



City Council Chamber
735 Eighth Street South
Naples, Florida 33940

City Council Special Meeting - January 15, 1993 - 2:30 p.m.

Mayor Muenzer called the meeting to order and presided.

ROLL CALL

Present: Paul W. Muenzer, Mayor
Fred L. Sullivan, Vice Mayor

Council Members:
Kim Anderson
R. Joseph Herms
Alan R. Korest
Ronald M. Pennington
Peter H. Van Arsdale

Also Present:
Dr. Richard L. Woodruff, City Manager
Maria J. Chiaro, City Attorney
Janet Cason, City Clerk
Missy McKim, Community Development Director
John Cole, Chief Planner
John Reble, Fire Lieutenant
Tara Norman, Deputy City Clerk
Marilyn McCord, Deputy City Clerk

See Supplemental Attendance List - Attachment #1

ITEM 1

ITEMS TO BE ADDED

No items were added to the agenda.

ITEM 3

**COUNCIL REVIEW OF CERTIFICATE OF INSUFFICIENCY RELATED
TO THE PETITION REQUESTING RECONSIDERATION OF
ORDINANCE 92-6808--COASTLAND MALL**

**READING OF CERTIFICATE OF INSUFFICIENCY
City Clerk Janet Cason**

City Clerk Janet Cason read the Certificate of Insufficiency (Attachment #2).

**STANDARDS OF REVIEW
City Attorney Maria J. Chiaro**

The City Attorney informed Council that their standard of review for the Certificate of Insufficiency is whether or not the City Clerk abused her discretion in finding the petition insufficient. She described the two resolutions attached to the meeting packets. The first disapproves the City Clerk's finding of insufficiency; the second states that she did not abuse her discretion and that the Certificate is approved and the petitions insufficient. With respect to abuse of discretion, Ms. Chiaro told Council they must consider whether in making her determination, the City Clerk exercised her duties in a reasonable way from what information she had available at the time her determination was made. The City Attorney emphasized, "...not whether it could have been different, but whether what she found was reasonable." She stated that the City Charter provides for Council's review of the City Clerk's determination, not their decision regarding the petition.

In reply to Council Member Van Arsdale's question, City Clerk Janet Cason described the Charter's requirements for affidavits on petitions. The affidavit required that the number of signatures be noted, however, this was not done. In addition, there were problems with the notarizations on the majority of the petitions. City Manager Woodruff displayed a transparency of a sample affidavit in order to point out the problems. He reported that the standards used to determine the appropriateness of the affidavits are not City standards. Chapter 117, Florida State Statutes, sets

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forth regulations for Notary Public. City Clerk Cason reported that 16 of the 345 petitions were correct. The Charter provides that if the Petitioner's Committee wishes to make the necessary corrections, they must notify the City Clerk within two days of receiving the Certificate of Insufficiency. To date, they had not done so.

PRESENTATION BY PETITIONER'S COMMITTEE

Attorney Gebhardt

Representing the Petitioner's Committee, Attorney Robert Gebhardt distributed literature dealing with the issue to Council. (Available in original meeting file in the City Clerk's Office.)

Attorney Gebhardt announced that it was his understanding that this Special Meeting was being held for a petition matter and not for a Coastland Mall issue. However, the attorney for Coastland Mall had been scheduled for presentation to Council. Attorney Gebhardt suggested that the Mall's council should be afforded the same time limit for speaking as any other citizen.

Addressing the City Clerk's position, Attorney Gebhardt told Council that it was impossible to correct the petitions. He said that the Committee was of the opinion that the time to begin correcting the petition should not begin until the particulars are set forth. Attorney Gebhardt reminded Council that they had the ability to reverse the Clerk's position. He continued, "City Council meets in two capacities, as legislatures and as judges. We believe you're here today as judges." Council's role as judges, said Attorney Gebhardt, was to determine whether the Clerk's decision was correct. He asked that Council concentrate solely on that issue, regardless of whether or not they support the Mall's expansion, adding, "In the future, you'll have the opportunity to reaffirm your support of expansion. It will go back to you for repeal. If you fail to repeal it, then it goes back to the voters."

Attorney Gebhardt brought attention to the fact that approximately 2,000 voters had signed the petition. He then asked Council to first determine whether the Clerk's decision was correct in her interpretation of the Charter and secondly to determine whether the Committee was afforded due process of the law. He said, "The members of the Committee do not believe they were afforded fair play. This constitutes actions where the City interfered."

Referring to an affidavit signed by Committee member Audree Karlosky, Attorney Gebhardt explained that the City Clerk had provided Ms. Karlosky with the petition material, however, now the petition is being ruled invalid. He said that the Committee was delayed at the beginning of the petition process because the appropriate ordinance was not prepared, adding further, that the Committee should have been present during the verification process, which was attended by the Mayor, City Manager, and City Clerk. Attorney Gebhardt said, "That may have tainted her decision. The Committee was not advised of these meetings." He did assure Council, however, that the

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Committee was not assigning bad motives to either the City Manager or the Mayor.

Attorney Gebhardt also referred to the to removal of a sign-up table from City Hall. He said, "The Petitioner's Committee was required to remove themselves under a threat of arrest." This was done by the City administration despite three recent Supreme Court cases stating that a sidewalk is the traditional place for exercising free speech.

"What then is the remedy?" inquired Attorney Gebhardt. He stated, "Certainly the remedy should not be to throw out the entire petition process since this would require the petitioners to start the petition process all over again, notwithstanding that they have done nothing wrong. Instead, we believe the appropriate remedy is that the City Clerk's decision be reversed and that the petitioning process should go forward. This is the only remedy that would further the purposes of the referendum conditions of the City Charter."

Attorney Gebhardt next referred to the City Clerk's interpretation of the City Charter, noting that the Committee's disagreement with that interpretation could be broken down into two distinct issues. The first issue relates to what part of the ordinance should be included with the petition. The second issue involves an affidavit that was required to be signed by the people who circulated the petition.

Before dealing with those two issues, Attorney Gebhardt stated, "You should know that the Supreme Court of the State of Florida and the City Charter require the Clerk, and require you, to construe the verification process liberally in favor of the petitioners. It is critical that you understand fully the laws of the State of Florida and the law in the City Charter relating to a liberal construction. Let me first quote you what the Supreme Court of the State of Florida has said regarding the referendum process, and I'm quoting, 'Statutes (which also means the City Charter) giving the power of initiative to the electors of the municipality are to be liberally construed by the courts to the end of permitting, rather than restricting, the power (in this case, referendum) and to attaining rather than preventing its object.' Therefore, all ordinance provisions of the City Charter relating to the referendum process must be interpreted by you to permit the referendum process to go forward. You are obligated to follow the laws of the State of Florida that say you must construe this liberally. The City Charter reinforces this notion." Attorney Gebhardt described guidelines to use for liberal interpretation. He then quoted a standard text use by lawyers: "A Statute entitled to liberal construction shall be favorably construed so as to give it, if possible, a beneficial explanation which will tend to promote justice and avoid harsh results." Attorney Gebhardt said that the same text goes on to state that the actual words in the Charter can be changed in order to reach that liberal result. Attorney Gebhardt informed Council that it was their duty to assist the referendum process.

Attorney Gebhardt reviewed what had taken place to date in this matter, noting that although a second affidavit was not needed, the Petitioner's Committee added one to each petition. He stated, "We believe the affidavit issue is a non-issue," noting that the City Clerk was required by Charter to

prepare the petition now being challenged.

The City Clerk's interpretation of "full text" was next reviewed by Attorney Gebhardt, who noted that perhaps too strict a reading of the Charter was taking place. He said that the cost of reproducing many copies of the entire ordinance, including all attachments, would be prohibitive.

In conclusion, Attorney Gebhardt stated: "The issue before you today is not the Coastland Mall expansion. It is not whether the expansion shall be doubled or increased by 50%. The issue before you today is whether over 2,000 registered voters of our City will have their wishes dashed. You are not considering alone the arguments of the law which I will be making today, significant as they may be legally. You will not be considering alone the technicalities of how many sheets of engineering data, if any, should be attached to a petition, important as that is to the legal issues to be heard today. Your task, as weighty as it is, will include these issues, but the underlying issue you will decide today is the issue of fairness and equity. Will your decision promote or frustrate the referendum process? Is it fair to deny over 2,000 voters their right to petition their government? Is it fair to say to those 2,000 voters, 'No, we're sorry, your signature doesn't count with us at this time.'

"I again remind you, a fork in the road lies ahead at another time, at another meeting. There the issue will be, for you, shall we repeal our decision in doubling the size of the Mall? That fork involves other issues and I am sure that you will confront them squarely. But today's decision is much more important: What is fair to the people of Naples? What reason on earth would you have to try to deprive these 2,000 voters of their rights to petition you for reconsideration of a decision you had made? I might suggest to you that those 2,000 voters represent not 15% but 33% of the voters who actually voted and put you, put some of you, in office at the most recent election. Thirty three percent. Based on the foregoing, we are asking you to reverse the decision of the City Clerk."

Mayor Muenzer announced that the attorney for Coastland Mall would be allowed seven minutes to speak.

PRESENTATION BY COASTLAND MALL ATTORNEY

Attorney Don Pickworth

Attorney Pickworth began by telling Council that although he had no quarrel with the fact that everyone was at today's meeting for the purpose of discussing the petition, the Coastland Mall project could be extinguished by the process. He said that in his opinion, the issue had been well covered. Attorney Pickworth stated that he did not believe the terms of an ordinance could be changed or eliminated. He referred to the issue of full text and emphasized that the Committee believed that meant the entire ordinance. Attorney Pickworth pointed out that every petition

included language stating that the ordinance was on file in its entirety in the Office of the City Clerk.

He explained that anyone who had the complete text of the ordinance available would be able to ascertain the details of the proposed expansion including the fact that an architectural theme will be incorporated into the Mall. Although the petition process is designed to allow an individual to inform himself, said Attorney Pickworth, that opportunity was not afforded in this situation. He concluded, "I would ask you to uphold the decision of the Clerk."

COMMENTS FROM REGISTERED PUBLIC SPEAKERS

James P. Lennane, 4228 Gordon Drive

Mr. Lennane referred to the signature page of the petitions and the standards for Notary Publics. The first page of the petition, which was notarized, should stand alone as a proper document, he said.

Mr. Lennane asked, "What is an ordinance? Many places in the law talk about exhibits. Nowhere does it define two or three pages signed by the Mayor. I believe the common man feels this is the ordinance. And, at meetings you don't read the full text, you read the title. If this recall fails, I believe you need to amend the Charter so that petition efforts aren't denied in the future." He reminded Council that the benefit of the doubt needs to be given to the petitioner. In conclusion Mr. Lennane stated, "Lastly, what is the penalty? The worst that happens is this gets put to a vote. That's democracy in action."

Fred K. Tarrant, 175 Third Street South

Mr. Tarrant told Council that he was speaking for himself and for Mrs. Tarrant. He reminded Council that after last year's February election it was decided that a defect existed in the Charter. Mr. Tarrant said that last year he was given documents by City officials which proved to be useless, adding, "Judge Blackwell threw the case out, saying it was not in his jurisdiction. The City said it was not in their jurisdiction. My point is, I think it is incumbent upon you to be especially liberal and lenient because you are dealing with damaged goods." He noted that a committee was presently reviewing the Charter. Mr. Tarrant said that it was vital for the City Clerk, City Attorney, or any City official to be sure that any documents given to citizens are correct. He added, "This is the clear responsibility of the City in any case, but especially in view of the fact you are dealing with a Charter that you yourself agree has a hole in it."

Next Mr. Tarrant referred to the incident involving the sign-up table outside of City Hall. He urged Council to put an end to nitpicking. He concluded, "The taxpayers elected you to do what's right. Make your decision in favor of the petitioners. We're just asking for due process and fair play."

Kathy Tomlinson, 356 11th Avenue South

Ms. Tomlinson commented that the expansion of Coastland Mall had become an issue only because

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a variance was needed. She said, "If you go by the letter of the law, you should have denied it. You chose to ignore present zoning laws. You are sending the message that you follow the laws only when they suit you." Ms. Tomlinson referred to the fact that several of the present Council Members had been supported by the CPC (Citizens Political Committee) based on their no-growth agendas. Therefore, she said, "I'm appalled at your decisions. Let democracy work. Don't play games."

Pam Mac'Kie, 575 Whispering Pine Lane

Ms. Mac'Kie's statement was read into the record and is included in these minutes as Attachment #3.

Stuart D. Russell, 2875 Gulf Shore Boulevard North

Mr. Russell clarified that he was one of the individuals who had set up the sign-up table outside of City Hall. He said that he was going to argue about what really occurred on that day, however, he had decided to cede to Mr. Tarrant's plea to stop nitpicking.

Penelope Taylor, 995 13th Street North

Ms. Taylor addressed Council, stating as follows: "I would like to speak again about what the Clerk's definition of a full text is. It appears from her definition, which she hand-wrote to us in a letter last week, that her definition corresponds with ours. That we indeed put the full text of the ordinance with this petition packet." Ms. Taylor distributed copies of the petition packet to Council for their review. (Available in original meeting file in City Clerk's Office.) She continued, "The Clerk's definition of full text of the ordinance is the full text. It's very clear; we agree. And, Exhibit A, Exhibit B, and Exhibit C. She defines the full text of the ordinance as the full text, and Exhibit A, Exhibit B, and Exhibit C. If she was to define the full text of the ordinance as the full text and Exhibit A, Exhibit B, and Exhibit C, she would not word it that way, would she? She would say, 'The full text of the ordinance includes Exhibit A, Exhibit B, Exhibit C, and the paper that declares and describes what they are.' I'm not trying to read her mind, but it seems to me it's fairly evident. The full text of the ordinance is what we attached to the petition packet. It's very clear."

BREAK: 4:30 p.m. - 4:37 p.m.

DECISION OF CITY COUNCIL

Council Member Herms requested review of the specific items given to members of the Petitioner's Committee by the City Attorney's and City Clerk's Offices. Deputy City Clerk Tara Norman

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described what the Committee had requested and received. City Attorney Chiaro verified that the Charter states that the City must provide petition blanks; the additional affidavit page was not supplied by the City. Mr. Herms inquired whether the term "full text" had been explained to the Committee and whether all of the required details were reviewed before signatures were obtained.

City Manager Woodruff reported that in Attorney Gebhardt's letter of December 3, 1992, he used the term "full text of the ordinance." Dr. Woodruff and City Clerk Cason maintained that they had no personal knowledge of any City employee having conversation relative to "full text" with any member of the Petitioner's Committee.

In response to Council Member Anderson's inquiry, City Clerk Cason clarified that a member of the Petitioner's Committee had picked up a copy of the ordinance, from her office at a cost of \$33.80, at approximately 10:50 a.m. on December 4th and that the petition was picked up later that same afternoon.

Council Member Korest commented that the petition process must follow certain requirements and that the Petitioner's attorney had the option of requesting a modification of the Charter. Referring to Mr. Tarrant's earlier comments, Mr. Korest agreed that the section of the Charter dealing with elections contains some areas that are apparently not clear, however, that does not tarnish the entire document. City Attorney Chiaro noted that each of the sections of the Code and the Charter are separable. If one portion is deemed to be unlawful, that does not affect the other portions.

Council Member Herms expressed his concern about the fact that approximately 2,300 citizens made an effort in a short period of time to question a situation in the City. The crux of the situation is, said Mr. Herms, "If we agree with what took place, we're telling the citizens to get a good attorney who can mind read everything that comes out of the City. That in itself is where I have a problem with what's taking place." Mr. Herms said that in his opinion a major problem with a violation of fair play existed in this matter.

City Attorney Chiaro reminded everyone that the Petitioner's Committee was represented by an attorney throughout this process. She said, "Even if I wished to guide them through this process, I could not do that. They were represented." In reply to Council Member Herms' inquiry, Attorney Chiaro said that the Committee had been given the proper forms.

City Manager Woodruff commented that he had discussed this matter with the City Clerk early in the process and confirmed that hers was an administrative function and although he was on the record as being in favor of expansion, the City Clerk must perform her job as directed in the Charter. Dr. Woodruff said further that he had ensured the City Clerk that any positions that management or Council had relating to this issue should not be a consideration and that she had free and total rule on this matter. For the record, City Clerk Cason confirmed that was correct, adding, "No one on Council or staff tried to influence me on any ruling." Dr. Woodruff told Council that under

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administrative rule, the City Clerk must look at the law and determine whether it was met.

Referring to whether or not the Committee was given the full text of the ordinance, Dr. Woodruff told Council that on December 4th, Attorney Gebhardt was provided with what staff interpreted the full text to be. Dr. Woodruff stressed the fact that Council should understand that the City Clerk is neutral on the issue of whether or not the Mall should expand and at no time in the rezoning or petition process was she a participant. He stated, "At no time has anyone in management placed her in a position as a pawn. She was given free reign. The record needs to reflect the directions she was given and the latitude that was given in this issue."

In reply to Council Member Herms' question about the necessity of attaching a copy of every page of every attachment to the ordinance to every ballot should this matter result in a referendum, the City Attorney explained that the Election Statute specifically states that a summary of the issue in 75 words or less is legally acceptable.

Council Member Anderson suggested that should this issue proceed to referendum, workshops and public hearings should be held in order to educate the public.

Council Member Pennington remarked that many facets of this issue had been troublesome. He said that he was certainly in accord with a liberal interpretation of the Charter, however, along with that was the responsibility of those people doing the petitioning to understand what was involved. Mr. Pennington said that he had talked with many people who claim they would not have signed the petition had they fully understood its meaning. He said, "In our Oath of Office, we state 'I will in all respects observe the provisions of the Charter.' I can only conclude that the Clerk felt that in all respects she believed she was observing the provisions of the Charter. Therefore I conclude she was doing her job responsibly."

MOTION: To **APPROVE** Item 3-b (Title below).

Anderson		Y
Herms		N
Korest		Y
Pennington	M	Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 93-6839

ITEM 3-b

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPLES
APPROVING THE CERTIFICATE OF INSUFFICIENCY ISSUED BY THE**

**CITY CLERK RELATED TO THE PETITION REQUESTING
RECONSIDERATION OF THE ADOPTION OF ORDINANCE 92-6808 -
REZONING THE COASTLAND MALL; AND PROVIDING AN
EFFECTIVE DATE.**

Council Member Anderson voted in the affirmative and commented as follows: "We, the City Council Members, are elected to represent the City of Naples residents - all of them. When we meet in regular session the first and third Wednesday of each month, we are presented with all of this material, all of the documents you now see on the table, to make an informed decision. Now, with the petition process, you, the Committee, are asking the citizens of the City of Naples to make the type of decision that we make by signing your petition and telling us by signing this petition that they disagree with our decision and that they are disagreeing with us without even the privilege of being fully informed as to the facts. We don't vote by ordinance alone. We never have and we never will on zoning issues. And shame on anyone who would subject our citizens to signing a petition, yet being hobbled without the benefit of knowing what they are disputing."

Council Member Herms stated, "I'm obviously going to vote 'no' for it. I think what's occurred here is that City staff was not proper in their working with the citizens in providing them with the proper paperwork. I think it's ridiculous to think that the citizens could have taken this pile of plans and paperwork and that people were going to spend the time to read that. Each one of those things takes at least three or four hours to review. The citizens, through the media, had a very good concept of what was being planned here. There was a lot of discussion. There's been dialogue on what the positives and the negatives of this project were and, to make it even more ridiculous, all of this stuff would not be required at a vote. Now, that was one of the things that really convinced me that the full text definition that we're dealing with here is being misinterpreted. We really have had a violation of due process or fair play by the City and that's why I'm voting no on this issue. And, unfortunately, I think one of the situations we have ourselves in here is, I think we've got basically a real strong violation of the public's trust in City government and that's what really concerns me and I don't know how we can build that back. We have to be in a perspective of where, if any of the citizens come to us, we do everything possible to provide them with the information on whatever it is that they're asking us. And we didn't do that here, and that's why I vote no."

Council Member Korest said, "I believe that we swore to uphold the Charter. I believe the Charter was written in a way that protects everyone. I don't think that petition drives should be lightly taken. On the other hand, I think that they are an important manner for citizens to have an opportunity to redress their government. I also do believe, however, that this is a very complicated issue. It's one that we spent dozens and dozens of hours reviewing and I think that it's vitally important for anyone to determine whether or not they should sign a petition drive to know specifically what they were signing. And I believe that with the limited amount of information available they did not know and that is the reason that that is a major requirement. It's a requirement in the Charter. And we are not

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here to say, 'Well, the interpretation we make indicates that this provision of a Charter is valid and this one isn't.' I think that leads to capricious government, and that is not what any of us want. And while this may not be a popular decision, I feel that we've upheld the integrity of City government, so I vote 'yes'."

Council Member Pennington voted in the affirmative.

Vice Mayor Sullivan commented, "I believe that the provisions of the City Charter were quite explicit and very clear and I believe that they were not followed and consequently I vote yes."

Council Member Van Arsdale voted in the affirmative.

Mayor Muenzer voted in the affirmative and stated as follows: "We've heard a great deal about the insufficiencies in the number of people that have signed this and just have mentioned a few things that have come to my attention that some people have made known to me that have signed this petition and have called in, as Mr. Pennington indicated he'd had some comments. I think that there were some presentations made that were very definitely incorrect in getting signatures. I had two people that indicated they were told by the circulators that the City Council was now supporting this drive and that we had found additional information that had come out and we realized we had made a mistake and we were supporting this, hoping this would give us some chances to redress. And I was asked explicitly by two people if we were now supporting this change. I also was disturbed to hear comments made in the air that there was now new information that had been found and disclosed that was causing many of Council, several members of Council, to seriously reconsider their position. And there was no new information that had been available or has been available up to this time. In particular, I heard Mr. Pennington comment on that one question, that this was not quite correct. I think that there were many verbal presentations made, unfortunately, to cause some of the confusion but that's exactly what Mr. Korest was referring to in the document itself. The Charter provides to prevent this type of thing from having any influence and I do believe that the Clerk was right in her opinion. I know that she would very definitely have liked to have been able to rule different than what she did because that would have been the popular thing and the least way to take resistance. I do want to say this Janet (City Clerk Cason), that I commend you for having the integrity of making a tough decision but a decision that you had to make under the discharge of your duty. I want to commend you for making the proper decision and I'm ready to vote yes in support of it."

CORRESPONDENCE AND COMMUNICATIONS

Mayor Muenzer announced that the next Workshop Meeting was scheduled for Tuesday, January

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19, 1993.

ADJOURN: 5:25 p.m.

PAUL W. MUENZER, MAYOR

Janet Cason
City Clerk

Marilyn McCord
Deputy City Clerk

These minutes of the Naples City Council were approved on 2/17/93.

Attachments: 3 pages

SUPPLEMENTAL ATTENDANCE LIST
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James P. Lennane
Mr. and Mrs. Fred K. Tarrant
Kathy Tomlinson
Pam Mac'Kie
Stuart D. Russell
Penelope Taylor
Donald Pickworth
Audree Karlosky
Lance Donovan
Sewell Corkran

Charles Rhoades
Anthony Tarrant
Jack Miller
Gil Weil
Willie Anthony
Robert Schroer
Robert Gebhardt
Bob Rier
Faith Knight
Jackie McMillar

Other interested citizens and visitors.

MEDIA:

Jerry Pugh, Colony Cablevision
Eric Staats, Naples Daily News
Traci Griffith, WNOG
Tim Engstrom, Fort Myers News Press



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Convened 2:30 pm / Adjourned 5:25 pm

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