IN THE CIRCUIT COURT OF TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

MATLACHA CIVIC ASSOCIATION, INC., [redacted], and J. MICHAEL HANNON,

Petitioners, Case No. 17-CA-000123

v.

CITY OF CAPE CORAL, FLORIDA,

Respondent.
_____/

AMENDED APPENDIX TO PETITION FOR WRIT OF CERTIORARI AND EXHIBITS TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Part I- Appendix to Petition for Writ of Certiorari

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was sent by email to Dolores Menendez (dmenendez@capecoral.net) and Brian Bartos (bbartos@capecoral.net), Cape Coral City Attorney, P.O. Box 150027, Cape Coral, Florida 33915, this 12th day of January 2017.

/s/Steven L. Brannock
STEVEN L. BRANNOCK
Florida Bar No. 319651
sbrannock@bhappeals.com
SARAH C. PELLENBARG
Florida Bar No. 559571
spellenbarg@bhappeals.com
BRANNOCK & HUMPHRIES
1111 W. Cass Street, Suite 200
Tampa, Florida 33606
Tel: (813) 223-4300
Fax: (813) 262-0604
Secondary Email: eservice@bhappeals.com

ORDINANCE 57 - 16

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF A PARCEL OF LAND BEING LOTS 15 THROUGH 28, MATLACHA SHORES FIRST ADDITION, TOGETHER WITH A PORTION OF UNDIVIDED LOT A, UNIT NO. 1, MATLACHA ISLES, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR REDEFINITION OF CITY BOUNDARIES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, THE CITY OF CAPE CORAL, the owner of the real property subject to this Ordinance has petitioned the Cape Coral City Council for the annexation of said real property to the City of Cape Coral; and

WHEREAS, the aforesaid petition bears the signature of A. JOHN SZERLAG, CITY MANAGER OF THE CITY OF CAPE CORAL, the owner of the property proposed to be annexed; and

WHEREAS, the City of Cape Coral desires to insure that the site is developed consistent with the development located within the City and which will be utilized in a manner that should prove beneficial to the City.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. After considering the application of THE CITY OF CAPE CORAL, the City Council has determined that the property proposed to be annexed to the City is contiguous to the City's boundaries, reasonably compact, and such annexation will not result in the creation of enclaves.

SECTION 2. The City of Cape Coral hereby annexes to the incorporated City limits the following described real property:

Lots 15 through 28, Matlacha Shores First Addition, according to the plat thereof as recorded in Plat Book 10, Page 42, Public Records of Lee County, as depicted in Exhibit "A", attached hereto,

Together with

A Parcel of land being a portion of Undivided Lot A, Unit No. 1, Matlacha Isles recorded in Plat Book 16, Pages 132-133 of the Public Records of Lee County, Florida; being more particularly described as follows:

BEGIN at the Southwesterlymost corner of Undivided Lot A, as shown on the Plat of Unit No. 1, Matlacha Isles, recorded in Plat Book 16, Pages 132-133 of the Public Records of Lee County, Florida; and also being a point on the Northerly Right-of-Way line of Pine Island Road (State Road 78) (66' Wide); Thence run along the lines of said Undivided Lot "A", the following Eight (8) courses: N 00°00'30" W for a distance of 253.20' to the Northeast corner of Lot 28, as shown on the Plat of Matlacha Shores, 1st Addition, recorded in Plat Book 10, Page 42, of the Public Records of Lee County, Florida; also being a point on a non-tangential circular curve concave Southerly, whose radius point bears S 04°55'38" W a distance of 1239.93 feet therefrom; Thence run Westerly along the arc of said curve to the left, having a radius of 1239.93 feet, through a central angle of 06°55'36", subtended by a chord of 149.81 at a bearing of N 88°32'10" W, for an arc length of 149.90 feet to the end of said curve; Thence run N 00°00'30" W a distance of 74.78' to a point on a tangential curve concave Southeasterly; Thence run Northeasterly along the arc of said curve to the Right, having a radius of 40.00 feet, through a central angle of 81°27'00", subtended by a chord of 52.19 feet at a bearing of N 40°43'00" E, for an arc length of 56.86 feet to the end of said curve; Thence run N 81°26'30" E for a distance of 66.44 feet; Thence run S 76°01'00" E for a distance of 72.21 feet to the beginning of a tangential circular curve concave Southwesterly; Thence run Southeasterly along the arc of said curve to the Right, having a radius of 83.03 feet, through a central angle of 80°11'00", subtended by a chord of 106.94 feet at a bearing of S 35°55'30" E, for an arc length of 116.20 feet (116.19 feet – Plat) to a point of reverse curvature; thence run Southeasterly along the arc of said curve to the left, having a radius of 330.61 feet, through a central angle of

75°59'48", subtended by a chord of 407.07 feet (407.08 feet – Plat) at a bearing of S 33°49'54" E, for an arc length of 438.52 feet to the end of said curve; Thence leaving said lines of Undivided Lot "A", run S 18°10'00" W a distance of 17.00 feet to a point on the Northerly Right-of-Way line of Pine Island Road (State Road 78) (66' Wide); Thence run along said Right-of-Way line N 71°50'00" W for a distance of 107.70 feet to the beginning of a tangential circular curve concave Southwesterly; Thence run Westerly along the arc of said curve to the left, having a radius of 987.93 feet, through a central angle of 11°59'32", subtended by a chord of 206.40' at a bearing of N 77°49'50" W, for an arc length of 206.78 feet to the end of said curve and to the **POINT OF BEGINNING.**

Parcel contains 1.41 acres, more or less.

Bearings refer to the Plat of Unit No. 1, Matlacha Isles, recorded in Plat Book 16, Pages 132-133 of the Public Records of Lee County, Florida.

The herein described parcel is subject to Easements, Reservations and Restrictions of record,

as depicted in Exhibit "B", attached hereto.

SECTION 3. The legal description of the boundaries of the City of Cape Coral is hereby amended to include the aforesaid property as a part of the municipality of the City of Cape Coral, Florida, and under the full jurisdiction of the municipality of Cape Coral.

SECTION 4. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 5. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2016.

_____
MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2016.

_____
REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:

_____
BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/Annexation AX16-0001 City of Cape Coral
Rev: 11/28/16

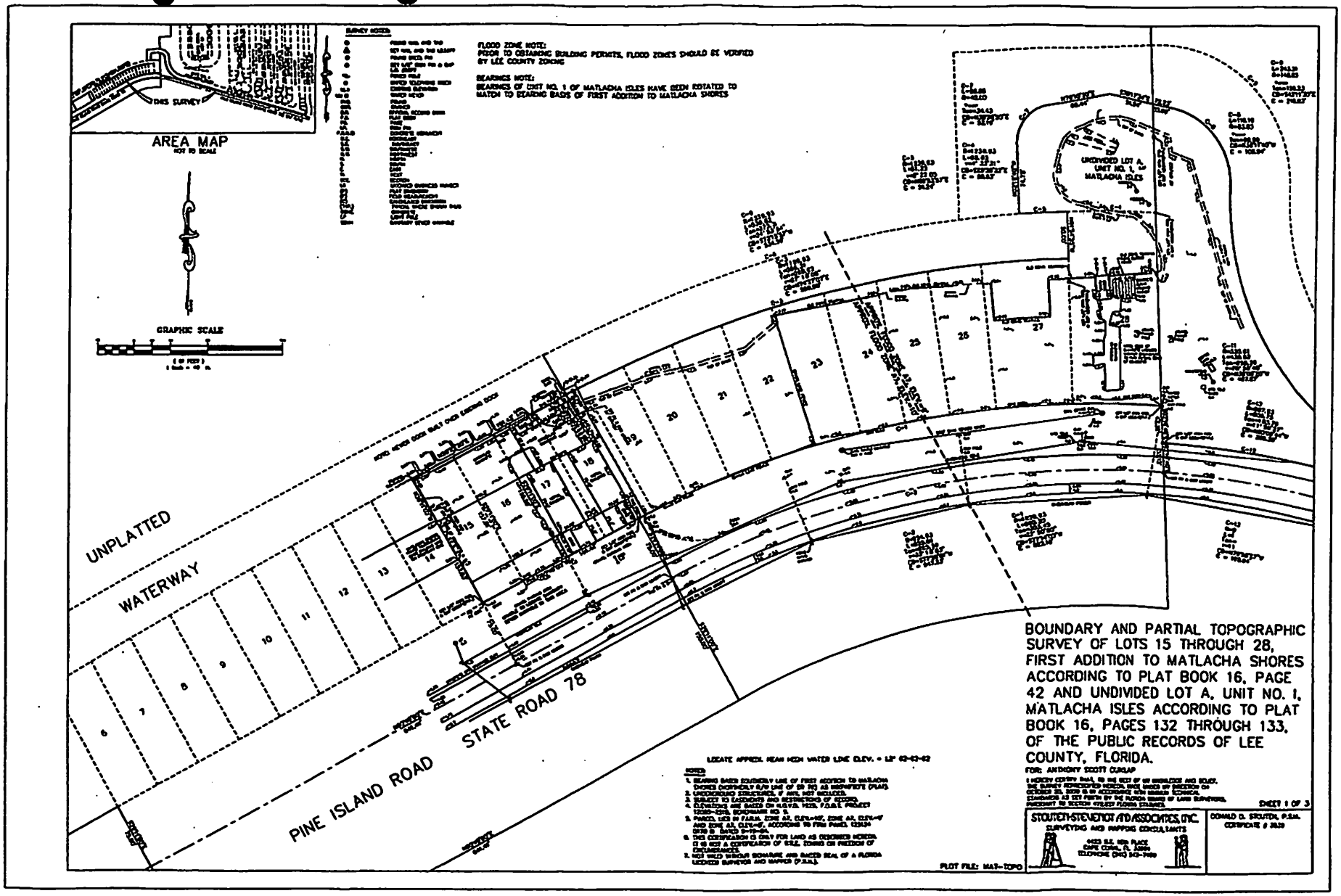

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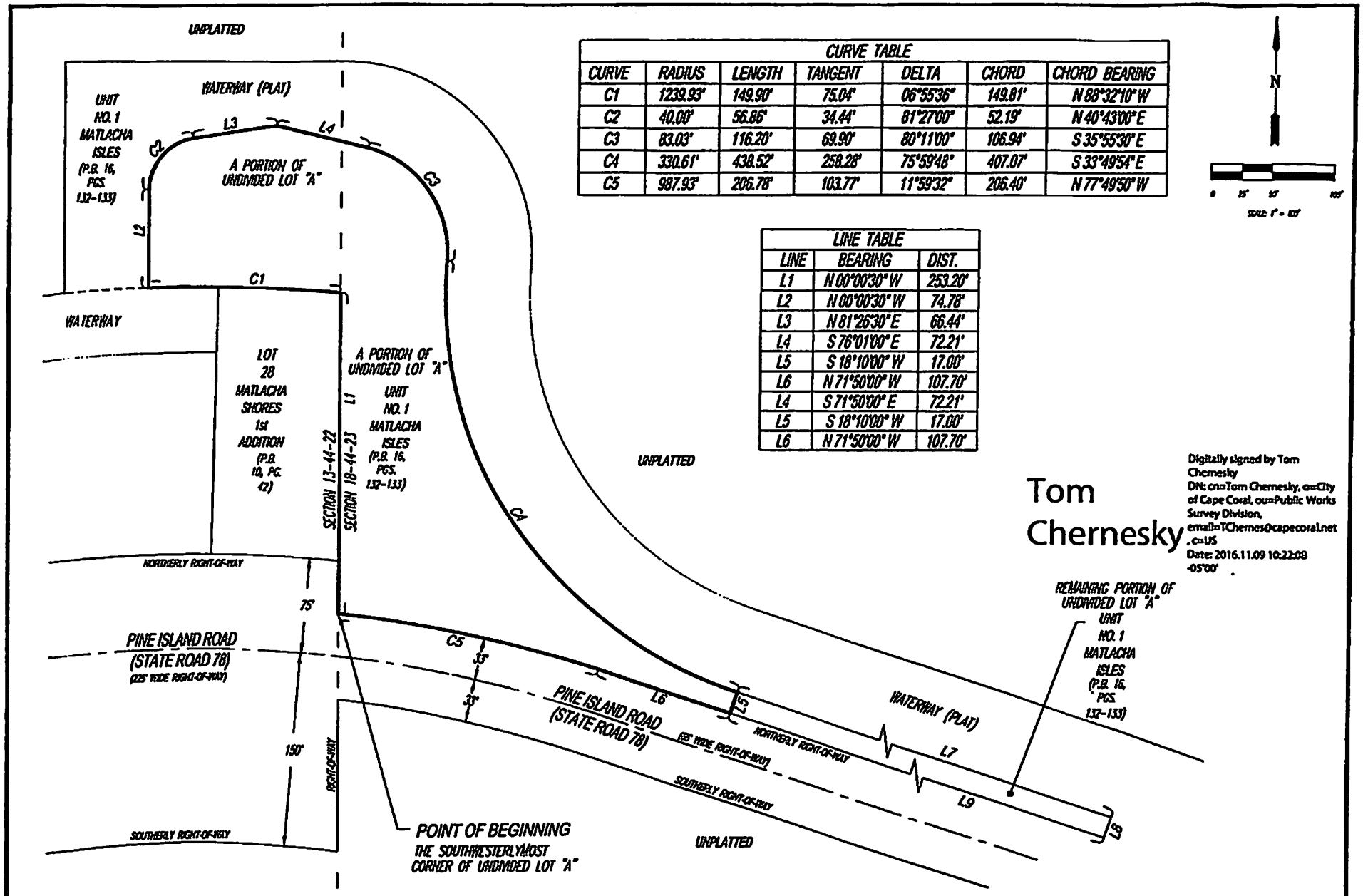
EXHIBIT "A"



CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD	CHORD BEARING
C1	1239.93'	149.90'	75.04'	06°55'36"	149.81'	N 88°32'10" W
C2	40.00'	56.86'	34.44'	81°27'00"	52.19'	N 40°43'00" E
C3	83.03'	116.20'	69.90'	80°11'00"	106.94'	S 35°55'30" E
C4	330.61'	438.52'	258.28'	75°59'48"	407.07'	S 33°49'54" E
C5	987.93'	206.78'	103.77'	11°59'32"	206.40'	N 77°49'50" W

LINE TABLE		
LINE	BEARING	DIST.
L1	N 00°00'30" W	253.20'
L2	N 00°00'30" W	74.78'
L3	N 81°26'30" E	66.44'
L4	S 76°01'00" E	72.21'
L5	S 18°10'00" W	17.00'
L6	N 71°50'00" W	107.70'
L4	S 71°50'00" E	72.21'
L5	S 18°10'00" W	17.00'
L6	N 71°50'00" W	107.70'

Tom Chernesky

Digitally signed by Tom Chernesky
DN: cn=Tom Chernesky, o=City of Cape Coral, ou=Public Works Survey Division, email=TChernes@capecoral.net, c=US
Date: 2016.11.09 10:22:08 -05'00'

THIS SKETCH MAY HAVE BEEN REDUCED

Revision	Date	Description	By

DRAWN BY: T.C.
APPROVED: T.C.
SCALE: 1" = 100'

Cape Coral FLORIDA
PUBLIC WORKS DEPARTMENT - SURVEY DIVISION
815 NICHOLAS PARKWAY, CAPE CORAL, FL. 33990
PHONE:(239) 574-0701

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF UNDIVIDED LOT A
UNIT No. 1, MATLACHA ISLES (P.B. 16, PGS. 132-133)
SECTION 13, TOWNSHIP 44 SOUTH, RANGE 22 EAST &
SECTION 18, TOWNSHIP 44 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

DATE: NOVEMBER 9, 2016
JOB #: 2016-0084
DRAWING NUMBER: CC-17-0002.DWG

EXHIBIT "B"

CLOSE

Mayor
Marni L. Sawicki
Council Members
District 1: James D. Burch
District 2: John M. Carioscia Sr.
District 3: Marilyn Stout
District 4: Richard Leon
District 5: Rana M. Erbrick
District 6: Richard Williams
District 7: Jessica Cosden

City Manager
John Szerlag
City Attorney
Dolores Menendez
City Auditor
Margaret Krym
City Clerk
Rebecca van Deutekom

1015 Cultural Park Blvd.
Cape Coral, FL

AGENDA FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

December 12, 2016	4:30 PM	Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

VIDEO **1. MEETING CALLED TO ORDER**

A. MAYOR SAWICKI

2. INVOCATION/MOMENT OF SILENCE

A. COUNCILMEMBER COSDEN

3. PLEDGE OF ALLEGIANCE

A. Kassie Beesley - Oasis Elementary

4. ROLL CALL

A. MAYOR SAWICKI, COUNCIL MEMBERS BURCH, CARIOSCIA, COSDEN, ERBRICK, LEON, STOUT, WILLIAMS

VIDEO **5. CHANGES TO AGENDA/ADOPTION OF AGENDA**

6. RECOGNITIONS/ACHIEVEMENTS

VIDEO A. Lee County Hawks Football Team, State Champions for Six Year Olds and Younger

VIDEO B. SERVICE AWARDS: 5 Years - Timothy Day, Jr./Fire; 10 Years - Tammy Whitaker/DCD, Tracy Williams/Finance

VIDEO C.

ADDENDUM: Resolution 233-16 Acceptance of 20 Passenger Bus from Guardian Angels to Special Populations; Department:Parks and Recreation/Special Populations Division; Dollar Value: N/A; (Donation, $64,844)

VIDEO **7. APPROVAL OF MINUTES**

VIDEO A. Regular Meeting - November 21, 2016

VIDEO B. Regular Meeting - November 28, 2016

8. BUSINESS

VIDEO A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 45 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

VIDEO B. CONSENT AGENDA

VIDEO (1) Resolution 207-16 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposals (RFP) RFP-PW16-94/GM to engage a firm to provide Professional Design Services for Streetscape Improvements SE 47th Terrace and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm CPH, Inc. Department: Public Works Dollar Value: N/A (Fund: N/A)

VIDEO (2) Resolution 212-16 Approve the purchase of portable APX6000 700/800 MHz radios and related equipment from Motorola Solutions, Inc. piggybacking Florida State Contract 725-500-12-1, in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposals, and authorize the City Manager, or designee, to sign the purchase order and any corresponding document; Department: Fire; Dollar Value $75,851; (General Fund)

VIDEO (3) Resolution 213-16 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposal (RFP) RFP-FD16-79/SH to engage a firm to provide Construction Manager at Risk (CMAR) Services for the construction of Fire Station #11 and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm, Wright Construction Group, Inc.; Department: Public Works/Fire; Dollar Value: N/A; (Fund: N/A)

VIDEO (4)

Resolution 216-16 Adopts Updated Financial Management Policies; Department: Finance; Dollar Value: N/A; (Fund: N/A)

VIDEO (5) Resolution 218-16 Approval to renew the Lee County Multi-Jurisdictional Mutual Aid Agreement between Lee County Sheriff's Office, Fort Myers Police Department, Cape Coral Police Department, Sanibel Police Department, Florida Gulf Coast University Board of Trustees on behalf of its Police Department, Florida Southwestern State College Board of Trustees on behalf of its Police Department, and the Lee County Port Authority; and authorizing the Mayor and Chief of Police to execute all necessary documents o/b/o the City of Cape Coral; Department: Police Department; Dollar Value: N/A (Fund: N/A)

VIDEO (6) Resolution 219-16 Approval of Interlocal Agreement Between the City of Cape Coral and the Cape Coral Redevelopment Agency for the Streetscape Project on SE 47th Terrace

VIDEO (7) Resolution 224-16 Approve the Staff Cost Proposal (SCP) SCP CI-1 with Cardno, Inc. for topographic survey of the existing improvements along SE 47th Terrace and surrounding streets in support of the Streetscape project for a not to exceed $66,140 and a City controlled contingency of $3,400 for changes to the work that results in changes in the level of effort for a total of $69,540 and authorize the City Manager or designee to execute the agreements; Department: Public Works; Dollar Value: $69,540; (CRA Fund)

VIDEO (8) Resolution 225-16 Approval of Agreement for Management of Cultural Park Theatre for the continued operation and management of the Cultural Park Theatre, located at 528 Cultural Park Boulevard, Cape Coral, by the Cultural Park Theatre Company, Inc., including an annual subsidy of $35,000, with an effective date of July 1, 2016; Department: Parks and Recreation; Dollar Value: $35,000; (Government Services Fund)

VIDEO (9) Resolution 226-16 Approval of Contract for Purchase of Lots 24 and 25, Block 2176, Unit 32, Cape Coral Subdivision, 1215 Kismet Parkway East, Cape Coral, for the expansion of the Academic Village site for the purchase price of $12,000 plus estimated closing costs not to exceed $1,200; Department: Financial Services / Real Estate; Dollar Value: $13,200; (Academic Village Capital Project Fund)

VIDEO (10) Resolution 228-16 Rejection of Seller's counteroffer of $10,500 and approval for City to offer of $9,500 to

Purchase Lots 97 and 98, Block 3025, Unit 43, Cape Coral Subdivision, 1313 NW 27th Street, Cape Coral, for the Festival Park project for the amount of $9,500 plus closing costs not to exceed $1,100; Department: Financial Services / Real Estate; Dollar Value: $10,600; (Parks Capital Project Fund)

VIDEO (11) Resolution 229-16 Approval of the 2015-2016 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report; Department: Community Development; Dollar Value: NA; (Fund: N/A)

VIDEO (12) Resolution 230-16 Approval of American Tower's request for consent to modify Sprint Nextel's equipment at the communication tower located at Fire Station #6 on Chiquita Boulevard and authorization for the City Manager to execute said consent letter; Department: Financial Services/Real Estate; Dollar Value: N/A; (Fund: N/A)

VIDEO (13) Resolution 231-16 Approve the Waiver of the procurement process to contract with Reliastar Life Insurance Company (Voya Financial) for the Medical & Pharmacy stop loss insurance, which provides protection against catastrophic or unpredictable losses, in accordance with the City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-141(c), at an estimated cost of $1,160,919 for specific and $43,990 for aggregate for an estimated total of $1,204,909 and authorize the City Manager or Designee to execute the application/agreement and any related documents in reference to this procurement; Department: HR; Estimated Dollar Value: $1,204,909; (Internal Service Fund)

VIDEO (14) Resolution 232-16 A Resolution to Repeal Resolution 30-16, Resolution of Necessity; Department: Real Estate/City Attorney; Dollar Value: N/A; (Fund: N/A)

VIDEO C. CITIZENS INPUT TIME

A maximum of 45 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

D. PERSONNEL ACTIONS

(1) NONE

E. PETITIONS TO COUNCIL

(1) NONE

F.

APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

(1) NONE

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

VIDEO (1) Resolution 211-16 (VP 16-0001*)

Final Public Hearing
*Quasi-Judicial, All Persons Testifying Must be Sworn In
WHAT THE RESOLUTION ACCOMPLISHES:
A resolution providing for the vacation of plat for a street right-of-way and the underlying public utility and drainage easements, being a part of NE 4th Street, located between Lots 1-28, Block 2377, and Lots 31-59, Block 2378, Cape Coral Unit 35; providing for the vacation of plat for all platted interior lot lines and public utility and drainage easements lying within Lots 1-56, Block 2377, and Lots 31-59, Block 2378, Cape Coral Unit 35; property is located at NE 4th Street between NE 5th Avenue and NE 7th Place.
Hearing Examiner Recommendation: The Hearing Examiner recommends approval of all vacation requests subject to the conditions in VP HEX Recommendation 5-2016.
City Management Recommendation: City Management recommends approval of all requests subject to the conditions appearing in the staff report.

VIDEO (2) Ordinance 57-16 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance providing for the annexation of a parcel of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of Undivided Lot A, Unit 1, Matlacha Isles; providing for redefinition of City boundaries.

B. Introductions

(1) NONE

10. UNFINISHED BUSINESS

VIDEO A. Water Quality

VIDEO B. Legislative Issues

11. NEW BUSINESS

VIDEO A.

Resolution 214-16 Approval of the 2017 Federal Legislative Platform

VIDEO B. Cape Coral Charter School Authority and CAFR Audit Discussion

VIDEO **12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

VIDEO **13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

VIDEO **14. TIME AND PLACE OF FUTURE MEETINGS**

VIDEO A. A Committee of the Whole Meeting is Scheduled for Wednesday, December 14, 2016 at 4:30 p.m. in the Nicholas Annex, 815 Nicholas Parkway, Cape Coral, FL

VIDEO **15. MOTION TO ADJOURN**

GENERAL RULES AND PROCEDURES REGARDING THE CAPE CORAL CITY COUNCIL AGENDA

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state of local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS**
DEPARTMENT OF COMMUNITY DEVELOPMENT CASES

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.

2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.

3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.

4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.

5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.

6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Item Number:	**A.(2)**
Meeting Date:	**12/12/2016**
Item Type:	**ORDINANCES/RESOLUTIONS - Public Hearings**

AGENDA REQUEST FORM
CITY OF CAPE CORAL

TITLE:
Ordinance 57-16 Public Hearing

REQUESTED ACTION:
Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision?
   If Yes, Priority Goals Supported are listed below.
   If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:
An ordinance providing for the annexation of a parcel of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of Undivided Lot A, Unit 1, Matlacha Isles; providing for redefinition of City boundaries.

LEGAL REVIEW:
Brian R. Bartos, Assistant City Attorney

EXHIBITS:
Revised Ordinance 57-16
Revised Staff Presentation
Additional Back-up Received - Annexation Point/Counterpoint - presented at the hearing by City Manager Szerlag
Additional Back-up Received - presented at the hearing by Planning Team Coordinator Wyatt Daltry

PREPARED BY:
Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:
Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

	Description	Type
☐	Revised Ordinance 57-16	Backup Material
☐	Revised Staff Presentation	Backup Material
☐	Annexation Point/Counterpoint - presented at the Hearing by City Manager Szerlag	Backup Material
☐	Revised Staff Presentation - presented at the Hearing by Planning Team Coordinator Wyatt Daltry	Backup Material

Ordinance 57-16/AX16-00001
December 12, 2016
City Council Meeting

Ordinance 57-16/AX16-00001

- **Applicant: City of Cape Coral**
- **Location: 3850-3926 Pine Island Road NW**
- **Request: City to annex six properties parcel (±5.37 acres) into the City of Cape Coral**
- **Purpose: To eventually apply City regulations to the annexed properties**

Subject Properties
DURDEN PKWY
KISMET PKWY W
KISMET PKWY E
GULFSTREAM PKWY
DIPLOMAT PKWY W
YBOR PKWY
TROPICANA PKWY W
TROPICANA PKWY E
CENTER PKWY
HANCOCK BRIDGE PKWY
VIZCAYA PKWY
TRAFALGAR PKWY
EVEREST PKWY
SAUGNA PKWY
BEACH PKWY
CAPE CORAL PKWY W
EL DORADO PKWY W
EL DORADO PKWY E
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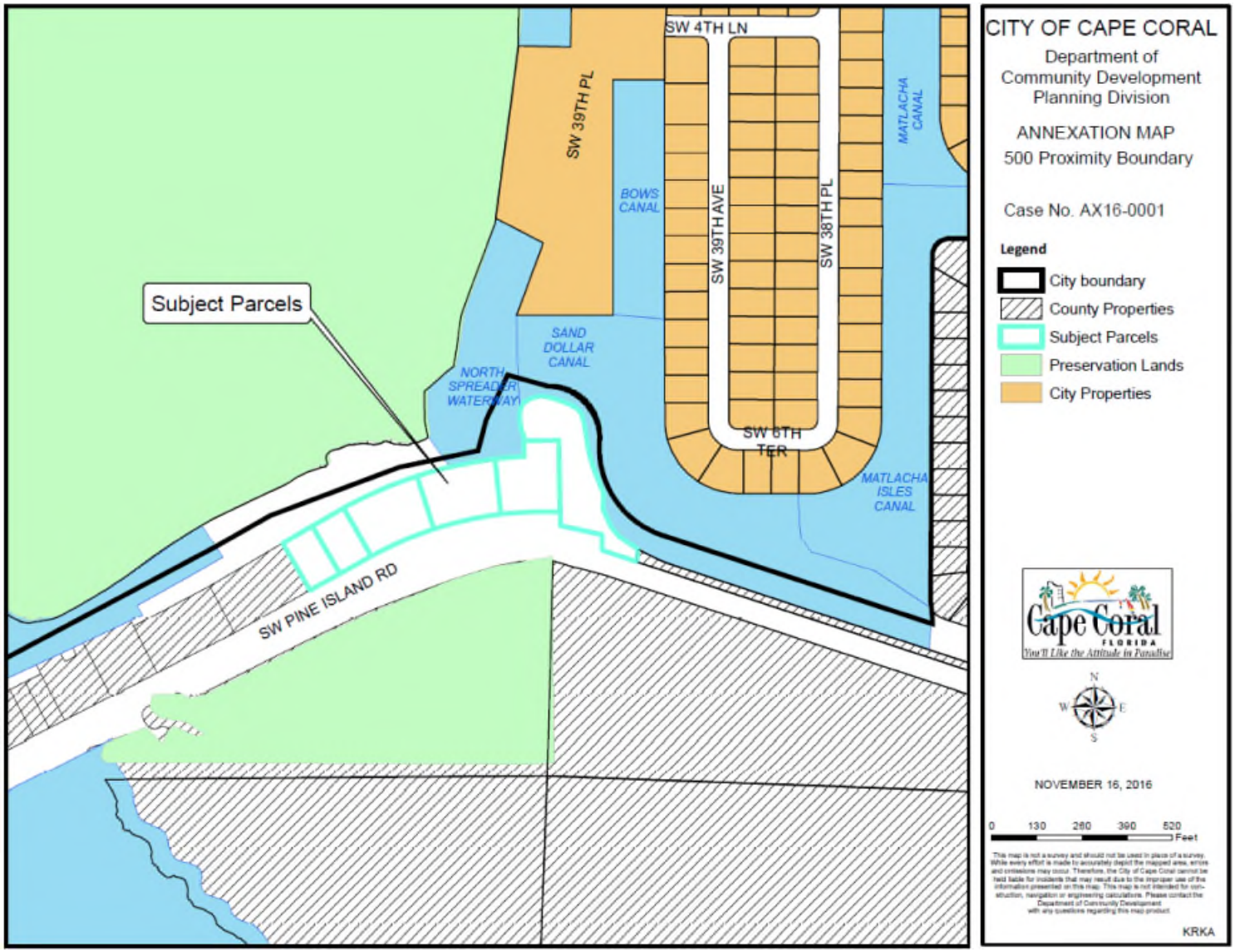
Subject Parcels
BOWS CANAL
NORTH SPREADER WATERWAY
SW 39TH AVE
SW 6TH TER
SAND DOLLAR CANAL
SW PINE ISLAND RD
CITY OF CAPE CORAL
Department of Community Development
Case # AX16-0001
Subject Parcel
Map Date: November 22, 2016
Aerial Date: 2016
0 90 180
Feet


Subject Parcels
SW 4TH LN
SW 39TH PL
BOWS CANAL
SW 39TH AVE
SW 38TH PL
MATLACHA CANAL
SAND DOLLAR CANAL
NORTH SPREADER WATERWAY
SW 6TH TER
MATLACHA ISLES CANAL
SW PINE ISLAND RD
CITY OF CAPE CORAL
Department of Community Development Planning Division
ANNEXATION MAP
500 Proximity Boundary
Case No. AX16-0001
Legend
City boundary
County Properties
Subject Parcels
Preservation Lands
City Properties
Cape Coral FLORIDA
You'll Like the Attitude in Paradise
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NOVEMBER 16, 2016
0 130 260 390 520
Feet
KRKA

Facts about Annexations

- **Deals with determining the governmental jurisdiction for the subject properties – should they be in the City or the County**

- **For voluntary annexations, burden of proof focuses on whether properties are contiguous to City, are reasonably compact, and do not create enclaves**

- **Request has no direct effect on development**

- **Per Chapter 171, annexed properties still retain County future land use and zoning; separate land use and rezoning ordinances are needed to change those to City designations**

The Annexation Properties

- **Properties purchased by the City in 2012 as part of Thieman purchase**
- **Part of the easternmost property was left out of the annexation request**
- **The waterfront nature of the properties provides the City with some development options in the future**

Recommendations

- **Properties must be annexed into Cape Coral to begin process to allow City regulations to take effect**
- **Will need to follow up with FLUM and rezoning; properties retain County land use and zoning after annexation**
- **Properties meet legal standards for annexation**
- **Property is owned by City; it is appropriate for City to bring property under its jurisdiction**
- **Staff recommends <u>Approval</u>**

Annexation Point/Counterpoint

Point	Counterpoint
Annexation creates enclave?	No, the county properties to the east (Matlacha Isles) are not completely surrounded by the City, or a combination of cities
Annexation is non-contiguous?	No, the annexation site is adjacent to the City to the north. Canals do not act as impediments to determining contiguity.
Annexation is involuntary?	No, the City is the applicant for the annexation. Florida law permits voluntary annexations, which do not require referendums.
Annexation is the precursor to the annexation of Matlacha?	There are no plans to annex Matlacha. In the absence of a voluntary annexation request, an attempt to do so would require a referendum of the residents of Matlacha. A simple majority of residents would be required to validate the annexation.
Annexation will create additional boat ramp traffic?	No. Annexation, by itself, has no effect on development.
Annexation will affect evacuation times?	No. Annexation has no effect on development.
Annexation will result in more parking for boat trailers?	No. Annexation has no effect on development.
Annexation will permit buildings with 5-8 stories?	No. Property already has County commercial zoning (C-1A and C-2). After annexation, county future land use and zoning remains; City would need to adopt ordinances to change future land use and zoning. A formal plan for development of site has not been completed.
What will City do with narrow strip of land to the east?	The City is not annexing that portion of the property, and that strip of land will remain in unincorporated Lee County.

Ordinance 57-16/Executive Summary

- **City purchased properties in 2012 (491 Purchase)**
- **Site of D&D Matlacha Bait and Tackle Shop**
- **Ordinance pertains to annexation only; no land use or zoning changes tonight**
- **Annexation would permit City to have development authority over its own property**

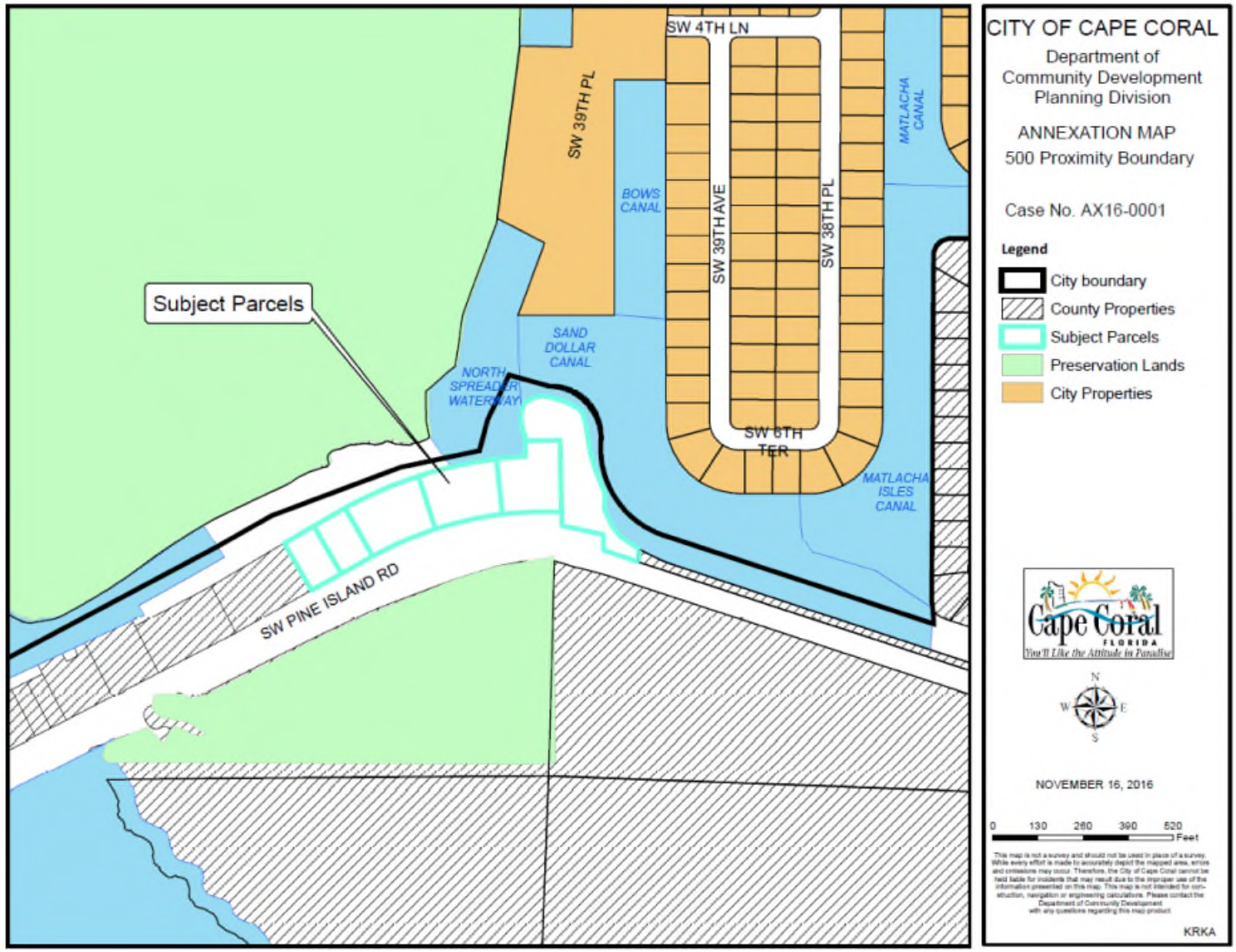
Ordinance 57-16/AX16-00001
December 12, 2016
City Council Meeting

Ordinance 57-16/AX16-00001

- **Applicant (and owner): City of Cape Coral**
- **Location: 3850-3926 Pine Island Road NW**
- **Request: City to annex six properties (±5.37 acres) into the City of Cape Coral**
- **Purpose: To eventually apply City regulations to the annexed properties**

Subject Properties
DURDEN PKWY
OLD RIVER STONE RD
KISMET PKWY W
KISMET PKWY E
GULFSTREAM PKWY
DIPLOMAT PKWY W
YBOR CANA PKWY
TROPICANA PKWY W
TROPICANA PKWY E
CENTUS PKWY
HANCOCK BRIDGE PKWY
VIZCAYA PKWY
TRAFALGAR PKWY
EVEREST PKWY
SAUGNA PKWY
BEACH PKWY
CAPE CORAL PKWY W
EL DORADO PKWY W
EL DORADO PKWY E
JASARANGA PKWY
DEL PRADO BLVD
DEL PRADO BLVD S
SANTA BARBARA BLVD
CHIQUITA BLVD
CHIQUITA BLVD S
EL DORADO BLVD N
PALMTREE BLVD
ACADEMY BLVD
N
S
E
W

Subject Parcels
BOWS CANAL
NORTH SPREADER WATERWAY
SW 39TH AVE
SW 6TH TER
SAND DOLLAR CANAL
SW PINE ISLAND RD
CITY OF CAPE CORAL
Department of Community Development
Case # AX16-0001
Subject Parcel
Map Date: November 22, 2016
Aerial Date: 2016
0 90 180
Feet


Subject Parcels
SW 4TH LN
SW 39TH PL
BOWS CANAL
SW 39TH AVE
SW 38TH PL
MATLACHA CANAL
SAND DOLLAR CANAL
NORTH SPREADER WATERWAY
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- **For voluntary annexations, burden of proof focuses on whether properties are contiguous to City, are reasonably compact, and do not create enclaves**

- **Request has no direct effect on development**

- **Per Chapter 171, annexed properties still retain County future land use and zoning; separate land use and rezoning ordinances are needed to change those to City designations**

The Annexation Properties

- **Properties purchased by the City in 2012 as part of 491 purchase**

- **Property has the Urban Community future land use, a Lee County classification, and two Lee County commercial zoning districts: C-1A (one property) and C-2 (five properties)**

- **Maximum height for both districts is 35 feet, and contain a variety of uses such as automotive repair and service stations, hotel/motels, (C-2 only), package stores, and restaurants (both districts)**

The Annexation Properties

- **Part of the easternmost property was left out of the annexation request**

- **The waterfront nature of the properties provides the City with some development options in the future**

Conclusion

- **Properties must be annexed into Cape Coral to begin process to allow City regulations to take effect**
- **Will need to follow up with FLUM and rezoning; properties retain County land use and zoning after annexation**
- **Properties meet legal standards for annexation**
- **Property is owned by City; it is appropriate for City to bring property under its jurisdiction**
- **Staff recommends <u>Approval</u>**

Mayor
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Council Members
District 1: James D. Burch
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District 3: Marilyn Stout
District 4: Richard Leon
District 5: Rana M. Erbrick
District 6: Richard Williams
District 7: Jessica Cosden

1015 Cultural Park Boulevard
Cape Coral, FL

City Manager
John Szerlag
City Attorney
Dolores Menendez
City Auditor
Margaret Krym
City Clerk
Rebecca vanDeutekom

AGENDA FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

December 12, 2016	4:30 PM	Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

1. MEETING CALLED TO ORDER

A. MAYOR SAWICKI

2. INVOCATION/MOMENT OF SILENCE

A. COUNCILMEMBER COSDEN

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

A. MAYOR SAWICKI, COUNCIL MEMBERS BURCH, CARIOSCIA, COSDEN, ERBRICK, LEON, STOUT, WILLIAMS – **PRESENT: CARIOSCIA, COSDEN, ERBRICK, LEON, SAWICKI, STOUT, WILLIAMS. EXCUSED: BURCH**

5. CHANGES TO AGENDA/ADOPTION OF AGENDA – ADOPTED AS AMENDED – MOVE ITEM 11(A) IMMEDIATELY FOLLOWING CONSENT AGENDA.

6. RECOGNITIONS/ACHIEVEMENTS

A. Lee County Hawks Football Team, State Champions for Six Year Olds and Younger
B. SERVICE AWARDS: 5 Years - Timothy Day, Jr./Fire; 10 Years - Tammy Whitaker/DCD, Tracy Williams/Finance
C. ADDENDUM: Resolution 233-16 Acceptance of 20 Passenger Bus from Guardian Angels to Special Populations; Department: Parks and Recreation/Special Populations Division; Dollar Value: N/A; (Donation, $64,844) - **APPROVED**

7. APPROVAL OF MINUTES

A. Regular Meeting - November 21, 2016 – **APPROVED**
B. Regular Meeting - November 28, 2016 – **APPROVED**

8. BUSINESS

A. PUBLIC COMMENT - CONSENT AGENDA
A maximum of 45 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual. **2 SPEAKERS. TOPICS: RESOLUTION 228-16; ITEMS 1, 6, AND 7.**

B. CONSENT AGENDA

(1) Resolution 207-16 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposals (RFP) RFP-PW16-94/GM to engage a firm to provide Professional Design Services for Streetscape Improvements SE 47th Terrace and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm CPH, Inc. Department: Public Works Dollar Value: N/A (Fund: N/A) – **APPROVED**

(2) Resolution 212-16 Approve the purchase of portable APX6000 700/800 MHz radios and related equipment from Motorola Solutions, Inc. piggybacking Florida State Contract 725-500-12-1, in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposals, and authorize the City Manager, or designee, to sign the purchase order and any corresponding document; Department: Fire; Dollar Value $75,851; (General Fund) – **APPROVED**

(3) Resolution 213-16 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposal (RFP) RFP-FD16-79/SH to engage a firm to provide Construction Manager at Risk (CMAR) Services for the construction of Fire Station #11 and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm, Wright Construction Group, Inc.; Department: Public Works/Fire; Dollar Value: N/A; (Fund: N/A) – **APPROVED**

(4) Resolution 216-16 Adopts Updated Financial Management Policies; Department: Finance; Dollar Value: N/A; (Fund: N/A) – **APPROVED**

(5) Resolution 218-16 Approval to renew the Lee County Multi-Jurisdictional Mutual Aid Agreement between Lee County Sheriff's Office, Fort Myers Police Department, Cape Coral Police Department, Sanibel Police Department, Florida Gulf Coast University Board of Trustees on behalf of its Police Department, Florida Southwestern State College Board of Trustees on behalf of its Police Department, and the Lee County Port Authority; and authorizing the Mayor and Chief of Police to execute all necessary documents o/b/o the City of Cape Coral; Department: Police Department; Dollar Value: N/A (Fund: N/A) – **APPROVED**

(6) Resolution 219-16 Approval of Interlocal Agreement Between the City of Cape Coral and the Cape Coral Redevelopment Agency for the Streetscape Project on SE 47th Terrace – **APPROVED**

(7) Resolution 224-16 Approve the Staff Cost Proposal (SCP) SCP CI-1 with Cardno, Inc. for topographic survey of the existing improvements along SE 47th Terrace and surrounding streets in support of the Streetscape project for a not to exceed $66,140 and a City controlled contingency of $3,400 for changes to the work that results in changes in the level of effort for a total of $69,540 and authorize the City Manager or designee to execute the agreements; Department: Public Works; Dollar Value: $69,540; (CRA Fund) – **APPROVED**

(8) Resolution 225-16 Approval of Agreement for Management of Cultural Park Theatre for the continued operation and management of the Cultural Park Theatre, located at 528 Cultural Park Boulevard, Cape Coral, by the Cultural Park Theatre Company, Inc., including an annual subsidy of $35,000, with an effective date of July 1, 2016;

Department: Parks and Recreation; Dollar Value: $35,000; (Government Services Fund) – **APPROVED**

(9) Resolution 226-16 Approval of Contract for Purchase of Lots 24 and 25, Block 2176, Unit 32, Cape Coral Subdivision, 1215 Kismet Parkway East, Cape Coral, for the expansion of the Academic Village site for the purchase price of $12,000 plus estimated closing costs not to exceed $1,200; Department: Financial Services / Real Estate; Dollar Value: $13,200; (Academic Village Capital Project Fund) – **APPROVED**

(10) Resolution 228-16 Rejection of Seller's counteroffer of $10,500 and approval for City to offer of $9,500 to Purchase Lots 97 and 98, Block 3025, Unit 43, Cape Coral Subdivision, 1313 NW 27th Street, Cape Coral, for the Festival Park project for the amount of $9,500 plus closing costs not to exceed $1,100; Department: Financial Services / Real Estate; Dollar Value: $10,600; (Parks Capital Project Fund) – **APPROVED**

(11) Resolution 229-16 Approval of the 2015-2016 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report; Department: Community Development; Dollar Value: NA; (Fund: N/A) – **APPROVED**

(12) Resolution 230-16 Approval of American Tower's request for consent to modify Sprint Nextel's equipment at the communication tower located at Fire Station #6 on Chiquita Boulevard and authorization for the City Manager to execute said consent letter; Department: Financial Services/Real Estate; Dollar Value: N/A; (Fund: N/A) – **APPROVED**

(13) Resolution 231-16 Approve the Waiver of the procurement process to contract with Reliastar Life Insurance Company (Voya Financial) for the Medical & Pharmacy stop loss insurance, which provides protection against catastrophic or unpredictable losses, in accordance with the City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-141(c), at an estimated cost of $1,160,919 for specific and $43,990 for aggregate for an estimated total of $1,204,909 and authorize the City Manager or Designee to execute the application/agreement and any related documents in reference to this procurement; Department: HR; Estimated Dollar Value: $1,204,909; (Internal Service Fund) – **APPROVED**

(14) Resolution 232-16 A Resolution to Repeal Resolution 30-16, Resolution of Necessity; Department: Real Estate/City Attorney; Dollar Value: N/A; (Fund: N/A) – **APPROVED**

11. NEW BUSINESS – AGENDA AMENDMENT

A. MOVED IMMEDIATELY FOLLOWING CITIZENS INPUT – Resolution 214-16 Approval of the 2017 Federal Legislative Platform – **APPROVED**

C. CITIZENS INPUT TIME

A maximum of 45 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual. **23 SPEAKERS. TOPICS: SAFETY OF FIRST RESPONDERS; 47TH TERRACE BEAUTIFICATION; 2017 COUNCIL MEETING SCHEDULE AND INCREASED CITIZEN'S INPUT TIME; OLD GOLF COURSE PROPERTY; STATE REQUIREMENTS FOR PERMITTING; EMINENT DOMAIN; AND CHARTER SCHOOL ISSUES.**

D. PERSONNEL ACTIONS
(1) None

E. PETITIONS TO COUNCIL
(1) None

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS
(1) None

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

(1) Resolution 211-16 (VP 16-0001 / Quasi-Judicial) – **Final Public Hearing**
WHAT THE RESOLUTION ACCOMPLISHES: A resolution providing for the vacation of plat for a street right-of-way and the underlying public utility and drainage easements, being a part of NE 4th Street, located between Lots 1-28, Block 2377, and Lots 31-59, Block 2378, Cape Coral Unit 35; providing for the vacation of plat for all platted interior lot lines and public utility and drainage easements lying within Lots 1-56, Block 2377, and Lots 31-59, Block 2378, Cape Coral Unit 35; property is located at NE 4th Street between NE 5th Avenue and NE 7th Place. **APPROVED**

(2) Ordinance 57-16 – **Public Hearing**
WHAT THE ORDINANCE ACCOMPLISHES: An ordinance providing for the annexation of a parcel of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of Undivided Lot A, Unit 1, Matlacha Isles; providing for redefinition of City boundaries. **APPROVED**

B. Introductions
(1) None

10. UNFINISHED BUSINESS

A. Water Quality – NO REPORT

B. Legislative Issues – NO REPORT

11. NEW BUSINESS

A. Resolution 214-16 Approval of the 2017 Federal Legislative Platform – **MOVED IMMEDIATELY FOLLOWING CITIZENS INPUT TIME**

B. Cape Coral Charter School Authority and CAFR Audit Discussion –
Approved City Manager to work with Legal, City Auditor, and staff to bring back recommendations to put forth best practices for the operation of the City's Municipal Charter School pursuant to Chapter 26 and if need be the Charter School Charter.

12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS

COUNCILMEMBER COSDEN – NO REPORT

COUNCILMEMBER ERBRICK – TOPIC: HOLIDAY WISHES

COUNCILMEMBER LEON – TOPIC: HOLIDAY WISHES

COUNCILMEMBER STOUT – TOPICS: COUNCIL FOR PROGRESS MEETING AND INCREASED CITIZEN INPUT TIME.

COUNCILMEMBER WILLIAMS – TOPIC: FLORIDA LEAGUE OF CITIES LEGISLATIVE CONFERENCE.

COUNCILMEMBER BURCH – EXCUSED

COUNCILMEMBER CARIOSCIA – NO REPORT

MAYOR SAWICKI – TOPIC: HOLIDAY WISHES.

13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

CITY ATTORNEY – NO REPORT

CITY MANAGER – NO REPORT

14. TIME AND PLACE OF FUTURE MEETINGS

A. A Committee of the Whole Meeting is scheduled for Wednesday, December 14, 2016 at 4:30 p.m. in the Nicholas Annex, 815 Nicholas Parkway, Cape Coral, FL.

15. MOTION TO ADJOURN – MEETING ADJOURNED AT 10:34 PM.

CLOSE

Mayor
Marni L. Sawicki
Council Members
District 1: James D. Burch
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1015 Cultural Park Blvd.
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AGENDA FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

November 28, 2016	4:30 PM	Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

VIDEO **1. MEETING CALLED TO ORDER**

VIDEO A. MAYOR SAWICKI

VIDEO **2. INVOCATION/MOMENT OF SILENCE**

VIDEO A. COUNCILMEMBER BURCH

VIDEO **3. PLEDGE OF ALLEGIANCE**

VIDEO A. Amelia Butts - Diplomat Elementary

VIDEO **4. ROLL CALL**

VIDEO A. MAYOR SAWICKI, COUNCIL MEMBERS BURCH, CARIOSCIA, COSDEN, ERBRICK, LEON, STOUT, WILLIAMS

VIDEO **5. CHANGES TO AGENDA/ADOPTION OF AGENDA**

6. RECOGNITIONS/ACHIEVEMENTS

VIDEO A. SERVICE AWARDS: 5 Years - Jill Ramirez/HR; 10 Years - Rebecca Fontanez/Parks and Recreation

VIDEO B. Staff Presentation - John Szerlag, City Manager

7. APPROVAL OF MINUTES

A. NONE

8. BUSINESS

VIDEO A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 45 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

VIDEO B. CONSENT AGENDA

VIDEO (1) Resolution 208-16 Approval of Hardship Deferral List for FY17 in the amount of $65,257; Department: Finance; Dollar Value: $65,257; (General Fund)

VIDEO (2) Resolution 210-16 Approval of Lee County TDC Interlocal Agreement funding for Yacht Club sand renourishment; Department: Parks and Recreation/Parks; Dollar Value: $3,750 (Fund: N/A)

VIDEO C. CITIZENS INPUT TIME

A maximum of 45 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

D. PERSONNEL ACTIONS

(1) NONE

E. PETITIONS TO COUNCIL

(1) NONE

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

VIDEO (1) AUDIT COMMITTEE - 1 VACANCY

VIDEO (2) GOLF COURSE ADVISORY BOARD - 2 VACANCIES

VIDEO (3) CONSTRUCTION REGULATION BOARD - 4 VACANCIES

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

VIDEO (1) Ordinance 52-16 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:
The ordinance authorizes the issuance of not to exceed $80,000,000 in aggregate principal amount of bonds of the City of Cape Coral to refund all or portions of the City's outstanding Special Obligation Revenue Bonds, Series

2007, Capital Improvement Revenue Bond, Series 2008, Special Obligation Revenue Bonds, Series 2011, and Special Obligation Refunding Revenue Note, Series 2012, in order to achieve debt service savings for the City. The ordinance provides for a covenant to budget and appropriate legally available non-ad valorem revenues to pay the principal of, redemption premium, if any, and interest on the bonds, and provides for the rights of the holders of the bonds. The potential net present value savings on the special obligation refunding bonds is $8,282,234 (Charter funded $5,459,500 and City funded $2,822,734).

VIDEO (2) Resolution 203-16 Public Input

WHAT THE RESOLUTION ACCOMPLISHES:
The resolution authorizes the issuance of not to exceed $80,000,000 in Special Obligation Refunding Revenue Bonds, Series 2016, to refund outstanding special obligation revenue bonds to achieve debt service savings; covenants to budget and appropriate certain non-ad valorem revenues to pay debt service on the bonds; and provides for other actions in connection with the bonds, the Purchase Agreement, Preliminary Official Statement, Escrow Deposit Agreement, and a Continuing Disclosure Certificate.

VIDEO (3) Ordinance 53-16 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending Ordinance 47-15, as amended by Ordinance 14-16, which adopted the City of Cape Coral Operating Budget, Revenues and Expenditures, and Capital Budget for Fiscal Year 2016, by increasing the total revenues and expenditures by a total of $11,245,432.

The purpose of this budget amendment is to make various true-up type adjustments to the budget. These adjustments will have no impact on the taxpayers.

VIDEO (4) Ordinance 54-16 ZA 16-0007*

Final Public Hearing
*Quasi-Judicial, All Persons Testifying Must be Sworn In
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance rezoning property located at 1975 SW Pine Island Road from Corridor (CORR) to Corridor District with the Commerce Park Overlay (CORR/CPO).
Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the application for rezoning.
City Management Recommendation: Recommends approval of Ordinance 54-16

VIDEO (5) Ordinance 56-16 PDP 16-0007*

Final Public Hearing
*Quasi-Judicial, All Persons Testifying Must be Sworn In
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the "Home Depot" Planned Development Project by approving a Special Exception for a Rental Establishment, Group III Use in a Pedestrian Commercial (C-1) district, and by eliminating a condition requiring that special exception uses, variances, deviations, and vacations of plat only be approved by PDP amendment.
Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the Project, subject to the terms and conditions for the reasons set forth in PDP HEX Recommendation 1-2016.
City Management Recommendation: Recommends approval of this PDP amendment.

B. Introductions

VIDEO (1) Ordinance 57-16 Set Public Hearing Date for Monday, December 12, 2016

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance providing for the annexation of a parcel of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of Undivided Lot A, Unit 1, Matlacha Isles; providing for redefinition of City boundaries.

VIDEO (2) Ordinance 59-16 Set Public Hearing Date for Monday, January 9, 2017

WHAT THE ORDINANCE ACCOMPLISHES:
The ordinance authorizes the issuance of not to exceed $130,000,000 in aggregate principal amount of Utility Improvement Refunding Assessment Bonds (various areas), Series 2017 for the purpose of refunding various outstanding assessment bonds of the City in order to achieve debt service savings for the City; pledges special assessment proceeds to secure payment of the principal of, redemption premium, if any, and interest on the bonds; allows for the use of net revenues of the City's water and sewer utility system to pay debt service on the bonds or make up deficiencies in the reserve account in the event such special assessment proceeds are insufficient for such purpose; and repeals Ordinance 50-15.

10. UNFINISHED BUSINESS

VIDEO A. Water Quality

VIDEO B. Legislative Issues

11. NEW BUSINESS

A. NONE

VIDEO **12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

VIDEO **13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

VIDEO **14. TIME AND PLACE OF FUTURE MEETINGS**

VIDEO A. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, December 5, 2016 at 4:30 p.m. in Council Chambers

VIDEO **15. MOTION TO ADJOURN**

GENERAL RULES AND PROCEDURES REGARDING THE CAPE CORAL CITY COUNCIL AGENDA

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state of local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS**
DEPARTMENT OF COMMUNITY DEVELOPMENT CASES

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.

2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.

3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.

4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.

5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.

6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

ORDINANCE 57 - 16

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF A PARCEL OF LAND BEING LOTS 15 THROUGH 28, MATLACHA SHORES FIRST ADDITION, TOGETHER WITH A PORTION OF UNDIVIDED LOT A, UNIT NO. 1, MATLACHA ISLES, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR REDEFINITION OF CITY BOUNDARIES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, THE CITY OF CAPE CORAL, the owner of the real property subject to this Ordinance has petitioned the Cape Coral City Council for the annexation of said real property to the City of Cape Coral; and

WHEREAS, the aforesaid petition bears the signature of A. JOHN SZERLAG, CITY MANAGER OF THE CITY OF CAPE CORAL, the owner of the property proposed to be annexed; and

WHEREAS, the City of Cape Coral desires to insure that the site is developed consistent with the development located within the City and which will be utilized in a manner that should prove beneficial to the City.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. After considering the application of THE CITY OF CAPE CORAL, the City Council has determined that the property proposed to be annexed to the City is contiguous to the City's boundaries, reasonably compact, and such annexation will not result in the creation of enclaves.

SECTION 2. The City of Cape Coral hereby annexes to the incorporated City limits the following described real property:

Lots 15 through 28, Matlacha Shores First Addition, according to the plat thereof as recorded in Plat Book 16, Page 42, Public Records of Lee County, as depicted in Exhibit "A", attached hereto,

Together with

A Parcel of land being a portion of Undivided Lot A, Unit No. 1, Matlacha Isles recorded in Plat Book 16, Pages 132-133 of the Public Records of Lee County, Florida; being more particularly described as follows:

BEGIN at the Southwesterlymost corner of Undivided Lot A, as shown on the Plat of Unit No. 1, Matlacha Isles, recorded in Plat Book 16, Pages 132-133 of the Public Records of Lee County, Florida; and also being a point on the Northerly Right-of-Way line of Pine Island Road (State Road 78) (66' Wide); Thence run along the lines of said Undivided Lot "A", the following Eight (8) courses: N 00°00'30" W for a distance of 253.20' to the Northeast corner of Lot 28, as shown on the Plat of Matlacha Shores, 1st Addition, recorded in Plat Book 10, Page 42, of the Public Records of Lee County, Florida; also being a point on a non-tangential circular curve concave Southerly, whose radius point bears S 04°55'38" W a distance of 1239.93 feet therefrom; Thence run Westerly along the arc of said curve to the left, having a radius of 1239.93 feet, through a central angle of 06°55'36", subtended by a chord of 149.81 at a bearing of N 88°32'10" W, for an arc length of 149.90 feet to the end of said curve; Thence run N 00°00'30" W a distance of 74.78' to a point on a tangential curve concave Southeasterly; Thence run Northeasterly along the arc of said curve to the Right, having a radius of 40.00 feet, through a central angle of 81°27'00", subtended by a chord of 52.19 feet at a bearing of N 40°43'00" E, for an arc length of 56.86 feet to the end of said curve; Thence run N 81°26'30" E for a distance of 66.44 feet; Thence run S 76°01'00" E for a distance of 72.21 feet to the beginning of a tangential circular curve concave Southwesterly; Thence run Southeasterly along the arc of said curve to the Right, having a radius of 83.03 feet, through a central angle of 80°11'00", subtended by a chord of 106.94 feet at a bearing of S 35°55'30" E, for an arc length of 116.20 feet (116.19 feet – Plat) to a point of reverse curvature; thence run Southeasterly along the arc of said curve to the left, having a radius of 330.61 feet, through a central angle of

75°59'48", subtended by a chord of 407.07 feet (407.08 feet – Plat) at a bearing of S 33°49'54" E, for an arc length of 438.52 feet to the end of said curve; Thence leaving said lines of Undivided Lot "A", run S 18°10'00" W a distance of 17.00 feet to a point on the Northerly Right-of-Way line of Pine Island Road (State Road 78) (66' Wide); Thence run along said Right-of-Way line N 71°50'00" W for a distance of 107.70 feet to the beginning of a tangential circular curve concave Southwesterly; Thence run Westerly along the arc of said curve to the left, having a radius of 987.93 feet, through a central angle of 11°59'32", subtended by a chord of 206.40' at a bearing of N 77°49'50" W, for an arc length of 206.78 feet to the end of said curve and to the **POINT OF BEGINNING.**

Parcel contains 0.141 acres, more or less.

Bearings refer to the Plat of Unit No. 1, Matlacha Isles, recorded in Plat Book 16, Pages 132-133 of the Public Records of Lee County, Florida.

The herein described parcel is subject to Easements, Reservations and Restrictions of record,

as depicted in Exhibit "B", attached hereto.

SECTION 3. The legal description of the boundaries of the City of Cape Coral is hereby amended to include the aforesaid property as a part of the municipality of the City of Cape Coral, Florida, and under the full jurisdiction of the municipality of Cape Coral.

SECTION 4. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 5. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2016.

_____
MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2016.

_____
REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:

_____
BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/Annexation AX16-0001 City of Cape Coral

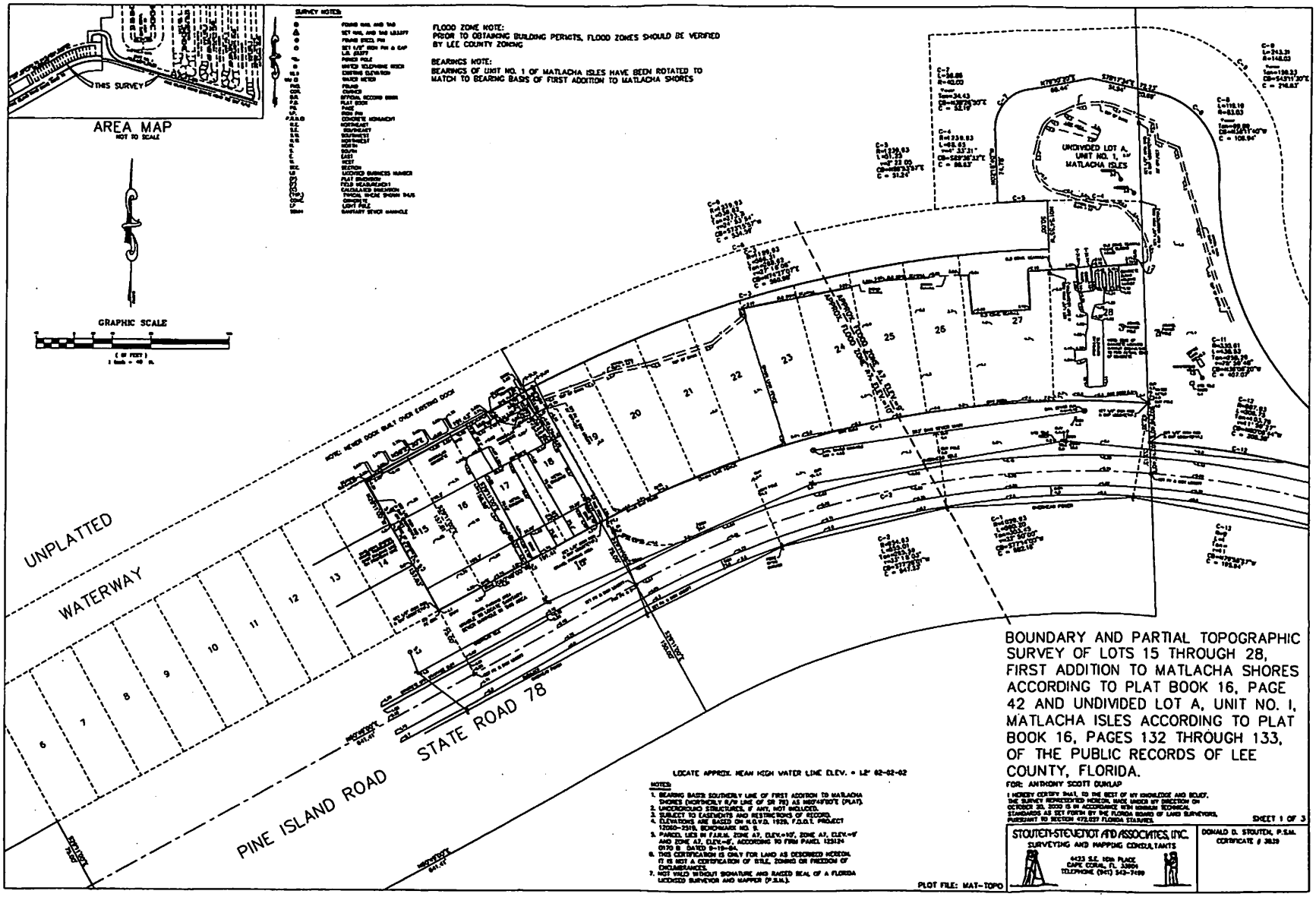
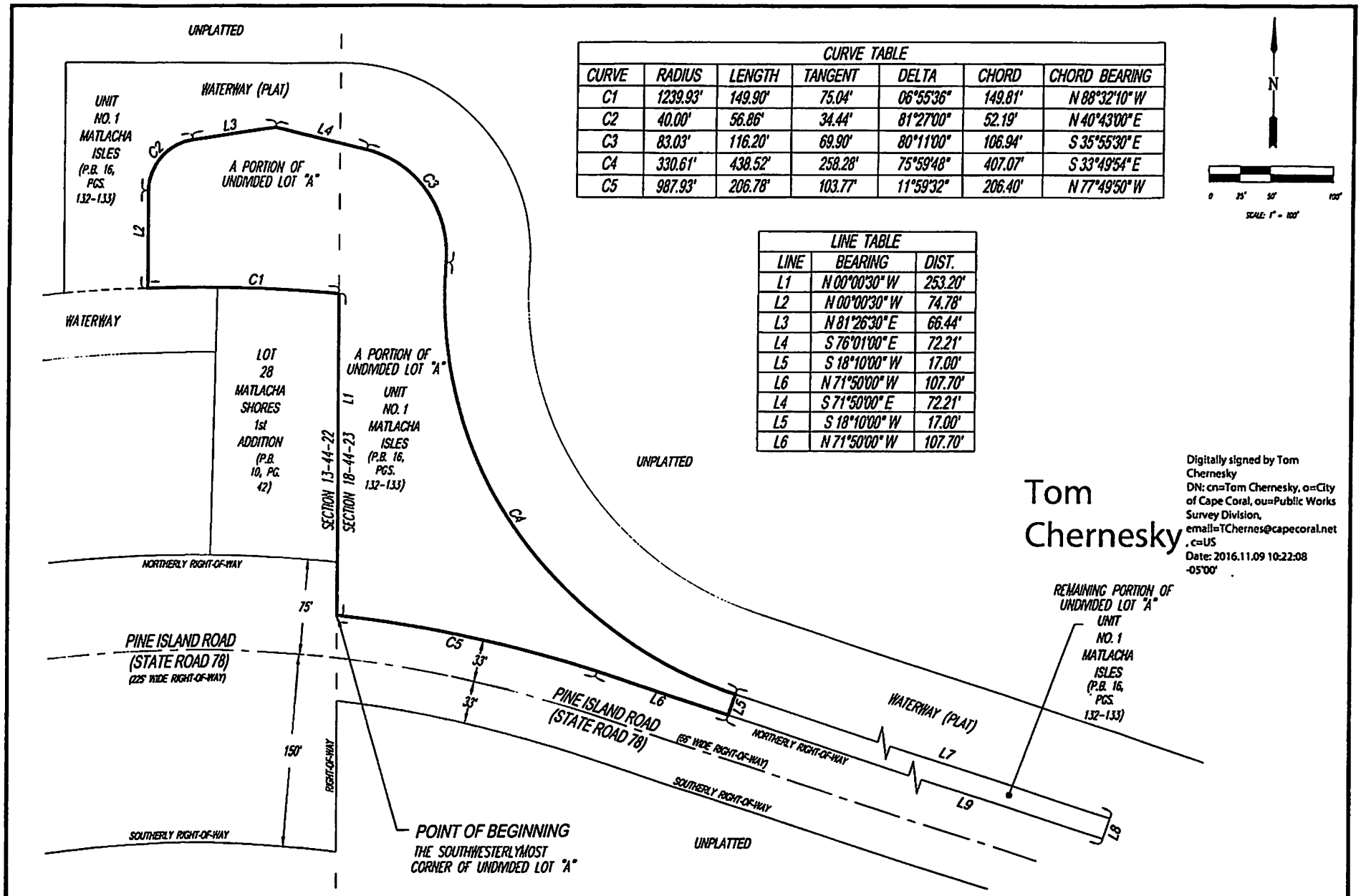


EXHIBIT "A"

P:\CAD\2001\01-137\Larry-Set\SURVEY#1.dwg Tue Jun 04 17:01:59 2002



CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD	CHORD BEARING
C1	1239.93'	149.90'	75.04'	06°55'36"	149.81'	N 88°32'10" W
C2	40.00'	56.86'	34.44'	81°27'00"	52.19'	N 40°43'00" E
C3	83.03'	116.20'	69.90'	80°11'00"	106.94'	S 35°55'30" E
C4	330.61'	438.52'	258.28'	75°59'48"	407.07'	S 33°49'54" E
C5	987.93'	206.78'	103.77'	11°59'32"	206.40'	N 77°49'50" W

LINE TABLE		
LINE	BEARING	DIST.
L1	N 00°00'30" W	253.20'
L2	N 00°00'30" W	74.78'
L3	N 81°26'30" E	66.44'
L4	S 76°01'00" E	72.21'
L5	S 18°10'00" W	17.00'
L6	N 71°50'00" W	107.70'
L4	S 71°50'00" E	72.21'
L5	S 18°10'00" W	17.00'
L6	N 71°50'00" W	107.70'

Tom Chernesky

Digitally signed by Tom Chernesky
DN: cn=Tom Chernesky, o=City of Cape Coral, ou=Public Works Survey Division, email=TChernes@capecoral.net, c=US
Date: 2016.11.09 10:22:08 -05'00'

THIS SKETCH MAY HAVE BEEN REDUCED

Revision	Date	Description	By

DRAWN BY: T.C.
APPROVED: T.C.
SCALE: 1" = 100'

Cape Coral FLORIDA
PUBLIC WORKS DEPARTMENT - SURVEY DIVISION
815 NICHOLAS PARKWAY, CAPE CORAL, FL. 33990
PHONE:(239) 574-0701

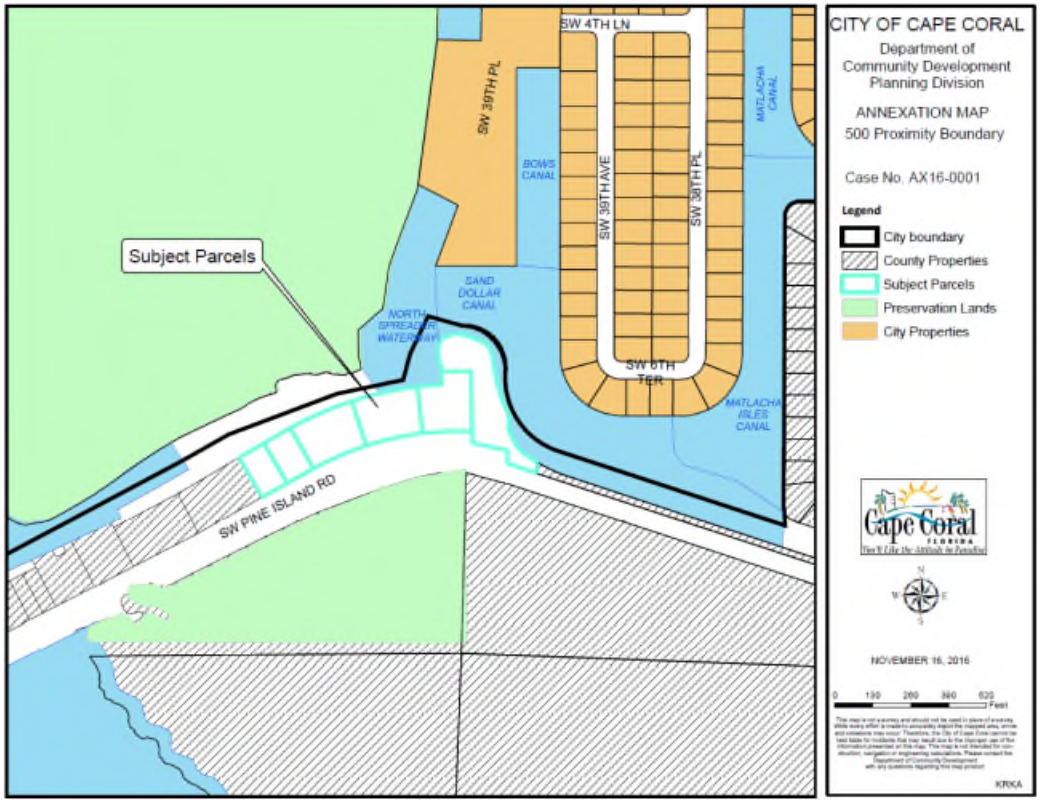
SKETCH TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF UNDIVIDED LOT A
UNIT No. 1, MATLACHA ISLES (P.B. 16, PGS. 132-133)
SECTION 13, TOWNSHIP 44 SOUTH, RANGE 22 EAST &
SECTION 18, TOWNSHIP 44 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

DATE: NOVEMBER 9, 2016
JOB #: 2016-0084
DRAWING NUMBER: CC-17-0002.DWG

EXHIBIT "B"

Ordinance 57-16/AX16-00001
Location: 3850-3926 Pine Island Road NW



Ordinance 57-16/AX16-00001

- **Applicant: City of Cape Coral**

- **Request: City to annex six properties parcel (±5.37 acres) into the City of Cape Coral**

- **Purpose: To eventually apply City regulations to the annexed properties**

Ordinance 57-16
Summary and Recommendations

- **Properties purchased by the City in 2012 as part of Thieman purchase**

- **Properties must be annexed into Cape Coral for City regulations to take effect**

- **Will need to follow up with FLUM and rezoning; properties retain County land use and zoning after annexation**

- **Staff recommends <u>Approval</u>**

MINUTES FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

November 28, 2016

Council Chambers **4:30 p.m.**

Meeting called to order by Mayor Sawicki at 4:30 p.m.

Moment of Silence – Councilmember Burch

Pledge of Allegiance – Amelia Butts – Diplomat Elementary

Roll Call: Mayor Sawicki, Council Members Burch, Carioscia, Cosden, Erbrick, Leon, and Williams were present. Councilmember Stout was excused.

CHANGES TO AGENDA/ADOPTION OF AGENDA

Councilmember Williams moved, seconded by Councilmember Burch to approve the agenda, as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

RECOGNITIONS/ACHIEVEMENTS

SERVICE AWARDS - NONE

Human Resources Director Sonego announced that this 5 year award would be given at next week's meeting as Ms. Ramirez was unable to attend this evening.

Staff Presentation - John Szerlag, City Manager

City Manager Szerlag announced the retirement of Public Works Director Steve Neff; displayed a power point with memories over the years as he has been employed with the City of Cape Coral since 1984.

Councilmembers Burch and Carioscia expressed their appreciation to Director Neff for his multiple years of service and professionalism.

APPROVAL OF MINUTES

None.

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

Tim Trimble discussed item 8(B)(1) as he was looking for supporting documents, Resolution 47-14. He was not pleased with the back-up included for this hardship deferral item.

CONSENT AGENDA

Mayor Sawicki pulled item 8(B)(1) from the Consent Agenda.

Resolution 208-16 Approval of Hardship Deferral List for FY17 in the amount of $65,257; Department: Finance; Dollar Value: $65,257; (General Fund)

Resolution 210-16 Approval of Lee County TDC Interlocal Agreement funding for Yacht Club sand renourishment; Department: Parks and Recreation/Parks; Dollar Value: $3,750 (Fund: N/A)

Councilmember Burch moved, seconded by Councilmember Cosden to approve item 8(B)(2), as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Finance Director Bateman discussed the deferment of payment on an assessment. The City still has to pay the interest cost. A hardship is approved annually based on the property owner's income, tax returns, and number of people in their family.

Resolution 208-16 Approval of Hardship Deferral List for FY17 in the amount of $65,257; Department: Finance; Dollar Value: $65,257; (General Fund)

Councilmember Burch moved, seconded by Councilmember Carioscia to approve items 8(B)(1), as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

CITIZENS INPUT TIME

Tim Trimble reiterated his statement as to the ability to search the City records online. In reference to the parking lot down at the old fire station, there is a lot of junk laying around. He requested that the City barricade that off.

Councilmember Cosden discussed the ability to search on the website. She requested that either the Clerk or the ITS Department take a look at this. City Manager Szerlag discussed the open government policy that is currently being worked on with staff.

Councilmember Leon discussed the public records tab that is already set up on the website. He commended the Clerk's office for setting up the search ability for resolutions, plat books, ordinances, minutes, elevation certificates, and elections. If you cannot find something, always contact the City Clerk's office for a copy.

City Clerk van Deutekom discussed the search area where Mr. Trimble is searching. She will have an answer provided working with the City Manager.

Councilmember Burch requested directions be put on the website on how to do a search.

Councilmember Cosden would like a search engine on the front page.

City Manager Szerlag responded they would come back with a status on the open government initiative that staff is working on with Johns Hopkins University.

PERSONNEL ACTIONS

None.

PETITIONS TO COUNCIL

None.

APPOINTMENTS TO BOARDS/COMMITTEES/COMMISSIONS

AUDIT COMMITTEE - 1 VACANCY

Audit Committee - City Clerk

Interviews
John Stevens – present

City Clerk van Deutekom stated there was one vacancy on the board due to a term expiration. The term expires 12/1/2020. One application was received from John Stevens. The vacancy was advertised in the Breeze on 9/14/2016, 9/30/2016, and on the City's website.

Councilmember Leon moved, seconded by Councilmember Burch to appoint John Stevens to the Audit Committee.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

GOLF COURSE ADVISORY BOARD - 2 VACANCIES

Interviews
Joseph Cervoni – not present
David Kenney – present

City Clerk van Deutekom stated there were two vacancies on the board due to term expirations. The term expires 12/31/2018. Two applications were received from Joseph Cervoni and David Kenney to be considered for reappointment. The vacancies were advertised in the Breeze on 10/7/2016, 10/19/2016, and on the City's website.

Councilmember Leon moved, seconded by Councilmember Burch to re-appoint Joseph Cervoni and David Kenney to the Golf Course Advisory Board.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

CONSTRUCTION REGULATION BOARD - 4 VACANCIES

Interviews
Thomas Phillips – present

City Clerk van Deutekom stated there was four vacancies on the board. The term expires 12/31/2017 and was due to the resignation by Gary Celestino. One application was received from Thomas Phillips who needs 2/3 vote since he is a member on another committee, the South Cape Community Redevelopment Advisory Board. The vacancy was advertised in the Breeze on 7/13/2016, 7/15/2016, 9/16/2016, on the City's website, and on Facebook.

Mayor Sawicki addressed Council and the public in reference to the remaining vacancies; she discussed details of a case and the lack of power that the board has. She would be interested in having a Council seat added to the board.

Councilmember Burch requested time to fill the positions. He has been working with the CCCIA to help fill the current vacancies.

Bill Johnson, Jr., CCCIA Executive Director, stated he has reviewed the documents and vacancies on this board. He will reach out to members to attempt to fill the remaining vacancies. He discussed construction crime.

Councilmember Burch discussed the success with handling unlicensed contracting enforcement by the CCCIA.

Mr. Johnson mentioned he would work with his group.

Mayor Sawicki stated that a member came to her and felt that the Board has no authority. She would like this on a future agenda. City Manager Szerlag responded in the affirmative.

Councilmember Leon stated he would be the second to have the Ordinance looked at for a liaison or a voting member. He would like input from the board members.

Mayor Sawicki stated that she will work with staff to have the liaison or a voting member topic. City Manager Szerlag stated that statutory requirements for this board would be included in the report.

Councilmember Williams moved, seconded by Councilmember Burch to appoint Thomas Phillips to the Construction Regulation Board as a consumer representative.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

ORDINANCES/RESOLUTIONS

PUBLIC HEARINGS

Ordinance 52-16 Public Hearing
WHAT THE ORDINANCE ACCOMPLISHES:
The ordinance authorizes the issuance of not to exceed $80,000,000 in aggregate principal amount of bonds of the City of Cape Coral to refund all or portions of the City's outstanding Special Obligation Revenue Bonds, Series 2007, Capital Improvement Revenue Bond, Series 2008, Special Obligation Revenue Bonds, Series 2011, and Special Obligation Refunding Revenue Note, Series 2012, in order to achieve debt service savings for the City. The ordinance provides for a covenant to budget and appropriate legally available non-ad valorem revenues to pay the principal of, redemption premium, if any, and interest on the bonds, and provides for the rights of the holders of the bonds. The potential net present value savings on the special obligation refunding bonds is $8,282,234 (Charter funded $5,459,500 and City funded $2,822,734).

City Clerk van Deutekom read the title of the Ordinance.

Finance Director Bateman explained what this Ordinance would accomplish. She discussed the power point titled Special Obligation Refunding Bonds and Special Assessment Refunding Bonds that included the following slides:

- Bond Refundings
- Preliminary Timing

She mentioned that the current market is not favorable. An agreement to wait until January, 2017 has been discussed in order to not flood the market.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Williams moved, seconded by Councilmember Cosden to adopt Ordinance 52-16.

Councilmember Burch discussed the current volatility, and inquired as to what would change from now until January. Director Bateman responded that the President-Elect has made it very well known that he would like to do away with the taxes and status of municipal bonds. The goal is to save more than 7 percent; she met weekly with underwriters and outside attorneys, and they all agreed to wait. She requested Council to please consider approving our authority to make it happen, the only change will be the day it happens instead of next week.

Councilmember Williams stated we are not adding to the debt, we are attempting to borrow money to pay off debt at a lower interest rate, saving approximately $8.2 million.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Mayor Sawicki stated that this Resolution does not require a public hearing, but public input. The Resolution is placed here due to the relation to Ordinance 52-16.

Resolution 203-16 Public Input
WHAT THE RESOLUTION ACCOMPLISHES:
The resolution authorizes the issuance of not to exceed $80,000,000 in Special Obligation Refunding Revenue Bonds, Series 2016, to refund outstanding special obligation revenue bonds to achieve debt service savings; covenants to budget and appropriate certain non-ad valorem revenues to pay debt service on the bonds; and provides for other actions in connection with the bonds, the Purchase Agreement, Preliminary Official Statement, Escrow Deposit Agreement, and a Continuing Disclosure Certificate.

City Clerk van Deutekom read the title of the Resolution.

Public Input opened.

No speakers.

Public Input closed.

Councilmember Williams moved, seconded by Councilmember Erbrick to approve Resolution 203-16.

Councilmember Burch requested information on the insurance requirement. Finance Director Bateman responded that because of our credit rating, the insurance is not required.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Ordinance 53-16 Public Hearing
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending Ordinance 47-15, as amended by Ordinance 14-16, which adopted the City of Cape Coral Operating Budget, Revenues and Expenditures, and Capital Budget for Fiscal Year 2016, by increasing the total revenues and expenditures by a total of $11,245,432.
The purpose of this budget amendment is to make various true-up type adjustments to the budget. These adjustments will have no impact on the taxpayers.

City Clerk van Deutekom read the title of the Ordinance.

Director Bateman explained what this Ordinance would accomplish. She discussed the power point titled FY 2016 Budget Amendment #2 that included the following slides:

- Distribution of Amendment by Fund Type
- Summary by Fund Type
- Summary of FY 2016 Budget amendment #2 – All Funds

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Erbrick moved, seconded by Councilmember Cosden to adopt Ordinance 53-16.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Ordinance 54-16 ZA 16-0007*
Final Public Hearing
*Quasi-Judicial, All Persons Testifying Must be Sworn In
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance rezoning property located at 1975 SW Pine Island Road from Corridor (CORR) to Corridor District with the Commerce Park Overlay (CORR/CPO).
Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the application for rezoning.
City Management Recommendation: Recommends approval of Ordinance 54-16

City Clerk van Deutekom read the title of the Ordinance.

City Clerk van Deutekom administered the oath.

Principal Planner Boyko explained what this Ordinance would accomplish. He discussed the power point titled Ordinance 54-16 ZA 16-0007 that included the following slides:

- Subject parcel map
- Future Land Use proximity map – Pine Island Road District (PIRD)
- Current Zoning Map/Existing Zoning – Corridor (CORR)
- Proposed Zoning – Commerce Park Overlay (CPO)
- Background
- Commerce Park Overlay
- Justification
- Recommendation

Planner Boyko discussed the justification as the CPO should increase value of subject property; not likely to diminish surrounding properties; CPO is compatible with surrounding area; frontage on 4-lane arterial; surrounding CORR zoning; Policy 1.15 of FLU states PIRD is intended for "office, warehouse, light manufacturing"; will increase land available for quasi-industrial uses – Cape Coral has a deficit of lands available. He continued with the recommendations as follows: The proposed amendment is appropriate for the surrounding areas and is consistent with Policy 1.15 of the Comp Plan and LUDR, Section 8.7.3; Planning staff recommends approval of Ordinance 54-16; The Hearing Examiner has also recommended approval of Ordinance 54-16 and that no correspondence has been received.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Leon moved, seconded by Councilmember Erbrick to adopt Ordinance 54-16, as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Seven "ayes." Motion carried 7-0.

Ordinance 56-16 PDP 16-0007
Final Public Hearing
*Quasi-Judicial, All Persons Testifying Must be Sworn In
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the "Home Depot" Planned Development Project by approving a Special Exception for a Rental Establishment, Group III Use in a Pedestrian Commercial (C-1) district, and by eliminating a condition requiring that special exception uses, variances, deviations, and vacations of plat only be approved by PDP amendment.

Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the Project, subject to the terms and conditions for the reasons set forth in PDP HEX Recommendation 1-2016.
City Management Recommendation: Recommends approval of this PDP amendment.

City Clerk van Deutekom read the title of the Ordinance.

City Clerk van Deutekom administered the oath.

Planning Team Coordinator Struve explained what this Ordinance would accomplish. He discussed the power point titled Ordinance 56-16 (PDP 16-0007) Home Depot PDP Amendment that included the following slides:

- Ordinance 56-16
- Ordinance 56-16, 2508 Skyline Boulevard
- Request

Planning Team Coordinator Struve discussed the request as the applicant seeking a Special Exception Use for a Rental Establishment, Group III Use. This PDP would approve converting a maximum of 25 conventional parking spaces near the south end of the Home Depot parking lot for the parking of rental vehicles.

- Reason for the PDP
- Subject parcel map
- Zoning Map
- Background

Planning Team Coordinator Struve discussed the background as the project originally approved by Ord 47-05; development includes a home improvement store and four commercial parcels; developer seeks a SE for Rental Vehicle, Group III Use; and Penske Truck and Home Depot vehicles will occupy 25 spaces reserved for commercial parking.

- Proposed Parking Area for rental vehicles
- Photograph Looking West (1)
- Photograph Looking West (2)
- Home Depot PDP Amendment – photograph looking South at nearest SF Home and a photograph looking North at rental vehicle parking area.
- Analysis
- Analysis (continued)
- Analysis (continued)
- Recommendation: Approval with Conditions
- Analysis; Concurrency and Comprehensive Plan
- Eliminate Conditions Appearing in Ord 47-05 (DCD Recommendation)
- Analysis
- Project Recommendations and Correspondence

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Leon moved, seconded by Councilmember Carioscia to adopt Ordinance 56-16.

Councilmember Burch requested input as to the recommendation of a removal of a condition in 47-05.

Planning Team Coordinator Struve explained that staff recommended to remove that requirement for future requests involving a vacation, special exception, or variance.

Discussion held in reference to the lack of PDP amendments on outparcels.

Councilmember Burch was not in favor of removing a condition that was put in place originally.

City Attorney Menendez discussed the issue about future variances or special exceptions. Council could approve this with a deletion of provision B9 if that is Council's will.

Councilmember Burch would like this part of the motion deleted.

Councilmember Leon discussed the cost of the PDP process to the applicant.

Discussion held in reference to the Development Plan.

City Attorney Menendez provided clarification of the motion; Council can approve it with or without staff's recommendation.

City Manager Szerlag stated he has looking at various types of uses as a future staff assignment.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, and Williams voted "aye." Burch voted "nay." Six "ayes." One "nay." Motion carried 6-1.

Introductions

Ordinance 57-16 Set Public Hearing Date for Monday, December 12, 2016
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance providing for the annexation of a parcel of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of Undivided Lot A, Unit 1, Matlacha Isles; providing for redefinition of City boundaries.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for December 12, 2016, in Council Chambers.

Planning Team Coordinator Daltry stated that they have identified a pair of minor scrivener's errors which would not affect the advertising; the Ordinance would be revised. He stated he was available for questions; the presentation would be done at the Public Hearing.

Councilmember Leon inquired as to whether or not we need permission from the County to annex.

Planning Team Coordinator Daltry stated we do not need permission, but we do need to notify the County in advance. It can be challenged by the County, but no permission is needed.

City Attorney Menendez discussed that there are Statute standards in reference to requirements for utilities; you do not need the County's permission to do it.

Ordinance 59-16 Set Public Hearing Date for Monday, January 9, 2017
WHAT THE ORDINANCE ACCOMPLISHES:
The ordinance authorizes the issuance of not to exceed $130,000,000 in aggregate principal amount of Utility Improvement Refunding Assessment Bonds (various areas), Series 2017 for the purpose of refunding various outstanding assessment bonds of the

City in order to achieve debt service savings for the City; pledges special assessment proceeds to secure payment of the principal of, redemption premium, if any, and interest on the bonds; allows for the use of net revenues of the City's water and sewer utility system to pay debt service on the bonds or make up deficiencies in the reserve account in the event such special assessment proceeds are insufficient for such purpose; and repeals Ordinance 50-15.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for January 9, 2017, in Council Chambers.

Finance Director Bateman stated she was available for questions.

UNFINISHED BUSINESS

Water Quality

Mayor Sawicki stated that a Water Quality back-up memo was provided to all of Council today. She, along with the City Manager and Utilities Director Pearson, will be attending the third contact meeting for the 16 counties surrounding Lake Okeechobee on Wednesday from 12 to 4 in Okeechobee. She will be bringing back the basis of a resolution to Council for approval. Mayor Sawicki discussed the process for this to give support and shows legislation what we are asking for. Nothing is being reinvented; East and West are bringing voices together to agree on the minimum of what they are asking for.

Legislative Issues

None.

NEW BUSINESS

None.

REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Burch – Topic: No report.

Councilmember Carioscia – Topic: No report.

Councilmember Cosden – Topic: No report.

Councilmember Erbrick – Topic: Thank you to Director Neff for all of his dedication to the City.

Councilmember Leon – Topic: No report.

Councilmember Stout – excused.

Councilmember Williams – Topic: No report.

Mayor Sawicki – Topic: Water Quality Meeting on Wednesday; on Thursday will be attending the Kaufman Foundation Mayor's Conference on Entrepreneurship at no cost to the City; Friday - Insurance Trust meeting in Clearwater, also no cost to the City and the Holiday Festival of Lights this Saturday, December 3rd.

REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

City Attorney – Topic: No report.

City Manager – Topic: No report.

TIME AND PLACE OF FUTURE MEETINGS

A regular meeting of the Cape Coral City Council was scheduled for Monday, December 5, 2016 at 4:30 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 6:23 p.m.

Submitted by,
Rebecca van Deutekom
Rebecca van Deutekom, MMC
City Clerk

ROETZEL
FOCUSED ON WHAT MATTERS TO YOU

MEMO

TO: Hon. Marni L. Sawicki, Mayor
& City Council, City of Cape Coral

FROM: Robert D. Pritt
General Counsel, Matlacha/Pine Island Fire Control District
Board Certified City County Local Government Attorney
Roetzel & Andress

DATE: December 11, 2016

RE: Annexation—Ordinance 57-16, an ordinance providing for the annexation of a parcel of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of Undivided Lot A, Unit 1, Matlacha Isles; providing for redefinition of City boundaries.

CLIENT-MATTER 100885.0002

Madam Mayor and City Council

I serve as general counsel for the Matlacha/Pine Island Fire Control District. The Fire Board has authorized and directed me to appear on the District's behalf. The Fire Chief Ben Mickuleit, Chair Ken Cox, Vice Chair Michael Dreikorn, Secretary Tonya Player, and Treasurer, John Cammick are here tonight.

The District is an independent special fire control district and governmental entity. The property proposed for annexation is located wholly within the District boundary and the District provides fire and first responder services to the private businesses that occupy the City-owned properties.

The District respectfully requests that this Council continue the hearing for at least a month to allow the District to review the application and possibly to confer with the City, to determine the effect upon the District, the other constituents within District boundaries, and the City.

Contrary to your City's own Comprehensive Plan, Intergovernmental Coordination Element, there has been no communication whatsoever between the City and the District. The Legislature has specifically enunciated a policy for resolution of inter-governmental disputes outside of litigation, including specifically, annexation disputes.

If the City is not inclined to continue this hearing, the District objects to this annexation as it stands before you tonight and respectfully requests that you decline to adopt Ordinance 57—16.

The reasons are as follows:

1. Lack of communication as indicated in the Comp Plan. As a practical matter, the property is located very close to the proposed Station 4 of the District. The District is in the process of soliciting proposals for the new station. This annexation may affect the feasibility of the station and fire and rescue service. We have initiated informal conversations with City staff in the past, but nothing has come of it. Intergovernmental planning and coordination is beneficial to all regardless of the local jurisdiction.

2. Lack of contiguity between the property and other City boundaries. The definition of contiguous includes substantial physical and social-economic connection.

3. The connection to existing boundaries is serpentine, or a "balloon on a string" evincing. In a sense, it is a "reverse enclave" effect. Creation of enclaves are not permitted.

4. The annexation serves no public purpose. The property history shows that these parcels and many others were purchased in 2012 by the City out of a foreclosure or bankruptcy. How that purchase accomplished a public purpose is beyond me. But even assuming the purchase was for a public purpose, the smattering of properties within the purchase indicates that there was no public purpose attributable to any particular properties including these.

5. Related to that, the City has apparently been the landlord for the private restaurant, bait shop and other businesses located on the property, none of which constitute a legitimate public business or purpose. Records show that all of the properties in this annexation are now listed as tax exempt. The loss of tax revenue to the District and other governmental entities is significant. The remaining property owners in the District must make up the difference.

Current case law indicates that a city would only be exempt from ad valorem taxation if the property is both owned by the City and the use is a legitimate public, not private, use. Treasure Coast Marina v. City of Fort Pierce SC 16-1107.

If a City property has been unlawfully obtained, it would be against public policy for it to be annexed to increase the value and then sold. We think that is the game plan and believe it to be in contravention of public policy.

We respectfully request that the ordinance be rejected or that it be continued. Your City's Comprehensive Plan, Intergovernmental Coordination Element is attached and highlighted.

ATTACHMENT

CAPE CORAL COMPREHENSIVE PLAN

INTERGOVERNMENTAL COORDINATION ELEMENT

GOALS, OBJECTIVES, AND POLICIES

GOAL:

The City of Cape Coral shall strive to achieve maximum coordination with other governmental jurisdictions, agencies, and entities.

Objective 1:

The City of Cape Coral shall coordinate planning activities mandated by the Comprehensive Plan with the plans of the Lee County School Board and adjacent local governments using existing formal and informal coordination mechanisms, or by establishing new formal mechanisms to ensure coordination. As the plans are amended and growth occurs, coordination methods may be subject to change. However, these methods are expected to include, but not necessarily be limited to, staff interaction, interlocal agreements, written communications and public meetings.

Policy 1.1: Cape Coral will coordinate planning activities mandated by the Comprehensive Plan with other affected local governments and the school board. Coordination activities may include, but not necessarily be limited to, interlocal agreements, public meetings, staff interaction, written notifications, and joint committees.

Policy 1.2: The City of Cape Coral shall utilize the mandatory dispute resolution process with other governments and agencies, as described in s. 186.509, Florida Statutes.

Policy 1.3: Development proposed in the comprehensive plan will be reviewed for impacts on the comprehensive plans of other appropriate local governments, regional agencies, and the State of Florida. This will be accomplished in part through the DRI, PDP and Plan amendment processes, and interlocal agreements (Policy 2.4).

Policy 1.4: The management of bays, estuaries, and harbors that cross Cape Coral's borders will be coordinated with other jurisdictions, including, but not necessarily limited to, Lee County, Fort Myers, the U.S. Coast Guard, the Charlotte Harbor National Estuary Program, and DEP. Coordination may include, but not necessarily be limited to, notification of development activities and future land use changes affecting those bays, estuaries and harbors, and withholding inspections until permits are obtained from the regulatory agencies with jurisdiction.

Policy 1.5: The City of Cape Coral will continue to:

- Utilize the Metropolitan Planning Organization (MPO) for all matters of coordination in transportation planning and implementation;

- Utilize the MPO Technical Advisory Committee (TAC) in matters requiring communication, cooperation, and coordination between Cape Coral and other jurisdictions.

Policy 1.6: City staff will continue to coordinate school and related facility siting and development processes with staff of the Lee County School Board.

Policy 1.7: City staff will be made available as needed to participate in intergovernmental coordination activities with other governmental, public and private entities.

Policy 1.8: The City will coordinate the designation of any future dredge spoil sites with neighboring jurisdictions with dredge spoil disposal responsibilities, in accordance with Policy 12.2 of the Future Land Use Element of this Plan.

Objective 2: EFFECTS OF NEW DEVELOPMENT

The City will coordinate the impacts of planned development on neighboring jurisdictions, regional agencies, and the State of Florida using existing formal or informal coordination mechanisms, or establishing new mechanisms as needed to ensure coordination. These mechanisms may include, but are not necessarily limited to, interlocal agreements, public meetings, staff interaction, written notifications, and joint committees.

Policy 2.1: Cape Coral will coordinate planning activities mandated by the Comprehensive Plan with other local governments, regional agencies, and the State of Florida, including, but not necessarily limited to, Lee County, Charlotte County, the City of Fort Myers, the Southwest Florida Regional Planning Council, and the Florida Department of Economic Opportunity.

Policy 2.2: Development proposed within the City of Cape Coral will be reviewed for impacts on the comprehensive plans of adjacent local governments, regional agencies, and the State of Florida. This may be accomplished in part through the Development of Regional Impact (DRI) and Comprehensive Plan amendment processes, and interlocal agreements.

Policy 2.3: The City of Cape Coral may enter into interlocal agreements with adjacent local governments for the notification and exchange of information regarding changes of future land use and/or zoning within one (1) mile of its corporate limits.

Policy 2.4: The City of Cape Coral will communicate with Lee County to discuss the effects of new development upon major roadways, such as County roads, that serve both communities.

Objective 3: LEVEL-OF-SERVICE STANDARDS

Ensure that the Level-of-Service (LOS) standards specified in the Comprehensive Plan are consistent with the LOS standards for public facilities of other governmental entities having operational and maintenance responsibility for those facilities.

Policy 3.1: The City of Cape Coral will coordinate planning activities mandated by the Comprehensive Plan with other local entities, regional agencies, and the State of Florida, with particular attention to ensuring consistency of level-of-service standards.

Policy 3.2: Development proposed within the City of Cape Coral will be reviewed for its impact on the level of service standards of adjacent local government. This will be accomplished in part through the DRI and plan amendment processes, the PDP process, the MPO, and through interlocal agreements.

Policy 3.3: The City of Cape Coral will ensure coordination of level-of-service standards by entering into interlocal agreements, serving on MPO committees, reviewing activities, and actively participating in interagency policy-making and goal-setting activities.

Objective 4: The City of Cape Coral shall support voluntary annexation of unincorporated lands adjacent to City boundaries for the purpose of maintaining cost-effective delivery of public services, eliminating enclaves, preserving natural resources, increasing the City's supply of commercial space, and increasing affordable housing opportunities within the City.

Policy 4.1: The City shall seek to implement a joint planning area (or areas) with Lee County, in order to resolve issues regarding proposed annexations.

Policy 4.2: In the event that the City of Cape Coral and Lee County are unable to resolve issues of concern relative to the proposed voluntary annexation area(s) the City shall first seek informal mediation.

Policy 4.3: The City will prioritize voluntary annexation requests that involve properties meeting the criteria for 'enclaves', as defined in Chapter 171, Florida Statutes.

cc: Ben Mickuleit, Fire Chief--Matlacha Pine Island Fire Control District
Ken Cox, Chair--Matlacha/Pine Island Fire Control District
Dolores Menendez, Cape Coral City Attorney

11103571 _1 100885.0002

BEFORE THE CITY COUNCIL OF CAPE CORAL, FL

RE: PROPOSED ORDINANCE 57-16/AX16-00001

OBJECTION BY COUNTY RESIDENTS AND LAND OWNERS J. MICHAEL HANNON AND KATHLEEN R. WALSH

We object to the proposed annexation of land in Matlacha by the City of Cape Coral. We ask the Council to take one of the following actions:

1. Dismiss the proposed ordinance and sell the land to a conservancy at the price the City paid for it in 2012; or,

2. Postpone voting on the ordinance until the legal problems are referred to Lee County and the Florida Attorney General.

As a new resident of Matlacha, I [Michael] have spent the past 5 days trying to figure out why Cape Coral wants this land in its city and why Matlacha, Cape Lacha, NW Cape Coral, and Pine Island object.

I found that the current dispute goes back a long way. Around 2008 Cape Coral City removed the Ceitus Boat Lift Barrier which formerly held back from Matlacha Pass the flow of polluted stormwater from the developed land in Cape Coral City. Obviously, when the Cape Coral canals were first dug, there was no department of the environment requiring a stormwater management plan, and it appears the canals serve that purpose.

Folks in Cape Coral apparently wanted to gain boat access to the Gulf from their labyrinthine canal system. That makes sense to me. So the City removed the Ceitus Boat Lift Barrier. When that happened, 30+ years of polluted sediments behind the Barrier were scoured out, carried downstream and deposited into a formerly ecologically diverse and very productive estuary: nursery to snook, tarpon and Florida Gold shrimp. The salinities of the little back bay of the Preserve dropped to zero, killing filter-feeding water-cleansing oysters. These waters are habitat of 86 threatened and endangered species.

I used google earth to view the land in Matlacha proposed for annexation, and saw that the canal goes north along the edge of the Seven Islands, of the Ceitus Boat Lift and to the north end of Cape Coral. You will see the Mangrove and the Matlacha Pass into which the Cape Coral stormwater began to run.

The City was challenged by a fellow named Phil Buchanan, Cherokee Indian heritage and retired from the CIA. He died in May of this year, and Pine Islanders speak of him with near reverence for his advocacy of the environment and selfless devotion to his neighbors.

Phil and others went to the Florida Department of the Environment and achieved a Consent Order with the City. Under the Consent Order, the City promised to rebuild the Ceitus Boat Lift and promised "better" environmental options—neither of which ever materialized. Phil

and his colleagues sued Cape Coral. I have reviewed the FDEP documents and the court case. I invite others to enlighten me, but it appears that with Phil's death, the hope of Cape Coral rebuilding the Ceitus Boat Lift must be left to another.

So I went up the road to take a look at the Ceitus Boat Lift and the area where the Cape Coral run-off continues to enter Matlacha Pass. What a breathtaking vista to the west: the Mangrove, the canals, the birds, manatees and wildlife. Except for the water. I learned that these lands are called the Matlacha Pass Aquatic Preserve, an environmentally sensitive estuary with five levels of state and federal protection: including Class (I or II) Florida Waterway, part of CHNEP (Charlotte Harbor National Estuary Program), GEMS (Gulf Ecological Management Site), and Aquatic Preserve. When I asked about the water, a long-time resident and environmental biologist told me that no state or federal agency seems to assume responsibility for its protection and preservation. I was concerned, because as a recreational boater, I know that if you were caught spilling boat oil in these waters, you could go to jail.

Then I learned about Cape Coral's "Seven Islands" development plan. It appears that your astute City residents know all about this. What I found out from court records is that in 2012 a developer operating under the name Thieman Enterprise got into some difficulties and surrendered his recently purchased properties to the bank. The Thieman properties included land outside Cape Coral, as well as the land now known as the Seven Islands. The properties outside Cape Coral consisted of the lots in Matlacha – the subject of the current annexation dispute -- and lots in St. James City.

The City bought the entire package at auction in 2012 for over $13 Million.

I thought this purchase of land by the City outside the City limits was at least odd. A city is a legal entity created by its State's citizens. In the tradition of our country to favor individual freedoms over government, a city may not exercise powers ordinarily enjoyed by a citizen of the State. For example, a city cannot operate a WaWa. It would be unfair, because the city could easily out-compete its rivals. One exception I can think of is the controversial power of eminent domain. However, a city can only exercise eminent domain over land within its boundaries.

So I think a city should only purchase land to fulfill a legitimate municipal objective. In reviewing the news articles in 2012, there appears to have been significant legal concerns raised at the time. The materials I have reviewed have not convinced me that the City lawfully could purchase the Thieman properties located in Matlacha and St. James City. In reflecting on this, it appears to me that the City went ahead with the purchase because the non-City land was bundled at auction with the City land: hence, I will give the City the benefit of the doubt and assume that expediency prevailed over the law. At the time, I am told, the Council and others promised the public quickly to sell the Matlacha and St. James City land, no doubt realizing a quick and tidy profit. Okay with me.

But that did not occur, and it is hard to enforce such assurances or even prove them. I believe the actual price paid for the Matlacha lots was less than $500,000. I understand that later, Cape Coral refused to sell even one lot to neighboring restauranteur Miceli's for $1,000,000 or $1,500,000. So, I wondered, what business was the City getting into?

The evidence seems to suggest that either the Council or its Planning Staff or both got excited about the Seven Islands, part of the Thieman purchased lands already in Cape Coral. These “islands” are actually dredge spoil islands. Apparently the Council became enchanted with the idea of becoming wealthy land developers. So, the Council pushed for the current plan to build 8-story mixed-use structures on these eco-islands, adjacent to the Matlacha Mangrove to the west and the community of Matlacha Isles to the east. I reviewed the process of selecting this plan, and find it hardly transparent. I also wonder how the City thinks this plan will survive environmental scrutiny.

As part of the development plan for the Seven Islands, the City apparently re-focused on the land in Matlacha on Pine Island Road. By annexation, the City now proposes to build a triple boat ramp marina, no doubt to augment the Seven Islands project up the canal. This is another project unlikely to survive environmental scrutiny. However, like the promises in 2012, there is no guarantee the City won't decide to build a WaWa on the canal.

So now to the annexation. The City is using the Florida Annexation statute to accomplish its takeover of the Matlacha land, and then re-zone it under Cape Coral laws to who-knows-what. They are using the "voluntary annexation" section which permits annexation if a city and the contiguous landowners consent. The statute is meant to be used where the adjacent land is owned by someone other than the city – as my daughter would say, “no duh.” Since the city – in my opinion – unlawfully owns the adjacent land itself, there aren’t two "sides" to this annexation. Interestingly, if this is a permissible use of the statute by the City, then no one can appeal the annexation because only an “affected party” can appeal. There is no “affected party” under the statute because the City is on both sides.

If this is a permissible use of the statute, then any Florida city could buy adjacent land and then start chomping away at the rest of the county. Cape Coral could use its significant funds, its immense purchasing power, and its tax-free overhead to chomp through Matlacha and Pine Island. The more land the City buys, the less the county receives in property taxes because the City is tax exempt. I think this is wrong, because Cape Coral could not accomplish the same thing through eminent domain.

The purpose of the annexation statute – it seems to me – is to permit residents of a county to choose through the democratic process whether to merge with an adjacent city. The purpose of the statute, as clearly stated by the Florida legislature, is to promote urban growth in areas of the county adjacent to a city where the residents want to have the sewer, water, police, fire and other services the city can provide. The statute is not intended for a city to act like PAC-MAN.

So, to me this is a bit of a crescendo: the unlawful purchase of the Matlacha land in 2012 now leads to an unlawful voluntary annexation. Cape Coral will say it is our land, so we can do with it what we want. But this un-neighborly act simply builds on the 2012 unlawful incursion into the county and Matlacha. Even the biggest of big government proponents would not concede that a City may engage in land development, just for the sake of making money.

If the annexation were truly an arms-length process, Cape Coral would be required to engage in significant planning in advance and to conduct a referendum. I believe the law is not an ass, and a moderately educated person ought to be able to understand it. I think this is easy to understand.

We see this ordinance as a grave assault on the sovereignty of Lee County and the rights of its residents to enjoy our delicate and non-urban environment. We have the following additional objections, which we will pursue on appeal if the ordinance is passed:

A. LACK OF PROPER NOTICE: We cannot know the full extent of the City's failures in this regard, as the only notice we were aware of was the posting of a sign at the property only a few days ago. Moreover, the documents I obtained from the City website are inadequate to advise anyone of the true nature of this action. The City's own proposal was amended without any notice only a day or two ago. To my knowledge, no one has noticed Lee County, which has an enormous interest in the proposal on behalf of its residents. I am sure Florida has an administrative procedures act which all this violates.

B. ILLEGALITY OF THE 2012 PURCHASE: We assert that the 2012 purchase of these properties is void *ab initio*, as the action was *ultra vires*. If litigation is necessary, we would pursue discovery of how the purchase was orchestrated in violation of the Florida Constitution and the Charter of Cape Coral.

C. VIOLATION OF LEE COUNTY LAW: While the documents attached to the ordinance notice include largely illegible surveys, it is clear that the City proposes to severe the serpentine snout of Lot A, the eastern-most lot, without applying for authority to do so with Lee County authorities. This is a thinly veiled attempt to establish "contiguity" of the land to the City boundary by unlawfully severing this snout, which is adjacent to Lee County and not adjacent to the City.

D. THE LAND IS NOT "CONTIGUOUS" WITH CITY BOUNDARIES: The City utterly fails to establish the requirement that the county land be "contiguous" to the boundary of the City. None of the lots are adjacent to the City boundary, even if one assumes that an intervening canal does not defeat contiguity. That is because the portion of the canal adjacent to the lots is owned from the mean high water mark into the canal by Lee County. (See Exhibit A, attached). In addition, Lot A, the easternmost lot, includes a piece of land on its rounded head which is also in Lee County. (See Exhibit B, attached). Continuity is also defeated by the snout of Lot A, the serpentine portion of the Lot which is adjacent to Lee County all the way to Matlacha Boulevard. (See Exhibit C, attached). In short, there is no common boundary between the City and the land in question anywhere.

E. THE LAND IS NOT "COMPACT" AS REQUIRED BY LAW: The Florida annexation statute also requires the land to be "compact": Subsection 171.031(12) of the Florida Statutes defines compactness to mean a "concentration of a piece of property in a single area and precludes" the creation of "enclaves, pockets or finger areas in serpentine patterns." The City Council is engaging in Gerrymandering. The word gerrymander was used for the first time in the *Boston Gazette* on 26 March 1812. The word was created in reaction to a redrawing

of Massachusetts state senate election districts under Governor Elbridge Gerry. Governor Gerry signed a bill that redistricted Massachusetts to benefit his Democratic-Republican Party. When mapped, one of the contorted districts in the Boston area was said to resemble the shape of a salamander. In this case, the Council has created a serpentine figure resembling the small tooth sawfish, an endangered Florida specie. In addition, if the snout of the fish is eliminated as the Council proposes, that leaves an "enclave" adjacent to Pine Island Road and the canal. And Lee County would continue to own the bank of the canal and several feet into the canal.

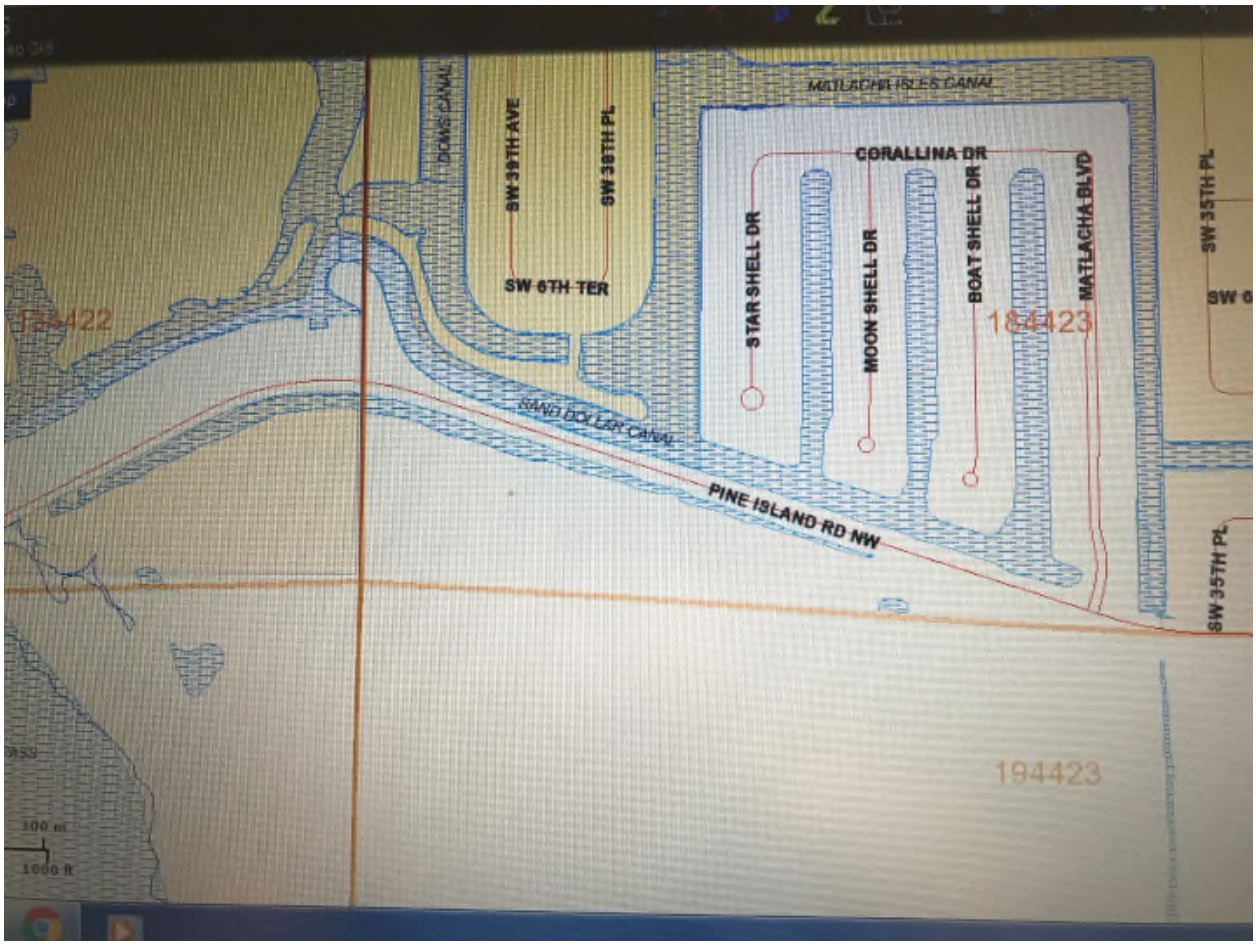
F. THE ORDINANCE IS ULTRA VIRES: The one thing the City has made clear, if the annexation takes place it plans to re-zone the land. As with the Seven Islands, we anticipate the City Council to seek "the highest and best use" for the land, in order to obtain the greatest profit. This is an entrepreneurial function which is beyond the authority of the City. Nor do the ends justify the means. Otherwise, Cape Coral would be able to purchase and annex all of Matlacha and Pine Island.

G. WE LIKE IT LIKE THIS: We choose to live in Matlacha and Lee County, not in Cape Coral. We tried that. Cape Coral government, as far as we can see, is oblivious to the environment. In only three years, we have seen the waters of Matlacha become even more turgid.

H. WE DON'T TRUST CAPE CORAL CITY GOVERNMENT: No offense, but from what we have seen with the Seven Islands, we do not trust you. I am sure I can find a legal nostrum that would fit this sentiment. Why not sell the property and see if we can get back on neighborly terms?

Very Respectfully,

J. Michael Hannon
Kathleen R. Walsh
2721 Clyde Street
Matlacha, FL 33993
(202) 365-5561
jmikehannon@gmail.com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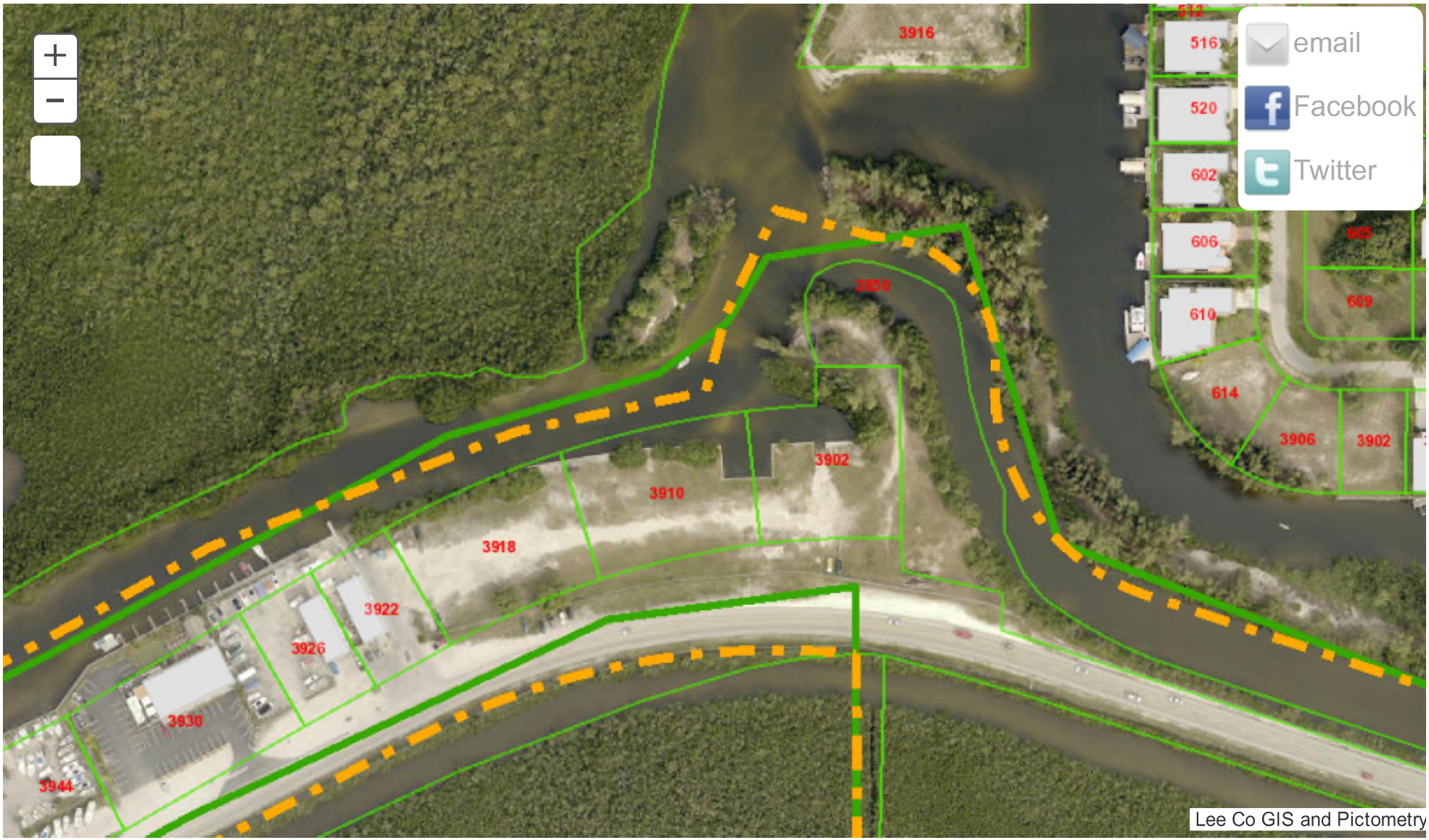
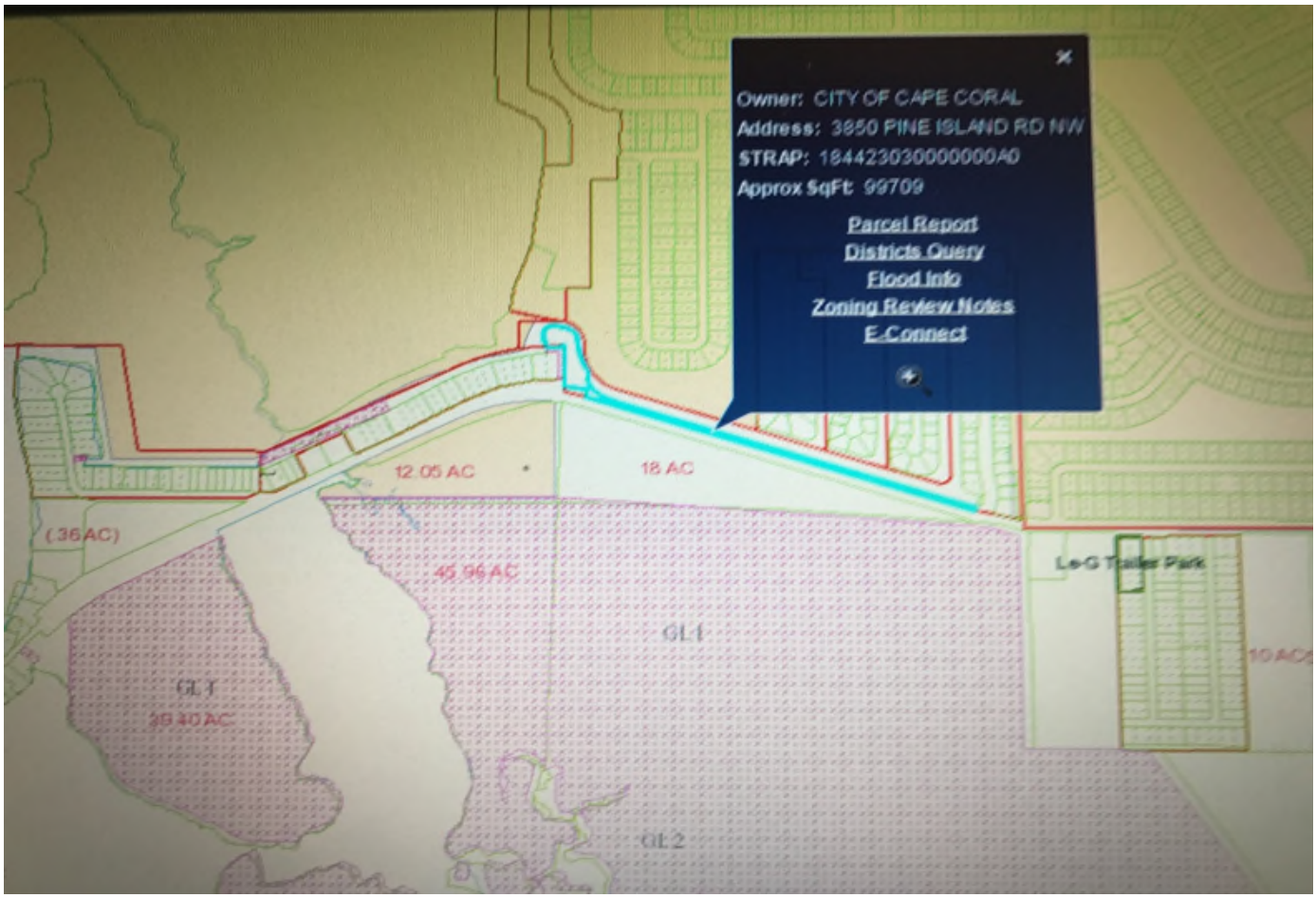
Find My Property

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Approx SqFt: 99709
Parcel Report
Districts Query
Flood Info
Zoning Review Notes
E-Connect
12.05 AC
18 AC
(36 AC)
45.96 AC
GL1
GL1
38.40 AC
GL2
L-o-G Trailer Park

Gmail

Michael Hannon <jmikehannon@gmail.com>

Objection to Ordinance 57-16

7 messages

Michael Hannon <jmikehannon@gmail.com> Mon, Dec 12, 2016 at 2:11 PM
To: "Wyatt A. Daltry" <wdaltry@capecoral.net>, Kristin Kantarze <kkantarz@capecoral.net>, ctyclk@capecoral.net
Cc: MJacob@leegov.com, dmenendez@capecoral.net
Bcc: Noel Andress <nandress@comcast.net>, nh <hindenach@gmail.com>, Roger Wood <rogergpica@gmail.com>, CenturyLink Customer <seehof@embarqmail.com>, Leo Amos <laajr@aol.com>, nadine <nadinerusso@gmail.com>, Kathleen Hogan <krw567@gmail.com>, Billie Young <billiey210sc@gmail.com>, Bill Hartnett <billhartnett@hotmail.com>, CAROL CRANE <CDCRANE@comcast.net>, president@swccna.com, Dreikorn Michael <dreikorn@theiplgroup.com>, "Feldman, Eileen" <PICAPIEXE@aol.com>, spanda@gtpslaw.com

Ms. van Deutekom, Ms. Kantarze, and Mr. Daltry,

Please accept for filing with the City Council the Objection to the Ordinance and exhibits which is attached hereto.

I would appreciate your placing me on the list of speakers for this evening. I would also like to place on the overhead the exhibits to the written objection.

Thank you,

J. Michael Hannon
(202) 365-5561

4 attachments

Exhibit C.JPG
3308K

Exhibit A.JPG
6109K

J. Michael Hannon
2721 Clyde Street
Matlacha, FL 33993
jmikehannon@gmail.com
(202) 365-5561

December 13, 2016

VIA ELECTRONIC TRANSMISSION ONLY

Rebecca van Deutekom, MMC
City Clerk, City of Matlacha
City Hall
1015 Cultural Boulevard
Cape Coral, FL 33990

Re: Objection of J. Michael Hannon and Kathleen R. Walsh to Ordinance 57-16/AX16-00001

Dear Ms. Van Deutekom:

I wish to thank the Council for allowing me to present our objection to this ordinance at the meeting last night.

Council Members Rana Erbick and Marilyn Stout indicated that they relied on the legal opinion of the City Attorney when they voted in favor of this Ordinance. I have found no such opinion in the record. I write to ask that the opinion of the City Attorney on this Ordinance be made a part of the record.

John Szerlag also presented a document on the overhead addressing issues he had heard about over the past few weeks. This document was not a part of the public record, nor was it provided ahead of time. Dr. Michael Dreikorn asked that the document be made a part of the record. Please advise whether this has been done.

Finally, hours before the hearing, Wyatt Daltry sent me some answers to an email inquiry I had sent on December 11, 2016. I have attached a copy, and I ask that this email exchange be made a part of the record.

Thank you for your courtesies and those of your staff.

Sincerely,

s/ J. Michael Hannon

J. Michael Hannon

Encl.

CC: w/Encl.

Mayor Marni Sawicki
Council Members
Dolores D. Menendez
John Szerlag
Wyatt Daltry
Michael Dreikorn, Ph.D.

Michael Hannon <jmikehannon@gmail.com> Dec 11 (2 days ago)

Wyatt,

I just reviewed the revised ordinance and revised staff report. I hope you can answer some questins.

1. The revisions appear to eliminate the eastern "tail" of Lot A from the annexation proposal. Is that correct? If so, how can that lot be annexed in part? Doesn't the eastern "tail" of that lot go all the way to Matlacha Blvd.? Isn't the portion of Lot A that is eliminated in the revision adjacent to Lee County property on the north?

2. The revision and the earlier drawing of the lot boundary for Lot A [eastern most lot] does not encompass all of the land at the north tip of the lot adjacent to the canal. Who owns that land?

3. The revision and earlier drawings show the Cape Coral boundary running east/west in the canal. Who owns the area of the canal between the Cape Coral boundary and the lot line to the south?

I have highlighted the revised ordinance and staff report attached and included stickies on the relevant maps.

Thanks,

Mike Hannon

Wyatt A. Daltry 2:51 PM (18 hours ago)

to me

Hello Michael,

Answering your questions in order:

1.) Yes, we are not annexing the eastern "tail" of the easternmost property (Lot A). A property may be annexed, in part. The remaining property would be considered adjacent to Matlacha Isles, and thus, adjacent to unincorporated Lee County.
2.) I wouldn't rely of the map polygon lines which are not entirely accurate as depicted on the County website (and since we use their line work, the City website too). I'd rely on the metes and bounds legal description of the subject area to be annexed. That description includes the 6 properties, between road and canal, with the exception of the aforementioned "tail".
3.) The canal is considered public rights-of-way. I admit I am uncertain which government has maintenance responsibilities (is it split down the centerline of the canal, for instance), but I'll check on that and hopefully receive an answer by the meeting. At any rate, public ROW doesn't serve as an impediment to determining contiguity, for purposes of annexation.

Hope this helps.

Wyatt Daltry, AICP, CFM
Planning Team Coordinator
City of Cape Coral

Department of Community Development
(239) 573-3160 (phone)
(239) 574-0594 (fax)

Gmail

Michael Hannon <jmikehannon@gmail.com>

Ordinance 57-16

7 messages

Michael Hannon <jmikehannon@gmail.com> Tue, Dec 13, 2016 at 11:33 AM
To: ctyclk@capecoral.net
Cc: dmenendez@capecoral.net, "Wyatt A. Daltry" <wdaltry@capecoral.net>, msawicki@capecoral.net, jszerlag@capecoral.net, jburch@capecoral.net, jcarioscia@capecoral.net, mstout@capecoral.net, rleon@capecoral.net, rerbrick@capecoral.net, rwilliam@capecoral.net, jcosden@capecoral.net, Dreikorn Michael <dreikorn@theiplgroup.com>
Bcc: Roger Wood <rogergpica@gmail.com>, CenturyLink Customer <seehof@embarqmail.com>, Smock Birdi <kesmock@gmail.com>, nh <hindenach@gmail.com>, CAROL CRANE <CDCRANE@comcast.net>, Bill Hartnett <billhartnett@hotmail.com>, Kathleen Hogan <krw567@gmail.com>

Ms. van Deutekom,

I have attached a letter request to the Council in connection with last night's hearing.

Thank you,

J. Michael Hannon

2 attachments

JMH Daltry Email Re Questions 121216.docx
17K

Ltr to City Clerk Re Record 121316.docx
14K

Rebecca vanDeutekom <rvandeut@capecoral.net> Tue, Dec 13, 2016 at 4:03 PM
To: "jmikehannon@gmail.com" <jmikehannon@gmail.com>

We have uploaded the pertinent documents into the packet online.

/rv

Rebecca van Deutekom, MMC
City Clerk
Office: (239) 574-0417 Fax: (239) 242-5344
rvandeut@capecoral.net

CAPE CORAL CITY COUNCIL

CAPE CORAL, FLORIDA

Excerpt of transcript of proceedings had at the public hearings conducted by the City Council of Cape Coral, Florida, at Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, Florida, on December 12, 2016, commencing at 4:30 p.m.

MEMBERS OF THE COUNCIL:

Marni Sawicki, Mayor
James Burch
John Carioscia, Sr.
Marilyn Stout
Richard Leon
Rana Erbrick
Richard Williams
Jessica Cosden

ALSO PRESENT:

John Szerlag, City Manager
Delores Menendez, City Attorney
Rebecca Van Deutecom, City Clerk
Wyatt Daltry, Planning Team

* * * *

THE MAYOR: On to 9-A, public hearing, Ordinance 57-16.

Madam City Clerk, please read the title.

THE CLERK: Ordinance 57-16, an ordinance providing for the annexation of a parcel of land, being Lots 15 through 28, Matlacha Shores, First Edition, together with a portion of undivided Lot A, Unit Number 1, Matlacha Isles, as more particularly described herein, providing for redefinition of city boundaries, providing for severability and an effective date.

THE MAYOR: Okay.

Do you need to be sworn? Is this quasi-judicial and I don't know?

MR. DALTRY: This is a quasi-legislative matter.

THE MAYOR: It is?

MR. DALTRY: Yes.

THE MAYOR: Okay. I did not have that down here, so since it is quasi-judicial --

MR. DALTON: No. Legislative, legislative. Quasi-legislative, do not need to be sworn in.

THE MAYOR: Got it.

MR. DALTON: Good evening. For the record, my name is Wyatt Daltry, planning team coordinator for the city's planning division. My credentials may be

obtained in the City Clerk's office. We're discussing Ordinance 57-16, which pertains to an annexation request of certain properties.

MR. SZERLAG: And if I may, because I'm the applicant for this project to annex the property, I would like to just give a brief executive summary of this issue.

As indicated on the PowerPoint, the city purchased the properties in 2012.

That's not on the PowerPoint, so let me just continue on.

We purchased the properties in 2012. It was part of the 491 properties that we had purchased.

The site is the D and D Matlacha Bait and Tackle Shop. It's five acres. It's a postage stamp of

geology, if you will.

The ordinance pertains to annexation only, no land use or zoning changes will take place tonight. That said, the property which is currently in nonincorporated Lee County, is zoned commercial. We as staff are going to take a look at the property; and I'm looking at the stakeholders of which Mr. Williams is one of them, relative to how the site should be utilized. It also includes a boat ramp that's currently there that we're holding two grants in

advance until we decide what Council wants to do. If Council decides that they want to have a more intense use, that will be up to the Council, the governing body, at a different time.

The annexation would permit the city to have developments over its own property, and we have no plans to go beyond the property that we have. Our only plan is to annex the property that we have to control the zoning and also utility issues; and when the property does come under the city, we would have control of the inspections of it as well.

I want to briefly mention, essentially, I did not

get a chance to talk to Wyatt or Vince to any extent. I do have the -- some points on annexation. Are they part of your presentation as well?

MR. DALTON: They are not, but I can provide that on the overhead.

MR. SZERLAG: Please do.

What I'll do is I'll read verbatim what this says; and if anybody wants a copy, we'll be happy to provide it, although it may be on line.

Is that correct, Vince?

UNIDENTIFIED SPEAKER: Yes.

MR. SZERLAG: Okay. This is also on line.

I have some points that were made relative to this

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matter.

Point number one: Does an annexation create an enclave? The answer is no. County property's to the east. Matlacha Isles are not completely surrounded by the city or a combination of cities.

Next question that was brought to our attention: Is the annexation noncontiguous? No. The annexation site is adjacent to the city to the north. Canals do

not act as impediments in determining continuity.

Also we were asked if the annexation is involuntary. No, because the City of Cape Coral owns the property. It's a voluntary annexation and we are the applicant. Florida law permits voluntary annexations which do not require referendums.

Is annexation a precursor to the annexation of Matlacha? Absolutely not. We own this property. It was part of the purchase we made in 2012. It's the best practice for any political subdivision, whether it's Matlacha or another municipality. If they are the owners of contiguous property to their political subdivision, it just makes sense to bring that property into the city.

The annexation will create additional boat ramp traffic. No. The annexation by itself has no effect on development.

Speaking of boat ramp traffic, that question was brought up by some residents that we have in Cape Coral; and, again, we are actually holding in abeyance two grants to enhance that boat ramp to see what Council wants to do and also make sure that those ramps

are safe in terms of boat traffic.

Annexation will affect evacuation times. No. It will not affect evacuation times.

Annexation will result in more parking for boat trailers. Again, the annexation has no effect on development.

Annex will permit buildings with five to eight stories. That -- this answer is no. After annexation the county's future land use and zoning remains. The city would need to adopt ordinances to change future land use and zoning, so if the city did change land use and zoning, you could have more than 35 feet that's required as a maximum by the county; but the annexation in and of itself does not allow that.

What will the city do with the narrow strip of land to the east? The city is not annexing that portion of the property and that strip of land will remain in incorporated Lee County.

I want to hopefully answer questions that were brought up and we have heard throughout the last two or

three weeks and would now turn the balance of this

presentation over to Wyatt unless you have any questions of me.

MR. DALTON: Wyatt Daltry, planning team coordinator.

Back to the presentation.

Much of this has already been discussed; but I'll go through this really quickly, then.

The applicant and owner for this ordinance is the City of Cape Coral. Location of the subject site is 3850 through 3926 Pine Island Road Northwest.

The request is for the city to annex six properties -- actually, five total properties and part of a sixth -- which is approximately five acres into the City of Cape Coral, the purpose of which is to eventually apply city regulations to the annexed properties.

Subject properties are located you can see to the west border or so of the City of Cape Coral, north of Pine Island Road.

This is an aerial of the site. As you can see, the western two properties, which I'll indicate here with the arrow, are developed. There's a bait and tackle shop. As you can see, the rest of the property is relatively undeveloped. There have been some --

looks like some seawall work done on that property in the past, but it is vacant of structures as of now.

This map shows the annexation map of the subject properties, as you can see in light blue here.

To the north are properties within the City of Cape Coral, thus having that connection or contiguity which is a requirement for annexations.

Here especially, preservation land and then you have some residences here.

This area here, this strip, is part of the easternmost property brought forth for annexation; but we removed that from the request. That portion of the property will remain in unincorporated Lee County.

Some facts about annexations.

These are relatively rare cases that are brought before you. They're relatively rare cases that communities deal with.

Annexations deal with determining the governmental jurisdiction for the subject properties, in this case whether those properties should be in the City of Cape Coral or remain in unincorporated Lee County.

There are two types of annexations, voluntary and

involuntary. We're dealing with a voluntary annexation. Voluntary annexations have a certain burden of proof; and that burden of proof focuses on

whether the properties to be annexed are contiguous to the city, whether those properties are reasonably compact and whether those properties do not create enclaves. Clearly, as we are before you today with this ordinance, we feel this meets the legal requirements for a voluntary annexation.

You may hear something about a referendum. Those are for involuntary annexations; and as this is not an involuntary annexation, no referendum will be a part of this. This would take place upon adoption of this ordinance and the expiration of a challenge period.

Being this is about an annexation, this request has no direct effect on development.

Now, the reason for this is because due to Chapter 171 of the Florida Statutes, which is the annexation chapter, annexed properties still retain county future land use and zoning. It means they will still retain their urban community future land use, which is a mixed

use designation, and the C-1-A and C-2 commercial zoning designations, which would essentially be Greek to us should this would be annexed because those are a different community's designations. Separate land use and separate rezoning ordinances are required for us to change those land use and zoning designations to a city designation.

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So there may be some discussion about traffic and eight-story buildings. That would be step three or four in this process. We're at step one right now.

Regarding the properties, annexation properties were purchased by the city in 2012 as part of the 491 purchase. I just mentioned the property has the urban community future land use classification, which is a Lee County classification, and two Lee County commercial zoning districts, the C-1-A zoning district, which is on the easternmost property, and the C-2 district, which is on the remaining five properties.

There's really no good analogous version of those zoning districts within Cape Coral. The C-1-A essentially is an office, mixed use district. It allows some residential. It appears to be an older

district from the seventies and eighties, permits some commercial development. C-2 is a thoroughfare commercial district, which has 166 permitted uses, including some fabrication uses. Both of those zoning districts have a maximum building height of 35 feet; contain a variety of uses such as automotive repair and service stations, hotels/motels within the C-2, at least. Both districts also include package stores and restaurants, so these are not residential districts that are being annexed in. These are fairly busy,

traffic-generating types of zoning districts.

Part of the easternmost property, as I mentioned, was left out of the annexation request. Overall, we feel the waterfront nature of the property provides the city with some development options in the future.

To continue, properties must be annexed into Cape Coral to begin the process to allow city regulations to take effect. If they are not annexed, city regulations cannot take effect on the properties.

Should these properties be annexed, the city would be required to follow the land use -- future land use

map amendment and rezoning changes as, again, properties retain the county land use and zoning after annexation.

Properties meet legal standards for annexation due to lots of review by city's DCD and City Attorney's Office, as well as we found the County Attorney's Office also agrees with us.

Finally, the property is owned by the city. I think many people couldn't understand this. It would be appropriate for the city to bring property under its jurisdiction that it owns.

Staff recommends approval of this ordinance.

I'm aware of four letters in denial or requesting opposition -- in opposition to this request.

I'll stand by for any questions.

THE MAYOR: All right. Mayor Pro Tem, do you have something you wanted to discuss before public input?

MR. WILLIAMS: Yeah. I want to just say a few words before we open a public hearing on this.

I believe there's a little misunderstanding what is really happening here.

First, if you're here opposing the annexation,

could you raise your hands?

I guess that's a majority.

Raise your hand if you own property on the land we are annexing.

Trick question. Okay, thank you.

What happened -- and, you know, we had a little conversation earlier about this; but we had acquired this property in a bulk purchase of foreclosed land, property that we're going to be using throughout Cape Coral for utility expansion and land to barter for other needed pieces or other projects.

Actually, the utility expansion is one of the items that you guys pushed for to get sewers up there when we were going through the EMA process. This is part of that.

We did not seek to purchase this.

THE MAYOR: Stop.

MR. WILLIAMS: You don't want us to have sewers?

THE MAYOR: We'll go to 30 minutes next for a break.

MR. WILLIAMS: We did not seek to purchase this

piece of property. It was part of an all or nothing bulk purchase of larger pieces of property.

THE MAYOR: Honestly, you will have your hearing in just a second.

MR. WILLIAMS: We do not want Matlacha. This is something we got and we have to -- this is a housekeeping issue that we're having tonight to bring it, as he said, under our jurisdiction. That's it.

It's not part of public input, so I'm not going to say the rest; but please understand that we are not trying to move west. This is something that we inherited in a purchase and we're just dealing with it to get it where it belongs. That's all. We're not trying to move out.

I'm out to Matlacha all the time. I love it. I don't want to change it.

So enough said. Thank you.

THE MAYOR: At this time I'll open up the public hearing for anyone wishing to speak on Ordinance 57-16.

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MR. PRITT: Good evening, Madam Mayor, members of

the Council. My name is Robert Pritt. I'm with the

law firm of Roetzel and Andress. I'm here on behalf of my client, the Matlacha/Pine Island Fire Control District, a governmental entity, independent fire control district.

We do also have our fire chief, Ben Mickuleit; Ken Cox, our chair; and our vice chair, Michael Dreikorn, is in the back with me.

I did submit something today and I gave a copy to the clerk. I presume you have it. Also a copy I think went to the city attorney.

The property proposed for annexation is located wholly within the district boundary and the district provides fire and first responder services to the private businesses that occupy these city-owned properties as well as all of the other properties in Matlacha and Pine Island.

The district respectfully, first and foremost, requests that this council continue this hearing for at least a month. Somebody said 30 to 60 days. That would be a good idea, given that this is -- because of the holiday season, probably. But at least a month to allow the district to review the application and possibly confer with the city to determine the effect upon the district, the other constituents within

district boundaries and also the city.

Contrary to your city's own comprehensive plan, the intergovernmental coordination element, there's been no communication whatsoever that we know of between the city and the district. We found out about this when others did, too, about a week or so ago. We had a meeting on it last Friday night and here we are on Monday.

The legislature has specifically enunciated a policy for resolution of intergovernmental disputes outside of litigation, including specifically annexation disputes. We would prefer not to go there. We don't want to go anywhere else except talking with the city and with the staff members and select persons if necessary and appropriate through our elected or appointed officials.

If the city is not inclined to continue the hearing, the district objects to this annexation as it stands before you and respectfully requests that you decline that you decline to adopt Ordinance 57-16.

Among the reasons are as follows:

One, as I said, lack of communication as indicated in the comprehensive plan. We do have -- I did have an attachment, about three-page attachment with highlighted sections and provisions of your

comprehensive plan that says you will do this; and this, as far as we can tell, was not done.

As a practical matter, this property is very close to our proposed Station 4 for the district, probably win a mile, maybe even less. The district is in the process of soliciting proposals for the new station. That has either been done or is about to be done at any time now. This annexation may affect the feasibility of the station and the fire and rescue service.

We have initiated informal conversations with city staff in the past. However, nothing has come of that and there was no discussion to our knowledge concerning this annexation.

Secondly, there's lack of contiguity between the property and other city boundaries. You might be surprised as to what the definition of contiguous is because I think you heard from the staff what it's just close enough because it's physically located across a

body of water, but contiguity or contiguous means a lot more things. I won't read the whole section because it's fairly long, but it means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality.

It goes on to say that the separation of the

territory sought to be annexed in the annexing is includes a canal or body of water or other minor geographical division of a similar nature and shall not prevent annexation under this act; but then there's a comma. It says provided that the presence of such a division does not as a practical matter prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other socially and economically.

As far as we know, there has been no study whatsoever to support that clause that is in the state statute.

And we looked at the map. The map was presented and I guess changed; but according to the map, it would indicate that with the preservation area being really the part that's arguably contiguous, there is no social or -- fully associated -- no area for fully associating and trading with each other socially and economically.

This is actually what I would call a reverse enclave. You're not allowed to have an enclave. This is kind of a reverse enclave or what we sometimes call a balloon on a string. This is not connected with the rest of the city in any way except across that water

and in primarily the preserve area. The connection to existing boundaries is serpentine or balloon on a string, which is not allowed. In a sense, as I said, it's a reverse enclave effect anyhow.

The annexation does not appear to serve a public purpose. Everything you do must serve a public purpose, and annexation is no exception. This does not appear to serve any public purpose whatsoever.

The property's history -- and thank you, Mr. Williams, Council Member Williams, for elucidating a little bit on the history of this -- but the property

history shows that the parcel and many others were purchased in 2012 by the city out of a foreclosure or bankruptcy situation. I think it was a foreclosure. How that purchase accomplished a public purpose I cannot understand.

Even assuming the purchase was for a public purchase, the smattering of properties within the purchase indicates that there was no public purpose attributable to any particular properties, including specifically these properties. So the city has something that it bought that it probably should not have bought, so what do you do about that?

I don't think you exacerbate the situation by annexing it to the city and selling it off to somebody.

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I know that it was represented that you won't do that, but that very much could be in the works.

You know, the voters in Florida actually changed the constitution in response to a Supreme Court case called Kelo; and the law is now that if this were an eminent domain proceeding where you would actually have to prove that it was for a public purpose, you would

not be able to purchase these properties because the constitution and statutes say that that is not a valid public purpose to buy properties and turn around and sell them to somebody else. Whether or not this would pass constitutional muster is -- that remains to be seen. Hopefully, we won't get there.

Related to that, the city's apparently been the landlord of a private restaurant, bait shop and other businesses located on the property, none of which constitute a legitimate public business purpose. Records show that all of the properties in this annexation are now listed as tax exempt. The loss of tax revenue to the district and governmental entities already is significant. Since 2012, it's already significant. That means that the remaining property owners in the districts must make up the difference in the shortfall of the taxation because the city owns the property.

Now, that presents another problem. It may be in or outside of this annexation proceeding; but current case law indicates that a city would only be exempt from ad valorem taxation if the property is both owned

by the city and the use is a legitimate public, not private purpose.

There's a case in our Florida Supreme Court right now called Treasure Coast Marina versus City of Fort Pierce, and we may have the answer to that before this is all over; but the law appears to be, as I said, the city most both own it and be using it for a legitimate public purpose.

The city property has been unlawfully obtained and it would be against public policy for it to be annexed to increase the value and then sold. And we think that would be in contravention of public policy.

For those reasons, we respectfully request that the ordinance be rejected; or our first wish would be that it be continued so that we can have discussions about services and going forward and who's going to do what in the future.

Thank you very much for your time.

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DR. DREIKORN: Mayor Sawicki, good evening, Council members. My name is Michael Dreikorn, Dr.

Michael Dreikorn. I'm a resident of Bokeelia, but I'm also an elected commissioner of the Matlacha-Pine Island Fire Control District, which is an independent taxing district within the Greater Pine Island. I'm also a board member of the Pine Island Water Association. It's an independent municipality providing utilities to the people of Greater Pine Island and parts of Cape Coral. And I'm also president of the Bokeelia Civic Association, which is essentially from the four-way stop north.

So what I would like -- how I would like to address you is -- even though we're not incorporated, we are organized as a community. We do have civic associations that represent the various villages of our island. And I would like to approach you as a neighbor to the west. You are our neighbor to the east.

We have utilities and we have municipalities. We're not incorporated, but we do have the ability to self-govern ourselves through the elected officials, who happen to be the commissioners in the county.

Now, this evening I saw the preceding ordinance where the people that were making statements were sworn in; and in this one I heard that this is quasi-legislative, there's no need to swear the

individuals in who were preventing information. Sounds

cool. However, the applicant is your city manager and he presented the document that I had not seen before and would like to make sure it's memorialized in the archives of this meeting because it certainly has some untruths on it. Let me point those out.

Now, I saw in that that there was an answer to or a response to the question would it have an impact on traffic. Where are the analyses, where are the results of that traffic study?

Let me point out that last year many of the people in this room were not united as we are tonight. Most of us were divided on a thing called the Pine Island Plan. We are united tonight because we want to have the solitude of our island.

During that Pine Island planning activity I was intimately involved with the leader of their former group -- the former leader, Phil Buchanan. We were on the same side of the table. One of the things that we talked about in extensive detail was the evacuation off the island. Lee County was involved in that. The EOC was involved in that. I contacted -- actually, I had

our chief, Chief Mickuleit, contact the director of EOC on this. They weren't notified by the city. So the city if adopting this annex would have the ability to change the zoning, which would have an impact to

analysis that was conducted last year by Lee County, which will have an impact on the Lee Plan.

So there are a whole bunch of little things going on here.

So with regard to this annexation proposal, we as a community, we on our fire commission, we on the water board, we on our civic associations are asking you to at least stay the vote tonight, take the opportunity to get some more input, allow us to conduct some analysis and have your vote at a later time if necessary. But what I really like to see you guys do is reject this vote.

$13 million was spent in 2011 by the city. As I heard from your councilman, it was spent out of water and sewer money. Now, my recollection on that is that when that money was collected by -- from taxpayers, water and sewer money can only be spent on water and

sewer acquisitions, expenditures. How in the heck did you buy $13 million of property out of water and sewer stuff? So here's a little Pandora's box that starts to open.

So you bought the properties; and in '12 the city manager, through his real estate division, filed for an exemption on these properties as well as many other properties on Pine Island for tax exemption.

Now, as a fire commissioner I'm really concerned about revenues so I can buy my new fire truck. These six parcels since 2012 have cost the Greater Pine Island, Matlacha/Pine Island Fire Control District, $46,000 in lost revenue because you guys took the tax exemptions. We want our money. Not only do we want our money for that, but we want our money for all the other properties on Pine Island that went tax exempt because there is no governmental use of these properties.

You collected rents, you collected access fees for that boat ramp; but at the same time the county picked up the garbage. At the same time mosquito control sprayed the area. At the same time Lee County School

Systems was not receiving the revenue they should have gotten and received from ad valorem taxes.

Something smells a little fishy here.

Now, the various civic associations, fire control district, water utilities received no notice of this annexation proposal; and as Mr. Pritt very eloquently stated earlier, it's part of your own charter to do that.

Why is that part of your own charter? Now, I know the County Attorneys were informed because I have been talking to them and I heard from your staff that the

county attorneys have already opined. Now I'm going to call baloney on that because I had an e-mail 30 minutes before I walked in here this evening from the County Attorney's department. There is still ambiguity on this.

And I have also spoken to the county commissioners who represent us. Unfortunately, the one that represents our district is MIA; but the ones I can get have been representing me in conversations with and they are having conversations with the county

attorneys.

Now, that all being said, what I'm trying to illuminate here is there are a lot of questions that you as a council deserve to have answered before you take a vote on something as important as this.

As a county manager, I understand your job. Your job is to run this city as a business. Your job is to make Cape Coral as prosperous a community as possible. That is your charter. And God bless you. You're doing a great job at it.

The reality here, that Cape Coral -- 491 parcels, $13 million. Do the math. You didn't pay much for this. There's not much skin in the game financially for Cape Coral in these properties, so there would not be much skin in the game for you to do something

neighborly, something neighborly to Pine Island and Matlacha; and whether it's granting it to the Caloosa Land Trust or whether it's providing it just for sale now, there is no arguable reason for the city to annex it, spend more taxpayer money through grants to improve it and then take it off to the highest and best bidder.

Folks, there's something stinky in that and I

think there's something illegal in that.

And as you heard, our fire control district has already engaged our attorneys. We have people looking at this. The ROI on this property or on these properties will significantly erode from that business perspective the further we go down on this. We are not going to be convinced that this is a good thing for Pine Island.

Now, I don't mean to take up all the evening this evening. I know there's a couple more speakers after me. But the bottom line, there's no governmental purpose for this property.

You stand on the properties that are being proposed to annex, you can't see Cape Coral. The little island between the boat ramp and what is Cape Coral, it has mangroves. You can't see the adjacent properties because that serpentine little tail is no longer in the game. So when we talk about contiguous,

we talk about compact, those aren't -- this does not meet that.

Frankly, Council, you weren't represented by your

attorneys in the presentation tonight. You deserve that.

Now, in closing I ask that this Council reject the annexation and direct its real estate division to sell the subject properties. You don't have to do it at a loss. Break even, make a little bit of a profit; but, please do not annex Matlacha or any part of Greater Pine Island. For that I would thank you in advance; but I do want to thank you for your time and your consideration. Please do the right thing for all concerned in this region. Thank you.

****

THE MAYOR: Madam City Clerk, did you have something before I went to Mayor Pro Tem?

THE CLERK: Yes, Your Honor, thank you.

Mr. Katerro Phonetic Spelling) wanted me to let the Council know there were four citizens that weren't able to stay this evening and they turned in letters of opposition, so we have additional four letters that we've received. We'll make sure that these originals get to DCD to put in the file.

THE MAYOR: Thank you very much.

Mayor Pro Tem.

MR. WILLIAMS: Thank you, Mayor.

THE MAYOR: We need a motion. You're going to make that, correct?

MR. WILLIAMS: Yes, I will. I'll make the motion. A few comments first.

This 491, you guys just don't understand what this 491 is all about. We don't have the ability to go out and select what pieces of land we wanted to buy. It was a package. We had to buy the package as it was. So I'm not going any further with that.

Annexation doesn't necessarily equal development. Because it's being annexed doesn't mean it's going to be developed, and tonight all we were talking about was the annex. We can develop now. If we wanted to put a 20-story building out there, we could probably do it; but, trust me, it's not going to happen.

I want to thank everybody that stood up and hammered on us about the boat ramps. I needed the help. Thank you. This is something that's not popular with me or the people that live up in that area in the northwest Cape. We understand the issues with that canal system, we understand the currents, we understand the manatee issues; and we have hundreds of manatees up

there. Estuary protection is something that's very

high on my list. And somebody mentioned that if I would say or I could promise that we wouldn't develop and we would just go ahead with it; but I can't. But I will promise I will fight it. I am totally, totally into that. I live there. So, obviously, it's something that's very important to me.

Somebody mentioned the parking lot. I have been kind of throwing that around. I would love to see that to a parking lot with a jitney going into Matlacha. I think it's a great idea. So help me, help me.

What I would like to do -- oh, and by the way, Micelli's, the restaurant, that's not part of this. They are not in this at all. It stops before their property.

What I would like to do, I would like to make a motion to move this to January 30th. I think what we need to do is there's a lot of misinformation here. These are our neighbors. I think we need to at least work with them and straighten out the misinformation. I think that there's no rush to get this done. We're

not going to do anything with this property now. This was a housekeeping issue when this started.

So my motion is going to be to move this to a date certain, January 30th; and if somebody would second that --

MS. COSDEN: Second.

MR. WILLIAMS: Thank you.

THE MAYOR: I'm going to go with the city manager.

MR. SZERLAG: I'll go back to the microphone.

THE MAYOR: Might not hear.

MR. SZERLAG: Is this better? Okay.

Just wanted to make a couple clarifications because it was indicated what my job is, and the gentleman was partly correct. My job is economic sustainability of the City of Cape Coral. It's also to enhance developments when we can to increase our ratio of commercial/industrial to residential structures. But the more important part of my job is the health, safety and welfare not only of Cape Coral residents and those who visit, but also residents and visitors in the surrounding area.

There was a comment made that this annexation will

have an adverse effect on evacuation times; and at this point in time, that is simply not true. Annexation just brings the property into the City of Cape Coral.

For any development that would be advanced and ultimately approved by this governing body, there would absolutely be an environmental impact statement performed, there would be traffic pattern analysis. As this Council knows, I'm sure the audience does not

know, that we currently have and you're sitting on two grants to develop the boat ramp; but we do not want to spend anyone's money, whether it's the government's at the federal level or the city's match, if we're not going to build a boat ramp. And I put an instruction to Coastal Engineering, well-known engineering firm, to assure that navigational safety is job number one when it comes time to enhancing the ramp and made an offer to any resident, and I'll extend that offer to the Matlacha residents as well, if you have any questions about boat safety, we'll be happy to incorporate those to our consultants and have our consultant answer those questions so that when we come back to this governing

body as to what we want to do with this property, you will have answers to all the questions. What you will not have answers for at this time is that City Council at some future point want to change the zoning from what is allowed in terms of density from the council zoning. That's a different conversation. Just wanted to say that.

THE MAYOR: Thank you.

Councilman Leon.

MR. LEON: One, the motion, I don't think there's a meeting on January 30th. We made a new policy where we have -- so --

MS. MENENDEZ: I'm sorry. January 23rd is a regular meeting. January 30th is a cal, February 6th is your next regular meeting.

MR. WILLIAMS: February 6th?

THE MAYOR: That's fine.

MR. LEON: Thank you.

So thank you all for coming to speak tonight. I appreciate it. This body appreciates it. I apologize that you had to sit through a longer meeting than normal; and that was unfortunate, but it's part of our

policy and the board. But thank you for coming out.

Two comments. You know, I can sit up here and say what I want, do what I want; and really in the end the majority of you weren't even Cape Coral residents. I don't have to answer to you. It doesn't matter what you say, really. If you look at it, it doesn't matter. You're not our citizens, our residents.

The past six months -- and I understand that you guys were just hearing about this. The city in general has been talking about this for the past six months; and everybody I talked to, especially on the city side, let's do it, let's move forward. A lot of my residents, a lot of my people that I answer to were like I don't see a reason why not to.

That said, I'm actually against it; and it's not

because of anybody. I mean it is because of what you guys said tonight; but there was one thing that really got my attention was about being a good neighbor. And we could be good neighbors here.

Pine Island -- you know, you heard one gentlemen talk about how we took away the sky. You know, I

wasn't even born, but whatever. None of us were here, especially on council.

So it is the nature of the beast; and that was part of the life of Florida in the fifties and sixties. It was built, drain the swamp, build -- I said drain the swamp. So, you know, and that's an unfortunate event. I get it. I understand, you know.

And Bokeelia is -- Matlacha, then you have got Lee County Pine Island Center, then you have got Bokeelia way down there. I have had the fortunate time to spend a lot of time out there. I have worked out there, I have done a lot. I won't say I've lived out there, but I pretty much did. I had a girlfriend out there.

So -- but it is unique; and whether the city annexes or not, it is a part of Matlacha and the feel and life of it. I don't think the city would ever, ever want to try to take that away from you or anybody because -- and even our citizens, we use Matlacha all the time. It's a beautiful city, beautiful place to go

fishing as well.

I will say if we do and if this motion passes, you know, we'll continue to look at it and view and talk

with you all; but in the end for me it's about being a good neighbor. So if tonight this motion fails, I'll be happy to support a motion to vote no on this annexation.

I am in favor of selling it. I am in favor of trying to push forward. I have told the city manager, if we're going to do anything, let's annex it first and then sell it. Maybe that was misguided comments on my part in the past.

Let's be good neighbors, let's work together; and I promise you some other issues that were up there, I mean water quality, we can talk about that all day long; and we had some past council members, Council Member Brant, people like that, that really pushed that issue forward for the city. Councilman Carioscia, same thing down in the southwest.

So I'm taking up too much time already, so thank you.

THE MAYOR: Council Member Cosden.

MS. COSDEN: Thank you, Mayor.

I just want to express why I seconded Council Member Williams.

This memo from Mr. Pritt that we all got, I wish we had had it sooner than when we sat down tonight; and I understand -- I'm sure there's a good reason, but we could have gotten some of these questions that were raised answered. Now I feel it would be rushing it to get everything answered tonight, so I think tabling this makes sense, especially when it comes to the fire district. I'm unclear on that and I just would like a chance to get my questions answered.

Thank you.

THE MAYOR: Council Member Stout.

MS. STOUT: I understand from the speakers tonight the concern that the City of Cape Coral is overreaching. It's interesting the number of people from St. James City and Bokeelia that spoke tonight rather than the people from Matlacha.

I can't support this motion for several reasons.

Number one, I was elected to represent the city of Cape Coral; and I have had a great deal of support from the citizens of Cape Coral and that's who I report to. That is who I was elected to represent.

If I really felt like the city was doing this in order to start encroaching onto Pine Island, then, yes,

I would have a concern; but I don't believe that.

And this has come before the committee as a whole.

We talked about it. And now if we delay it again, what are we doing to staff? You know, we told them to do this. I trust our legal staff. I don't have to question whether I have had good information. I trust our legal staff. I know legal opinions can vary greatly; but, I'm sorry, I have to support our attorney and so therefore I will vote no on this motion and I'm hoping that it does go down because what it does is give all of you the thought that okay, we'll come back on February 6th and we'll all line up and we'll speak again and the council will vote it down. And I think it's giving false hope if in fact this council meant what they said when they told the city manager to move forward with this annex. But, of course, this was at a committee as a whole meeting when we didn't fill council chambers or fill the office where we meet.

So I just -- I just find it amazing that we're now contemplating not doing what we directed the staff to do.

Thank you.

THE MAYOR: Council Member Carioscia.

MR. CARIOSCIA: I also trust our legal department when they tell us that they have spoke to the county attorney, they have spoke to the county, the people that are in charge of this, they agree with us. I

don't expect anything less from someone to walk here and say there seems to be an ambiguous interpretation in what we're doing. I understand that. Okay?

And I, too, represent the residents of Cape Coral and in their best interest what I have to do.

Let me ask you one more thing, and I think we should contemplate this a little bit.

I hear people telling us we should sell it. Well, if we do sell it, the buyer's going to do what? Well, whatever Lee County code allows them to build, whatever they want there. Okay.

As it is right now -- and let me speak, okay? I listened to you for almost two hours, all right? It's my turn, all right?

You would have more of the advantage dealing with us in regards what or what not to put there than a

private developer. You would. You have a private developer come in and he wants to put whatever, how are you going to stop him if he's within the codes of Lee County? You can't. And he will build whatever is best for the bottom line for them.

So I'm going to not support delaying this because it's not -- again, it will give you false hope, it will make you believe to come back, have some influence and more talk. But in the best interest of Cape Coral we

have to annex that property.

Thank you very much.

THE MAYOR: Council Member -- sorry. This is a business meeting. Thank you.

Council Member Erbrick.

MS. ERBRICK: I will not support this motion. I was on that council in 2012 along with Council Member Carioscia. We did inherit the package, which was mostly sitting in the City of Cape Coral.

I listened tonight as you asked us to be good neighbors. I listened to you move on and tell me about all the rumors out there; and your speculation, basically calling us liars, thieves, gypsies, tramps,

keep going. And, frankly, this is disheartening that you would even come to our City Council meeting and talk that way. I would not go to one of your meetings and speak in that manner.

When we purchased this property and realized that there was a portion that was sitting in Matlacha, I always envisioned it being annexed into the city and then moved into our parks and rec master plan, always. It's taken four years to get there.

I don't believe delaying this changes the outcome. It gives you another 30 to 45 days to do whatever; but at the end of the day my job is to the folks and the

taxpayers in the City of Cape Coral.

I appreciate your discussion. I duly noted where you for some reason think we're the most evil people on the face of this planet. Thank you very much for that enlightenment; but come on, we need to coexist together.

I'm agreeing with Council Member Carioscia. I think you have got a better shot with us than with someone else.

Excuse me.

Thank you.

This needs to move forward. It's been four years in the making. It's not going to get any easier going down the road, Council, so please reconsider any of the votes you have got sitting out there that you're going to support this, passing this off for another 45 days.

THE MAYOR: Madam City Attorney?

MS. MENENDEZ: Thank you, Madam Mayor. I wanted to respond to one thing that Councilman Carioscia said.

He said he believed the City Attorney's Office had spoken with the County Attorney's Office. Well, we did not speak with the County Attorney's Office. We received copies of e-mails that contained analyses by the Lee County Attorney's Office, analyzing the legal issues associated with the proposed annexation from

their perspective as the County Attorney's Office; and we did obtain copies of those.

MR. CARIOSCIA: I should have said communicated.

THE MAYOR: Mayor Pro Tem?

MR. WILLIAMS: Thank you, Mayor.

Delaying this until February is not to try to

change everybody's mind on this thing. I am for the annexation. In fact, I'm the one that started this whole process. But what I'm asking for is time to work with these folks to have a conversation. There's a lot of misinformation. Let's fix it instead of everybody -- if we're passing it tonight because we have the authority to do it, and then them walking out totally against Cape Coral. Good neighbor, no. I think we should be working with these people and explaining what our plans are, finding out what their concerns are.

We've heard a lot of concerns tonight, and I would say about half of them were on target. The rest of them were way out of whack.

All I'm asking for is time to do the neighborly thing. It's what you would do with your next-door neighbor. Let's -- they're our next-door neighbor.

When the vote comes up in February, whether or not it passes is not what I'm looking for. Like I just

said, I'm for it; but I would really like to have a conversation with these people and, you know, show them

that we're a good neighbor and we're willing to talk with them and work with them.

We did slide this in under the whatever, so they didn't have a lot of time to react to this thing, so all I'm asking for is time. I'm not asking for anybody to change votes or anything else, just time to try to keep our relationship good.

THE MAYOR: Any other comments?

Seeing none, Madam City Clerk, please call the roll.

THE CLERK: Cosden.

MS. COSDEN: Aye.

THE CLERK: Erbrick.

MS. ERBRICK: No.

THE CLERK: Leon.

MR. LEON: No.

THE CLERK: Sawicki.

THE MAYOR: No.

THE CLERK: Stout.

MS. STOUT: No.

THE CLERK: Williams.

MR. WILLIAMS: Aye.

THE CLERK: Carioscia.

MR. CARIOSCIA: No.

THE CLERK: Two ayes, five nays. Motion failed.

THE MAYOR: At this time I'll need --

MS. STOUT: I'll make a motion to approve the Ordinance 57-16.

MR. LEON: Second.

THE MAYOR: Council Member Leon.

MR. LEON: Thank you, Madam Mayor.

I think that where as a council, how we talk about Lee County, you know, how we have all campaigned, how we all sit up here and talk about their government and what we could do differently, how could we, you know, work together, how can we do things. I think we started out good with all this; but even now there's some issues that take place. And even Fort Myers, things like that.

I think we're losing an opportunity because we're kind of acting like Lee County right now acts to us in Cape Coral. And here we have a whole bunch of citizens. I understand they are not Cape Coral citizens, but we have an opportunity to work with them. What in the end can we not do by annexing that we can do already? If we're going to turn this into a park,

let's do it. I mean we can do -- we can turn it into a boat ramp and whatever they want or we can, you know,

make it where it's nice and pretty and -- but this gives us the opportunity to be good neighbors.

We can -- I'm sure what we envision on doing or any of us envision on doing falls in line with what the county rules regulate for the area already.

Let's not annex it. Let's do the good thing to our neighbors as we hope one day the county will do to us and just move forward and work with our neighbors.

That's my last plea.

I know in the past I really have been for annexing and it's really -- I mean, like I said, I said my comments before, so thank you.

THE MAYOR: All right. I have a motion on the floor to -- that has been to approve Ordinance 57-16. If there's no other comments, Madam city clerk, please call the roll.

THE CLERK: Cosden.

MS. COSDEN: No.

THE CLERK: Erbrick.

MS. ERBRICK: Yes.

THE CLERK: Leon.

MR. LEON: No.

THE CLERK: Sawicki.

THE MAYOR: Aye.

THE CLERK: Stout.

MS. STOUT: Aye.

THE CLERK: Williams?

MR. WILLIAMS: No.

THE CLERK: Carioscia.

MR. CARIOSCIA: Aye.

THE CLERK: Four ayes, three nays. Motion passed.

* * * *

(Excerpt concluded.)

STATE OF FLORIDA)
COUNTY OF LEE)

I, John F. Martina, Jr., Notary Public and Contract Court Reporter for the Circuit Court of the 20th Judicial Circuit of the State of Florida, do hereby certify that a public hearing of the Cape Coral City Council was held as described on Page 1 hereof; that I was authorized to and did report said hearing from a CD of the proceedings, including the testimony, fully and accurately in shorthand, and that the foregoing typewritten pages, numbered 1 through 44, inclusive, constitute a transcript of my shorthand report of an excerpt of the proceedings taken at said time.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th Day of January, 2017.

John F. Martina, Jr., Notary Public, State of Florida at Large.

AGREEMENT

AGREEMENT between the GREATER PINE ISLAND WATER ASSOCIATION, a non-profit corporation, hereinafter referred to as the "Association" and the City of Cape Coral, a Florida municipality, hereinafter referred to as the "City":

WITNESSETH:

WHEREAS, the Board of County Commissioners of Lee County, Florida, by Resolution No. 83-9-116 duly adopted on September 28, 1983, extended the franchise area of the Association to include portions of Section 19, 20 and 21 of Township 44 South, Range 23 East, Lee County, Florida, and

WHEREAS, to facilitate the distribution of potable water within the area contained in the franchise extension, the Association shall be installing a water main on the south right-of-way line of State Route 78 (Pine Island Road) in Section 19 and 20 and part of Section 21 of said Township and Range, and

WHEREAS, there may be residences, commercial and industrial water users on the north side of State Route 78 that desire to purchase water from the Association that are currently within the City of Cape Coral, and the City of Cape Coral is currently unable to provide potable water to that area, and

WHEREAS, the parties desire to enter into an Agreement to facilitate the distribution of potable water to those potential water users that my desire the same on the north side and adjacent to State Route 78;

NOW THEREFORE, for mutual considerations hereinafter recited, the parties do agree as follows:

1. That the recitals contained in the preamble hereto are true and correct.

2. The Association may, in its sole discretion provide potable water to those properties within the City of Cape Coral, Lee County, Florida,

on property adjacent to State Route 78 in Section 17, 18 and a part of Section 16 in Township 44 South, Range 23 East, Lee County, Florida, as more particularly described on Schedule A attached hereto and incorporated herein.

3. That any potential water user within said area desiring service with the Association shall make application for and become a member of the Association pursuant to the Articles of Incorporation, Rules and Regulations and By-Laws of the Association and such other conditions as are similarly imposed on all other water users of the Association, provided that all costs of the extension of facilities to provide service to the applicant shall be borne by the applicant. All extension of facilities shall be in accordance with plans, specifications and permits as submitted by the applicant and approved by the Association, and the applicant shall be responsible for maintenance, modifications and repairs to said extended facility for one year after acceptance by the Association provided that the Association shall perform the maintenance, modifications or repairs and shall be reimbursed by the applicant, upon demand,to the Association for its costs associated therewith.

4. That the Association may impose such other and further conditions for the delivery of water to potential users as is deemed to be in the best interest of the Association.

5. That in addition to the above requirements, the Agreement between the Association and the water user shall provide that when the City has extended its lines to serve the area above described, the Agreement between the Association and the water user shall terminate upon written notice being given by the Association to the user, provided that there shall be no refund of any membership fees, capital charges or similar costs borne by the applicant upon termination.

6. The City shall give the Association notice of the commencement of construction of any line or lines to service the

area described herein, and the parties shall use their best efforts to coordinate the transfer of customers from the Association to the City as construction is completed.

7. This Agreement shall continue in full force and effect from the date of approval of both the Board of Directors of the Association and the Council of the City by appropriate Resolution and shall continue until the City constructs the necessary facilities to serve the area described herein, but in no event shall the Agreement be for less than ten years, provided that in the event the minimum contractual period conflicts with the City's bond covenants or places the City's bonded indebtedness in jeopardy, said minimum contractual period shall be null and void.

8. This Agreement is binding upon the parties hereto, their respective successors and assigns.

9. The parties agree that this Agreement is not intended to impair or diminish the rights or the holders of bonds issued by the City of Cape Coral, and the parties agree that if this Agreement is found to impair or diminish such rights that this Agreement shall terminate in so much as it may impair or diminish such rights.

IN WITNESS WHEREOF this Agreement has been duly approved by the parties to the Agreement on the date indicated.

APPROVED by the Board of Directors of the GREATER PINE ISLAND WATER ASSOCIATION by Resolution dated the 27th day of March, 1984.

GREATER PINE ISLAND WATER ASSOCIATION, INC.

By Gordon R. Kennel
President

APPROVED by the Council of the City of Cape Coral by Resolution dated the 23rd day of April, 1984.

CITY OF CAPE CORAL

By Joseph M. Mazurkiewicz
Mayor

SCHEDULE "A"

Those portions of Section 16, excepting therefrom the South East one-quarter and the East one-half of the South East one-quarter of the South West one-quarter of said Section 16, Section 17 and Section 18 of Township 44 South, Range 23 East, adjacent to State Road 78, Lee County, Florida.

AMENDMENT TO AGREEMENT

BETWEEN the Greater Pine Island Water Association, Inc., a non-profit corporation, hereinafter referred to as the "Association," and the City of Cape Coral, a Florida municipality, hereinafter referred to as the "City."

WITNESSETH:

The "Association" and the "City" previously entered into an Agreement for the "Association" to provide potable water to certain areas within the "City" which Agreement was duly approved by a Resolution of the Board of Directors of the "Association" on March 27, 1984, and was duly approved by the "City" by Resolution 20-84 on the 2nd day of April, 1984, and

WHEREAS, the parties desire to expand the area in which the "Association" shall provide potable water within the "City";

NOW THEREFORE, for the mutual consideration hereinafter recited, the parties do agree as follows:

1. That the recitals contained in the preamble hereto are true and correct.

2. That Schedule A attached to the Agreement between the "Association" and the City" previously defined shall be and is hereby amended to read as follows:

Schedule A. All of Section 16, 17, 18 and 21 of Range 23 East, Township 44 South, Lee County, Florida, lying within the city limits of the City of Cape Coral and bounded on the North by Embers Parkway, on the East by Chiquita Boulevard, on the South by Trafalgar Parkway, and on the West by the city limits of the City of Cape Coral, including the right to service all lots abutting upon either side of the boundary roads.

3. That except as amended, the prior Agreement of the parties shall be in all other respects confirmed and ratified.

IN WITNESS WHEREOF, this Amended Agreement has been duly approved by the parties to the Agreement on the date indicated.

APPROVED by the Board of Directors of the Pine Island Water Association by Resolution dated April 24, 1984.

GREATER PINE ISLAND WATER ASSOCIATION, INC.

By: Gordon R. Kennel
Gordon R. Kennel, President

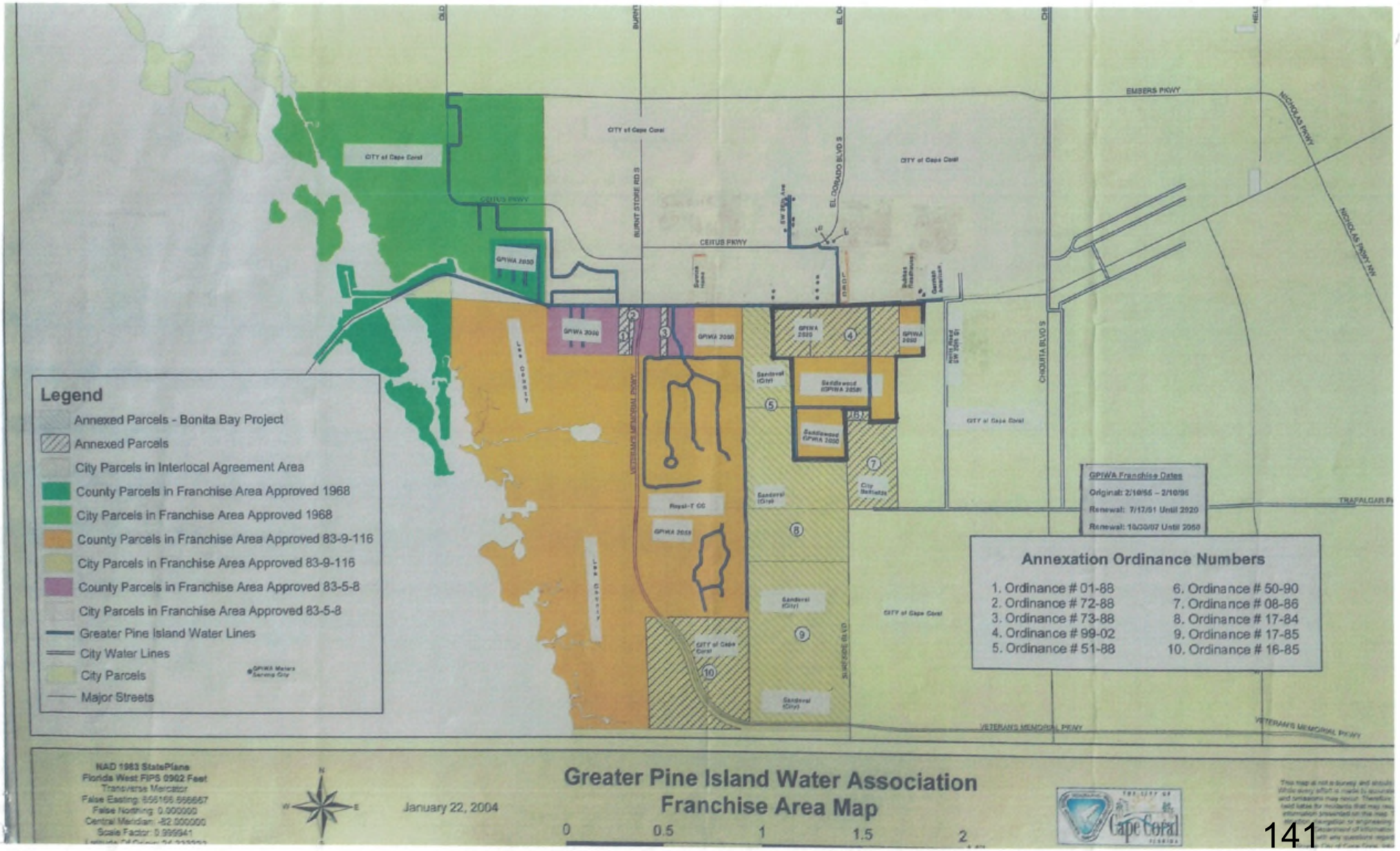
APPROVED by the Council of the City of Cape Coral, by Resolution dated the 8th day of May, 1984.

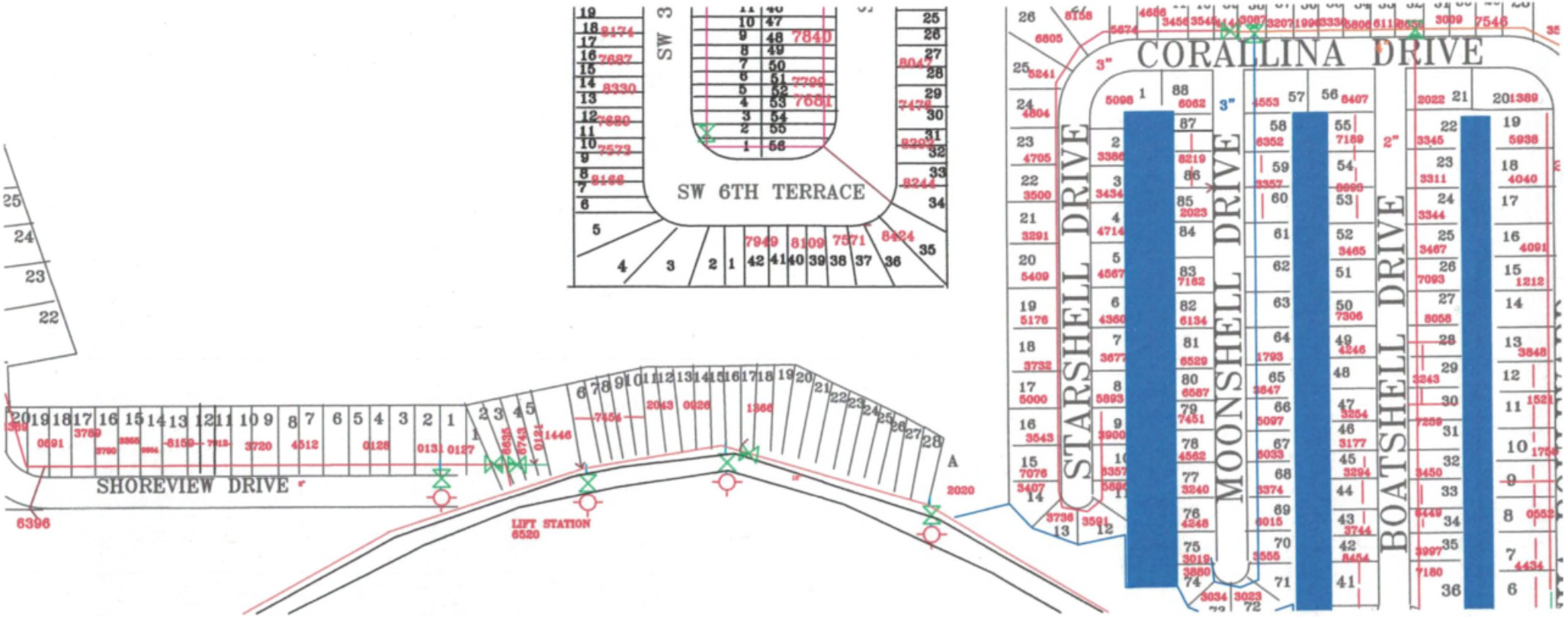
CITY OF CAPE CORAL

By: Robert D. Pinton
City Manager

ATTESTED TO:

Eula R. Jorgensen
CITY CLERK


Legend
Annexed Parcels - Bonita Bay Project
Annexed Parcels
City Parcels in Interlocal Agreement Area
County Parcels in Franchise Area Approved 1968
City Parcels in Franchise Area Approved 1968
County Parcels in Franchise Area Approved 83-9-116
City Parcels in Franchise Area Approved 83-9-116
County Parcels in Franchise Area Approved 83-5-8
City Parcels in Franchise Area Approved 83-5-8
Greater Pine Island Water Lines
City Water Lines
City Parcels
Major Streets
GPIWA Franchise Dates
Original: 2/10/56 – 2/10/96
Renewal: 7/17/51 Until 2020
Renewal: 10/30/07 Until 2050
Annexation Ordinance Numbers
1. Ordinance # 01-88
2. Ordinance # 72-88
3. Ordinance # 73-88
4. Ordinance # 99-02
5. Ordinance # 51-88
6. Ordinance # 50-90
7. Ordinance # 08-86
8. Ordinance # 17-84
9. Ordinance # 17-85
10. Ordinance # 16-85
NAD 1983 StatePlane
Florida West FIPS 0902 Feet
Transverse Mercator
January 22, 2004
Greater Pine Island Water Association
Franchise Area Map
0
0.5
1
1.5
2
Cape Coral
EMBERS PKWY
CITY of Cape Coral
CEITUS PKWY
BURNT STORE RD S
EL DORADO BLVD S
CHIQUITA BLVD S
NICHOLAS PKWY
VETERANS MEMORIAL PKWY
TRAFALGAR PKWY
GPIWA 2050
Royal-T CC
Sandoval (City)
Saddlewood (GPIWA 2050)


SW 3
SW 6TH TERRACE
CORALLINA DRIVE
STARSHELL DRIVE
MOONSHELL DRIVE
BOATSHELL DRIVE
SHOREVIEW DRIVE
LIFT STATION
6520
6396
2020

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PINELAND
FL
33945-9800
1175000027
01/05/2017 (800)275-8777 9:02 AM

Product Description	Sale Qty	Final Price
First-Class Mail Large Envelope (Domestic) (CAPE CORAL, FL 33990) (Weight:0 Lb 1.40 Oz) (Expected Delivery Day) (Saturday 01/07/2017)	1	$1.15
Certified (@@USPS Certified Mail #) (70151730000239066015)	1	$3.30
Return Receipt (@@USPS Return Receipt #) (9590940302175146224087)	1	$2.70
Total		$7.15
Credit Card Remitd (Card Name:MasterCard) (Account #:XXXXXXXXXXXX1594) (Approval #:005485) (Transaction #:751)		$7.15

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Sent To: Mr. John Szerlag, City Manager
Street and Apt. No., or PO Box No.: 1015 Cultural Park Blvd
City, State, ZIP+4®: Cape Coral FL 33990

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Matlacha/Pine Island Fire Control District
5700 Pine Island Road
Bokeelia, Fl 33922
Phone: 239-283-0030
Fax: 239-283-3313

January 5, 2017

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. John Szerlag, City Manager
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

RE: Chapter 164, Florida Statutes, Dispute Resolution Initiation of Conflict Resolution Proceeding

Dear Mr. Szerlag:

Please find enclosed a certified copy of the Resolution adopted by the Matlacha / Pine Island Fire Control District initiating conflict resolution proceedings pursuant to Chapter 164, Florida Statutes. This Resolution and this letter are being timely provided to you in compliance with Section 164.1052, Florida Statutes.

The District has a conflict with the City of Cape Coral regarding the adoption of Ordinance 57-16 on December 12, 2016 which purports to annex a portion of the District's service territory. The conflict includes:

1. Municipal annexation of the Annexed Territory on December 12, 2016;

2. Conflict over service provisions to the Annexed Territory as to fire and first responder services;

3. Failure to notify the District of the proposed annexation; and

4. Annexed Territory is owned by the City and has been listed as tax-exempt including the portion of the Annexed Territory occupied by a private restaurant, bait shop, and other businesses, which has caused a loss of revenue to the District and other governmental entities.

5. There were procedural defects in the conduct of the annexation proceeding.

The proposed dates for a conflict assessment meeting to be held pursuant to Section 164.1053 would be January 23, 24, 25, 26 or 27, 2017. The proposed location for the conflict

assessment meeting would be Fire Station 1, 5700 Pine Island Road, Bokeelia, Florida. The proposed attendees on behalf of the District at the conflict assessment meeting would include but not be limited to the Chief of the Fire District, a District commissioner, and the attorney for the District.

A copy of this letter and Resolution shall be sent to the Board of County Commissioners of Lee County, Florida, as its substantial interest may be affected by adoption of Ordinance 57-16.

The justification for initiation of this process is based on sections 171.081(2) and 164.1051, Florida Statutes, which require governmental conflicts arising from municipal annexation and the allocation of resources to proceed through conflict-resolution procedures before judicial action.

Matlacha / Pine Island Fire Control District

By: _____
Ken Cox, Chair

Enclosure:
-Certified copy of Resolution of Matlacha / Pine Island Fire Control District

RESOLUTION 2017-010417

RESOLUTION OF THE MATLACHA / PINE ISLAND FIRE CONTROL DISTRICT

WHEREAS, the Matlacha / Pine Island Fire Control District is an independent special fire control district under Chapter 191, Florida Statutes, and Special Act 2000-396 Laws of Florida (hereinafter "District"); and

WHEREAS, the City of Cape Coral is a municipality under Article VIII of the Florida Constitution Chapter 165, Florida Statutes (hereinafter "City"); and

WHEREAS, the City and the District qualify as local government entities as defined in Section 164.1031, Florida Statutes; and

WHEREAS, the City adopted Ordinance 57-16 on December 12, 2016, an ordinance providing for the annexation of parcels of land being Lots 15-28, Matlacha Shores First Addition, together with a portion of undivided Lot A, Unit 1, Matlacha Isles (hereinafter referred to "Annexed Territory"); and

WHEREAS, the Annexed Territory is located wholly within the service boundaries of the District; and

WHEREAS, the City owns the Annexed Territory; and

WHEREAS, the District historically and currently provides fire and first responder services to the Annexed Territory including the private commercial businesses that occupy this City-owned property; and

WHEREAS, this Resolution is adopted as a "Local Government Resolution" as defined in Section 164.1031, Florida Statutes; and

WHEREAS, contrary to the City's Comprehensive Plan, inter-governmental coordination element, there was no communication from the City to the District regarding the annexation of the Annexed Territory; and

WHEREAS, the District appeared at the public hearing on December 12, 2016, and requested that the City continue consideration of Ordinance 57-16 to provide an opportunity for communication between the District and the City or reject the annexation; and

WHEREAS, the City adopted Ordinance 57-16 on December 12, 2016.

NOW THEREFORE, this Resolution is adopted by the Board of the Matlacha/Pine Island Fire Control District and states as follows:

1. The Whereas recitals are hereby incorporated in this Resolution.

2. It is the intention of the District by adoption of this Resolution to initiate the conflict resolution procedures provided by Chapter 164, Florida Statutes.

3. It is the intent of the District to initiate the conflict resolution procedures prior to initiating court proceedings pursuant to Chapter 164, Florida Statutes.

4. The issues of conflict include the following:

(a) Municipal annexation of the Annexed Territory historically and currently served by the District on December 12, 2016;

(b) Conflict over provision of service to the Annexed Territory as to fire and first responder services;

(c) Failure to notify the District of the proposed annexation;

(d) Annexed Territory is owned by the City and has been listed as tax-exempt including the portion of the Annexed Territory occupied by private business-related parking, a bait shop, and other businesses, which has caused a loss of revenue to the District and other governmental entities;

(e) Annexed Territory does not meet the criteria of the annexation statute, as the Annexed Territory is not compact and contiguous to the City and creates an enclave.

(f) There were procedural defects in the conduct of the annexation proceeding.

5. Within five (5) days of passage of the Resolution, a certified copy of this Resolution shall be provided to the Chief Administrator of the City.

This Resolution is adopted on the 4th day of January, 2017.

MATLACHA / PINE ISLAND FIRE CONTROL DISTRICT

By: _____
Ken Cox, Chair

Attested to:

By: _____
Secretary

BY-LAWS OF THE MATLACHA CIVIC ASSOCIATION

ARTICLE I. NAME

The name of the organization shall be the Matlacha Civic Association.

ARTICLE II. PURPOSE

The purpose of this organization is to form an association of concerned citizens to accomplish the following:

Section 1. Provide a unified voice on civic problems so that the best interests of Matlacha can be effectively presented to our County Commissioners, State Legislatures, other elected officials and the general public.

Section 2. Furnish a forum for members to express their views and present worthwhile projects for consideration and action.

Section 3. Conduct monthly meetings and promote social functions for residents to get acquainted and become friends with their neighbors.

ARTICLE III. MEMBERSHIP

Section 1. Eligible for membership will be any resident, property owner, business owner or operator in the unincorporated Lee County area known commonly as Matlacha. The area begins with Matlacha Isles subdivision and goes to and includes property on Little Pine Island.

Section 2. Persons although not meeting Section I requirements who the Board and general membership may consider an asset to the organization may become an Associate Member. Dues will be the same as for a general member, but an Associate Member may not hold elected office nor vote on any issue.

Section 3. (A) Annual dues will be established by the Board and approved by the general membership. Dues will be on a per person basis.

(B) Dues shall be payable January 1 of each year. A member will be considered delinquent if dues are not received by March 1. Delinquent members may neither hold elected office nor vote.

ARTICLE IV. ELECTION OF DIRECTORS

Section 1. At each November meeting, a nomination committee of three members shall be appointed by the President to nominate candidates to fill any vacant Board seats or seats whose term will expire within one (1) year.

Section 2. A candidate for Director must be a member in good standing prior to nomination. Nominations will be made at the January meeting each year. Additional nominations from the floor will be accepted at that meeting.

Section 3. Two members of the same household shall not serve on the same Board of Directors. Any waiver of this section will require a 2/3 majority of votes cast.

Section 4. Elections will be held at the January general meeting and the new officers and Board members will assume their duties at the regular February meeting. The Board of Directors will select their officers at the February Board meeting.

ARTICLE V. BOARD OF DIRECTORS

Section 1. The Board of Directors shall consist of seven (7) members. Every effort shall be made to provide equal representation on the Board.

Section 2. Board members shall conduct regular monthly meetings as convened by the President. Any Board member can request special meetings.

Section 3. The Board shall be comprised of four (4) officers and three (3) members-at-large.

Section 4. Board members may serve a maximum of three (3) consecutive years and a maximum of five (5) years in total.

Section 5. The Board shall:

a. Assist the officers, recommend committees and assist in forming them.
b. Prepare and maintain by-laws as adopted by the membership.
c. Fill seats on the Board which may become vacant prior to the end of the respective term of office.

Section 6. The Board is authorized to spend up to one hundred and fifty dollars ($150.00) for any Association service or purpose without a vote of the membership.

ARTICLE VI. OFFICERS AND DUTIES

Section 1. Officers shall consist of President, Vice President, Secretary and Treasurer. The term of office shall be from January to December, inclusive. Officers may serve a maximum of two (2) consecutive years in the same office, but may be reelected to that office after an absence of one (1) year.

Section 2. The President shall:

a. Preside over Association and Board meetings.
b. Call Board and committee meetings as required.
c. Be sure all officers and committee chairs are prepared for the next meeting.
d. Sign checks in the absence of the Treasurer.
e. Assign committees as recommended by the Board or as required.

Section 3. The Vice President shall:

a. Preside at meetings in the absence of the President.
b. Act as program and publicity chair and assist other committees as necessary.

Section 4. The Secretary shall:

a. Take minutes of Association and Board meetings.
b. Act as custodian of all records, except those otherwise delegated.
c. Preside over meetings in the absence of the President and the Vice President.

d. Keep an up-to-date inventory of all Association assets.

Section 5. The Treasurer shall:

a. Collect and deposit all funds, write and sign checks, pay bills and submit a financial report at each meeting.
b. Keep a current membership book of dues paid.
c. Contract and pay for building rental for meetings.
d. Serve as chair of any finance sub-committee and recommend to the Board every May a projected budget for the coming year.

ARTICLE VII: MEETINGS

Section 1. Regular membership meetings shall be held each month unless a majority of the members vote to the contrary.

Section 2. Meeting dates will be established on the basis of the availability of the meeting venue.

ARTICLE VIII. PROCEDURE AND ORDER OF BUSINESS

Section 1. Robert's Rules of Order shall govern.

Section 2. The order of business at Association meetings shall be:

a. Open meeting
b. Pledge of Allegiance to the flag
c. Reading and acceptance of minutes
d. Communications and correspondence
e. Treasurer's report
f. Committee reports
g. Old Business
h. New Business
i. Adjournment

Section 3. Guest speakers or special presentations will be scheduled at the conclusion of the regular meeting.

ARTICLE IX. COMMITTEES

Section 1. Program. The Vice President, acting as Program Chair, shall arrange the program for each meeting and, acting as Publicity Chair, shall also provide advance publicity to the media.

Section 2. Membership. The Membership Chair shall contact and promote memberships from residents of Matlacha, shall coordinate membership lists with the Treasurer and shall establish a Calling Committee, which shall notify members of planned speakers, meetings or special events.

Section 3. Social. This committee shall make arrangements for and be in charge of any special social event.

ARTICLE X. COMMITTEES

Section 1. Any member may propose a change in the by-laws under "New

Business" at a regular meeting. If the proposal is seconded, discussion is in order.
Section 2. The President shall then appoint a By-Laws Committee of three (3) members who will review the proposed change and report to the Board at their next meeting.
Section 3. The proposed change can then be presented at the next general meeting. A 2/3 majority of the members present shall be required to adopt the proposed change.

APPROVED: October 27, 1980 May 1994

January 25, 1982
October 28, 1985
January 2, 1986
February 1989

November 2000
November 2002
September 22, 200December 2015

1091275

OFF. REC 1268 PG 1987

WARRANTY DEED

with

RESTRICTIONS ON USE

THIS INDENTURE made this 10th day of October, 1977 between GAC PROPERTIES INC, a Florida corporation, having its principal place of business in Dade County, Florida and lawfully authorized to transact business in the State of Florida, Grantor, and BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, Grantee.

WITNESSETH: that Grantor, for and in consideration of the sum of $10.00 and other good and valuable consideration to it in hand paid by the Grantee, the receipt and sufficiency whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee, its successors and assigns forever, all of the land lying waterward of that certain "property line" in the City of Cape Coral, Lee County, Florida, such property line more particularly described and set forth in the "Exhibit" attached and made a part hereof by such reference.

1. (a) In consideration for the within-given grant and conveyance it shall be a covenant running concurrently with the title, such covenant being expressly assumed by Grantee in behalf of itself and its successors and assigns, pursuant to which, Grantee agrees that the land conveyed hereby shall never be developed in any way to provide use for commercial, industrial or residential purposes, nor shall same be used for more than limited public assess for purposes of enjoyment of the premises in their natural state.

(b) For purposes of accomplishing the foregoing limitations, Grantee agrees never to make changes to the surface topography or sub-surface elements through filling of same by deposit of any materials, by excavation, dredging, mining or drilling, to remove any of the soil, vegetation or minerals and petroleum from the premises nor interfering with the natural drainage of the area or using same in a manner contrary to preservation of such lands as part of the wilderness system of the state. Grantee shall take all steps

This Instrument Was Prepared By:
Robert L. Weintraub
Attorney at Law
Post Office Box 525030, Miami, Florida 33152

necessary to include the areas hereby conveyed as a wilderness area under Chapter 258, Florida Statutes.

(c) At no time shall Grantee allow a use to be made of the premises which shall be inconsistent with preservation of same in accordance with acceptable principles of environmental conservation and shall retain the property's natural character and quality. This limitation is intended to preclude any operations for profit or commercial development and also to limit the building of any structures or improvements from adjacent property which may be inconsistent with limited use, access, or enjoyment in the public.

(d) In the event of violation of any one of the foregoing limitations as to use or adoption of the property, Grantor or its successors and assigns shall have an immediate right to make application to the Circuit Court for Lee County, Florida or to any other court of appropriate jurisdiction, for a declaration of such court confirming said violation and breach of the foregoing covenant and to obtain, upon such determination, an appropriate judgment enforcing this covenant and ordering restoration of the natural conditions existing prior to any damage occasioned by the violation.

(e) Failure on the part of Grantor to enforce any alleged violation of the foregoing covenant shall never be construed as a waiver at any subsequent time to declare such violation or others as operative and to commence proceedings as aforesaid.

(f) Grantor shall have the right to enforce restrictions on the premises to the result that the premises shall always remain in their natural state, or in the event of violation thereof, Grantor may commence proceedings to effect reversion of title to Grantor in a court of appropriate jurisdiction upon proper notice to Grantee of the pendency of such proceedings. No reversion of title shall become operative if within 90 days Grantee shall, after receiving such notice, commence

proceedings to correct the violation and shall have a reasonable time to complete such proceedings successfully. If reverter of title shall occur, then Grantor so reacquiring title shall also be bound to maintain said premises in their natural state and the Grantor agrees that it will take such reacquired title subject to all conditions contained in this conveyance. None of the foregoing shall apply to any of the conveyed premises which might be within one hundred feet (100') on either side of the center line of State Road 78, commonly known as Pine Island Road.

2. Grantee acknowledges that Grantor is in the process of constructing a certain peripheral spreader waterway designated as "A" on Exhibit along the westerly and southerly portions of its properties in the City of Cape Coral, the purpose of which is for the collection of surface runoff waters from the interior canal system lying within said Cape Coral Subdivision owned and developed by Grantor. Such waterway, in the collection of said runoff waters, is designed to allow for a disposal of the excess waters so collected over and across the most westerly or southerly banks thereof onto the lands herein conveyed which lie waterward of such water. The construction of all the foregoing spreader waterway is authorized by the Department of Environmental Regulation and other regulatory agencies, and the operation thereof in the collection and disposal of such waters requires that same be allowed to flow toward navigable waters and across the lands herein conveyed; wherefore:

(a) Grantor specifically reserves the right unto itself and its successors and assigns to allow uninterrupted surface runoff of waters originating on its lands lying upland of the property line, described in the attached Exhibit, to flow across the lands herein granted and conveyed, and by such reservation Grantee acknowledges an easement in gross for such surface water discharge across such lands.

(b) To the extent reasonably necessary for Grantor to construct, or maintain after construction, the aforesaid spreader waterway, Grantor reserves a right to enter onto portions of the lands hereby conveyed to accomplish such purposes without such entry constituting a trespass of any kind. Such rights of entry include the rights to use access of the subject lands at any time hereafter to accomplish any necessary or needful restoration work on dikes, spoil piles or other limited work required for such purposes. Grantor agrees to restore to natural condition any damage caused by the above work.

3. Subject to conditions, limitations and reservations of record and taxes for the current and subsequent years.

AND the said Grantor, GAC PROPERTIES INC, does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whatsoever.

IN WITNESS WHEREOF the said Grantor has caused these presents to sign in its name by its proper officer and its corporate seal to be affixed on the day and year first above written.

GAC PROPERTIES INC

(Corporate Seal)

By: Norman A. Eddleman
President

Frank J. Callahan, Trustee

Herbert S. Freehling, Trustee

STATE OF FLORIDA

COUNTY OF DADE

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Norman S. Edelcup well known to me to be the President of the corporation named as Grantor in the foregoing deed, and acknowledged executing the same freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

Witness my hand and official seal in the County and State last aforesaid this 12th day of April, 1977.

Notary Public, My Commission Expires:

STATE OF FLORIDA

COUNTY OF DADE

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Frank J. Callahan, well known to me to be the Co-Trustee of the corporation named as Grantor in the foregoing deed, and acknowledged executing the same freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

Witness my hand and official seal in the County and State aforesaid this 13th day of April, 1977.

Notary Public, My Commission Expires

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES APRIL 19 1980
BONDED THRU GENERAL INS. UNDERWRITERS

STATE OF FLORIDA

COUNTY OF DADE

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Herbert S. Freehling, well known to me to be the Co-Trustee of the corporation named as Grantor in the foregoing deed, and acknowledged executing the same freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

Witness my hand and official seal in the County and State last aforesaid this 12th day of April, 1977.

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES APRIL 19 1980
BONDED THRU GENERAL INS. UNDERWRITERS.

Notary Public, My Commission Expires:

OFF. REC. 1268 PG 1992

JOINDER OF LAND TRUSTEE
(Platted Lots)

CITY NATIONAL BANK OF MIAMI, a national banking association, of Miami, Dade County, Florida, as Trustee under the provisions of a certain Land Trust Agreement dated the 15th day of November, 1970, joins in the within deed for purposes of perfecting the conveyance of any platted lots included with the lands described therein, and does hereby covenant that said premises are free from all encumbrances made by it, and will warrant and defend the same against the lawful claims and demands of all persons claiming by, through or under it but against none other.

(Corporate Seal)

CITY NATIONAL BANK OF MIAMI, as Trustee

Signed, sealed and delivered
in the Presence of:

By: _____
Sr. Vice President and Trust Officer

CITY NATIONAL BANK OF MIAMI CORPORATE SEAL 1963 FLORIDA

Witness: Heather E. Casiano

Witness: Joyce W. Peeples

Attest Betty A. Kleckner
TRUST OFFICER

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments personally appeared CLIFFORD L. HORN and BETTY A. KLECKNER, well known to be the SENIOR VICE PRESIDENT & TRUST OFFICER and TRUST OFFICER respectively of CITY NATIONAL BANK OF MIAMI, Trustee under Land Trust Agreement dated the 15th day of November, 1970, and that they severally acknowledged executing the within Joinder of Land Trustee to the annexed Warranty Deed in the presence of two subscribing witnesses freely and voluntarily under authority vested in them by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 14TH day of April, 1977.

R. POWELL Notary NOTARY PUBLIC OF FLORIDA AT LARGE

Notary Public, State of Florida, at Large

My Commission Expires: Notary Public, State of Florida at large My commission expires Feb. 17, 1980.

JOHNSON ENGINEERING, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
2158 JOHNSON STREET
TELEPHONE (813) 334-0046
POST OFFICE BOX 1549
FORT MYERS, FLORIDA
33902

CARL E. JOHNSON
1910-1959

OFF. REC 1268 PG 1993

February 11, 1977

DESCRIPTION
NEW PROPERTY LINE
ALONG EASTERLY SIDE OF LAND
BEING CONVEYED BY CAC PROPERTIES, INC.
TO STATE OF FLORIDA
SECTIONS 24, 25 & 36, T. 43 S., R. 22 E.
AND
SECTIONS 1, 12 & 13, T. 44 S., R. 22 E.
CITY OF CAPE CORAL, LEE COUNTY, FLORIDA

A line running through Section 24, 25 & 36, Township 43 South, Range 22 East and Sections 1, 12 & 13, Township 44 South, Range 22 East, City of Cape Coral, Lee County, Florida said line being more particularly bounded and described as follows:

From the north quarter corner of said Section 24, Township 43 South, Range 22 East go on a bearing N 89° 47' 56" W along said north line of said section a distance of 1780.00 feet to the Point of Beginning of the herein described line.

From said Point of Beginning, which point is on the north boundary of "Cape Coral Unit 90" as recorded in Plat Book 24 at pages 12 through 29 of the Lee County public records, run through said Unit 90 the following course and distances: S 00° 49' 11" W for 794.99 feet; N 89° 47' 56" W for 899.24 feet to a point on the west line of said Section 24 and the west line of said Unit 90; thence run along said line S 00° 51' 34" W for 620.01 feet; thence leaving said section line run S 89° 47' 56" E for 495.02 feet; S 00° 51' 34" W for 120.00 feet; S 89° 47' 56" E for 589.74 feet; S 00° 49' 11" W for 852.73 feet; N 89° 26' 00" W for 590.30 feet; S 00° 51' 34" W for 1601.09 feet; S 6° 47' 42" E for 412.32 feet; S 00° 49' 11" W for 744.99 feet to the south line of said Unit 90 and the north line of "Cape Coral Unit 83" as recorded in Plat Book 23, page 41 through 54 of the Lee County public records; thence continue along said line through said Unit 83 the following courses and distances: S 13° 27' 59" E for 103.08 feet; S 00° 49' 11" W for 1955.82 feet; S 89° 23' 00" E for 770.00 feet; S 00° 49' 11" W for 2135.00 feet; S 89° 23' 00" E for 1001.05 feet to a point on a curve not tangent to the last mentioned course; thence run along the arc of said curve having a radius of 1255.00 feet, a central angle of 26° 39' 42", for an arc length of 583.99 feet, said curve having a long chord bearing S 26° 51' 00" E and a length of 578.74 feet, to a point on said curve not tangent to the next mentioned course; thence continue along said line S 00° 49' 11" W for 501.50 feet; thence continue along said line passing from said Unit 83 into "Cape Coral Unit 82" as recorded in Plat Book 24 at pages 113 through 126 of the Lee County public records the following courses and distances: S 26° 34' 35" W for 617.29 feet; S 00° 37' 00" W for 2020.00 feet;

PRESIDENT
ARCHIE T. GRANT, JR
VICE-PRESIDENT
FORREST H. BANKS
SECRETARY-TREASURER
LEIF E. JOHNSON
ASSOCIATES
LESTER L. BULSON
ROBERT S. O'BRIEN
DAN W. DICKEY
DEAN C. THOMAS
JOSEPH W. EBNER

JOHNSON ENGINEERING, INC.

S 64° 50' 37" E for 444.82 feet; S 89° 22' 20" E for 955.98 feet; S 48° 27' 23" E for 755.77 feet; S 89° 22' 22" E for 761.06 feet; S 00° 02' 45" E for 565.00 feet; N 89° 19' 15" W for 2364.22 feet; S 00° 42' 00" W for 1665.84 feet; and S 89° 18' 00" E for 15.00 feet; thence continue along said line passing from said Unit 82 into "Cape Coral Unit 81" as recorded in Plat Book 24 at pages 102 through 112 of the Lee County public records the following courses and distances: S 00° 34' 51" W for 375.00 feet; S 89° 18' 00" E for 1235.00 feet; S 00° 34' 51" W for 545.00 feet; S 2° 16' 27" E for 185.25 feet; S 00° 34' 51" W for 803.09 feet; N 89° 25' 09" W for 749.22 feet; S 00° 34' 51" W for 2437.83 feet; S 89° 25' 09" E for 1100.02 feet; S 00° 34' 51" W for 1085.01 feet; thence continue along said line running from said Unit 81 into unsubdivided lands the following courses and distances; S 00° 34' 51" W for 375.00 feet; S 89° 25' 09" E for 449.20 feet; S 00° 34' 51" W for 5052.84 feet; S 00° 01' 25" E for 942.11 feet to a point of curve; thence run along the arc of a curve to the left having a radius of 200.00 feet, a central angle of 76° 59' 42", for an arc length of 268.76 feet to a point of compound curvature; thence run along the arc of a curve to the right having a radius of 200.00 feet having a central angle of 76° 59' 42", for an arc length of 268.76 feet to a point of tangency; thence continue along said line S 00° 01' 25" E for 1500 feet more or less to the end of said line located on the southwesterly side of a waterway and said point lying S 48° 31' 56" W for 566.94 feet from a Permanent Reference Monument located at the westerly end of the division line between Lots 24 and 25 in Block 5318 as shown on "Cape Coral Unit 58" as recorded in Plat Book 23, pages 128 through 147 of the Lee County Public Records.

ROB/ds

APR 28 9 55 AM '78
OFFICIAL RECORDS
LEE COUNTY, FLORIDA

Planning Division Staff Report
AX 16-0001

Review Date:	November 15 2016
Prepared By:	Wyatt Daltry, AICP, Planner Team Coordinator
Review Approval:	Robert H. Pederson, AICP, Planning Manager
Applicant	City of Cape Coral 1015 Cultural Park Boulevard Cape Coral, FL 33990
Property Owner:	City of Cape Coral
Authorized Representative/ Applicant:	Wyatt Daltry, AICP, Planner Team Coordinator
Request:	**The City has initiated a voluntary annexation of six (6) properties (±5.37 acres) into the City of Cape Coral from unincorporated Lee County.**

Positive Aspects of Application:	• The property is owned by the City • Annexation will let the City establish development controls and standards over property it owns • Annexation will expand City boundary to gain more waterfront property • Opportunity exists for a waterfront commercial or parkland use
Negative Aspects of Application:	• Could cause concern among Matlacha Isles residents regarding development, traffic, potential future annexation
Mitigating Factors:	• A future land use map amendment and a zoning process to City designations will be required prior to development

Location: Western Cape Coral, west of Matlacha Isles, and southwest of the Sirennia Vista city park

Strap No.	Address
13-44-22-02-00000.0150	3926 PINE ISLAND RD NW
13-44-22-02-00000.0170	3922 PINE ISLAND RD NW
13-44-22-02-00000.0190	3918 PINE ISLAND RD NW
13-44-22-02-00000.0230	3910 PINE ISLAND RD NW
13-44-22-02-00000.0270	3902 PINE ISLAND RD NW
18-44-23-03-00000.00A0	3850 PINE ISLAND RD NW

Matlacha Shores Subdivision, 1st Addition, Lots 15-28 and A Parcel of land being a portion of Undivided Lot A, Unit No. 1, Matlacha Isles

3850-3926 Pine Island Road NW
Matlacha, FL 33993

Subject Property:	***Future Land Use***	***Zoning***
Current:	Urban Community, a Lee County future land use map classification	C-1A and C-2, Lee County zoning designations
Proposed:	N/A	N/A
	Surrounding Future Land Use	***Surrounding Zoning***
North:	Natural Resources/Preservation (PRES) and Parks and Recreation (PK)	Preservation (PRES) and Residential Development (RD)
South:	Conservation Lands – Wetlands and Wetlands, Lee County future land use map classifications	Agricultural-2 (AG-2), a Lee County zoning designation
East:	Urban Community, a Lee County FLUM classification	RS-1 and RSC-1, Lee County zoning designations
West:	Urban Community, a Lee County FLUM classification	C-2, a Lee County designation

City Water: No

City Sewer: No

Type of Access Road: Pine Island Road (SR 78), a principal arterial road.

Soil Types: Matlacha gravelly fine sand (Soil Type 69)

Soil Limitations for Development:

Map Unit		Limitations	
		Dwellings without basements	Small commercial buildings
69	Matlacha gravelly fine sand	Moderate (wetness)	Moderate (wetness)

The soil in the area presents moderate limitations for dwellings and small commercial buildings. These limitations are typically overcome by using various engineering solutions, such as importing fill. The soil type, therefore, should not present an obstacle to any proposed annexation. However, special feasibility studies may be required at the development stage of the property.

Drainage: Must comply with South Florida Water Management District or the City of Cape Coral Engineering Design Standards.

Natural Resources: The site is characterized by a mix of vacant land and developed commercial property. The hydrology is considered non-hydric.

Flora & Fauna Habitat: No protected species were identified on the property. Prior to any development order being issued, an environmental survey must be undertaken, and mitigation performed to minimize the impacts of development, if any, on the protected species habitat.

Property Description:

The site consists of six (6) parcels of ±5.37 acres in Western Cape Coral. The eastern half of the property is vacant and a bait and tackle shop is on the western end of the site.

Background and Analysis:

The properties were purchased by the City of Cape Coral in 2012 as part of the Thieman 491 land purchase. Most of the Thieman purchase involved sites in the city limits. This site is the only one outside of the city boundaries.

The western portion of the site (Lots 15-18) has been used as a bait and tackle shop since 1971, according to Lee County Property Appraiser's Office records. The remainder of the site is vacant.

The City initiated a voluntary annexation for these parcels from the current Lee County jurisdiction into the City. The petition for voluntary annexation includes the required signatures. The parcels have the necessary connection to other property in the City to the north. This request does not involve the elimination of enclaves.

The future use of this site is yet to be determined. The City of Cape Coral wishes to annex the property into the City limits so that it may exercise its land use and zoning authority for future development. The site has waterfront commercial opportunities that are relatively rare for a community with 400 miles of canals. Alternatively, the City could develop the subject properties for recreational or park purposes.

Ultimately, the future use of the site will be determined through a future land use amendment and rezoning. These are separate processes that require separate public hearings, as the property will continue to retain Lee County land use and zoning designations until such time as the annexation is complete and City future land use and zoning are established.

Impact Assessment Summary:

The following calculations summarize approximate conditions for each municipal service analyzed. A more complete analysis of each service is included in the text that follows the calculations. To determine the impact assessment, we used the current County land use and zoning designations to determine the existing impacts. Using the maximum allowed density, the purpose of this section is to determine the impact of annexing this property, with consideration of the maximum County-allowed density (thus developing the worst-case scenario analysis of the impacts involved with this annexation). Therefore, the impacts discussed in this assessment do not necessarily reflect the actual amount of dwelling units, population, etc.

The existing land use classification for these parcels within unincorporated Lee County is "Urban Community." The zoning is Commercial (C-1A and C-2). The maximum density permitted under the Urban Community future land use classification is 10 dwelling units per acre. As discussed in the analysis section, it takes a separate City process to change the land use and zoning to City standards[1]. To summarize the Florida Statute, in the period between annexation and amending the land use and zoning designations for newly annexed property, the designations that previously applied before annexation would still apply.

Two of the lots are developed and operate as a bait and tackle shop. The site has had a lengthy history of usage as a water-dependent commercial use.

Type:	**Dwelling Units**
Under Existing Zoning:	57 (5.67 acres of Open Lands classification x 10 dwelling units (DU)/acre)
Type:	**Population***
Under Existing Zoning:	145

***** 2.54 persons/household = avg. household size; 2010 Census

Type:	**Water Use**
Existing Generation:	11,400 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	12.0 MGD

[1] Florida Statute 171.062(2)

The City has been permitted water withdrawals not to exceed 16.93 million gallons per day. The potable water consumed by development permitted by future land use amendments would be evaluated as part of that review and concurrency requirements would be met. Currently, the subject property is not located in the City's water service area, potable being water provided by the Greater Pine Island Water Association.

Type: **Sewage**

Existing Generation: 11,400 gal/day
Facility Capacity: 28.4 MGD
Avg. Daily Usage: 12.0 MGD

The wastewater generated by development permitted by future land use amendments would be evaluated as part of that review and concurrency requirements would be met. Although nearby properties to the east will be connected on the City's centralized wastewater system within the next two years, currently, none of the subject properties are located in the City's wastewater service area and instead, utilize septic tanks.

Type: **Solid Waste**

Existing Generation: 687 lbs./day
Facility Capacity: 1,836 tons/day
Existing Demand: 1,384 tons/day
Capacity Available: Yes.

Type: **Traffic/Daily Trips**

Existing Generation: 13 AM peak trips/hour and 15 PM peak trips/hour
Facility Capacity: Local roads currently access the subject properties. Pine Island Road, a principal arterial roadway, passes by the subject properties to the south.
Capacity Available: Yes.

The traffic generated by development permitted by future land use amendments would be evaluated as part of that review and concurrency requirements would be met.

Type: **Fire Response Capacity**
City fire resources can support this annexation.

Type: **Police Resource Capacity**
City police resources can support this annexation.

Development Impact Analysis:

Hurricane Evacuation:

The subject properties are located in the Storm Surge/Evacuation Zone A/A. As this application concerns a voluntary annexation request, no development will be permitted until the land use and zoning are amended in accordance with the City Comprehensive Plan and Land Use and Development Regulations. Any land use amendment resulting in an increase of residential density will require mitigation, as the subject properties are located in the Coastal High Hazard Area as defined by Florida Statute Chapter 163.3178.

Park Lands:

The levels of service standards for parkland and facilities are based on permanent population. Based on the existing permitted densities, at maximum development there would be an increase in park demand of 0.58 acres.

Protected Species:

The City requires a detailed protected species survey prior to the issuance of any land clearing, site clearing, site work permits, or building permits. Therefore, future consideration for even the most minor land activities will be preceded by a listed species survey for both flora and fauna. Staff would then recommend suitable protection, conservation, or enhancement of these areas through its Natural Resources/Preservation future land use classification and other regulatory controls and restrictions.

Recommendation:

The City has undertaken a number of initiatives over the past decade to provide additional opportunities for commercial and industrial development which include:

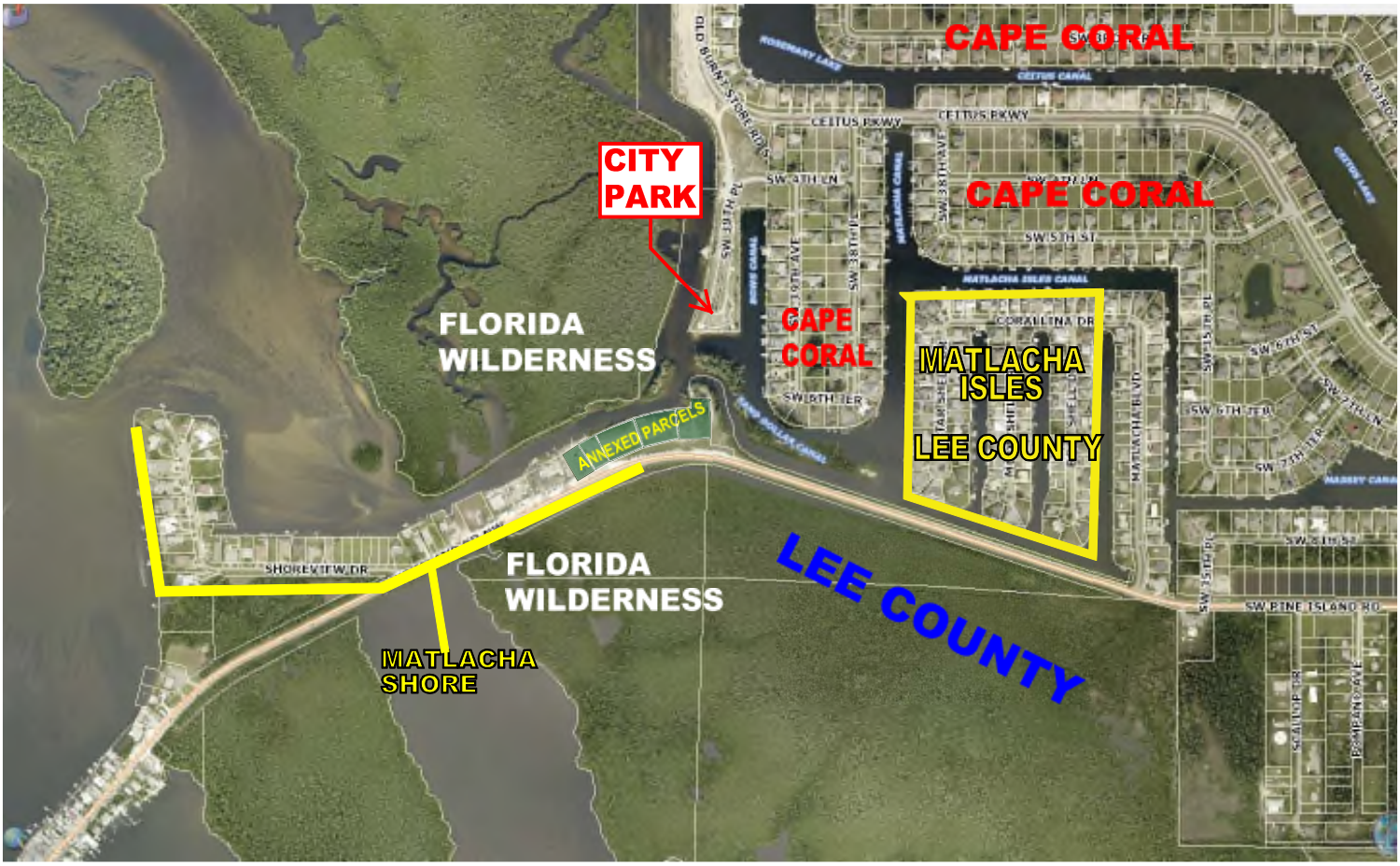
1. Creation of the Pine Island Road District and related zoning districts, Village and Corridor – to promote high quality commercial and mixed-use development;
2. New zoning districts for the downtown Community Redevelopment Area to foster an urban downtown – retail and office with compound buildings supporting mixed use;
3. Commercial Activity Center and Mixed Use Preserve land use districts which could provide new opportunities for high quality commercial and mixed use development, while discouraging residential at prime commercial locations;
4. Amendments to the existing Mixed Use land use classification - mandating a minimum percentage of commercial development and allowing non-residential mixed use developments;
5. New zoning districts within the City Hall area to foster office and retail space consistent with a “public government center”;
6. Commerce Park Overlay to increase light industrial opportunities at suitable locations within the Corridor District; and

7. Financial incentives provided through the City Economic Development Office to assist in assemblage of land for commercial and industrial development.

Clearly the City has been proactive in efforts to secure land appropriate for non-residential development. Selective annexations of properties, particularly enclaves, may serve as an eighth strategy by which additional opportunities for these types of development may be achieved. This was reflected in the economic study prepared by Paul Van Buskirk for the Economic Development office in 2012. Overall, the proposed annexation provides benefits which outweigh the costs of serving an additional 5.37 acres.

Due to the opportunities for non-residential development provided by this annexation, the opportunity for waterfront commercial development, and the City's need for more commercial, professional, and mixed-use lands, Planning Division staff recommends **approval** of the proposed annexation.

STRAP	Owner Name	Site Address	Last Trans. Date	Last Trans. Amt	Just Value	Taxable Value
18-44-23-03-00000.00A0	CITY OF CAPE CORAL	3850 PINE ISLAND RD NW, MATLACHA	4-2012	$ 13,080,100	$ 323,825	$ 0


CAPE CORAL
CITY PARK
CAPE CORAL
FLORIDA WILDERNESS
CAPE CORAL
MATLACHA ISLES
LEE COUNTY
ANNEXED PARCELS
FLORIDA WILDERNESS
LEE COUNTY
MATLACHA SHORE

(9)

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

FIRST NATIONAL BANK OF PENNSYLVANIA, a national banking association,

Plaintiff,

v.

THIEMAN ENTERPRISES, LLC, a Delaware limited liability company; THIEMAN LIMITED PARTNERSHIP, A dissolved Ohio limited partnership; OWEN BAY, LLC, a dissolved Florida limited liability company; TED H. THIEMAN, an individual; and MARILYN L. THIEMAN, an individual,

Defendants.

_____/

Case No. 11-CA-054029
Judge: Fuller, Joseph C.

FILED LEE CO. FLORIDA
CLERK OF COURTS
2012 MAR -7 PM 3:06
BY _____ D.C.

STIPULATED FINAL JUDGMENT OF FORECLOSURE

THIS action was heard before the Court on the Joint Motion of Plaintiff and Defendants for the Immediate Entry of a Stipulated Final Judgment of Foreclosure. Based on the evidence presented and being otherwise fully informed in the premises, it is ORDERED AND ADJUDGED that:

1. The Joint Motion of Plaintiff and Defendants for the Immediate Entry of a Stipulated Final Judgment of Foreclosure is granted. Service of process has been consented to by Defendants.

2. There is due and owing to Plaintiff the following:

Principal due on the note by the mortgage foreclosed	$21,618,541.95
Interest on the note and mortgage through January 27, 2012	$ 1,285,534.97
Per diem interest at $2,702.32 from 1/28/12 through 2/24/12	$ 75,664.96
Late charges	$ 59,509.52

Old Republic National Title - Title Search and Examination	$ 1,000.00
CorpDirect	$ 86.00
NRAI Corporate Services	$ 581.00
Clerk of the Court, Lee County	$ 2,136.50
Federal Express	$ 83.42
Legal Fees	$ 44,689.00

TOTAL **$23,087,827.32**, plus an additional contested amount for default rate interest, with all parties reserving all rights with respect to liability.

3. The total sum referenced in paragraph 2 will bear interest at the prevailing statutory interest rate from this date through December 31 of this current year. Thereafter, on January 1 of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Section 55.03, Florida Statutes.

4. Plaintiff, whose address is 1801 Glengary Street, Suite 200, Sarasota FL 34231, holds a lien for the total sum not less than the amount specified in paragraph 2 herein. Subject to prior entry in this action of an order approving settlement agreement and actual entry into the settlement agreement by all necessary parties as contemplated pursuant to the Joint Motion for Entry of Order Approving Settlement Agreement, the lien of Plaintiff is superior in dignity to any right, title, interest, or claim of Defendants and all persons, corporations, or other entities claiming by, through, or under Defendants or any of them and the property will be sold free and clear of all claims of Defendants, with the exception of any assessments that are superior pursuant to Florida Statutes, Section 718.116. The Plaintiff's lien encumbers the subject property located in Lee County, Florida, and described as:

SEE ATTACHED EXHIBIT "A"

5. If the total sum with interest at the rate described in paragraph 3 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the subject property at public sale on April 9, 2012 at 9:00 a.m./~~p.m.~~ using the following method: via the Internet at www.lee.realforeclose.com, after having first giving notice as required by Section 45.031, Florida Statutes. At least three (3) days prior to the sale, Plaintiff must pay the costs associated with the Notice of Publication.

6. Plaintiff shall advance all subsequent required costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property for sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this Judgment, or such part of it, as is necessary to pay the bid in full. If a third party bidder is the purchaser, the third party bidder must pay the documentary stamps attached to the Certificate of Title in addition to the bid.

7. If Plaintiff incurs additional expenses subsequent to the entry of this Final Judgment but prior to the sale date specified in paragraph 5 herein, Plaintiff may, by written motion served on all parties, seek to amend this Final Judgment to include said additional expenses.

8. On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiff s costs; second, documentary stamps affixed to the Certificate, unless the property is purchased by a third party bidder; third, Plaintiffs attorney's fees; fourth, the total sum due to Plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 3 from this date to the date of the sale; and by retaining any remaining amount pending further order of this Court.

9. On filing of the Certificate of Title, Defendants and all persons claiming under or against Defendants since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the

property and the purchaser at sale shall be let into possession of the property. On filing of the Certificate of Sale, Defendants' right of redemption as prescribed by Florida Statutes, Section 45.0315 shall be terminated.

10. Pursuant to Florida Statutes, Section 45.031:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF COURT AT (239) 533-5000 WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF

YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT YOUR LOCAL LEE COUNTY LEGAL AID SOCIETY AT (239) 334-6118 TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE LEE COUNTY BAR ASSOCIATION REFERRAL SERVICE AT (239) 334-0047 FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

11. The Plaintiff may assign the judgment and credit the bid by the filing of an assignment without further order of the Court.

12. The Court retains jurisdiction of this action to enter further Orders that are proper including, without limitation, orders authorizing writs of possession and an award of attorney's fees and to enter deficiency judgments if the Defendants have not been discharged in bankruptcy, but subject to the terms of the settlement agreement (and the releases provided for therein) as approved by the Court.

DONE AND ORDERED in Chambers in Lee County, Florida, this 6th day of March 2012.

The Honorable Joseph C. Fuller
Circuit Judge

Conformed copies:

Michael E. Siegel, Esq.
Livingston, Patterson, Strickland & Siegel, PA
46 N. Washington Blvd., Suite 1
Sarasota, Florida 34236

Michael P. Shuster, Esq.
Porter Wright Morris & Arthur LLP
9132 Strada Place, 3rd Floor
Naples FL 34108-2683

CHARLIE GREEN, CLERK, CIRCUIT COURT
BY: M. PARKER D.C.
MAR - 9 2012

W:\First National Bank of PA\Thieman Enterprises\final judgment of foreclosure2 121411.docx

EXHIBIT A

Parcel No. 9A: All of Block 2420, in Unit 34, Cape Coral, a Subdivision, as recorded in Plat Book 16, Pages 74 through 86, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 10A: All of Block 2529, in Unit 36, Cape Coral, a Subdivision, as recorded in Plat Book 16, Pages 112 through 130, inclusive, of the Public Records of Lee County, Florida.

Parcel No. ID: Tract A, Block 2100, in Unit 36, Part 1, Cape Coral, a Subdivision, as recorded in Plat Book 23, Pages 87 through 94, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 14A: All of Block 2738, in Unit 39, Cape Coral, a Subdivision, as recorded in Plat Book 16, Pages 142 through 154, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 15A: All of Block 2813, in Unit 40, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 81 through 97, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 12A: All of Tract A, Block 2770, in Unit 40, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 81 through 97, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 13A: All of Blocks 2785 and 2786, all in Unit 40, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 81 through 97, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 18A: All of Block 2872, in Unit 41, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 2 through 14, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 17A All of Block 2977, in Unit 42, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 32 through 44, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 2D: All of Block 2990B, in Unit 43, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 48 through 57, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 21A: All of Block 3689, in Unit 50, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 155 through 162, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 22A: All of Block 3707, Less and Except Lots 1 through 11, inclusive, in Unit 50, Cape Coral, a Subdivision, as recorded in Plat Book 17, Pages 155 through 162, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 31A: All of Block 4065, in Unit 56, Cape Coral, a Subdivision, as recorded in Plat Book 19, Pages 107 through 116, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 29A: All of Block 4115A, in Unit 57, Cape Coral, a Subdivision, as recorded in Plat Book 19, Pages 124 through 137, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 30A: All of Block 4075, in Unit 57, Cape Coral, a Subdivision, as recorded in Plat Book 19, Pages 124 through 137, Inclusive, of the Public Records of Lee County, Florida.

Parcel No. 6D: All of Block 5300A, in Unit 58, Cape Coral, a Subdivision, as recorded in Plat Book 23, Pages 128 through 147, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 34A: All of Block 4186A, in Unit 59, Cape Coral, a Subdivision, as recorded in Plat Book 19, Pages 140 through 153, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 7D: All of Blocks 4199A, 4199B; and 4271A, all in Unit 60, Cape Coral, a Subdivision, as recorded

in Plat Book 19, Pages 154 through 169, inclusive, of the Public Records of Lee County, Florida.

Parcel C-l: Lots 10 and 21, Block 4199, in Unit 60, Cape Coral, a subdivision, as recorded in Plat Book 19, Pages 154 through 169, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 8D: All of Block 4331A, in Unit 61, Cape Coral, Subdivision, as recorded in Plat Book 21, Pages 4 through 20, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 35A: All of Block 4280A, in Unit 61, Cape Coral, a Subdivision, as recorded in Plat Book 21, Pages 4 through 20, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 26A: All of Block 5107A, in Unit 80, Cape Coral, a Subdivision, as recorded in Plat Book 22, Pages 140 through 159, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 27A: All of Block 5096A, in Unit 80, Cape Coral, a Subdivision, as recorded in Plat Book 22, Pages 140 through 159, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 36A: All of Block 5279A, in Unit 82, Cape Coral, a Subdivision, as recorded in Plat Book 24, Pages 113 through 126, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 37A: All of Tract A, Block 5445, in Unit 90, Cape Coral, a Subdivision, as recorded in Plat Book 24, Pages 12 through 29, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 38A: Lots 1, 2, 3, 4 and 5, Block 5520, all in Unit 91, Cape Coral, a Subdivision, as recorded in Plat Book 24, Pages 88 through 98, inclusive, of the Public Records of Lee County, Florida.

Parcel C-3: Tract A, in Unit 91, Cape Coral, a subdivision, as recorded in Plat Book 24, Pages 88 through 98, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 11D: All of Tract I, in Unit 97, Cape Coral, a Subdivision, as recorded in Plat Book 25, Pages 85 through 97, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 12D: All of Blocks 6169, 6170, 6171, 6172, 6173, 6174 and 6175, all in Unit 98, Cape Coral, a Subdivision, as recorded in Plat Book 25, Pages 107 through 121, inclusive, of the Public Records of Lee County, Florida.

Parcel No. 28A: All of Blocks 6184, 6187 and 6188, all in Unit 98, Cape Coral, a Subdivision, as recorded in Plat Book 25, Pages 107 through 121, inclusive, of the Public Records of Lee County, Florida.

PARCEL NO. B: The Islands
Lots 1, 9, 12, 13, 14, 15, 16 and 17, Block 6400;
Lots 1, 2, 3, 4, 5 and Tract G, Block 6401;
Lots 1, 2, 3, 4, 5, 6, 7 and Tract F, Block 6402:
Lots 1, 2, 3, 4 and Tract E, Block 6403;
Lots 1, 2, 3, and Tract D, Block 6404;
Lots 1, 2 and Tract C, Block 6405;
Lots 1, 2, 3, 4, 5, 6, 7 and Tract B, Block 6406;
Lots 1, 2, 3, 4, 5, 6, 7, 8 and Tract A, Block 6407;
Lots 1, 2, 3 and 4, Block 6408;
All in Unit 76, The Islands, Cape Coral, a Subdivision, as recorded in Plat Book 35, Pages 121 through 129, inclusive, of the Public Records of Lee County, Florida

Parcel No. 9D: All of Tract A, Block 5271 and Tract A, Block 5275, Spreader Waterway, Cape Coral, a Subdivision, as recorded in Plat Book 32, Pages 48 through 111, inclusive, of the Public Records of Lee County, Florida.

PARCEL #2: Lots 46, 47 and 48, Block 4223; Lots 40 and 41, Block 4226; Lot 31, Block 4261; Lots 1, 2 and 6, Block 4262, All in Unit 60, Cape Coral, a Subdivision, as recorded in Plat Book 19, pages 154 through 169, inclusive, of the Public Records of Lee County, Florida.

PARCEL #4: Lots 18 and 19, Block 5248; Lots 27, 28, 29 and 30, Block 5255; Lots 33 and 38, Block 5268; Lots 48 and 49, Block 5284, Lots 12, 13, 16, 17, 20 and 21, Block 5270, Lots 30 and 31, Block 5271, All in Unit 82, Cape Coral, a Subdivision, as recorded in Plat Book 24, Pages 113 through 126, inclusive, of the Public Records of Lee County, Florida.

PARCEL #5: Lot 68, Block 5196; Lot 47, Block 5257; Tracts "A" and "B", Block 5268; Lot 67, Block 5284, Being in the Cape Coral Spreader Waterway Plat, as recorded in Plat Book 32, Pages 48 through 111, inclusive, of the Public Records of Lee County, Florida.

PARCEL #6: Lots 49 and 50, Block 5152; Lots 15, 16, 17, 18, 21, 22, 23, 24, 27 and 28, Block 5162; Lots 35, 36, 37, 38, 41, 42, 43, 44, 53 and 54, Block 5195, All in Unit 83, Cape Coral, a Subdivision, as recorded in Plat Book 23, Pages 41 through 54, inclusive, of the Public Records of Lee County, Florida.

PARCEL #7: Lots 7 and 8, Block 5413; Lots 60 and 61, Block 5427; Lots 1, 2, 3, 4, 5, 6, 49 and 50, Block 5437; Lots 29 and 30, Block 5438; Lots 11, 12, 13 and 14, Block 5448; Lots 21, 22, 23 and 24, Block 5449; Lots 29, 30, 31, 32, 35, 36, 49, 50, 53 and 54, Block 5460; Lots 25, 26, 27, 28, 29, 30, 31, 32, 37 and 38, Block 5463; Lots 40, 41, 44, 45, 48, 49, 50, 51, 52 and 53, Block 5464; Lots 49 and 50, Block 5465; Lots 15 and 16, Block 5476; Lots 1, 9, 10, 11, 12, 25, 26, 40 and 41, Block 5477; Lots 1, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39 and 40, Block 5482, All in Unit 90, Cape Coral, a Subdivision, as recorded in Plat Book 24, pages 12 through 29, inclusive, of the Public Records of Lee County, Florida.

PARCEL #8: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and 76, Block 5470, All in Unit 90A, Cape Coral, a Subdivision, as recorded in Plat Book 30, pages 104 through 106, inclusive, of the Public Records of Lee County, Florida.

PARCEL #9: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46, Block 6300; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75, Block 6301; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9,10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42, Block 6302; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71, Block 6303; All in Unit 83, Part 1, Cape Coral, a Subdivision, as recorded in Plat Book 30, pages 107 through 110, inclusive, of the Public Records of Lee County, Florida.

Parcel 100: Lot A, Matclacha Isles Unit 1, according to the Plat thereof as recorded in Plat Book 16, page 132, Public Records of Lee County, Florida.

Parcel 101: Lots 15 through 28, Matclacha Shores First Addition, according to the Plat thereof as recorded in Plat Book 10, page 42, Public Records of Lee County, Florida.

Parcel 102: The West 1/2 of Southwest 1/4 of Southeast 1/4 of Southwest 1/4 of Section 19, Township 43 South, Range 23 East, less road right-of-way, Lee County, Florida.

Parcel 103: The East 1/2 of Southwest 1/4 of Southeast 1/4 of Southwest 1/4 of Section 19, Township 43 South, Range 23 East, less road right-of-way, Lee County, Florida.

Parcel 104: The West 1/2 of Southeast 1/4 of Southeast 1/4 of Southwest 1/4 of Section 19, Township 43 South, Range 23 East, less road right-of-way, Lee County, Florida.

Parcel 105: The East 1/2 of Southeast 1/4 of Southeast 1/4 of Southwest 1/4 of Section 19, Township 43 South, Range 23 East, less road right-of-way, Lee County, Florida.

Parcels 102 through 105 also described as follows: The South 1/2 of the Southeast 1/4 of the Southwest 1/4 of Section 19, Township 43 South, Range 23 East, Lee County, Florida, less the Northerly 25 feet running East to West reserved for road right of way.

Parcel 106: The North 1/2 of Northeast 1/4 of Northwest 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 107: The South 1/2 of Northeast 1/4 of Northwest 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 108: The North 1/2 of South 1/2 of Northeast 1/4 less the East 68 feet of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 109: The South 1/2 of South 1/2 of Northeast 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 110: The North 1/2 of North 1/2 of North 1/2 of Southeast 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 111: The South 1/2 of North 1/2 of North 1/2 of Southeast 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 112: The North 1/2 of South 1/2 of North 1/2 of Southeast 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

Parcel 113: The South 1/2 of South 1/2 of North 1/2 of Southeast 1/4 of Section 30, Township 43 South, Range 23 East, Lee County, Florida.

W:\First National Bank of PA\Thieman Enterprises\11 Title\Updated Legal Description (1-17-12) LESS EXCLUDED PARCELS.docx

Lee County
Clerk of Court
FORECLOSURE SALE
BID LOG

FIRST NATIONAL BANK OF PENNSYLVANIA
Plaintiff

Case Number: 11-CA-054029
Sale Date: 08/02/2012

Vs.

THIEMAN ENTERPRISES LLC ET AL
Defendant

Presale Bids

Bidder ID	Bid	Date/Time
13394	$100.00	08/01/2012 09:37:01 AM
5573	$450,200.00	08/02/2012 08:45:41 AM

Auction

	Auction Open		08/02/2012 09:00:01 AM
7571		*$450,300.00	
5573		*$475,200.00	08/02/2012 09:00:19 AM
7571		*$475,300.00	
	Auction Closed		08/02/2012 09:01:01 AM

The final bid was made by: Florida Properties III, LLC
Whose address is: 1801 Glengary Street, Suite 200 Sarasota, FL 34231
In the total amount of: $475,300.00

Final Bid Amount:	$475,300.00
Clerk Fees:	$0.00
Auction Fee:	$70.00
Doc Stamps:	$3,327.10
Total Due:	$3,397.10

* = Bid via Proxy