8. **Variance Petition 16-V4 Public Hearing:** Consider a resolution, pursuant to Section 58-175 of the City of Naples Code of Ordinances, to allow the redevelopment of a property that measures approximately 66.67 feet in width where a minimum lot width of 75 feet is required for the property located at 59 9th Avenue South. **Petitioner: Steven C. Cantera.**

Title read by Chairman Krall. This being a quasi-judicial proceeding, Notary Public Elizabeth Rogers administered an oath to those intending to offer testimony that had not already been sworn; all responded in the affirmative. Members then made ex parte disclosures to the effect that each was either familiar with or had visited the site; no one indicated contact. City Attorney Robert Pritt then questioned whether a continuance was to be considered by the Board at the request of an adjacent property owner’s (Joseph Karaganis) agent, Attorney Anthony Pires. Following a brief discussion, the continuance request was withdrawn.

Attorney Richard Yovanovich, agent for the petitioner, explained that the petitioner had paid $2.8-million for the subject lot, the existing home was built in 1938, the parcel is a lot of record and construction should therefore be allowed. The petitioner is a local builder, he continued, noting that he had developed another lot of the same size in 2012 in which he currently resides. Mr. Yovanovich stated that the petitioner would review specifics of that construction during his presentation.

10:13 a.m. It is noted for the record that Member Cardillo left the meeting and did not return.

Petitioner Steven Cantera explained that, as a builder in the area for 35 years, he is familiar with the City’s codes. He pointed out that in 2012 he had bought and later developed a nearby property on 10th Avenue South that is exactly the same dimensions as the subject lot. At that time he had contacted former City Senior Planner Adam Benigni via telephone who had indicated that such lots while nonconforming are buildable (see attached communication confirming same / Exhibit E). Mr. Cantera then reviewed his numerous contacts with Mr. Karaganis attempting to address this neighbor’s concerns following the April 11, 2014 closing on the subject property, noting that it had culminated in a request by Mr. Karaganis for a zoning verification letter (see Exhibits C and F of “Objections” attachment below) which was rendered on July 25, 2014. At that point, Mr. Cantera referenced research he had completed of area lots wherein he found 50 which are less than legal width but have structures on them; a global fix is needed for the situation, he added.

Recess: 10:27 a.m. to 10:41 a.m. It is noted for the record that the same Board Members were present when the meeting reconvened and consideration of Item 8 continued.

Matthew Kragh, architect for the petitioner, MHK Architecture & Planning, confirmed Mr. Cantera’s comments regarding the manner in which contact with City staff had occurred in the past; namely calling and verifying over the telephone whether a lot could be built upon. He then utilized an electronic presentation to review the proposed project, pointing out that the petitioner had instructed that the home be kept to a more narrow width to avoid the coastal construction line thereby lessening the height requirement for the first floor and retaining a lower profile for the structure; the home meets setback requirements. Mr. Kragh provided an overview of the sun study requested by Mr. Cantera in an effort to appease the above referenced neighbor’s complaint that his pool would be shaded should a home be built on the subject lot; no significant difference in shading was realized between the proposed home and the existing landscape buffer, he added (see “Shade Study” attachment below). Attorney Yovanovich summarized by requesting approval of the variance.
Planning Director Robin Singer began her presentation by reviewing the history of the subject parcel, noting that the two lots had been split from the parcel to the west, creating two separate parcels in 1979; a home had been constructed on the parcel to the west and built out to the setbacks so the petitioner would be unable to purchase land from that source to meet the lot width standard of the current code. This split had been facilitated by the property appraiser with no action taken by the City, she continued, adding that since 1967, the code requires such division of property must result in legal sized parcels. She then addressed past practices as described above with regard to simple telephone calls to staff to ascertain whether a nonconforming parcel is in fact buildable. She stressed that this had stopped following the June 9, 2014 opinion from the City Attorney (see attached Objections, Exhibit E) and that zoning verification letters should be sought by property owners. The process for a demolition or building permit now involves a title search back to at least 1967 to ascertain the conformity of the lot, she said. Ms. Singer presented the staff report and noted that denial had been recommended due to noncompliance with Specific Criteria 1, 2 and 6 (see attached Revised Staff Report). Attorney Yovanovich maintained that, with the amended policy described by Ms. Singer, persons seeking to purchase property have no way in which to ascertain whether the parcel is in fact buildable pursuant to City code prior to that purchase. She stated that buyers should follow due diligence and contact her staff for a finding as to whether a parcel is buildable prior to purchase. In response to Attorney Yovanovich she confirmed that had Mr. Cantera contacted her department prior to the aforementioned June 9, 2014 opinion, there existed a strong possibility that he would have been advised that the parcel was indeed buildable as a house currently existed.

City Attorney Pritt then questioned the square footage of the existing and proposed structure and Mr. Yovanovich responded that should the variance for lot width be granted, the petitioner is willing to abide by the maximum square footage of 3,800 as presented by Mr. Kragh, not the maximum buildable of 6,000 square feet.

Public Comment: Joseph Karaganis, adjacent neighbor to the east, explained that he had first contacted Ms. Singer in March 2014 regarding the legality of the subject parcel. He further maintained that pertinent code sections were in effect prior to 2014 regarding minimum requirements for lot width. Attorney Anthony Pires, representing Mr. Karaganis, received confirmation that the petitioner did receive a copy of the July 25, 2014 zoning verification letter for his property that had been requested by Mr. Karaganis.

In response to Mr. Pritt, Attorney Yovanovich then entered into the record Hearing Exhibits A through E as reflected below (A – property appraiser’s property detail for 59 9th Avenue South; B through D – deeds for lots within Block 12, Tier 1; and E – Email from Adam Benigni). Responding to Chairman Krall, Ms. Singer also pointed out that a Revised Staff Report had been provided in a supplement and is the proper document for consideration at that time.

Recess: 11:45 a.m. to 11:54 a.m. It is noted for the record that the same Board Members were present when the meeting reconvened and consideration of Item 8 continued.

Mr. Karaganis then testified to his opinion of the matter as reflected in his submittal entitled “Objections”, including the history of ownership in Block 12, Tier 1, stressing that he believed that the parcel is un-buildable and that the petitioner should have requested a title search of the property prior to purchase. He maintained that he had first questioned the parcel size in March 2014 by contacting the City; the variance should not be granted, he concluded. In response to Attorney Yovanovich, he explained that when he purchased his property in 2001, it had been his understanding that the subject parcel was part of a larger estate and that it contained the caretaker’s dwelling and garage.

Page 5
Attorney Pires then presented his client’s objections to the variance as contained in the submittal referenced above, requesting a recommendation of denial. In response to Mr. Pires, Attorney Yovanovich agreed to enter into the record the email from former Planner Benigni as noted above although declined to enter the research completed by the petitioner regarding other properties in the R1-10 Residence District.

City Attorney Pritt then advised the Board to focus on consideration of the variance under discussion and its recommendation to City Council regarding same. He then provided an overview of the use of the variance process as well as his June 9, 2014 memorandum.

**MOTION by McCashin to RECOMMEND APPROVAL of Petition 16-V4; seconded by McCann and carried 4-0 (Cardillo-absent, McCashin-yes, Feight-yes, Kovacs-absent, McCann-yes, and Krall-yes).**

Chairman Krall noted that City Council consideration is scheduled for May 18, 2016.