


Memorandum

TO: Mayor, City Council and Candidates
FROM:  Debra Filipek, City Clerk
RE: Errata Sheet - November 1, 2017
DATE: October 30, 2017

Agenda Item

VIII. C. Mayor and Council Member Items: Resume of Margaret A. Wuerstle, and Letter regarding Affordable Housing Study to City Council from Ms. Wuerstle dated October 27, 2017 (Forbes; Greensheet No. 17-11-0408)

X. City Attorney's Report: Approve resolution evidencing action taken on October 4, 2017 in regards to the Petition filed by attorney Neale Montgomery, Esquire, Pavese Law Firm, on behalf of applicant BG Mine, LLC, for Contraction of Real property from the City of Bonita Springs. (Greensheet No. 17-11-0416); and

Provide direction to City Attorney as to whether City Council wants to renew the Code Enforcement Hearing Examiner Agreement with Thomas W. Franchino, or, alternatively, authorize the City Attorney to advertise a Request for Proposal ("RFP") for this position. (Greensheet No. 17-11-0415)

DAF

Attachments

cc: Carl L. Schwing, City Manager
Arleen Hunter Assistant City Manager
Audrey Vance, City Attorney
Matt Feeney, Public Works Director
Lora Taylor, Communications Director
John Dulmer, Community Development Director
Anne Wright, Finance Director
Nicole Perino, Parks & Recreation Director
Chris Campbell, Neighborhood Services

MARGARET A. WUERSTLE, AICP, P.P.

630 Wiggins Bay Dr • Naples, Florida 34110 • Telephone: (239) 281-6978 • pegwuerstle@aol.com

EDUCATION

- 2006 – 2009 University of Cincinnati, Cincinnati, Ohio
Major: Community Planning
Degree: Masters in Community Planning
- 1986 – 1988 Rutgers University, Camden, New Jersey
Major: Urban Planning
Degree: Bachelor of Arts
- 1969 – 1971 Fashion Institute of Technology, New York City, New York
Major: Interior Design
Degree: Associate in Applied Science

PROFESSIONAL EXPERIENCE

- 2/1/12 - Present** **SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL**, 1400 Colonial Blvd. Suite 1; Ft. Myers, Florida 33907

EXECUTIVE DIRECTOR

Job Description: The Executive Director is responsible for executive management of the Southwest Florida Regional Planning Council including execution of the Council-approved work program and management of staff. Extensive knowledge of economic, social, political and physical forces influencing growth and development and the role in regional planning in helping to organize these forces to achieve sustainable futures. Responsible for the development of the annual budget and work plan that includes long-range goals and objectives as well as measurable outcomes. Directs and provides technical assistance to 23 local governments and presents a strong personal presence in the community with frequent presentations to governments and community groups. Administers a fair and impartial personnel policy based on ability and merit.

- 12/03 – 1/20/2012** **CITY OF CINCINNATI**, Department of City Planning and Buildings, Two Centennial Plaza, 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202

CHIEF PLANNER & ZONING HEARING EXAMINER

Job Description: The Chief Planner serves as the Division Manager. Responsibilities include serving as secretary to the Planning Commission, oversight of the Urban Conservator and Historic Conservation Board, overall management of the planning functions of the City, development of neighborhood plans and strategies, creation of maps and information necessary to assist all City departments, agencies, boards and commissions with planning projects and land use decisions. Supervises all regulatory work including zone changes, text amendments, subdivisions, and pre-development conferences. Examples of specific studies include: regulations for controversial social service uses; implementation of the public view corridor study; annual updates to the Cincinnati Zoning Code, creation of the Development Opportunity Teams and coordination and development of the first Comprehensive Plan in 27 years. The Zoning Hearing Examiner holds public hearings and makes decisions on applications for Variances, Special Exceptions, Conditional Uses, Hillside Overlay Districts, Urban Design Districts and Public View Corridors.

- 7/2002 – 10/1/2003** **COLLIER COUNTY**, Planning Services Department, 2800 North Horseshoe Drive, Naples, Florida 34104

PLANNING SERVICES DIRECTOR

Job Description: Responsible for the management of the Planning Services Department comprised of 47 employees in three sections: Current Planning Section, Comprehensive Planning Section, and Community/Redevelopment Section. Responsibilities included staffing the Planning Commission, Board of Zoning Appeals, two CRA Advisory Boards and Historic Preservation Board. Managed updates and amendments to the Growth Management Plan and Land Development Code. Daily processing of development applications, public information requests and various special neighborhood studies.

1999 - 6/2002

CITY OF ROCHESTER, City Hall - Room 122B, 30 Church Street, Rochester, New York 14614

DIRECTOR OF ZONING

Job Description: Responsible for the management of the Division of Zoning with a staff of 17 employees and the administration and enforcement of the Zoning Code including serving as staff planner for the City Planning Commission, Zoning Board of Appeals, Environmental Commission, Preservation Board, Downtown Design Committee, and Skyway Committee.

1998 - 1999

YWCA OF JAMESTOWN, 401 N. Main Street, Jamestown, New York 14701

HEAD OF OPERATIONS

Job Description: Administration of Human Resource Department, supervision of 8 Program Directors and management of the following programs: 2 Child Development Centers, 2 After School Programs, Alternatives to Violence Program, Transitional Housing Program, Parent and Community Services Program, Child and Adult Care Feeding Program, Teenage Education and Motherhood Program (TEAM), and a Summer Camp.

1992 - 1998

CITY OF DUNKIRK, 342 Central Avenue, Dunkirk, New York 14048

MAYOR

Job Description: Chief Executive Officer of the City (Population 14,000) responsible for the administration of all city affairs including:

- *appointment of all department directors, commission members, and boards members
- *supervision of all departments, offices, commissions and boards (210 paid employees)
- *implementation of all local laws, ordinances, and resolutions adopted by the Common Council
- *preparation of \$21 million budget and Capital Projects Program
- *responsible for the operation of regional sewerage treatment plant and water distribution system
- *negotiation of all union contracts (Police, Fire, AFSCME, Management)
- *grant writing including preparation of Federal Enterprise Community application and State Economic Development Zone application as well as numerous other funding applications.

1990 - 1991

CITY OF DUNKIRK, 342 Central Avenue, Dunkirk, New York 14048

DIRECTOR OF PLANNING & ECONOMIC DEVELOPMENT

Job Description: Responsible for the management of the Department of Planning and Economic Development including implementation of a variety of city wide economic development, housing development including affordable housing, and retail enhancement plans. Preparation of zoning, subdivision, site plan, and development reviews. Consultant to the Planning Board, Zoning Board, Harbor Commission, Downtown Revitalization

Commission, and Dunkirk Local Development Corporation. Chairman of the Regional Planning Board. Coordinated, wrote, and administered all grants including CDBG, UDAG, EQBA, and ARC grants. Preparation of department budget; supervision and development of staff. Performed other planning and community development activities as required.

1983 – 1990

HORN, KAPLAN, GOLDBERG, GORNY & DANIELS, Suite 500, Citicenter Bldg.,
1300 Atlantic Avenue, Atlantic City, New Jersey 08401

PLANNING CONSULTANT/REAL ESTATE DEVELOPMENT SPECIALIST

Job Description: Review of development proposals for compliance with municipal, county, state and federal permit requirements. Interpretation of provisions of zoning ordinances in 15 municipalities and 3 counties. Preparation of site analyses and applications to municipal, county, state, and federal agencies. Formulation of plans and studies in response to new policies. Coordinated project consultants through the permitting process. Coordinated documents for real estate closings and condominium registrations; title examinations, legal research, and preparation of graphic presentations for hearings and conferences.

1978 – 1983

COASTAL PLAINS ENVIRONMENTAL CONSULTANTS, 21 Gordon's Alley,
Atlantic City, New Jersey 08401

PLANNER I/ MODEL BUILDER

Job Description: Research, coordination of data and preparation of studies, inventories and environmental assessments of sites of potential development or land use changes. Assisted in the development of land use proposals and plans for development projects to meet the requirements of all necessary permits while minimizing any adverse environmental impacts. Construction of architectural scale models of proposed hotel/casinos and development projects.

1973 – 1977

CHAUTAUQUA COUNTY DEPARTMENT OF PLANNING & DEVELOPMENT
Gerace Office Building, Mayville, New York 14757

SPACE UTILIZATION COORDINATOR

Job Description: Research and collection of data for general studies in all areas of planning. Specific studies included: 1.) Preparation and design of a county bicycle route system to provide recreational opportunities and encourage transportation alternatives; 2.) Research, survey, and mapping of historically significant buildings for each municipality to promote conservation of historic sites and districts; 3.) Research and preparation of a County Aboriginal Occupations Map to assist county planners in the formulation of policies and decisions regarding the location of the Southern Tier Expressway and the Chautauqua Lake Bridge. General responsibilities included the identification of county space by utilization and frequency of use; formulation of plans to meet present and future space needs.

ADDITIONAL STUDIES

Cornell University School of Industrial and Labor Relations

***Contract Bargaining,*Contemporary Labor Problems,*Labor Law I: Public Sector**

University of Louisville

*** Crime Prevention Through Environmental Design (CPTED)**

The National Development Council

***Economic Development Finance ED101**

HUD Training Series

***CDBG Fundamentals, *Environmental Assessment**

COMPUTER TRAINING

***ArcView GIS, Photoshop, Illustrator, InDesign, Dreamweaver, PowerPoint, Microsoft Office**

TEACHING EXPERIENCE

Fall 2005 - 2009	University of Cincinnati – Adjunct Professor Course: Undergraduate Level-Land Use Controls
Winter 2006 - 2009	University of Cincinnati – Adjunct Professor Course: Graduate Level – Land Use Controls
Spring 2006 - 2009	University of Cincinnati – Adjunct Professor Course: Advanced Land Use Controls, Zoning Analysis
Spring 2010	University of Cincinnati – Adjunct Professor Course: Social Justice and the City
Spring 2011	University of Cincinnati- Adjunct Professor Course: Developing an Effective Comprehensive Plan
Fall 2011	University of Louisville – Adjunct Professor Course: Professional Practice

PUBLICATIONS

Emergency Homeless Shelters in North America: An Inventory and Guide for Future Practice; Housing & Society; Vol. 40 Issue 1, p1; January 2013; Gilderbloom, John I.; Squires, Gregory D.; Wuerstle, Margaret

A Sound Approach to Regulating Social Services Facilities; American Planning Association; *Zoning Practice*, Issue Number 1 Practice Social Services; January 2010; Margaret Wuerstle, AICP

GRANTS

2010 HUD Planning Challenge Grant - \$2.4 Million for a Unified Development Code
Federal Promise Zone Designation for Hendry County, Glades County and Immokalee in Collier County

BOARDS & COMMITTEES

Lee County Metropolitan Planning Organization, Technical Advisory Committee (2012- Present)
United Way of Lee, Hendry, Glades and Charlotte Counties - Allocations Committee (2012 - Present)
Bonita Springs Lions Club

REFERENCES ARE AVAILABLE UPON REQUEST



October 27, 2017

City Council
City of Bonita Springs
9101 Bonita Beach Road
Bonita Beach, Florida 34135



RE: Affordable Housing Study

Dear Council Members:

The Southwest Florida Regional Planning Council (SWFRPC) stands ready to assist the City of Bonita Springs in researching and developing a plan for providing affordable housing to the residents of the City. The SWFRPC's assistance will include public outreach to the community and council members to obtain input. Best practices will be assembled and summarized with recommendations on alternatives that address specific City needs. The SWFRPC can also assist with implementation once the City determines the programs and alternatives that they want to pursue. I look forward to working with the City of Bonita Springs on one of the most pressing issues facing not only the City of Bonita Springs but all of Southwest Florida. Thank you for your consideration.

Sincerely,

Margaret Wuerstle, AICP
Executive Director

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	17-11-0416
AGENDA ITEM SUMMARY		
REQUESTED MOTION:		
<p>Approve resolution evidencing action taken on October 4, 2017 in regards to the Petition filed by attorney Neale Montgomery, Esquire, Pavese Law Firm, on behalf of applicant BG Mine, LLC, for Contraction of Real Property from the City of Bonita Springs.</p>		
MEETING DATE: November 1, 2017 ERRATA		
AGENDA:	REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
PRESENTATIONS	X STATUTE PART 1, FLORIDA STATUTES 171	Audrey E. Vance City Attorney
CONSENT	ORDINANCE	
PUBLIC HEARING	ADMIN. CODE	
APPEALS	OTHER	
MAYOR AND COUNCIL MEMBER'S REPORTS		
X CITY ATTORNEY		
CITY MANAGER		
BACKGROUND:		
<p>On October 4, 2017, City Council held the public hearing on the Petition filed by attorney Neale Montgomery, Esquire, Pavese Law Firm, on behalf of applicant BG Mine, LLC, for Contraction of Real Property from the City of Bonita Springs.</p> <p>At the public hearing, Council rejected the amended Petition and authorized the City Attorney, with the assistance of the Special Land Use Counsel, to prepare a resolution for the Mayor to sign, with the factual basis for the Council's decision. Attached is the resolution, stating the facts and reasons in the record upon which the rejection was based.</p> <p>Attachment: Resolution 17-61</p>		
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, WHICH STRATEGIC OBJECTIVE?		
STAFF RECOMMENDATIONS:		
Approve the resolution.		
REVIEWED BY:		
City Manager:	 <hr/>	
City Attorney:	 <hr/>	
City Clerk:	<hr/>	
Department Director:	<hr/>	
COUNCIL ACTION:		
<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED <input type="checkbox"/> DEFERRED <input type="checkbox"/> OTHER		

**CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 17-61**

**A RESOLUTION BY THE CITY OF BONITA SPRINGS, FLORIDA;
ACTING UPON AN AMENDED PETITION FOR CONTRACTION FILED
BY NEALE MONTGOMERY, ESQUIRE, PAVESE LAW FIRM, ON
BEHALF OF BG MINE, LLC; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, on February 2, 2017, the City of Bonita Springs ("City"), received a "Petition for Contraction of Real Property from the City of Bonita Springs Section 171.051, Florida Statutes" ("Petition"), filed by Neale Montgomery, Esquire, on behalf of BG Mine, LLC; and

WHEREAS, on April 3, 2017, the City received an "Amended Petition for Contraction of Real Property from the City of Bonita Springs Section 171.051, Florida Statutes," filed by Neale Montgomery, Esquire, on behalf of BG Mine, LLC ("Amended Petition"); and

WHEREAS, pursuant to its Amended Petition, BG Mine, LLC, seeks to de-annex property owned by BG Mine, LLC, consisting of approximately 1299.43+/- acres ("Property"), from the City; and

WHEREAS, also on February 2, 2017, the same date on which the Petition was received by the City, BG Mine, LLC, filed a declaratory action in Circuit Court, Case No. 17-CA-00381, in which the City and BG Mine, LLC, are the parties to the litigation ("Circuit Court Litigation"); and

WHEREAS, on July 7, 2017, BG Mine, LLC, filed a "Petition for Formal Administrative Hearing" at the Florida Division of Administrative Hearings, in which BG Mine, LLC, has challenged the City's comprehensive plan amendments related to its Evaluation and Appraisal Report; and

WHEREAS, in order to consider the Amended Petition, the Council of the City of Bonita Springs ("City Council") was provided copies of the annexation ordinance, annexation agreement, annexation petition, evidence presented in 2003 to support the annexation, and correspondence between Attorneys Russell Schropp and Douglas Wood with the City Attorney prior to approval of the petition to annex the property on April 16, 2003, along with copies of the applicable state statutes; and

WHEREAS, on April 5, 2017, the City Council took no action on the Amended Petition because of the pending Circuit Court Litigation, and subsequently scheduled the public hearing for October 4, 2017, a date mutually agreed upon by counsel for BG Mine,

LLC, to accommodate the availability of its experts and the City's Special Land Use Counsel David A. Theriaque (after other dates for the public hearing on the Amended Petition were cancelled due to the statewide emergency from Hurricane Irma); and

WHEREAS, during the public hearing on October 4, 2017, BG Mine, LLC, was provided the opportunity to present its reasons for contraction, after which City Council received additional guidance from the City's Special Land Use Counsel regarding the legal issues related to contractions.

NOW, THEREFORE, be it resolved by the City Council of the City of Bonita Springs, Lee County, Florida:

1. The recitals above are hereby adopted by the City Council as their own and render the following final decision.
2. Based upon an analysis of the Amended Petition and the standards for contraction set forth in Chapter 171, *Florida Statutes*, the City Council makes the following findings and conclusions:
 - a. The contraction procedures are set forth in Section 171.051, *Florida Statutes*, which require that:

Any municipality may initiate the contraction of municipal boundaries in the following manner:

- (1) The governing body shall by ordinance propose the contraction of municipal boundaries, as described in the ordinance, and provide an effective date for the contraction.
 - (2) A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries, filed with the clerk of the municipal governing body, may propose such an ordinance. The municipality to which such petition is directed shall immediately undertake a study of the feasibility of such proposal and shall, within 6 months, either initiate proceedings under subsection (1) or reject the petition, specifically stating the facts upon which the rejection is based.
- b. This proceeding was initiated pursuant to Section 171.051(2), *Florida Statutes*. Thus, Section 171.051(1), *Florida Statutes*, is not applicable to this proceeding.

- c. BG Mine, LLC, failed to file a petition of fifteen (15) percent of the qualified voters in an area desiring to be excluded from the municipal boundaries as required by Section 171.051(2), *Florida Statutes*, and, therefore, both the Petition and Amended Petition are legally insufficient.
 - d. Even assuming that the Petition and Amended Petition are not legally insufficient, which they are, the City Council concludes that the proposed contraction would not further the public health, safety, and welfare for the following additional reasons.
 - e. BG Mine's expert witness Dr. David Depew, AICP, testified that the Property is now rural in nature, which is inconsistent with his 2003 testimony that the Property was urban in nature.
 - f. Since annexation of the Property, the Property has continually been used, zoned, and entitled as Industrial Planned Development ("IPD").
 - g. The Property has continually been used for mining purposes, specifically lime rock used for development, which is an industrial use and, thus, meets the term "urban in character" as defined in Section 171.031(8), *Florida Statutes*.
 - h. The only vehicular access for this Property, whether for emergency services or for use by the property owners in the operation of the mine, is through the City, making contraction impractical given that all services would need to go through the City.
3. Given these reasons, as well as others that are in the record, the City Council hereby rejects the Amended Petition, and authorizes the City Attorney, with the assistance of the City's Special Land Use Counsel, to prepare this resolution for the Mayor to sign, providing the factual basis for the City Council's decision.

4. Effective Date. This Resolution shall become effective immediately on its adoption by the City Council at its regular meeting.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 1st day of November 2017.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

DeWitt	___	Quaremba	___
Forbes	___	Simmons	___
Gibson	___	Slachta	___
O'Flinn	___		

Date filed with City Clerk: _____

AGENDA ITEM SUMMARY

REQUESTED MOTION:

Provide direction to City Attorney as to whether City Council wants to renew the Code Enforcement Hearing Examiner Agreement with Thomas W. Franchino, or, alternatively, authorize the City Attorney to advertise a Request for Proposal ("RFP") for this position.

MEETING DATE: November 1, 2017 *Errata*

AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
	PRESENTATIONS		Audrey E. Vance City Attorney
	CONSENT	STATUTE	
	PUBLIC HEARING	ORDINANCE	
	APPEALS	ADMIN. CODE	
	MAYOR AND COUNCIL MEMBER'S REPORTS	X OTHER - CONTRACT - CODE ENFORCEMENT HEARING EXAMINER	
X	CITY ATTORNEY		
	CITY MANAGER		

BACKGROUND:

The current term of Code Enforcement Hearing Examiner ("HEX") Agreement between Thomas W. Franchino and the city will expire on January 31, 2018. City Council selected Hearing Examiner Franchino, who has served in this position from February 1, 2006, and whose agreement has continued to be renewed.

Direction is requested from City Council whether the City Attorney should offer to extend the Code Enforcement Hearing Examiner Agreement with Hearing Examiner Franchino, or, alternatively, authorize the City Attorney to advertise a Request for Proposal ("RFP"). I have reached out to him to determine his interest in continuing the position.

If City Council directs that an RFP be advertised, it is proposed this be done by posting on the City website, the Lee County and Collier County Bar Association websites, along with the Florida Bar's City, County, Local Government section and FMAA websites. Thereafter, interviews for this position can be scheduled before City Council at their December meeting. Once the successful candidate is selected, the Agreement can be prepared and submitted to City Council for approval in January, 2018. Pursuant to Purchasing Code, securing professional services such as the Hearing Examiner is exempt from the provisions of the Finance Ordinance.

Attachments: Current Code Enforcement Hearing Examiner Agreement


IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? YES NO

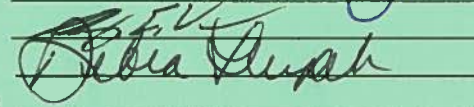
IF YES, WHICH STRATEGIC OBJECTIVE?

STAFF RECOMMENDATIONS:

Provide direction to the City Attorney as to whether City Council wishes to renew the current Hearing Examiner Agreement effective as of February 1, 2018, or, alternatively, have the City Attorney prepare a Request for Proposal for this position.

REVIEWED BY:

City Manager: _____ 

City Attorney: _____ 

City Clerk: _____

Department Director: _____

COUNCIL ACTION:

- ___ **APPROVED**
- ___ **DENIED**
- ___ **DEFERRED**
- ___ **OTHER**

**CODE ENFORCEMENT
HEARING EXAMINER AGREEMENT**

THIS AGREEMENT is made between the City of Bonita Springs, a Florida municipal corporation (hereinafter the "City"), and Thomas W. Franchino, 1250 North Tamiami Trail, Suite 106, Naples, Florida 34102 (hereinafter the "Hearing Examiner").

WITNESSETH:

WHEREAS, the City is authorized through the Local Government Code Enforcement Boards Act, Chapter 162, Florida Statutes and by Bonita Springs Ordinance No. 03-10 to establish a code enforcement process, including an alternative code enforcement hearing process; and

WHEREAS, the City has pursuant to City of Bonita Springs Land Development Code, provided for an alternative code enforcement hearing process which allows the use of Hearing Examiners, also referred to as Special Masters.

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions set forth below, the City and the Hearing Examiner intending to be legally bound, hereby agree as follows:

1. The Hearing Examiner shall be employed to handle code enforcement issues as needed by the City Council of Bonita Springs. The Hearing Examiner shall become familiar with the City of Bonita Springs ordinances, including land regulations. The Hearing Examiner shall exercise all powers and provide all services of a Special Master (Hearing Examiner) as permitted under statutory law, in particular Chapter 162, Florida Statutes, and the Charter and ordinances of the City. Services of the Hearing Examiner will include one public hearing a month and all administrative duties related to the proper conduct of hearings and the issuance of orders.
2. The Hearing Examiner represents that he is an attorney duly licensed to practice law in the State of Florida, and that he is currently in good standing with the Florida Bar. The Hearing Examiner shall promptly advise the City if any change in the foregoing shall occur during the terms of this Agreement.
3. The Hearing Examiner shall abide by and perform his duties in accordance with the ethics of his profession and all federal, state, and municipal laws, regulations, and ordinances relating to the practice of law.

BSC-14-09-150

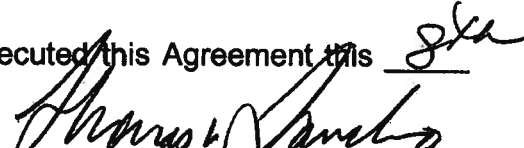
4. In consideration for the services rendered by the Hearing Examiner under this Agreement, the Hearing Examiner shall receive the sum of \$225.00 per hour for services rendered as the Hearing Examiner. For the review of Code Enforcement Hearing Examiner orders and other documents necessary as a result of the code enforcement hearings, the Hearing Examiner shall receive the sum of \$100.00 per hour. The Hearing Examiner shall submit to the City Clerk a detailed monthly billing for services rendered under this Agreement.
5. The Hearing Examiner shall keep accurate records of the affairs handled by the Hearing Examiner. All income or funds, if any, generated by the Hearing Examiner as a result of the City of Bonita Springs code enforcement cases or other matters heard by the Hearing Examiner shall belong to the City, whether paid directly to the Hearing Examiner or to the City.
6. Except in extraordinary circumstances or complex matters, the Code Enforcement Hearing Examiner orders shall be prepared by the City's Code Enforcement Department's staff, and shall be provided to the Hearing Examiner for his review and signature at the conclusion of the code enforcement hearing, or as soon thereafter as may be practicable. Upon the signing of such orders by the Hearing Examiner, the City's Code Enforcement Department's staff shall forthwith mail, at the expense of such department, the Code Enforcement Hearing Examiner orders by regular United States Mail, or as otherwise directed, to the respondents and other parties designated in such orders. It is the intention of the parties that the foregoing procedures shall permit the mailing of the signed Code Enforcement Hearing Examiner orders to occur no later than the third working day after completion of the code enforcement hearings.
7. The relationship created herein is not an employer/employee relationship. The Hearing Examiner is an independent contractor in charge of the manner and method of performing the work of the Code Enforcement Hearing Examiner for the City.
8. The term of this Agreement is for (1) one year, from February 1, 2015, until January 31, 2016, with the Agreement to be automatically renewed for two consecutive terms on the Agreement anniversary date, unless sixty (60) days' notice is given for cause not to renew. Further, the renewal shall be under the same terms and conditions set forth in this Agreement. The Hearing Examiner may terminate this Agreement for convenience by giving ninety (90) days written


notice. The City may terminate the Agreement during its term for cause. Constitutes for cause occurs by any one of the following acts.


- a) Failure to timely notify the City should the Hearing Examiner not be available for any code enforcement public hearing or for excessive unavailability as defined in paragraph (12) twelve below.
 - b) Failure to timely render written decisions so as to preclude meaningful appeal rights of the City or any respondent.
 - c) Failure to articulate a decision, whether written or as part of the record, so as to preclude meaningful appeal rights of the City or any respondent.
 - d) Any act that would cause a judge to be in dereliction of his duties in the State of Florida.
 - e) Excessive billing that exceeds the reasonable amount of time to attend the public hearings and render the orders.
9. Any notice required to be given under this Agreement shall be sufficient if in writing and sent by regular United States Mail to the Hearing Examiner's business addresses or to the City Manager of the City of Bonita Springs.
10. No amendments or variation of the terms or conditions of the Agreement shall be valid unless in writing and signed by the parties.
11. The Hearing Examiner's rights and obligations under this Agreement are personal and not assignable or transferable to another attorney.
12. In the event the Hearing Examiner is unavailable for hearings for up to (3) three consecutive months or (4) four hearings in any fiscal year, an Alternate Hearing Examiner will serve temporarily in lieu of the Hearing Examiner. Should the Hearing Examiner be unavailable in excess of the above or violate the Agreement pursuant to paragraph 8, an Alternate Hearing Examiner will assume the duties as the regular Hearing Examiner for the remainder of the term. If, upon review of the Hearing Agenda for any upcoming hearings, the Hearing Examiner shall determine that he may have a conflict of interest as to any particular respondent, he shall notify the City's Code Enforcement Department sufficiently in advance in order that an Alternate Hearing Examiner may hear the case on the date scheduled.
13. In the event the City or Hearing Examiner terminates the services of this Agreement, to the extent reasonably possible, the Hearing Examiner agrees to a smooth transference of operations.

14. The validity or unenforceability of any particular provision of the Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all aspects as if such invalid or unenforceable provisions were omitted.

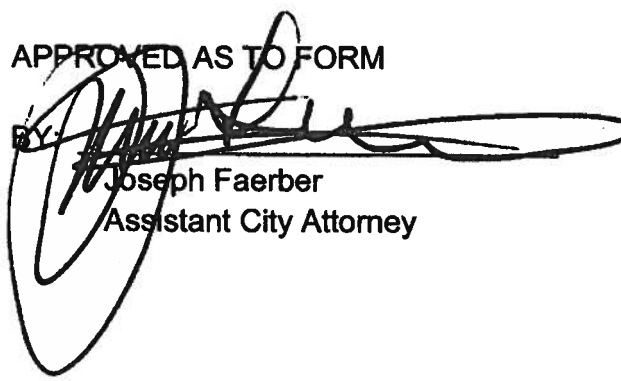
IN WITNESS THEREOF, the parties have executed this Agreement this 8th
day of Sept. 2014

BY: 
Thomas W. Franchino
Hearing Examiner

ATTEST
CITY CLERK
BY: 
Dianne Lynn

CITY COUNCIL OF BONITA SPRINGS
BY: 
Mayor Ben Nelson, Jr.

APPROVED AS TO FORM

BY: 
Joseph Faerber
Assistant City Attorney