

**MINUTES FOR THE REGULAR MEETING OF THE  
CAPE CORAL CITY COUNCIL**

**December 3, 2018**

**Council Chambers**

**4:30 p.m.**

Meeting called to order by Mayor Coviello at 4:31 p.m.

Invocation/Moment of Silence – Councilmember Gunter

Pledge of Allegiance – Councilmember Gunter

Roll Call: Mayor Coviello, Council Members Carioscia, Cosden, Gunter, Stokes, and Williams were present. Councilmember Stout was excused. Councilmember Nelson arrived at 5:56 p.m.

**CHANGES TO AGENDA/ADOPTION OF AGENDA**

Mayor Coviello asked if there were any changes to the agenda.

Councilmember Williams requested that 9 A (4), Ordinance 78-18, be withdrawn.

Councilmember Carioscia requested a vote to see if the majority wanted to keep it on the agenda.

Councilmember Williams stated many of the people who would speak on that Ordinance were not present tonight.

Mayor Coviello stated it could be left on the agenda, but just not move it forward or vote on it.

Councilmember Williams explained as we are moving forward with this, people are coming forward with ideas and concerns. He noted this would be an opportunity to make some tweaks on this Ordinance.

Mayor Coviello stated the Ordinance revolves around banning retail pet sales in the City.

Councilmember Gunter concurred with Councilmember Carioscia since this was the second time it was brought forth.

Mayor Coviello asked for a show of hands in the audience from who was present to speak on this Ordinance. (One hand was raised.)

City Attorney Menendez stated it would be appropriate to have a motion and a second.

***Councilmember Carioscia moved, seconded by Councilmember Gunter, to keep Ordinance 78-18 on today's agenda.***

***Council polled as follows: Gunter, Stokes, Carioscia, and Coviello voted "aye." Williams and Cosden voted "nay." Four "ayes." Two "nays." Motion carried 4-2.***

Mayor Coviello requested a motion to adopt the agenda, as presented.

***Councilmember Carioscia moved, seconded by Councilmember Gunter, to adopt the agenda, as presented.***

***Council polled as follows: Gunter, Stokes, Carioscia, and Coviello voted "aye." Williams and Cosden voted "nay." Four "ayes." Two "nays." Motion carried 4-2.***

**RECOGNITIONS/ACHIEVEMENTS**

None.

**APPROVAL OF MINUTES**

Regular Meeting – November 19, 2018

***Councilmember Cosden moved, seconded by Councilmember Stokes, to approve the minutes for the November 19, 2018 regular meeting as presented. Voice Poll: All "ayes." Motion carried.***

**BUSINESS**

**PUBLIC COMMENT - CONSENT AGENDA**

Tim Trimble inquired about General Fund items 1, 2, 5, and 10. Where is the money coming from to fund these items?

Financial Services Director Bateman explained what Fund is paying for each item that Mr. Trimble questioned.

City Manager Szerlag explained where the money came from in Item 10.

Councilmember Gunter pulled item 8(B)(1).

**CONSENT AGENDA**

- 1) Resolution 227-18 Award Request for Proposal RFP-PW18-78/MM for Emergency Disaster Assistance and Debris Removal Services to Ceres Environmental Services, Inc. (Primary); Phillips and Jordan, Inc. (Secondary); CrowderGulf Joint Venture, Inc. (Tertiary); Custom Tree Care, Inc.; DRC Emergency Services, LLC.; Grubbs Emergency Services, LLC.; KDF Enterprises, LLC.; Omni Construction, Inc.; TAG Grinding Services, Inc. and T.F.R. Enterprises, Inc. on an as needed basis, at the unit price stated and authorize the City Manager or Designee to execute the contracts and renewals; Department: Public Works; Annual Dollar Value: N/A - Amounts based on the severity of the disaster; (Governmental Services – General Fund)
- 2) Resolution 248-18 Award ITB-PW18-127/MM Yacht Club Pool Renovations and Deck Improvements to AuMiller Pools LLC., as the lowest responsive responsible bidder, to renovate the Cape Coral Yacht Club Complex main pool, kiddie pool and surrounding concrete pool deck and walkways in the amount of \$255,250 with a 12% City Controlled contingency of \$30,630 for a total project cost of \$285,880 and authorize the City Manager or Designee to execute the agreements, amendment and any renewals; Department: Public Works; Dollar Value \$285,880; (Special Revenue Fund - Aquatics)
- 3) Resolution 252-18 Approve award of ITB-UT18-126/GL for the purchase and delivery of Water, Sewer & Irrigation Materials to: Core & Main LP, Ferguson Enterprise, Inc., Fortiline Inc. and Harrington Industrial Plastics, LLC, respectively, at the unit prices bid, not to exceed budgetary limit, as the lowest responsive responsible bidder in each particular group and authorize the City Manager or designee to execute the contract, purchase order and any renewals; Department: Utilities; Estimated Annual Dollar Value: \$1,800,000; (Water & Sewer Fund)
- 4) Resolution 256-18 Acceptance of Warranty Deed from Elizabeth Benavidez for a portion of the 1994 vacated right of way of SW 28th Place being adjacent to Lot 53, Block 5972, Cape Coral Unit 93 (2811 SW 25th Terrace) and a Public Utility and Drainage Easement to clarify additional utility and drainage easement area

along the western perimeter easement of Lot 53, Block 5972; Department: Financial Services / Real Estate Division; Dollar Value: \$80; (Fund: Public Works Planning & Permitting)

- 5) Resolution 259-18 Award ITB-PW18-132/MM Greenscape Median Landscape Maintenance for Areas 3, 8 and 9 to John Fideli Landscapes, LLC., as the lowest responsive responsible bidder, to maintain the landscaping and irrigation system in the amount of \$74,260 with a \$10,000 City Controlled contingency for a total project cost of \$84,260 and authorize the City Manager or Designee to execute the agreements, amendment and any renewals; Department: Public Works; Dollar Value: \$84,260; (General Fund)
- 6) Resolution 266-18 Acceptance of Cross Access Easement in a portion of 2315 Andalusia Boulevard (part of Lots 27 and 28, Block 2162, Unit 32, Strap #31-43-24-C1-02162.0270), to provide access to the alley right of way, as conditioned in the Vacation of Plat Resolution 187-18; Department: Financial Services / Real Estate Division; Dollar Value: N/A; (Fund: N/A)
- 7) Resolution 267-18 City of Cape Coral 2017-2018 Consolidated Annual Performance Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) Program; Department: Community Development; Dollar Value: N/A; (Fund: N/A)
- 8) Resolution 268-18 Single Family Impact Fee Deferral Program Developer Agreements between the City of Cape Coral and Habitat for Humanity of Lee and Hendry Counties; Department: Community Development; Dollar Value: N/A; (Fund: N/A)
- 9) Resolution 257-18 Lee County Tax Collector Building - Potable Water Main Reimbursement; Department: Utilities; Dollar Value: \$43,361; (Water & Sewer Fund)
- 10) Resolution 269-18 Waive Fees for Fire Suppression Conversion from Reclaimed to Potable Water; Department: Fire; Dollar Value: Fluctuates with Property; (Utilities Enterprise, DCD Building Special Revenue, and General Fund)

***Councilmember Carioscia moved, seconded by Councilmember Cosden, to approve items 8(B)(2), 8(B)(3), 8(B)(4), 8(B)(5), 8(B)(6), 8(B)(7), 8(B)(8), 8(B)(9), and 8(B)(10), as presented.***

***Council polled as follows: Gunter, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 6-0.***

Councilmember Gunter inquired what the penalty was on Resolution 227-18 for a contractor who did not appear to do the work outlined or if it occurred later. He questioned if there was a clause within that contract to make sure the contractors are bound by the City to some degree.

Mayor Coviello commented on increasing the \$1,000 per day fee for liquidated damages if they do not perform according to the clauses in the contract.

Councilmember Cosden commented on the matrix in the backup. She requested in the future to see a column for past contract adherence and have that weighted the highest.

Procurement Manager Roop noted how challenging it was to deal with contractors after the hurricane regarding disaster debris. She explained how the City regrouped to make the requirements clearer and more stringent. She mentioned liquidated damages were \$1,000 per day if they did not mobilize within a specified period which was clearly stated on the RFP. The second item was \$500 per day if they did not complete the debris removal or whatever project given on the time agreed upon. There was a potential of at

least \$1,500. More important than liquidated damages are to designate primaries and secondaries which we did not have.

City Attorney Menendez explained how these contracts provided for two different tiers of liquidated damages, depending on the nature of the issue in terms of the contractor's failure to perform. She stated Council has the ability to not approve these contracts with these particular figures and to request more information about what fair and reasonable liquidated damages might be under these circumstances.

Mayor Coviello stated he was okay with \$1,000 per day, but he wanted a clause where the non-performing contractor would pay the City the difference to hire a performing contractor.

City Attorney Menendez stated the other concept is the need to mitigate damages. Even when there is a liquidated damages clause, the City cannot just wait 90 days and let the \$1,000 per day accumulate. The City has an obligation to try and mitigate our damages by entering into another contract or hiring someone else.

Councilmember Gunter concurred with Mayor Coviello. He stated terminology should be included to say that if we're paying \$100,000 and we need to hire another contractor because someone did not show up, the likelihood is there that we will pay more money. There needs to be some type of liquidated penalty that if we have to incur an additional cost, they should be responsible for that. He inquired of staff if the listed contractors in the backup material were the ones who failed to show up during Hurricane Irma.

Manager Roop responded in the affirmative.

Public Works Director Clinghan noted that there were not many hurricane removal contractors since it is a specialized field.

Bryan S. Fike, Director of Government Relations, Ceres Environmental Services, Inc., provided background on himself and his firm including participation by Ceres Environmental during the 2017 hurricane season which included activations for Hurricanes Harvey and Irma, and was the primary for Puerto Rico, the Virgin Islands, St. Croix, and St. Thomas.

City Manager Szerlag inquired when a decision needed to be made on this bid.

Manager Roop stated she would have to check on this, but normally they run 90 to 120 days. They received the proposals on June 15<sup>th</sup>.

City Manager Szerlag asked the primary contractor if they would keep their proposal open until January?

Mr. Fike stated they would keep their prices in place.

City Manager Szerlag requested that Council table this Resolution until January for clarification on this issue.

Councilmember Cosden requested to find out why staff did not contact this company to execute the contract.

City Manager Szerlag stated that was the salient reason he wanted the postponement.

City Attorney Menendez noted Council could continue the item to a specific date in January or be withdrawn from tonight's agenda.

Discussion held regarding how many cities Ceres is the primary vendor.

***Councilmember Gunter moved, seconded by Councilmember Cosden, that we take Resolution 227-18 and continue it and give staff the opportunity to answer some questions they have and hopefully answer some of the questions that Council has.***

Director Clinghan requested that Facilities Manager Ridenour clarify a statement made about the communication with all six vendors.

Facilities Manager Ridenour confirmed that staff contacted a minimum of six vendors that we had contracts with. He did not personally speak to all six, maybe three or four. At the time one of our project management staff members reached out to Ceres. No conversation was made with Bryan until 3-4 weeks after we initiated a contract with another firm. All six of the vendors that we reached out to were well documented as far as who we spoke to and the time. When we spoke to Ceres at that time, they were in the process of evaluating numerous other municipalities and told us they would have to get back to us. That is when we continued to move forward with enacting a different contractor.

City Manager Szerlag reiterated that he would still like to have this matter continued until January 14, 2019.

Councilmember Cosden requested to see the documentation of that contact when this is brought back in January.

City Attorney Menendez stated a motion was needed to continue this to January 14, 2019.

***Councilmember Gunter amended his motion to bring this item back on January 14, 2019. Second agreed.***

***Council polled as follows: Gunter, Stokes, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 5-0. (Councilmember Williams was not present on the dais at the time the vote was taken.)***

#### **CITIZENS INPUT TIME**

Michael Hannon, Matlacha resident, appeared to discuss the proposed removal of the Chiquita Boat Lock. He noted they were preparing to challenge that. Please make sure that the scientists that have supported this application by the City of Cape Coral to convince Council that this is in the best interests of the residents of Cape Coral.

Yolanda Olsen, District 2 resident, appeared to discuss City Permits and the Chiquita Boat Locks. She understood that the City hired a Tallahassee law firm to oppose the request for an extension of filing a petition. She questioned the quote on how the City is willing to discuss matters with residents. She noted how there were no results on having a counsel of experts.

Jessica Blanks, District 1 resident, appeared to discuss the Chiquita Boat Lock. She encouraged Council to have an open mind and further study the long-term effects. She noted the impacted areas for the current habitat of endangered small tooth sawfish or threatened manatees need more studies. Please consider alternatives that give you everything other than just satisfy boating wait times.

Magnus Thiersmann, District 3 resident, appeared to discuss climate change and sea level rise. He mentioned how the water was sucked out of the canals during Hurricane Irma, especially on the Southwest Spreader. If the Lock is removed, low tides can leave some boaters stranded.

Jason Pim, District 1 resident, appeared to discuss five locks on the way to Jupiter Inlet, and how some of the gates were left open, depending on the water levels. He did not

want the City to make the same mistake with the Chiquita Boat Lock. He encouraged Council to dig deeper into the pros and cons and consider alternatives to the removal.

Terry Nelson, Cape Coral resident, appeared to discuss water quality. Sea grasses are decreasing at an alarming rate, and they need to be protected. The removal of the Lock will contribute to that. The Lock was put in place as a nutrient pollution source to protect the estuary. He urged Council to have a current nutrient study and budget study done now since the study that had been used to determine this decision is from 2004.

Karen Solgard, District 4 resident, requested that Council to creatively plan for more affordable housing in Cape Coral. Where in Cape Coral should affordable housing be built? How should communities be designed? She discussed sustainable living, not just cheaper and smaller replicas of what is already being built.

JoAnn Elardo, Cape Coral Animal Shelter, appeared to discuss Resolution 78-18. She realized that the Resolution needs some tweaking from its present state and explained the request to hold off on this until the beginning of January. She noted that 94% of the animals that are sold in pet stores are from puppy mills.

Rob Marder, District 3 resident, discussed the Chiquita Boat Lock, noting that he lives on the Spreader Canal. He urged Council to follow through on their commitment to remove the Lock. It would be in the best interest of the residents who live on the Spreader Canal, and it would improve the quality of life there.

Christina Jackson, District 5 resident, discussed how she went to Washington, DC to speak with Congressmen and Senators regarding the water quality issues. She has attended the US Army Corps of Engineers meetings. Why throw away the barrier by what could be the tipping point of an even greater disaster? She suggested fixing the Chiquita Boat Lock.

Louis Navarra, Cape Coral resident, discussed the GO Bond. He also discussed the purchase of the old golf course which was still in negotiations as of the last time he checked. He made the following suggestions: 1) redo the old golf course, 2) sell Coral Oaks, 3) keep the old ordinances that limit growth, 4) why can't we buy some of the lands with 20/20 like the land behind Publix on Del Prado and 5) discussed vacation rentals and the puppy mill ordinance.

Charlie Myers, Cape Coral resident, discussed FGCU's science program called Restore, which is a web-based interactive decision support tool for Adaptation of Coastal, Urban, and Natural Ecosystems. ACUNE is the acronym in Southwest Florida.

Tim Trimble, Cape Coral resident, discussed expired car registrations which are mostly out of state.

Bonnie Beatley, Cape Coral resident, questioned if the Ordinance on the dogs and cats would include Pet Smart who rehomes a lot of cats every year through an agency.

Councilmember Cosden addressed the person who asked about sea level rise. She noted that the City had a study done in 2016 and have been implementing some of the recommendations. She suggested the resident send her an email so that she could send him that study.

#### **PERSONNEL ACTIONS**

None

#### **PETITIONS TO COUNCIL**

None

#### **APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS**

None.

## ORDINANCES/RESOLUTIONS

### PUBLIC HEARINGS

#### Ordinance 61-18 (ZA 18-0001\*) Public Hearing

\*Quasi-Judicial, All Persons Testifying Must be Sworn In

#### WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Official Zoning Map by rezoning property described as Lots 11-12, Block 665, Unit 21, Cape Coral Subdivision, from Multi-Family Residential (R-3) to Pedestrian Commercial (C-1) zone; property is located at 2121 SE 15th Place. (0.23 acres) (Applicant: Lazaro Flores)

Hearing Examiner Recommendation: The Hearing Examiner recommends that the City Council deny this application for rezoning.

City Management Recommendation: City Management recommends approval.

Interim City Clerk Bruns read the title of the Ordinance and administered the oath.

Senior Planner Heller explained the purpose of the Ordinance and displayed the following power point slides:

- Ordinance 61-18
- ZA 18-0001, owner, representative, location, urban services, request
- Vicinity
- Current Future Land Use Map
- Current Zoning Map
- Proposed Zoning Map
- Findings of Fact
- Analysis – Comp Plan
- Analysis – LUDR Section 8.7
- Recommendation
- Public Input
- Correspondence

Public Hearing opened.

Harvey Oh, resident of 221 SE 15<sup>th</sup> Place, noted he lived directly across the proposed rezoning request. He voiced his concern about whether or not this was a compatible use. He questioned whether a lot of this size meets the required development criteria. He requested to see some of the proposals as opposed to just giving them C-1 zoning where they could put any type of development they want by multi-family and residential homes across the street.

Andres Boral, Boral Engineering & Design, Inc., addressed some of the concerns this neighbor had. This parcel is .23 acres, and the intent is to rezone it to Commercial so that it can be used as a parking lot. Commercial adjacent to residential is required to have certain landscape buffers. This property will be developed basically with a parking lot and lots of buffers. There will be access from the alleyway; a lot of traffic will be through there and not necessarily the local right-of-way in front of the neighbors. Impact will be minimal. If this zoning is approved, his client will be able to develop the property as the property currently has a Future Land Use of Commercial Professional (CP). Without this rezoning, that property cannot be developed.

Councilmember Nelson arrived at 5:57 p.m.

Public Hearing closed.

Councilmember Carioscia discussed the recommendation from the Hearing Examiner. He questioned if the Hearing Examiner was present to provide testimony.

Planning Manager Pederson stated the Hearing Examiner does not attend Council meetings. The Hearing Examiner is a contract attorney, and her recommendation was

part of the meeting packet. He noted that some of the testimony on this hearing could be interpreted a number of ways. City Planning Staff recommended approval. He explained the slide entitled "Vicinity" and noted inconsistencies with Future Land Use and Zoning.

Councilmember Carioscia inquired what type of business is being anticipated for this property.

Manager Pederson stated the property owners have indicated they want to do a parking lot, and it can include any business allowed in the C-1 zoning district.

City Attorney Menendez stated zoning cannot be conditioned; it could be developed as any one of the uses, individually or as part of a larger assembly. She added that the Hearing Examiner will never come to defend her decision; she makes her decision based on the way she analyzes the facts that are before her. Council is free to take that recommendation into consideration. It is considered to be expert testimony as well as the testimony of the Planning Staff.

Councilmember Gunter reviewed the points made by the Hearing Examiner, noting that she only agreed to one of ten.

Manager Pederson explained how the standards and recommendation are evaluated.

Mayor Coviello questioned the access on the back side if there was a parking lot. He also inquired if there would be access from the residential street.

Manager Pederson noted the applicant indicated there would be some access through the alley. He added there would be access from all three sides.

City Attorney Menendez noted the Land Use being CP on this property and how it cannot develop as residential currently with that Land Use. If it is not going to be rezoned to C-1, then a P-1 rezoning may be in order unless the City changes the Land Use designation in the Comprehensive Plan.

Mr. Boral stated they had an approved site plan permit on the lot to the east facing Del Prado. They were planning on having a parking lot on this property to serve that development which has been approved for a use as a hair salon and business office. He noted rezoning to P-1 would be considered spot zoning. If they do not rezone and change the Comprehensive Plan, this would be the only lot on the block with a Residential Future Land Use; everything else would be CP and inconsistent. If you don't develop this, cars will park there anyway, and there will not be any of the required trees.

Councilmember Cosden confirmed that currently it was inconsistent with the Land Use which means it cannot be used unless the Zoning or Land Use is changed. She noted she would support this Ordinance.

Mr. Oh was allowed to speak again. He voiced his concern that there could be restrictions on a potential use in the future if they did rezone this parcel.

City Attorney Menendez reiterated that there cannot be conditions on a rezoning. She questioned Manager Pederson concerning R-3 zoning where there are certain circumstances under which commercial parking has a special exception that can be approved. Does this property qualify given the stated purpose and its relationship to adjacent commercial property?

Manager Pederson stated staff has not analyzed that because that is not the request that came before staff.

Public Hearing closed.



***Councilmember Cosden moved, seconded by Councilmember Carioscia, to adopt Ordinance 61-18, as presented.***

***Council polled as follows: Williams, Cosden, and Coviello voted "aye." Carioscia, Gunter, Nelson, and Stokes voted "nay." Three "ayes." Four "nays." Motion denied 3-4.***

Ordinance 76-18 (ZA 18-0009\*) Public Hearing

\*Quasi-Judicial, All Persons Testifying Must be Sworn In

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending the City of Cape Coral Official Zoning District Map by rezoning property described as Lots 31-36, Block 807, Unit 22, Cape Coral, from Professional Office (P-1) to Pedestrian Commercial (C-1); property is located at 915-923 SE 10th Street. (0.69 acres) (Applicant: HBLB Properties III, LLC)

Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the application for rezoning.

City Management Recommendation: City Management recommends approval of the rezone.

Interim City Clerk Bruns read the title of the Ordinance and administered the oath.

Senior Planner Heller explained the purpose of the Ordinance and displayed the following power point slides:

- Ordinance 76-18
- ZA 18-0009: owner, applicant, location, request
- Findings of Fact
- Vicinity
- Current Future Land Use Map
- Proposed Zoning Map
- Analysis – Section 8.7.3.B
- Recommendation

Public Hearing opened.

Veronica Martin, Senior Planner, TDM Consulting, represented the applicant who owns HBLB Properties. She explained the request for rezoning from P-1 to C-1.

Public Hearing closed.

***Councilmember Williams moved, seconded by Councilmembers Gunter to adopt Ordinance 76-18, as presented.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 7-0.***

*Council recessed at 6:32 p.m. and reconvened at 6:45 p.m.*

Ordinance 77-18 (PDP 18-0001\*) Public Hearing

\*Quasi-Judicial, All Persons Testifying Must be Sworn In

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending Ordinance 6-98, as amended by Ordinance 17-17, approving a Planned Development Project in the City of Cape Coral entitled "A-1 Shelters Self Storage, Hancock Creek Site," providing for Planned Development Project approval for certain property described as a parcel of land located in the Southwest Quarter of Section 33, Township 43 South, Range 24 East and in the Northwest Quarter of Section 4, Township 44 South, Range 24 East, Lee County, Florida; properties located at 2555 NE Pine Island Road and near the southeast corner of Diplomat Parkway East and NE 24th Avenue; expanding the project area by 3.7 acres to include a parcel of land northwest of the existing site; granting a deviation from the requirement that building walls used for meeting the screening requirement within a CPO buffer be composed of

stucco, brick, stone, textured concrete masonry units, or other concrete surfaces to allow the walls of buildings within the new 3.7 acre project area to be composed of metal; granting a deviation from the Non-Residential Design Standards to allow all buildings within the new 3.7 acre project area to be exempt from the Non-Residential Design Standards; granting development plan approval pursuant to Section 4.2 of the City of Cape Coral Land Use and Development Regulations. (Applicant: Kirby Family Limited Partnership #3)

Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the Project, subject to the terms and conditions set forth in PDP HEX Recommendation 5-2018.

City Management Recommendation: City Management recommends approval.

Interim City Clerk Bruns read the title of the Ordinance and administered the oath.

Planning Team Coordinator Struve explained the purpose of the Ordinance and displayed the following power point slides:

- Ordinance 77-18: owner, authorized rep, project, location, area
- Ordinance 77-18, vicinity map, project site
- Current Zoning Map
- Requests
- Development Plan
- PDP Amendment for Expanding the Project Area Analysis (LUDR, Section 4.2.5A.3.b)
- Deviation to LUDR, Section 2.7.13J.6.c(5)
- Analysis (LUDR, Section 4.2.4.K)
- Map of buffer
- Deviation to LUDR, 5.6
- Analysis (LUDR, Section 5.6.10)
- Recommendations
- Correspondence

Public Hearing opened.

Linda Miller, Senior Planner, Avalon Engineering, represented the Kirby Family Limited Partnership #3 on PDP 18-0001. She noted the request would amend Ordinance 6-98 and 17-17. She stated that Lynn Kirby, managing partner for the Kirby Family Partnership, was present. She reviewed how long the Kirby Family has been in this warehouse business. She explained slides that were displayed:

- This PDP Amendment requests: Approval to expand the Project area of the PDP from 13.7 acres to 17.4 acres with the addition of 3.7 acres to the west. Master Development Plan approval for Self-Storage Facility and Storage Enclosed (RV Parking) separately or in any combination
- This PDP requests two Deviations to the City of Cape Coral's Land Use and Development Regulations.
- Environmental Concerns
- Landscaping Plan
- Elevations
- Stor-Rite Storage Facility
- This is a picture of the Kirby's existing RV Storage Facility on NE 25<sup>th</sup> Avenue.

Public Hearing closed.

***Councilmember Williams moved, seconded by Councilmember Gunter, to adopt Ordinance 77-18, as presented.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

Ordinance 78-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends Chapter 12, "Offenses and Miscellaneous Provisions" of the Code of Ordinances to create Section 12-128, Article XIII, "Retail Sale of Dogs and Cats Prohibited" prohibiting the retail sale of dogs and cats in the City; provides for definitions, prohibition, disclosures, amortization, enforcement and penalties. (Applicant: Brought forward by Councilmember Williams)

Interim City Clerk Bruns read the title of the Ordinance.

Public Hearing opened.

JoAnn Elardo, President, Board of the Cape Coral Animal Shelter, requested postponement of this Ordinance so that their attorney could review it again and bring it back to Council in a better form. She noted the people who would be supporting this did not come tonight; late this afternoon they were informed that this would be postponed. She displayed a fact sheet that was distributed to Council and reviewed the items listed on that sheet.

Charlie Myers discussed how he personally bred Labradors for 28 years. He also discussed how Greyhounds were bred in Florida which sickened him, as well as the process that breeders of puppy mills follow. He opined that trying to make this a Governmental regulation was like trying to find a cure for the worst disease.

Ms. Elardo was permitted to speak again. She noted that there are reputable breeders out there, and they would work with them, as well as shelters. She stated they also wanted to track businesses that have just opened up. She hoped that Council would support finding those businesses, bringing them into our City, and letting us work with breeders, but not puppy mills. She wanted that abolished in the Cape and added it was a Government function.

Public Hearing closed.

Councilmember Williams disagreed with Mr. Myers; he stated this was a Government issue because we are dealing with abused animals. He explained why it was withdrawn. He requested to table this for one week and allow us to get the people, evidence, and package here to enable us to make an informed decision.

***Councilmember Williams moved, seconded by Councilmember Cosden, to table this for one week until our next meeting where we can have the people come in and have a full Council to vote on it.***

Councilmember Carioscia stated the issue here is enforcement. If we banned sales in the one pet store in Cape Coral, people can still go over the bridge. We should be lobbying on a State or Federal level and not at the City level with only one pet store that sells dogs and cats. If you google breeders, there is a list of breeders that have been arrested or investigated. Will we also ban breeders? We won't ban breeders, but we will ban a pet store that sells dogs. Whether or not the dogs they sell are healthy, and whether or not they buy from breeders, we won't know. No pet store with this Ordinance will be allowed to come into the Cape. The Ordinance discloses that we will not be able to sell dogs and cats from stores. He had no opposition to delaying this for one week.

City Attorney Menendez addressed an issue raised earlier regarding whether or not pet stores such as Pet Smart, Petco, and Pet Supermarket that deal with rescue organizations and have them located in their stores would be affected by this or prohibited from engaging in that practice. The answer is no. Retail stores that work with an animal rescue organization for the purpose of getting those animals adopted and providing a show case for them is not affected. There is an exclusion in the Ordinance because that is not the retail sale. The only other point she made was that the motion

was actually a motion to continue this public hearing until December 10<sup>th</sup> as opposed to tabling it. She asked Councilmember Williams if he concurred.

Councilmember Williams responded in the affirmative.

Councilmember Stokes discussed the love he has for his dog and how he was excited about banning puppy mills. He noted this Ordinance was brought forth twice. He did not think a week was enough time. He asked the City Attorney how long the Ordinance can be tabled.

City Attorney Menendez explained what Councilmember Williams was requesting and that people interested in this Ordinance were not present due to the Ordinance being withdrawn today. If the Council wants to continue the public hearing, it can be continued to January, but not to have an indefinite period. Continuing a public hearing once it is opened is basically this Ordinance. She explained that Council could adopt this Ordinance with some tweaking, depending on what the proposed changes are. This Ordinance was already in the works and all that Council would be doing is continuing the public hearing on this Ordinance. If there is a desire to significantly change this Ordinance, then that would really be starting anew, not just continuing the public hearing regarding this and adopting it.

Mayor Coviello stated withdrawing it meant it needed more work. He suggested this should be brought back in a better form. He stated banning the sale of cats and dogs at pet stores in our City will not resolve the issue of puppy mills. When a person purchases an animal at the local small pet store, they then buy the leash, bowl, food, and collar which will spark sales. He did not want to interfere with small, private businesses in this issue or any other issues.

Councilmember Stokes stated tweaking will not work. He would support an Ordinance that would take care of the puppy mills and possibly a cooperation with the business owner in getting shelter dogs adopted.

Councilmember Nelson stated she would not support the current Ordinance. She discussed her experience visiting the Patriot Pet Store, noting that 30% of their sales was selling puppies. For this Ordinance to be effective within three weeks from today would not be reasonable for a small business to plan for that revenue loss. She was not sure that the way this Ordinance is written that it is Council's job to regulate. She questioned what was being done on a Federal or State level to prohibit and eliminate puppy mills. She was more concerned with backyard breeders and local puppy mills that are not regulated. She hoped that when the Cape shelter is opened, it can be used as community outreach to educate our residents. She recommended needing more time to have a stronger Ordinance.

Councilmember Gunter agreed with Councilmember Stokes and Councilmember Nelson. He could not support the current Ordinance, even with minor tweaks. He noted this seemed like an umbrella Ordinance. If the problem is puppy mills, then we should be addressing the puppy mill problem. He questioned if there were some legitimate puppy mills that existed. He opined that this is probably a bigger issue on a Federal or State level because puppies are transported across state lines. We should try to get a lobbyist together if this is the direction Council wants to go at our State and Federal level as well.

City Manager Szerlag explained the difference between denying an Ordinance and coming back at a later time with one that could be considered similar versus withdrawing it. He noted the comment from Councilmember Gunter about this possibly be considered at the legislative level. He stated that there is a proposed legislative platform on the December 10<sup>th</sup> agenda. He could ask Terri Hall to include something for consideration that would prohibit the sale of dogs via puppy mills. He agreed he could make that happen on the Monday agenda in terms of the legislative platform. He noted the timeline of the agenda approval and doubted that it could happen with any major changes.

City Attorney Menendez reiterated major changes cannot be done by merely continuing it. She addressed the comment about a retail pet store being out of business in January; that owner would be amortized for nine months. She provided some examples of minor changes that could be made to this Ordinance to not require withdrawal. She also went through a list of things that cannot be done. From the time it was originally brought up, this Ordinance was never a regulation of puppy mills. If the intention is to withdraw this, it can certainly be done. If it is to bring it back and still regulate the retail sale of dogs and cats in a different manner, that can be encompassed within Councilmember Williams' original proposition that was seconded by another Councilmember. If the desire is to bring back a completely different Ordinance on a different subject, which is a more direct regulation or prohibition of puppy mills, then that would need support by Council to bring forward an Ordinance on another topic.

Mayor Coviello questioned rushing this Ordinance. He felt the need for a new Ordinance that addresses the issue of puppy mills and not our stores.

Councilmember Williams realized that nothing can be done in a week. He explained the reason he made the motion was to keep this Ordinance alive. This Ordinance was not ready to be heard; that is why he went with the withdrawal. ***He noted he would be willing to change the motion.***

Mayor Coviello stated the target was to eliminate the sale of dogs purchased from puppy mills and not to eliminate the sale of dogs from retail stores; that is where the Ordinance needs to go in order to get acceptance and approval.

Councilmember Williams stated there are no puppy mills in Cape Coral; a lot of these dogs come from overseas. How could that be regulated?

Councilmember Cosden noted the invoices were distributed to Council during the recess. The invoices show that the one pet shop in question does purchase from puppy mills. She suggested googling the companies noted on these invoices. She opined that this should be a Federal issue, but it is not; it is up to Council to set an example. She noted that we have taken steps to regulate things that are not regulated at a higher level. She noted that false information was corrected tonight which is reason enough to withdraw, table, or continue it. Making a final decision tonight would be wrong.

***Councilmember Cosden withdrew her second from the motion.***

Councilmember Williams stated he wanted to go back to the original to move this to January. He asked the City Attorney for her advice on withdrawing the Ordinance or killing it to bring it back in January.

City Attorney Menendez stated she could address it if she understood what the issues he was planning on bringing forward. This Ordinance is not directly attacking puppy mills, and not regulating or prohibiting it. Not all pet stores will buy from puppy mills although it is rare for a reputable breeder to sell to a pet store. She suggested January might be a little soon to bring back a different Ordinance that will regulate what Council wants. If Council wants to broaden the regulatory scheme or find ways of modifying, she suggested withdrawing it tonight and reconsidering a new approach.

Councilmember Williams questioned if Council needed to set a new date if we withdraw this tonight.

City Attorney Menendez explained there would be no decision on this Ordinance if it is withdrawn. If someone wants to bring back an Ordinance on this or some other related topic, it will get a new number and drafted for that particular regulation. It will be scheduled for Introduction and a Public Hearing will be set for that Ordinance at that time.

***Councilmember Williams changed his motion to withdraw this Ordinance.***

City Manager Szerlag agreed with the City Attorney, but he also suggested a conjunctive motion so that it would withdraw this Ordinance but also at the same time indicate that you want to come back with an entirely new Ordinance to regulate the sale of puppy mills and other items that Council deems appropriate.

City Attorney Menendez suggested that if you're going to do that, that you sever those two issues. One would be the withdrawal of this Ordinance; second, seek a plus one to come back with this regulation of puppy mills and whatever regulatory features are related to it.

Councilmember Stokes explained there are two separate issues: puppy mills and the retail of pets at pet stores. He agreed with going with a new Ordinance. He suggested language to contain proof of being bred responsibly and locally.

Mayor Coviello stated there was a motion on the floor to withdraw this Ordinance and craft another Ordinance. He asked if there was a second to that motion.

***Councilmember Carioscia seconded the motion.***

City Attorney Menendez questioned if the only motion was to withdraw it. If it is not just to withdraw it, but to withdraw it and bring it back in some other form, she wanted to make sure that Councilmember Carioscia is the plus one to Councilmember Williams' desire to bring it back in some other form.

Mayor Coviello asked if it should be withdrawn first and then come back with the additional part.

City Attorney Menendez stated if this is being withdrawn and no one on Council is picking it up and Council just wants to see it done, she recommended that there be that vote. She understood from Councilmember Williams that right after you do that vote, he wants to bring a new Ordinance.

Mayor Coviello stated he already had a second.

City Attorney Menendez stated he had a second to bring back an Ordinance dealing with prohibiting the retail sale of dogs and cats in the City of Cape Coral, which is the Ordinance being presented.

Mayor Coviello stated we just need to withdraw that Ordinance and vote on it. Then come back with the request for a new Ordinance.

City Attorney Menendez stated after the vote, Councilmember Williams probably wants to get his plus one for him to do a broader regulation.

***Councilmember Williams moved, seconded by Councilmember Carioscia, to withdraw Ordinance 78-18, as presented.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 7-0.***

Councilmember Williams asked for a plus one to bring this Ordinance in a different form.

Councilmember Cosden stated she would be the plus one.

Ordinance 79-18 Public Hearing

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance approving the Interlocal Agreement between the City of Cape Coral and Lee County for the rental of space within City Fire Stations to house emergency vehicles

and personnel; authorizing the Mayor to execute the Interlocal Agreement. (Applicant: Brought forward by City Management.)

Interim City Clerk Bruns read the title of the Ordinance.

Fire Chief Lamb stated this is a housekeeping issue, and there would be a brief staff presentation.

EMS Fire Battalion Chief Solich displayed the following power point slides:

- What is the Interlocal Agreement?
- Current Interlocal Agreement
- Proposed Interlocal Agreement
- Two charts showing the Current Interlocal and Proposed Interlocal
- Recommendations
- Questions

Fire Chief Lamb stated our plan is to continue to work with the County as we have done for a number of years.

Lee County Public Safety and Emergency Medical Services Chief Benjamin Abes thanked City staff for having multiple meetings and coming to this agreement. He noted they were happy with the agreement presented tonight; it is a good representation of the partnership between Lee County and the City of Cape Coral.

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Gunter moved, seconded by Councilmember Williams, to adopt Ordinance 79-18, as presented.***

***Council polled as follows: Gunter, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 6-0. (Councilmember Nelson was not present on the dais at the time this vote was taken.)***

**Resolution 271-18 Public Hearing - Election to use Uniform Method of Collecting Non-Ad Valorem Special Assessments**

**WHAT THE RESOLUTION ACCOMPLISHES:**

The resolution approves electing to use the Uniform Method of Collecting Non-Ad Valorem Special Assessments levied within certain portions of the City as described in the resolution, states a need for such levy, and provides for the mailing of the resolution. (Applicant: Brought forward by City Management.)

NOTE: This resolution would approve a means of collection and does not impose a specific assessment.

Interim City Clerk Bruns read the title of the Resolution.

Director Bateman explained the purpose of the Resolution and displayed the following power point slides:

- Resolution 271-18
- Uniform Method of Collection & Statutory Requirements
- Non-ad valorem assessments

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Williams moved, seconded by Councilmember Gunter, to approve Resolution 271-18, as presented.***

***Council polled as follows: Gunter, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 6-0. (Councilmember Nelson was not present on the dais at the time this vote was taken.)***

## INTRODUCTIONS

None.

## UNFINISHED BUSINESS

Water Quality – Update

Public Works Director Clinghan reviewed the memo provided to Council and provided the most current update on Lake Okeechobee.

## Follow Up Items Requested by Council

None

## NEW BUSINESS

Resolution 258-18 City of Cape Coral Local Housing Incentive Plan for the State Housing Initiative Partnership Program (SHIP)

Housing Coordinator Yearsley explained the purpose of the Resolution and displayed the following power point slides:

- Resolution 258-18
- Local Housing Incentive Plan (2 slides)
- Incentives (Required Review) (3 slides)
- Other
- Recommendation

***Councilmember Cosden moved, seconded by Councilmember Stokes, to approve Resolution 258-18, as amended to remove the micro cottage village development and ADUs.***

City Manager Szerlag stated staff recommended that micro cottage development, Accessory Dwelling Units, and Guest Houses be eliminated from this proposal. They are being taken out of the LUDRS as well.

***Council polled as follows: Gunter, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." All "ayes." Motion carried 6-0. (Councilmember Nelson was not present on the dais at the time this vote was taken.)***

## REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Gunter– Topics: Guest Speaker at Orchid Homeowners Association on 12/1, Attended the Holiday Festival of Lights and Tree Lighting.

Councilmember Nelson – Topics: Left Early

Councilmember Stokes – Topics: No Report

Councilmember Stout – Excused

Councilmember Williams – Topics: No Report

Councilmember Carioscia – Topics: No Report



Councilmember Cosden – Topics: Helped judge essays for a scholarship contest for the Voice of Democracy at the North Fort Myers VFW, attended the Festival of Lights.

Mayor Coviello: Topics: Animal Shelter Fundraising, Capital Bank, Fundraiser at Royal Tee called Bark at the Bar, Meeting with Lee Health officials regarding possible future expansion, Lifeline Walk at Jaycee Park, Festival of Lights, Grand Menorah Lighting at the Chabad Jewish Center. He requested a second for invocations to be offered to the church and clergies in our community. Councilmember Stokes provided the second. The Mayor will work on getting something brought forward on an agenda inviting them to come and do our invocations at the podium.

#### **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 10, 2018 at 4:30 p.m. in Council Chambers.

#### **MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 8:17 p.m.

Submitted by,



Kimberly Bruns, CMC  
Interim City Clerk