Architectural Associates, carried no errors and omissions coverage, the petitioners would be responsible for the cost of resolving the issue at hand which was estimated at \$720,000 if the structure were demolished. Although the home in question is not the architect's first project in the City, it is the first involving a cul-de-sac, Mr. Yovanovich pointed out. He said that the architect had indicated that during the plan review process an issue concerning a spatial design flaw and a slight encroachment of an entry planter had been discovered by the plans reviewer. This, he said, indicated that staff had been reviewing the front setback. The plans were subsequently approved and construction commenced. Referring to the site plan, Attorney Yovanovich pointed out that the front setback had been clearly indicated as being measured from the chord, not the property line, the original plans having followed slight design adjustment to address the spatial design issue. He referred to a history of the inspection process (Attachment 2), noting that the project had passed inspections until a stop-work order was issued when a spot survey revealed a problem with the front yard setback. Although Henry Johnson, attorney for the architect, attempted to resolve this issue with the City, Mr. Yovanovich said, Mr. Johnson had been told that staff did not have authority to do so. Therefore, the petitioners decided to seek a variance.

Mr. Yovanovich then explained that there was insufficient space on the property to relocate the structure farther to the rear. He also took issue with staff's recommendation for denial based on the criteria for granting a variance; namely, that the plight of the applicant is in fact, due to unique circumstances not created by the applicant. The plans, which clearly depict the property line and the location of the chord line from which the setback had been measured, had been approved by the City, he said, and further asserted that at one time the City had actually allowed the chord line to be used to measure front yard setbacks. He also questioned the City's accountability in its review process since the plans for the structure had been reviewed, approval given for construction to commence, and several building site inspections had taken place. Mr. Yovanovich referred to other homes on the same cul-de-sac with setbacks similar to the home in question, suggesting that they may have also been built when the chord measurement method was in effect. Collier County and the City of Marco Island still use the chord method for measuring front setbacks, he added.

Attorney Yovanovich then addressed the special circumstances criterion contained in the variance process, pointing out that construction had advanced considerably which would result in the aforementioned economic loss if the structure were to be demolished. In addition, the Stephens home is located within the R1-10 Residence District and would constitute no

enlargement of any particular nonpermitted use since single-family homes are allowed there. In conclusion, Mr. Yovanovich stated that he felt the front yard setback would not be an issue if other properties on the street were redeveloped. He reminded Council of the recommendation for approval of this petition by the PAB which had deemed the case at issue to involve unusual circumstances.

Petitioner Jennifer Stephens said that this is the first home she and her husband had attempted to build and that they had chosen their architect based on recommendations by three individuals. She said they now realized their error in not requesting the information in writing; however, it would be financially devastating for her family to rebuild since the architect does not carry errors and omissions insurance. Mrs. Stephens explained that the house was designed especially for her family of five and that the plans had been approved by City staff and building permits issued; the construction had passed three inspections, she said, and she and her husband had accrued \$459,000 in building costs. When the City directed them to stop building, Community Development Director Robin Singer told them that while the staff had made a mistake, it did not have the authority to approve the setback involved and instructed them to apply for a variance. Mrs. Stephens concluded by saying that she and her husband had made every attempt to comply with City requirements and that City staff should have protected them by not approving the original plans if an error had existed.

Characterizing the circumstances of this case as unfortunate, Council Member Sorey took the position that some of the responsibility nevertheless resides with the petitioners in not confirming that the architect carried errors and omissions insurance, nor ascertaining whether he was licensed. There is therefore blame for all involved he said, but noted that a stamp which the City affixes to plans states that building permit issuance does not constitute final acceptance of plans or specifications, and that work may be halted at any time for non-compliance. In dialogue with contractor Tim Rushing, Mr. Sorey learned that a licensed surveyor had advised that the building was positioned exactly in accordance with the blueprints; Mr. Rushing also confirmed that this was the first home that his company had built on a cul-de-sac. Mr. Sorey then asked whether the garage could be removed, thus lessening the extent of variance needed. Mr. Yovanovich responded that while this could be done, a total rebuild would be necessary, saying that avoiding a rebuild was the reason for the variance application.

In response to Council Member Price, Attorney Yovanovich redefined his earlier argument that adjacent homes may be set back the same or a similar distance from the cul-de-sac as the Stephens residence and thus constituting a unique circumstance. Mr. Yovanovich continued that this therefore makes the land peculiar, considering the location and what presently exists there. As far as the uniqueness of the particular structure, the petitioners had done all that they could to comply with City regulations, several inspections had been passed for construction to reach the level that it had, he said, and that this level of construction is not found on typical variance petitions. (It is noted for the record that documentation and exhibits pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.)

Responding to Council Member Taylor, Mr. Yovanovich clarified that while the Stephens residence was Mr. Wainscott's first design on a City cul-de-sac, he had designed 11 other homes in the City and over 600 throughout Collier County and Marco Island, reiterating that these latter entities use the chord method of measurement. Miss Taylor also received confirmation that

Jason and Jennifer Stephens are the sole owners of the property in question although they do own other properties. In response to Council Member MacIlvaine, Mr. Yovanovich stated that the contractor had prepared both an estimate of costs to date and an estimate to rebuild up to the present state of construction (Attachment 3). Mr. MacIlvaine took issue with the measurement that had asserted 38 feet of front yard to the curb of the cul-de-sac. Mr. Yovanovich said that he had endeavored to depict any ramifications to the public and that the home would in fact at the closest point, be the aforementioned 38 feet. Council Member Willkomm indicated that he had visited the site and that the home in question appears to overpower others on the cul-de-sac, suggesting that in this manner it would be impacting the financial wellbeing and quality of life of surrounding homeowners. Mr. Yovanovich pointed out that in order to meet new Federal Emergency Management Agency (FEMA) flood elevations the structure is automatically positioned higher than existing homes; furthermore, escalating land costs in the City result in homes being built to the legal limits, he added.

Referring to prior statements by Mrs. Stephens, Petitioner Jason Stephens stressed that a larger home is being built to enable his family to live comfortably, not in an effort to increase its value.

In response to Council Member MacIlvaine, Architect Wainscott affirmed that none of the second story is impacted by the variance, noting that the second story covers approximately one-third of the garage. Mr. Wainscott also indicated that the distance from the floor of the garage to the peak of the roof of the garage would be 15 feet.

Henry Johnson, attorney for Architect Wainscott, stated for the record that South Florida Architectural Associates had since 2001 built 19 custom homes within the City as well as 11 remodeling projects and 2 condominium renovations; the firm has also designed over 600 single family homes in Collier County. He stressed the company's concern with reference to the outcome of this petition, cautioning Council however not to base its decision on the size of the home since it is in conformance with Code. He concluded by noting that the Stephenses were building their home in good faith and hoped that Council would approve the variance sought. In further response to Council Member Sorey, Mr. Wainscott said that, as a small firm, he and his partner are involved in all projects designed. Council Member MacIlvaine asked whether the architectural firm carried errors and omissions insurance. Attorney Johnson responded that he felt this was not an issue in regard to the variance petition, but said that to his knowledge the firm did not have this type of insurance.

Recess: 10:39 a.m. to 10:49 a.m. It is noted for the record that all members were present when Council reconvened except Member Willkomm, who returned at 10:51 a.m.

Upon return from recess, City Council Members made the following additional ex parte disclosures: Sorey/spoke with Attorney Richard Yovanovich and Aisling Swift, Naples Daily News reporter; MacIlvaine and Barnett/spoke with Ms. Swift; Taylor/spoke with Ms. Swift and staff; Price/spoke with petitioners; Nocera/spoke with various affected neighbors and; Willkomm/spoke with Henry Kennedy, Joseph Biasella and various citizens not associated with this variance.

Mayor Barnett asked for clarification of whether any work had been done on the site after March 29 when the spot survey was submitted and a letter of rejection was issued and picked up by contractor. Attorney Yovanovich replied that interior walls and wooden braces for the second floor had been installed; he then provided Council with an itemized estimate by the contractor of

projected costs should a variance be denied and the petitioners forced to rebuild to current status (See Attachment 3).

Community Development Director Robin Singer gave an electronic presentation which included photographs of the subject property, abbreviated chronology of events, a partial site drawing depicting the front yard setback and criteria for granting a variance. (It is noted for the record that a printed copy of this presentation is contained in the file for this meeting in the City Clerk's Office.) She noted that the intrusion into the front yard setback is calculated at 14 feet, 2.4 inches and that the spot survey which first noted the encroachment was dated March 29 although no survey had been done to verify setbacks in conjunction with two previous inspections involving the slab and the block wall and tie beams. She then reviewed the plans and described the location of the structure 30 feet from the property line, not the chord line. Additionally, she explained that while the setbacks of adjacent homes appeared to be calculated from the property line, at the time they were built chord measurements may have been allowed. Staff recommends denial of the variance, she said, on the grounds that it does not meet the applicable criteria as provided in Section 86-205 of the Code of Ordinances. In further clarification, Ms. Singer stated that this was based on the finding that the plight of the applicant was not due to unique circumstances not created by the applicant (Section 86-205(c)(3)(a)); nor did special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same district (Section 86-205(c)(3)(b)); and that the subject property was a lot which could be built upon. She continued by noting that in reference to Section 86-205(c)(3)(c), the proposed structure is a permitted use within the R1-10 Residence Zoning District where it is located. In conclusion, she said that PAB had recommended approval at the July 12 meeting with a vote of five-to-two.

Building Official Paul Bollenback reviewed his memo of August 15, 2006, which he described as a sequence of events regarding the stop work order issued to the property on April 7 (Attachment 4). City Attorney Robert Pritt pointed out that this document was in response to claims of the City's responsibility in this matter. Mr. Bollenback also reviewed his prior memo of August 8 (Attachment 5), noting the following references included therein: January 4, building permit/receipt; March 17, slab inspection passed; March 24, block wall and tie-beam inspection passed; March 29, spot survey submitted by contractor was denied due to the encroachment; April 6, staff noticed continued work on site; and April 7, stop work order was posted. He made reference to the aforementioned August 15 memo and its attachments, dealing with the January 4, building permit/receipt signed by the contractor (which indicates a survey requirement, a front yard setback of 30-feet, and the application value of construction at \$500,000). Mr. Bollenback also noted that the memo indicates the City of Naples policy dated December 19, 2001, in which it identifies ascertainment of proper setbacks as the contractor's responsibility. He then referred to a report dated April 18, 2006, showing all inspections performed at the site and the aforementioned rejected survey of March 29, adding that the contractor would have been notified by letter at that time. The final items attendant to the August 15 memorandum were listed by Mr. Bollenback as documentation of the application tracking showing the following: date of plan rejection (December 16, 2005), date of plan re-submittal (December 22, 2005), subsequent plan approval (December 29, 2005), and processing by permit specialist (December 30, 2005). In conclusion, Mr. Bollenback emphasized that he had reviewed this matter and in doing so had spoken with the plans examiner responsible for the review and approval of the permit, attributing to human error failure to not recognize that the

architect had used an improper chord measurement. Director Singer added that it is the responsibility of the architect to ensure that design meets Code and that City staff's responsibility is to police these codes to the best of its ability. She indicated that it was unfortunate that the oversight had not been brought to light sooner, but that it nevertheless had been identified and must be rectified.

Noting that Collier County and the City of Marco Island continue to use chord measurement, Council Member Sorey asked whether the City's April 30, 1991, change of measurement method from chord to radius (property line) should have been made by City Council. City Attorney Robert Pritt said that the circumstances surrounding the 1991 interpretation are unknown but the property line method is the most recent interpretation available. Director Singer also noted that chord measurements is not reflected in the Code, therefore measurement must be from the property line. In further response to Mr. Sorey, Mr. Bollenback clarified that the dollar valuation noted on the building permit is provided by the contractor.

Vice Mayor Nocera questioned the initial plan approval process, and Building Official Bollenback explained that typically the contractor, not the architect, submits plans for approval, and that part of the review process involves setbacks. Mr. Bollenback also confirmed that the City is provided a copy of spot surveys; however, inspectors are actually examining for compliance with the Florida Building Code, not setback issues. Furthermore, Vice Mayor Nocera asked whether spot surveys could then be required to be maintained at the building site, and Mr. Bollenback said that this and other safeguards will be researched.

Council Member Price said that, in his opinion, unique circumstances do in fact exist, noting the City's stamp indicating that the plans had been examined for compliance with the Code and also that the setback was measured from the chord. Spatial perception had apparently been an issue early in the permitting process, he said, and according to his understanding, someone would have had to examine the structure very closely using the property line, particularly since a planter was noted to constitute an encroachment into the setback. Even then, he suggested, the chord measurement was missed. Mr. Price asked whether a checklist is used in conjunction with Code compliance before approval of building plans is granted. Mr. Bollenback confirmed that a checklist format is used when reviewing plans. Director Singer also verified for Council Member Taylor that spot surveys are indeed required, not optional. In response to Mayor Barnett staff reported that the individual who had approved the plans in question had left City employ approximately three weeks before, but for reasons unrelated to this variance petition. Council Member Sorey ascertained from Building Official Bollenback that the above referenced checklist is not kept with the record of a building site.

Attorney Yovanovich requested that during the lunch recess he be provided with copies of all documentation referenced during prior testimony by staff. He then asked Mr. Bollenback to describe the procedure followed during inspections of building sites. Mr. Bollenback confirmed that a set of plans must be on site for the inspector's use. Mr. Yovanovich asked for the number of times the plans were used by City staff in the course of their inspections in light of the fact that the chord measurement had not been noted until the March 29 spot survey. Mr. Bollenback again emphasized that these earlier inspections had been to ascertain whether the structure met the Florida Building Code, and Director Singer pointed out that setbacks are not a factor in conjunction with inspections of such elements as grade beams and tie-beams. Mr. Yovanovich concluded by saying that he does not place the blame for this situation solely with City staff, but

that he sought to illuminate what oversights had occurred. Council Member Sorey pointed out that an issue with the planter encroaching into the front setback had nevertheless arisen early in the permitting process; therefore, the front setback was being reviewed and the chord measurement still overlooked.

Public Comment: (11:41 a.m.) **Dorothy Hirsch, 626 Regatta Road and Harold and Jill Oldak, 1700 Dolphin Court**, urged Council to enforce the Code and not grant this variance. **James Clare, 1685 Dolphin Court**, stated that the Code should be enforced and no variance should be granted. Mr. Clare also presented additional names in conjunction with a petition he had submitted prior to the meeting. (It is noted for the record that a copy of this material is contained in the file for this meeting in the City Clerk's Office.) **Gary Kluckhuhn, 2180 Sandpiper Street**, stated that, as a former builder, he had relied heavily on City staff to interpret the code. He supported granting this variance and urged use of the chord measurement in cul-de-sac situations. **Henry Kennedy, Pelican Avenue**, expressed concern that during site inspections only Florida Building Code compliance, but not the City Code, is noted. Mr. Kennedy also urged Council to enforce the Code. **Valerie Tausch, 1355 Marlin Drive**, stated that she owns a similar cul-de-sac property and when she considered building, her initial research revealed no chord measurement was allowed in the City. Since this had limited the size of the home she could construct, it had therefore influenced her decision not to build on the lot. **Chris Lecroy, 4815 Tenth Avenue S.W.**, stated that he is a builder and feels that the variance should be granted since the City had erred. **Terry Green, 2200 Tarpon Road**, said that he feels that the new FEMA flood elevation requirements make houses appear even more massive, but nevertheless urged the denial of this variance. **Steve Kinney, 1409 Dolphin Road**, briefly discussed the issue of encroachments into setbacks and matters dealing with proof of insurance coverage; he said that the Code should be followed by all, just as he had always done. **Kris Dane, 1300 Dolphin Road**, stated that he is a resident of the area and has no objection to the variance.

Recess: 12:19 p.m. to 1:29 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.

Public Comment (cont.): (1:29 p.m.) **Judith Chirgwin, 112 Tenth Avenue South**, urged the public to become more involved in City government, explaining that she feels Council is in need of public comment on various subjects to enable intelligent decision making.

City Attorney Pritt instructed Council that ex parte disclosures must be made following the above referenced recess; therefore, City Council Members made the following assertions: Willkomm/spoke with numerous persons; Price, Nocera, and Barnett/no conversations with anyone regarding this matter; Taylor/conversations with newspaper reporter and Dorothy Hirsch; and Sorey and MacIlvaine/spoke with City Attorney Pritt.

The architect for the petitioner, Dave Wainscott, reviewed for Council the process pursued by his firm in the application process for this project, pointing out that the plans were prepared and then approval received from the petitioners as to the conceptual design. At this point, he explained, a site plan was developed and during late July, 2005, a pre-application meeting was undertaken with City staff wherein spatial perceptions and setbacks were reviewed in conjunction with the R1-10 zoning restrictions. Mr. Wainscott said that building plans were then prepared and given to the builder to submit for permitting, and approval was received. As the architect, he said that he feels the structure in question could not be redesigned and that a total teardown would be necessary.

In his closing comments, Attorney Yovanovich restated his above positions and reminded Council that the petitioners had attempted to build their home within the Code, that they had proceeded in good faith when the plans were initially approved by City staff, and that he respectfully asked that the variance be granted.

In response to Council Member Taylor, City Attorney Pritt expressed the opinion that a staff error does not constitute a reason for approval of a variance; however, the Council is free to make its own interpretation. He continued by citing the following case law in support of his position: Town of Lauderdale by the Sea v. Meretzsky, wherein a building permit issued in violation of law or under mistake of fact may be rescinded although construction may have been commenced, and in Godson v Town of Surfside, the issuance of a building permit will not estop the government authority from enforcing its ordinances in revoking a permit that has been obtained in violation of its ordinances. Council Member Taylor also noted an earlier assertion that the City's role in the application process is to protect the applicant from entering into Code violations with regard to review of plans; City Attorney Pritt however responded that, in his opinion, the mistake made by the staff is not a reason for granting the variance and whether mistakes were made by both parties is another determination to be made. He continued by saying that his interpretation of Council Member Taylor's question is that the role of staff is to protect all citizens, and if an error is made, then it is Council's responsibility to determine accountability. In conclusion, he further responded to Council Member Taylor regarding precedents to the effect that although each case stands alone, and is not binding from a legal standpoint; if similar circumstances are brought before Council however, past actions must be considered. In response to City Attorney Pritt's citation of Meretzsky above, Attorney Yovanovich pointed out that the Stephenses are in fact proceeding as this particular case instructs; namely, that they have come before Council for a variance as an exception to the Code that only the City Council has the power to approve.

(It is noted for the record that the following statements were made prior to the roll call vote on the motion to deny this petition. See below.) Council Member Willkomm explained that he advocated denial because eight of the last ten variance requests to come before the Council dealt with setback issues ranging from 19 inches to 9 feet, and all were denied; therefore, he said he feels no choice exists. In conjunction with his statement, Mr. Willkomm noted a list of variances which had been provided by the City Manager at his request. (It is noted for the record that this document is contained in the file for this meeting in the City Clerk's Office.) Council Member Price however said that, for the first time in his experience, a variance in fact meets all of the criteria for approval, despite the fact that he believed he had voted against the petitions cited by Council Member Willkomm. Council Member Sorey characterized the situation as a very difficult one, and while he said that he would like to vote for approval, he is precluded from doing so by his responsibility to uphold the law of the community; he said he did not believe the petition had met the criteria for a variance. Vice Mayor Nocera pointed out however that he feels the City erred and that the applicant attempted to adhere to the Code, therefore, he said that he must vote for approval. Council Member MacIlvaine indicated that he would, as staff recommended, vote for denial due to the petition not meeting the criteria for a variance; the Code must be followed, he added. Council Member Taylor said that she feels the applicant had a part in the errors that evolved and that she could not support the variance.

At this time, Attorney Yovanovich moved for continuance of this matter on the grounds that a listing of past variances had been introduced but that he had not been given an opportunity to

review it; therefore he was unable to rebut comments made based upon the material. City Manager Lee responded by noting for the record that the above list had been included in the supplemental City Council packet for this meeting.

During the roll call vote that appears below, Mayor Barnett observed that the situation before Council was a very difficult one and that his decision to support the variance is based on his belief that the petitioners had relied on professionals to guide them and in good faith proceeded with the building of their home. Therefore, he said he would support approval. He also said that during a site visit he had observed another large home in close proximity to the property in question.

MOTION by MacIlvaine to DENY RESOLUTION 06-11287, amending Section 2: “...does not meet the criteria in Section 86-205(a) and (b) in the Code of Ordinances necessary for approval...” This motion was seconded by Willkomm and carried 4-3 (Sorey-yes, Price-no, MacIlvaine-yes, Willkomm-yes, Taylor-yes, Nocera-no, Barnett-no).

Council Member Sorey and Vice Mayor Nocera noted interest in further discussion of chord measurement versus the property line measurement on cul-de-sacs, and also additional spot survey requirements during construction.

It is noted for the record that Items 8-a and 8-b were considered concurrently.

**RESOLUTION 06-11288.....ITEM 8-a
A RESOLUTION DETERMINING GENERAL DEVELOPMENT SITE PLAN PETITION 06-GDSP2 FOR PROPOSED RENOVATIONS TO THE FAIRFIELD INN, A NEW STAND-ALONE HOTEL BUILDING, A FREE-STANDING OFFICE/COMMERCIAL BUILDING, AND RECONFIGURATION OF VEHICULAR CIRCULATION LOCATED AT 1775 AND 1785 DAVIS BOULEVARD, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 06-11289..... ITEM 8-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 06-RIS4 FOR PROPERTY LOCATED AT 1775 AND 1785 DAVIS BOULEVARD, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

Titles read by City Attorney Robert Pritt (2:28 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/no contact; Price/visited the site and spoke with Charlie Thomas regarding another matter; Nocera, MacIlvaine and Sorey/visited the site but no contact; and Barnet and Taylor/familiar with the site but no contact.

Planning Administrator Stephen Olmsted explained that these items involve a two-part petition for the remodeling and redevelopment of the Fairfield Inn located on Davis Boulevard including demolition of the existing restaurant (Eby’s) as well as construction of a second hotel building and an office building. The petitioner is not proposing to increase the number of transient lodging units, however.

Attorney John Passidomo, agent for the petitioner, pointed out that the property was annexed in 1999 and is located at the eastern city limits at the intersection of Davis and US 41. It currently contains 124 transient lodging units and a freestanding restaurant; the proposal is to replace the restaurant with an office building, relocate some of the transient lodging units into a new

building, and significantly upgrade the entire property. Mr. Passidomo noted that the project is within 500 feet of a residential district across a waterway in the unincorporated area of Collier County and therefore requires a Residential Impact Statement (RIS); he however emphasized that all codes had been met and no variances are required. He also referenced the approval given by the Planning Advisory Board (PAB) and addressed the recommendations of that approval during the June 21, 2006 meeting. He said that of those included in the staff report (contained in the file for this meeting in the City Clerk's Office), one requirement had already been accomplished in that a landscaped buffer had been enlarged at the north section of the property along the water. This landscaping would also be maintained pursuant to Section 110-137(a)(3). Mr. Passidomo concluded by saying that the petitioner agreed to abide by all recommendations within the staff report and therefore asked approval.

In response to Council Member Price, Mr. Passidomo indicated that the maximum height of the main structure is to be less than 42 feet, noting that this issue had been addressed at the above referenced PAB meeting. Discussion next involved the parking situation, and Mr. Passidomo pointed out that the hotel use would begin during the late afternoon and the office use would occur during the daytime hours. Mr. Passidomo assured Council that a parking needs analysis would be done in the near future and noted the site plan under consideration was for two or three stories, depending on the outcome of the aforementioned analysis. He also pointed out that the petitioner would come before Council within the next 60 days for consideration of this study. Mr. Price next questioned the elevation and the density of the structure, also noting no mention of lot coverage. Charles Thomas, also indicating that he represents the petitioner on this project, explained that the lot coverage is 37% and gave an explanation of the differing elevations noted on the site plans, saying that some are Federal Emergency Management Agency (FEMA) flood elevation calculations and some are measurements from zero sea level. Mr. Passidomo noted that since this area is the entrance to the City, the renovations and improvements to the site will better reflect the ambience of the City. Responding to Council Member Sorey, Mr. Thomas also explained that the elements of this development take into consideration the Trent Green (Gateway) Plan and Collier County's Gateway/Bayshore Drive project, exemplifying the circular concept.

Further discussion involved density and usage requirements, and Mr. Olmsted reviewed staff's recommendation for approval with the conditions set forth by the PAB, also noting two conditions to be added to the resolution is requested by staff. Those conditions involve a conservation easement which required mangrove enhancement and restoration along the northern property line, and a general condition which would require compliance with all applicable state, local and federal requirements and any applicable easements and agreements regarding development or redevelopment of the property. He also pointed out that no boat slips were included in this petition, therefore, staff had no comment except that review and approval in the future would be necessary if such structures became a consideration. Mr. Olmsted also described the process necessary if the petitioner's parking needs study reflects the ability to construct the aforementioned third story of the proposed office building. This process, he said, had been detailed in his August 15 memo; he said that Mr. Passidomo and City Attorney Pritt had suggested including this with the conditions. (See Attachment 6) In response to Council Member Price, Mr. Olmsted said that information on traffic and sewer system impacts would be forthcoming with detailed review of engineering plans prior to permitting. Mr. Olmsted also assured Mr. Price that if the aforementioned boat slips were petitioned for, a RIS and General

Development and Site Plan (GDSP) would also be required because development of these slips would be within 300 feet of a residential area.

At that time Mayor Barnett asked for public comment, reminding speakers that the above referenced boat slips are not being considered with the items on that particular meeting agenda.

Public Comment: (3:19 p.m.) **Dave Bedtelyon, 1854 Harbor Lane**, waived comment. **Mike Riley, 1850 Harbor Place**, cautioned that no cuts be allowed through the conservation easement thereby keeping the commercial and residential areas separated. **Frank Perrucci, 1848 Harbor Place**, urged that the landscape buffer be kept solid, be maintained, and suggested the possibility of a fence being added within the easement. In response to the above public comment regarding the existing conservation easement, Planning Administrator Olmsted said that, before development, a review would occur in that area. Attorney Passidomo explained that the proposed landscape buffer would not be compromised in any way even with possible future development along the waterfront area.

MOTION by Taylor to APPROVE RESOLUTION 06-11288 as amended, in Section 2 to include the following conditions: “10. Mangrove enhancement and restoration required within the conservation easement located along northern property line. 11. Compliance with all applicable state, local and federal requirements and any applicable easements and agreements regarding development or redevelopment of the property. 12. Paragraphs 2 and 3 of the August 15, 2006, memo from Steve Olmsted, Planning Administrator, regarding Item 8, attached hereto and made a part thereof.” This motion was seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Council Member Taylor expressed concern that lighting levels would affect the nearby residential area, suggesting some sort of shielding be considered to direct the fixtures downward to the parking area. Mr. Olmsted pointed out that conditions addressing this matter were stated within the RIS and that Code of Ordinances Section 110-88 also addresses this concern. Planner Tony McIlwain explained that lighting plans must be submitted for approval and Mr. Olmsted added that plans submitted to the Design Review Board (DRB) must also contain detailed specifications in conjunction with Code compliance.

MOTION by Taylor to APPROVE RESOLUTION 06-11289 as submitted; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11290.....ITEM 9
A RESOLUTION DETERMINING PETITION 06-WD2 FOR A WAIVER OF DISTANCE IN ORDER TO OBTAIN AN ALCOHOLIC BEVERAGE LICENSE WITHIN 500 FEET OF ANOTHER ESTABLISHED LICENSEE THAT SERVES ALCOHOL IN THE PD PLANNED DEVELOPMENT ZONING DISTRICT AT 1700 9TH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:37 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Barnett, Taylor, and MacIlvaine/no contact; and Price, Nocera and Sorey/visited the site but no contact. Council Member Price questioned the hours of operation due to outside dining. Burt Guirado, agent for the petitioner, responded to the

effect that the hours listed for the neighboring establishment, The Cheesecake Factory, would be agreed to by the petitioner. (See motion below.)

MOTION by Barnett to APPROVE RESOLUTION 06-1190, as amended, to reflect same hours of operation as the Cheesecake Factory, noted in Waiver of Distance Petition, page 2, section 2: “Monday thru Thursday 11 a.m. – 11 p.m., Friday and Saturday 11 a.m. – 12 a.m., Sunday 10 a.m. – 11 p.m.” This motion was seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**RESOLUTION (Withdrawn-see Item 4).....ITEM 10
A RESOLUTION DETERMINING VARIANCE PETITION 06-V7 FROM SECTION 110-54 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHED ALLOWABLE ENCROACHMENTS INTO REQUIRED YARDS IN ORDER TO PERMIT THE CONSTRUCTION OF A STAIR RAILING ON A WIDOW’S WALK TO ENCROACH INTO THE SPATIAL PERCEPTION SETBACK LINE, AT 85 13TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION (Continued-see Item 4).....ITEM 11-a
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 06-LE2 FOR LIVE ENTERTAINMENT AT CJ’S BOARDWALK BAR AND GRILL LOCATED AT 1100 SIXTH AVENUE SOUTH #10, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION (Continued-see Item 4)..... ITEM 11-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 06-RIS6 TO ALLOW LIVE ENTERTAINMENT AT CJ’S BOARDWALK BAR AND GRILL LOCATED AT 1110 6TH AVENUE SOUTH #10, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**ORDINANCE (First Reading).....ITEM 12
AN ORDINANCE AMENDING SUBSECTIONS (10) AND (12) OF SECTION 106-104, NUMBER OF PARKING SPACES, OF THE CODE OF ORDINANCES IN ORDER TO AMEND THE PARKING REQUIREMENTS FOR MEDICAL OFFICE AND MULTIFAMILY DWELLING UNITS TO ACCOMMODATE SEASONAL INCREASES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:49 p.m.). Planning Administrator Stephen Olmsted gave a brief presentation of the staff report recommending approval. (It is noted for the record that a copy of this material is contained in the file for this meeting in the City Clerk’s Office.) He explained that this request is to increase the number of parking spaces required from one space for every 200 square feet of gross floor area for medical offices and clinics to 1 space for every 175 square feet of gross floor area. Regarding multifamily dwelling units, the current requirement is 1½ or 2 spaces per dwelling unit, depending on the zoning district, with no requirement for visitor parking; this would be increased to 2 spaces per unit and visitor parking would be required at one space per 10 dwelling units. In response to Council Member Taylor, Mr. Olmsted said that it was believed that the new requirements would be sufficient, but that the situation would be closely monitored and requirements increased at a future date, if necessary.**

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

ORDINANCE 06-11291.....ITEM 13
AN ORDINANCE RELATING TO OCCUPATIONAL LICENSE TAXES AND PEDDLER’S FEES, ADMENDING SECTION 58-81, SCHEDULE OF TAXES, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF INCREASING OCCUPATIONAL LICENSE TAXES; AMENDING SECTIONS 18-62 AND 18-65 OF APPENDIX A FEE SCHEDULE FOR THE PURPOSE OF AMENDING THE LICENSE AND PERMIT FEES FOR PEDDLERS AND SOLICITORS; PROVIDNG A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:52 p.m.). City Manager Robert Lee noted that this would be an increase of 5% which, according to State Statue, is allowable every two years. He also pointed out that this increase would be the second since 1994.

MOTION by Sorey to ADOPT ORDINANCE 06-11291 as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11292.....ITEM 14
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ROWE DRILLING COMPANY, INC., FOR THE CONSTRUCTION OF AN EXPLORATION AQUIFER STORAGE AND RECOVERY WELL; AMENDING THE FY 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:53 p.m.). Council Member Willkomm expressed concern with this expenditure, noting the apparent lack of reuse water to supply and fully utilize the new system under construction. This he said would necessitate further spending... He questioned whether the total cost of the reuse water system and the additional aquifer storage and recovery (ASR) wells needed had been determined, and also questioned the need for additional spending to utilize what is being funded presently. Council Member Taylor pointed out that the City is however under a State mandate to install a new stormwater system, noting the ongoing need of identifying methods of water conservation. Public Works Director Dan Mercer said that he was at that time unable to identify the amount to be spent for the alternative water supply program, but that the cost of the item under consideration will be included in that amount.

Council Member Sorey pointed out that if prospective geological results are not realized, neither this well nor another, would be installed. He also stated that he felt the trends in consumptive use permits must be monitored with the possibly of limitations being imposed as has occurred in other parts of the State. Mr. Sorey stressed that the City Council has been committed to the cleanup of Naples Bay and that he felt strongly that the total maximum daily loads (TMDL) allowed for discharge into the Bay would predicate the stormwater issue and its subsequent costs.

In response to Vice Mayor Nocera, Director Mercer said that this particular well would be at the Wastewater Treatment Plant off Goodlette-Frank Road, east of the Police & Emergency Services building. Mr. Willkomm said that he would however be supportive of this measure if it aids in protecting Naples Bay, nevertheless, he stressed that in the future, more information on total costs

and all aspects of projects must be made available to Council. City Manager Robert Lee noted an update presentation on the reuse project on the agenda of the September 18 meeting and that staff would provide additional information at that time.

Council Member Price urged what he termed visionary reaction, not just reactionary measures, with regard to the water issue and attendant spending. Council Member Taylor stressed that Florida is depleting its supply of water and that water will become its most expensive commodity of the future.

MOTION by Sorey to APPROVE RESOLUTION 06-11292 as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

ORDINANCE (First Reading)..... ITEM 15
AN ORDINANCE AMENDING SECTION 62-37, SPEED RESTRICTIONS, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO ESTABLISH SPEED LIMITS ON LOCAL RESIDENTIAL CITY STREETS; AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO INSTALL APPROPRIATE SIGNAGE; AND PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:06 p.m.). Council Member Sorey requested confirmation that speed limits on local connector streets would remain at 30 miles per hour (mph). City Attorney Pritt quoted the following statutory requirements: The maximum speed within any municipality is 30 mph with respect to residential districts. The municipality may set a maximum speed limit of 20 to 25mph on local streets and highways after an investigation determines that such a limit is reasonable. City Attorney Pritt stressed that only local, residential streets could be altered and that these streets are designated within the Comprehensive Plan which is submitted to the Florida Department of Transportation (FDOP). City Manager Robert Lee also stated that initially all streets were considered, but those designated for change within the resolution are those presently deemed local residential. Mr. Sorey stated that he would support this measure but urged additional analysis of the streets to possibly broaden the scope of this amendment to include others. Council Member Price suggested researching the process of converting present connector streets to local residential status to expand the lowering of speed limits.

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

RESOLUTION 06-11293..... ITEM 16-b
A RESOLUTION APPOINTING COUNCIL MEMBER WILLIAM MACILVAINE AS AN EX OFFICIO MEMBER TO THE BOARD OF TRUSTEES OF THE FIREFIGHTERS' RETIREMENT TRUST FUND FOR A TERM COMMENCING AUGUST 21, 2006, AND EXPIRING FEBRUARY 5, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:17 p.m.), also recommending that the resolution be amended as stated in the motion below.

MOTION by Sorey to APPROVE RESOLUTION 06-11294, amended to reflect Council Member MacIlvaine an ex officio appointment; seconded by Barnett and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11294.....ITEM 16-a
A RESOLUTION APPOINTING COUNCIL MEMBER WILLIAM MACILVAINE AS AN EX OFFICIO MEMBER TO THE BOARD OF TRUSTEES OF THE POLICE OFFICERS’ RETIREMENT TRUST FUND FOR A TERM COMMENCING AUGUST 19, 2006, AND EXPIRING FEBRUARY 5, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:17 p.m.), also recommending that the resolution be amended as stated in the motion below.

MOTION by Sorey to APPROVE RESOLUTION 06-11294, amended to reflect Council Member MacIlvaine an ex officio appointment; seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11295.....ITEM 17
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE MAYOR IN APPOINTING COUNCIL MEMBER JOHN F. SOREY, III THE VOTING DELEGATE FOR THE FLORIDA LEAGUE OF CITIES ANNUAL CONFERENCE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:18 p.m.).

MOTION by Price to APPROVE RESOLUTION 06-11295 as submitted; seconded by Barnett and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11296.....ITEM 18-a
A RESOLUTION APPOINTING ONE MEMBER TO THE CITIZENS ADVISORY COMMITTEE FOR THE EAST NAPLES BAY SPECIAL TAXING DISTRICT FOR THE BALANCE OF A THREE-YEAR TERM CONCLUDING JUNE 18, 2007; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:20 p.m.).

MOTION by Taylor NOMINATING Scott Dunnuck to the Citizens Advisory Committee; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11297.....ITEM 18-b
A RESOLUTION APPOINTING ONE MEMBER TO THE CODE ENFORCEMENT BOARD FOR A THREE-YEAR TERM COMMENCING SEPTEMBER 17, 2006, AND EXPIRING SEPTEMBER 16, 2009; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:20 p.m.).

MOTION by Taylor NOMINATING Fred Klaucke to the Code enforcement Board Fund; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11298.....ITEM 18-c
A RESOLUTION APPOINTING ONE MEMBER TO THE BOARD OF TRUSTEES OF THE FIREFIGHTERS’ RETIREMENT TRUST FUND FOR A TWO-YEAR TERM COMMENCING SEPTEMBER 4, 2006, AND EXPIRING SEPTEMBER 3, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:21 p.m.).

MOTION by Taylor NOMINATING Daniel Keller to the Board of Trustees of the Firefighters’ Retirement Trust Fund; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11299..... ITEM 18-d
A RESOLUTION APPOINTING ONE MEMBER TO THE BOARD OF TRUSTEES OF THE POLICE OFFICERS’ RETIREMENT TRUST FUND FOR A TWO-YEAR TERM COMMENCING SEPTEMBER 4, 2006, AND CONCLUDING SEPTEMBER 3, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:21 p.m.).

***MOTION** by MacIlvaine **NOMINATING** Nancy Oppenheim to the Board of Trustees of the Police Officers’ Retirement Trust Fund; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).*

RESOLUTION 06-11300.....ITEM 19
A RESOLUTION APPOINTING ONE MEMBER TO THE CARVER FINANCE BOARD OF DIRECTORS FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING OCTOBER 16, 2007; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:22 p.m.).

***MOTION** by Taylor **NOMINATING** Warren Adkins to the Carver Finance Board of Directors; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).*

Added ItemItem 20
REQUEST BY CITY ATTORNEY ROBERT PRITT FOR THE FOLLOWING EXECUTIVE SESSIONS ADDED TO AGENDA FOR SEPTEMBER 6, 2006, REGULAR MEETING:

.....ITEM 20-a
11:15 A.M. – MARINE INDUSTRIES ASSOCIATION OF COLLIER COUNTY V. FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION AND CITY OF NAPLES, CASE NOS. 05-2034, 05-2035, 05-2036, 05-2037.

***MOTION** by Taylor to **APPROVE** request for executive session at 11:15 a.m., September 6, 2006, re: Marine Industries Association of Collier County v. Florida Fish & Wildlife Conservation Commission and City of Naples. This motion was seconded by Barnett and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).*

.....ITEM 20-b
11:30 A.M. – BIASELLA V. CITY OF NAPLES, CASE NO. 2:04-cv-320-FtM29DNF. It is noted for the record that Council Member Taylor abstained during the vote for the motion below.

***MOTION** by Price to **APPROVE** request for executive session at 11:30 a.m., September 6, 2006, re: Biasella v. City of Naples; seconded by Barnett and carried 6-0-1 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-abstaining, Willkomm-yes, Barnett-yes). (See Attachment 7, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.)*

.....ITEM 20-c
11:45 A.M. – BIASELLA V. CITY OF NAPLES AND RUSSELL AYERS, CASE NO. 2:06-CV-00258-UA-SPC.

MOTION by Barnett to APPROVE request for executive session at 11:45 a.m., September 6, 2006, re: Biasella v. City of Naples and Russell Ayers; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....

(4:28 p.m.) **Henry Kennedy, Pelican Avenue**, urged Council to follow protocol regarding what he described as sidebar comments between Members during sessions. He also urged improvement of procedure regarding spot surveys for building projects.

CORRESPONDENCE and COMMUNICATIONS.....

(4:31 p.m.) Mayor Barnett requested that staff research ways in which the building site inspection process could be improved in order to avoid errors. Council Member Willkomm expressed his appreciation to all involved regarding Item 7 (Variance Petition 06-V8). Council Member Sorey suggested a workshop to discuss the avoidance of the building site inspection errors and to review the chord versus the property line measurement system. Vice Mayor Nocera and Council Member Sorey urged staff to as soon as possible present recommendations regarding pool equipment height. Council Member Taylor asked whether a joint meeting with the Collier County Commissioners and Collier County School Board regarding workforce housing could be scheduled in the near future. Council Member Sorey however recommended a workshop for Council decision making prior to the proposed joint meeting, and Mayor Barnett suggested a November date. It was also requested by Council that the new recodified Code of Ordinances be provided as soon as possible to enable review before the September 6 meeting.

ADJOURN.....

4:44 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki Smith, Technical Writing Specialist

Minutes Approved: 9/20/06

Exhibit "A"

1. The City of Naples specifically reviewed and approved for code compliance on December 27, 2005, all plans submitted by South Florida Architectural Associates, Inc. relating to the instant project including, but not limited to, the site plan for the subject residence which specifically disclosed the existence of a thirty foot front setback from a cord.
2. Specifically, Sheet A1 dated November 7, 2005 by South Florida Architectural Associates, Inc. entitled "Site Plan" was reviewed by the City of Naples and specifically disclosed the existence of the plan to construct a home with a thirty foot front setback from a cord specific delineated cord line.
3. Based upon the plan, City of Naples issued Building Permit Number C5-504-185 and, at the time of issuance of the subject permit, requested no modification from plan relating to the subject matter of this letter.
4. The Permit Card, a copy of which is attached to this Exhibit and incorporated herein by reference specifically indicates that the City of Naples permitted construction to move forward relating to the Stephens residence and had inspections relating to the subject residence on January 27, 2006; February 3, 2006; and March 7, 2006. The City of Naples, permitted, by and through its original review and approval for code compliance of the subject building plans, issuance of the building permit. The multiple building inspections relating to the subject residence included structural wall and structural joists/beam inspections, which resulted in the payment in excess of \$600,000.00 in building costs incident to the construction of improvements consistent with the City of Naples plan approval.

Attachment "B"

1680 Dolphin Court
 Application for Building Permit
 Chronology of Events

- (*) 11-19-05 - Patanner applied for SFND permit 05-02504133
- (2) 12-15-05 - Plan reviewed and rejected by Tom Goodwin due to spatial perception issue. Planner Kerry Nielson also involved.
- (3) 12-22-05 - Plan reviewed and approved by Tom Goodwin
- (4) 1-04-06 - SFND permit issued.
- (5) 1-27-06 - Grade beam inspected and approved by inspector BAS
- (6) 2-03-06 - Stem wall inspected and approved by inspector BAS
- (7) 2-09-06 - Brass beam inspected and approved by inspector BAS
- (8) 2-27-06 - Rough plumbing inspected and approved by Inspector TOS
- (9) 3-07-06 - Slab inspected and approved by inspector RLB
- (10) 3-23-06 - Cells inspected and approved by inspector RLB
- (11) 3-24-06 - Cells and tie beam inspected and approved by Inspector RLB
- (12) 3-29-06 - Soil survey rejected in this office by RLB (by e-mail to contractor) and picked up by Contractor
- (13) 4-06-06 - Inspector performing inspections at another property on Dolphin Lane noticed work going on at 1680 Dolphin Ct. He immediately contacted the Deputy Building Official, Paul Ballerback to inform him of this
- (14) 4-07-06 - Stop Work Order issued by Acting Building Official Paul Ballerback
- (15) 4-12-06 - PMB spoke to contractor regarding this situation. He stated that he would consult with the architect and owner to decide upon a course of action
- (16) 4-11-06 - Dave Wanscott, architect of record called PMB to discuss the situation

Other Considerations - The permit that was issued to the contractor (and signed by PMB) specifically states the setbacks required. We have a copy of that permit in our records. The contractor has stated that our employee told him that he could continue work on the project after the defective survey was brought to his attention. Our employee denies making such a statement. The contractor has admitted to me in person that he knowingly did perform additional work on the building after he was made aware of the fact that the survey was found by us to be defective.



Memo

Community Development

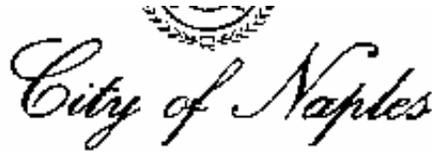
Building and Zoning • Planning • Code Enforcement • GIS

TO: Dr. Robert Lee, City Manager
VIA: Robin Singer, Community Development Director
FROM: Paul Bollenback, Building Official
DATE: August 15, 2006
SUBJECT: 1680 Dolphin Court

I have forwarded six (6) documents to the City Manager's Officer pertaining to this project and the petition for variance including:

1. Building Permit/Receipt Dated Jan. 4, 2006. This document is signed by the contractor and indicates:
 - a. A survey is required.
 - b. Front yard setback of 30'
 - c. Application value of construction, \$500,000
2. City of Naples Policy regarding surveys & elevation certificates dated Dec.19, 2001. This explains that it is the contractor's responsibility to ascertain proper setbacks.
3. Inspection History Report dated April 18, 2006. This is a chronological report of all inspections performed at 1680 Dolphin Court.
4. Structures-Document confirms rejected survey by Robert Banker on March 29, 2006.
5. Application Tracking Action-H.T.E. document showing date of plan rejection (Dec. 16, 2005), date of plan re-submittal (Dec. 22, 2005) and plan approval (Dec. 29, 2005).
6. Application Tracking Step-H.T.E. document confirming Dec. 29, 2005 building department plan approval and Dec. 30, 2005 processing by permit specialist.

I personally investigated this matter. In my conversation with the plans examiner responsible for the review and approval of this permit he explained to me that he did not recognize that the architect had used an improper chord measurement and attributed his oversight to human error.



DEVELOPMENT SERVICES
BUILDING & ZONING
295 Riverside Circle
Naples, FL 34102
PH: 941-213-5020
FAX: 941-213-5025

TO: ALL CONTRACTORS
FROM: WILLIAM L. OVERSTREET, BUILDING OFFICIAL
DATE: DECEMBER 19, 2001
SUBJECT: SURVEYS & ELEVATION CERTIFICATES

Effective January 1, 2002, the Building Department will require the submittal of the following prior to issuance of a certificate of completion/occupancy:

1. AT 21 DAYS AFTER FIRST INSPECTION:
SPOT SURVEY SHOWING PRIMARY STRUCTURE, WITH ELEVATION NOTED.
2. AT 14 DAYS BEFORE A CERTIFICATE OF OCCUPANCY IS REQUESTED:
 - A. FINAL SURVEY WITH ALL APPENDAGES SHOWING.
 - B. ELEVATION CERTIFICATE.

NOTE: THE 21 DAY SURVEY WILL BE REVIEWED FOR SETBACKS AND ELEVATIONS AS A COURTESY TO HELP PREVENT ANY POTENTIAL PROBLEMS. HOWEVER, IT REMAINS THE CONTRACTOR'S RESPONSIBILITY TO ASCERTAIN PROPER SETBACKS AND ELEVATION, AND THESE WILL BE VERIFIED AGAINST THE FINAL SURVEY AND ELEVATION CERTIFICATE.


WILLIAM L. OVERSTREET
BUILDING OFFICIAL

APPLICATOR STRUCTURE	PROPERTY ADDRESS PERMIT	FOLEO/ARCEL MEMOIR INSPECTION	SECTION-TOWNSHIP-RANGE RESULT DATE/STATUS	INSPECTOR
05 00504185 000 500	1602 DOLPHIN CT BPR 00 BLDG PERMIT RESIDENT NEW	1311200001 108 0001 108 STRUCTURAL GRADE REAR	10 51 25 1/27/06 APPROVED	KLS
000 500	HPR 00 BLDG PERMIT RESIDENT NEW	120 0001 120 STRUCTURAL STEM WALLS	2/03/06 APPROVED	BAS
000 500	HPR 00 BLDG PERMIT RESIDENT NEW	108 0002 108 STRUCTURAL-GRADE DEPR	2/09/06 APPROVED	DAE
000 500	HPR 00 BLDG PERMIT RESIDENT NEW	124 0001 124 STRUCTURAL REAR	3/07/06 APPROVED	RLR
000 500	HPR 00 BLDG PERMIT RESIDENT NEW RES COMM: start gas yet to be placed in cells	136 0001 136 STRUCTURAL-CELLS	1/23/06 DISAPPROVED	KLR
000 500	HVS 00 BLDG PERMIT RESIDENT NEW RES COMM: PLUS TIE REAR	136 0002 136 STRUCTURAL-CELLS	1/24/06 APPROVED	KLR
000 500	DPR 00 BLDG PERMIT RESIDENT NEW RES COMM: front encroaches 14.2 feet into setback	144 0001 144 STRUCTURAL-SURVEY/EDV	4/25/06 DISAPPROVED	RLR
000 500	PL 00 PLUMBING PERMIT COMM/REF/SEF RES COMM: RES COMM: RES COMM:	715 0001 715 PLUMBING-ROUGH INSPECTOR #1 CHECK FOR CONSTRUCTION SETS, MAINT. FRANKS COMPLIANCE-STABILIZED ROCK, CLEM TOLLETT, MENCK ETC. ** NOTE ALL DEFICIENCIES **	2/27/06 APPROVED	TJS

PREPARED BY: 08/06, 2:54:59
PROGRAM H05231

PAGE 1

Cancel List OK Add structure Upgrade

Application: 05 00504185 1990 DOLP-HN CT CITY
 Type: SFND 10 SINGLE FAMILY-NEW DETACHED
 Structure number/sequence: _____
 Structure description: 10000-NEW DETACHED

Item Description	Code	Quantity	Unit	Amount	Notes
CONCRETE FOOTING	R 01				
FOUNDATION TYPE	R R-S				
Roof type	R 04				
Roof included (Y/N)	R				
CEILING OF COOL	R				
FLOOR TIME MEAS AREA	R				
GRAVEL BUILDING EDGE	R				
PROP WALKS ADJAC (Y/N)	R				
STREET PAVED (Y/N)	R				
ELEVATION TEXT (Y/N)	R				
STREET ADJACENT		3375	.00		REJECTED-FILE
ELEVATION TEXT PER APPROV		3275	.00		MUL-SL-SPECT
ELEVATION TEXT RECEIVED		3345	.00		YES SPOT ASD
WATER METERS		3175	.35		YES SPOT-ASD

Application Tracking Action Log Item Selection - *****

Application Tracking Action Log Item Selection

Application number: 05 00504185
 Address: 1990 DOLP-HN CT
 Application type: 10 SINGLE FAMILY-NEW DETACHED
 Agency: BUILDING DEPARTMENT
 Current status: IN PROGRESS
 Position to date: Position to date

Date	Action	By	Amount
12/16/05	TOM A SOOMITZ	REJECTED	.00
12/17/05	WEAST KORDWAY	RESUBMITTED	.10
12/19/05	TOM A SOOMITZ	APPROVED	.00

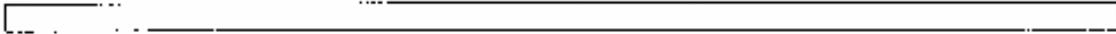
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Application Tracking Step Selection By Revision - *****

Application Tracking Step Selection By Revision

Application number: 06 00504705
 Address: 1660 COLUMBIA CT CITY
 FOLIO/PARCEL NUMBER: 18312203001
 Application type: 00 SINGLE FAMILY NEW DETACHED
 Section-Township-Range: 10-50-25
 Tenant/Case number: STEPHENS

APP #	DESCRIPTION	DATE	BY	STATUS	DATE	TYPE	BY
BUILDING DEPARTMENT	A 01 T	11/15/05	12/01/05	12/29/05	AP	TRG	
PERMITTING INSPECTOR	A 01 T	11/15/05	12/01/05	11/29/05	AU	TRG	
PERMIT SPECIALIST	A 01 I	12/29/05	01/12/06	12/29/05	AE	ABO	



HTE Printout



Memo

Community Development

Building and Zoning • Planning • Code Enforcement • GIS

TO: Dr. Robert E. Lee, City Manager
VIA: Robin Singer, Community Development Director
FROM: Paul Bollenback, Building Official
DATE: August 8, 2006
SUBJECT: 1680 Dolphin Court

The following narrative is provided to clarify the sequence of events regarding the Stop Work Order issued to the new single-family residence at 1680 Dolphin Ct.:

1. Jan. 4, 2006 Permit issued to construct SFND structure. Permit plans show the front setback measurement to the chord rather than the property line as required.
2. Mar. 17, 2006 Slab inspection passed. The slab inspection insures that all structural requirements are met, but does not verify the location of the slab on the property.
3. Mar. 24, 2006 Block wall and tie-beam inspection passed. The tie beam inspection insures that all structural requirements are met, but does not verify the location of the structure on the property.
4. Mar. 29, 2006 Spot survey submitted by contractor to building division's office is denied by inspector Bob Banker. Mr. Banker spoke to T.R. Rushing (contractor) and informed him that he needed to address this ASAP and not to proceed with construction. Contractor was also provided a copy of the survey rejection letter at this time. (A copy is in our file.) The spot survey is the first inspection which verifies that the location of the structure matches the approved plan. While this project matches the approved plan, the inspector recognized that the plan was in error. Most contractors will call for a spot survey prior to proceeding with vertical construction to insure that the structure is correctly located on the property, but they are not required to do so.
5. Apr. 6, 2006 Inspector Tom Szempruch, while performing afternoon inspections in Royal Harbor noticed numerous workers at 1680 Dolphin Court. When he returned to the Building Division's office, he informed me of what he had seen.
6. Apr. 7, 2006 I instructed inspector Bob Banker to post a Stop Work Order at the job site. I also contacted the construction company owner by phone to inform him of my decision to issue the stop work order. I told him that no further work was to proceed until the stop work order was lifted.

It is the architect's responsibility to make certain that the plans are drawn to code. Note: The plans examiner responsible for reviewing these plans is no longer with the City.



Memo

Community Development

Building and Zoning • Planning • Code Enforcement • GIS

TO: Dr. Robert Lee, City Manager
VIA: Robin Singer, Community Development Director
FROM: Steve Olmsted, Planning Manager
DATE: August 15, 2006
SUBJECT: Fairfield Inn Petitions 06-GDSP2 and 06-RIS4 – Agenda Item 8

As outlined in the Planning Advisory Board staff report, the petitioners were requesting approval of more office square footage than the provided parking can support. However, staff's recommendation is to limit the approved development to the 25,200 square feet of office space that can be supported by the available parking until the applicant is able to provide additional parking or submit a parking needs analysis that justifies fewer spaces than otherwise required.

Should the petitioner obtain staff approval of a parking needs analysis that would support the requested 39,000 square feet of office space, they would be required to submit the parking needs analysis as a conditional use petition for consideration by the Planning Advisory Board and final action by City Council. The Naples Code of Ordinances, Section 106-107(c) 2, states, "If the parking needs analysis is presented for an increase in building size, it shall be reviewed through and meet the criteria of the conditional use process as listed in section 86-203. Any such approval must be recorded in the public records of the county at the expense of the owner or applicant." The petitioner has recently submitted a Parking Needs Analysis that will be scheduled for consideration at next month's Planning Advisory Board meeting and subsequent City Council meetings.

Section 86-202 (C) (7) of the Code of Ordinances states that any significant change to an approved General Development and Site Plan would also require approval of a revised development plan as if it were a new one. However, the applicant has submitted petitions for Residential Impact Statement and General Development and Site Plan that anticipate 39,000 square feet of office space. In the event that City Council approves the petitions that have been submitted for their consideration, the only steps that would need to be completed to allow the increase in office space from 25,200 square feet to 39,000 square feet would be approval of a parking needs analysis by the Planning Advisory Board and City Council. Also attached for your consideration is a letter from the petitioner's agent, John Passidama.

Should you have any questions, please contact me. Thank you.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>TAYLOR HEATHER Penelope ANN</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>	
MAILING ADDRESS <i>995 13th St N Collier</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
CITY <i>Naples</i>	FL COUNTY <i>34102</i>	NAME OF POLITICAL SUBDIVISION <i>City of Naples</i>	
DATE ON WHICH VOTE OCCURRED <i>8/16/06</i>		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-term, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, PENNY TAYLOR hereby disclose that on August 16 2006.

(a) A measure came or will come before my agency which (check one):

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____
- inured to the special gain or loss of my relative, _____
- inured to the special gain or loss of _____, by whom I am retained, or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

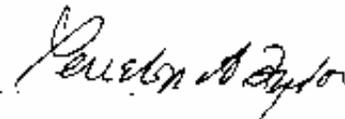
#22b) - notice for executive session

I am defendant in this case.

8/16/06

Date Filed

Signature



NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.