



City Council Chamber  
735 Eighth Street South  
Naples, Florida 33940

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**City Council Regular Meeting - January 17, 1996 - 9:00 a.m.**

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Mayor Muenzer called the meeting to order and presided.

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**ROLL CALL**

**ITEM 2**

**Present:**

Paul W. Muenzer, Mayor  
Alan R. Korest, Vice Mayor

Council Members:

Ronald M. Pennington  
Marjorie Prolman  
Fred L. Sullivan  
Fred Tarrant  
Peter H. Van Arsdale

**Also Present:**

Dr. Richard L. Woodruff, City Manager  
Maria J. Chiaro, City Attorney  
Dr. Jon Staiger, Natural Resources Mgr.  
Missy McKim, Planning Director  
Mark Thornton, Comm. Services Director  
Flinn Fagg, Planner I  
Dan Mercer, Utilities Director  
Susan Golden, Planner II  
Tara Norman, Chief Deputy City Clerk  
Virginia Neet, Deputy City Clerk  
George Henderson, Sergeant-at-Arms  
Henry Watkins  
Werner Hardt  
Charles Andrews  
Ken Fuchs

Michael Volpe  
Joe Sineno, Collier Reporting Svc.  
Reverend Susan Diamond  
Bonnie MacKenzie  
Kenneth Abernathy  
Bruce Anderson  
Kim Anderson

See also Supplemental Attendance List  
(Attachment 1)

**Media:**

Jerry Pugh, Continental Cablevision  
Michael Cote, Naples Daily News  
David Taylor, Continental Cablevision

**INVOCATION and PLEDGE OF ALLEGIANCE .....ITEM 1**  
Reverend Susan Diamond, First Christian Church

**ITEMS TO BE ADDED .....ITEM 3**  
City Manager Richard Woodruff requested that the following items be added to the agenda:  
    Item 23 - Bid Award for Decking Material for City Dock  
    (See also Item 24 which was added to the agenda later in the meeting.)

**CONSENT AGENDA**

**APPROVAL OF MINUTES.....ITEM 13**  
Regular Meeting of December 20, 1995; Workshop Meeting of January 2, 1996.

**RESOLUTION 96-7614.....ITEM 14**  
**A RESOLUTION GRANTING A TEN FOOT WIDE EASEMENT TO FLORIDA POWER & LIGHT COMPANY FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF UNDERGROUND ELECTRIC UTILITY FACILITIES ALONG THE EAST SIDE OF CAMBIER PARK ALONG 8TH STREET SOUTH; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 96-7615.....ITEM 15**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBORDINATION OF CITY UTILITY INTERESTS TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF; DIRECTING THE CITY CLERK TO FORWARD A CERTIFIED COPY OF THIS RESOLUTION TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 96-7616.....ITEM 16**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBORDINATION OF CITY UTILITY INTERESTS TO FLORIDA POWER & LIGHT COMPANY, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF; DIRECTING THE CITY CLERK TO FORWARD A CERTIFIED COPY OF THIS RESOLUTION TO FLORIDA POWER & LIGHT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**.....ITEM 19**  
**AWARD OF BID FOR ANNUAL CONTRACT TO FURNISH LABOR AND EQUIPMENT TO TRANSPLANT PALM TREES.** Contractor: Gator Landscaping, Naples, Florida / Est. Fiscal Year Expenditures: \$35,000.00 / Funding: Parks & Parkways Operating Budget and Various CIP

Projects.

**RESOLUTION 96-7617.....ITEM 20**  
**A RESOLUTION RENEWING THE CONTRACT WITH EMPLOYEE ASSISTANCE SERVICES OF SOUTHWEST FLORIDA, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, TO PROVIDE AN EMPLOYEE ASSISTANCE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

.....**ITEM 21**  
**AWARD OF BID TO PURCHASE SUPERVISORY CONTROL & DATA ACQUISITION (SCADA) SYSTEM FOR THE WATER TREATMENT PLANT.** Contractor: Curry Controls Company, Lakeland, Florida / Bid Amount: \$62,777.00 / Funding: CIP Project #96K36.

.....**ITEM 22**  
**AUTHORIZATION TO WAIVE COMPETITIVE BIDDING IN ORDER TO ISSUE AN ANNUAL PURCHASE ORDER FOR TURF MAINTENANCE.** Contractor: Chemlawn, Fort Myers, Florida / Annual Total: \$60,019.00 / Funding: Parks & Parkways Operating Budget.

**END CONSENT AGENDA**

**MOTION by Pennington to SET AGENDA, to ADD ITEM 23, to APPROVE CONSENT AGENDA ITEMS 13, 14, 15, 16, 19, 20, 21, 22, and to REMOVE ITEMS 17 AND 18 FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION; seconded by Sullivan and carried 7-0 (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes).**

**ANNOUNCEMENTS.....ITEM 4**  
Mayor Muenzer presented a plaque to Jerry Pugh, of Continental Cablevision, in appreciation for his dedicated service to the City of Naples through his work in television broadcasting.

Community Services Director Mark Thornton distributed an invitation to the Florida Arbor Day celebration scheduled for January 19, 1996 at the River Park Community Center. Mr. Thornton also announced that the City of Naples would be awarded the Tree City U.S.A. designation by the National Arbor Foundation in recognition of the City's tree maintenance and planting programs. City Manager Richard Woodruff stated, for the record, that the City plants at least one tree for every day of the year.

Mayor Muenzer presented a keepsake, containing beach renourishment sand, to members of the Beach Renourishment Committee and publicly recognized their contribution to the beach renourishment project.

**ORDINANCE 96-7618.....ITEM 5**  
**AN ORDINANCE APPROVING REZONE PETITION 95-R16, AMENDING A PREVIOUS PLANNED DEVELOPMENT FOR THE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF U.S. 41 AND RIVER POINT DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Chiaro. (9:24 a.m.)

Planner Flinn Fagg referred to the revised site plan and relayed staff's objection to the proposed dumpster location adjacent to River Point Drive. City Manager Richard Woodruff suggested that Council approve the petition conditioned upon subsequent approval of the dumpster's location by the City Manager or his designee.

**Public Input:** None (9:26 a.m.)

**MOTION by Korest to ADOPT Ordinance 96-7618 on second reading AS AMENDED TO REQUIRE APPROVAL OF THE DUMPSTER LOCATION BY THE CITY MANAGER OR HIS DESIGNEE; seconded by Sullivan and unanimously carried, all members present and voting. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)**

**ORDINANCE (Tabled) .....ITEM 6  
AN ORDINANCE AMENDING DIVISION 5, "THIRD STREET COMMERCIAL AREA  
SPECIAL OVERLAY DISTRICT", OF THE COMPREHENSIVE DEVELOPMENT CODE  
OF THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER  
PROVISION, AND AN EFFECTIVE DATE. Title read by City Attorney Chiaro. (9:30 a.m.)**

Planning Director Missy McKim provided an overview of the January 16, 1996 Planning Advisory Board Special Meeting and distributed a memorandum which summarized public input and PAB recommendations regarding the proposed ordinance. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Ms. McKim described the Third Street Area as well designed and said the intent of this ordinance was to preserve the area's good qualities. Using overhead transparencies, Ms. McKim explained that 3 parking spaces per 1,000 square feet would better reflect the district's pedestrian character. She also noted provisions relating to outdoor dining, landscaping requirements, various other permitted uses, and architectural standards which would also enhance the pedestrian atmosphere. Since the residential aspect is secondary, residences would be permitted on the second and third floors, but not required on third floors, as on Fifth Avenue South. Ms. McKim also referred to Section 102-1077, sign criteria, and pointed out the different options available to the property owners. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) She noted that although the proposed ordinance prohibits vertical awnings, replacement of existing vertical awnings would be permitted until renovation of the building's facade occurs.

Council Member Van Arsdale suggested reduced parking requirements as an incentive for residential development and Council Member Prolman commented on the importance of limiting third floor development to residential use. Council Member Tarrant expressed concern about the formula used for the parking requirements.

Andrea Clark Brown, architectural consultant for the Third Street property owners, used an aerial map to describe the relationship between the proposed ordinance and the Master Plan. She explained how waiving certain landscape requirements would result in more efficient parking and would also improve pedestrian access through the alleyways. She then described the concept in which a brick walkway along the alleys would aid pedestrian traffic and stated that it would be funded by the individual property owners. In response to Council, Ms. Brown explained that lighting standards were not addressed in the proposed ordinance but would be considered later. She

also commented that the intention was not to encourage more development but rather to better utilize what is already there.

**Public Input:** (10:24 a.m.)

**Katherine K. Chlumsky, 3345 Fort Charles Drive**

Mrs. Chlumsky declined to speak when called.

**George Buonocore, 155 Carica Road (owner of the "Paper Merchant")**

Mr. Buonocore objected to the proposed ordinance citing its signage limitations and inconsistency with regulations on Fifth Avenue South. He also stated that Third Street South does not need change, only improvement.

**Dr. Jon Staiger, 1187 Third Street South**

(City Manager Richard Woodruff stated that Dr. Staiger was appearing as a citizen and not as a City staff member.) Dr. Staiger endorsed the proposals dealing with the parking lots and alleyways and suggested improvements to the dumpster locations. He also supported residential development on Third Street and said residents in the area are not disturbed by the commercial activities.

**Dale E. Chlumsky, 3345 Fort Charles Drive**

Mr. Chlumsky said that he was generally in favor of the proposed ordinance but, as owner of five buildings on Third, he desired to lend his input as to what is built. He also noted that he was only given three days to consider the proposed ordinance.

**Dave Rice, 255 Champney Bay Court**

Mr. Rice said third floor development should be limited to residential use and predicted that current traffic problems would worsen if commercial square footage were increased. He also stated that impact on surrounding residential areas had not been fully researched.

**Tony Ridgeway, 2455 Lantern Lane (President of the Third Street Merchants Association)**

Mr. Ridgeway stated that the Third Street Merchants Association membership had reviewed the proposed ordinance and strongly supported it.

**Joan F. Tobin, 1300 Third Street South (representing Neapolitan Enterprises)**

Mrs. Tobin clarified that all property owners were invited to participate in the development of the proposed ordinance which, she said, would both ensure compatible development and diversity. She agreed that while residential uses are desirable, Third Street provides the only office space at the southern end of town.

City Manager Woodruff publicly thanked Mrs. Tobin for her efforts in the redevelopment of Crayton Cove.

**Virginia B. Corkran, President of the Old Naples Association**

Mrs. Corkran requested that Council table the proposed ordinance for further review. She said that she felt City staff could not effectively enforce it and suggested that a policy be included in the Comprehensive Planning process to address the giving away of alleys or other publicly owned land.

Mrs. Corkran also observed that a conceptual plan does not ensure results.

Council Member Van Arsdale pointed out, however, that the proposed ordinance would not relinquish alleys, only enhance them. He also noted that the proposed ordinance was more restrictive than current regulations.

**Eileen Arsenault, 1188 Gordon Drive**

Ms. Arsenault suggested incorporated drinking fountains and bicycle paths on Third Street and urged flexibility in the parking requirements. She also suggested that the architectural standards include awnings between buildings.

**Public Input Closed:** 11:10 a.m.

Council Member Sullivan said the issue required more work and participation by the general public as well as the concerned parties. He supported the efforts of the property owners and merchants but said the present ordinance was incomplete and too open to interpretation.

**MOTION by Sullivan to TABLE THIS ITEM UNTIL THE MARCH 6, 1996 REGULAR MEETING; seconded by Tarrant. After the discussion which appears below, this motion carried 5-2 (Korest-no, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-no, Muenzer-yes)**

Council Member Prolman supported ordinance's concept but said too many elements were missing. Vice Mayor Korest reminded Council that this activity had been in process for several months and took the position that the ordinance was not seriously flawed. He also observed that the property owners and merchants would not have indicated support unless it was in their best interests. Council Member Pennington said that he agreed with many aspects of the ordinance but felt unnecessarily rushed. Council Member Van Arsdale, however, said the only substantive issue was timing and stressed that the ordinance works to preserve the qualities of Third Street. Council Member Tarrant said more time was needed to work out details and to understand the public/private aspects of the ordinance.

**RESOLUTION 96-7619.....ITEM 10  
A RESOLUTION SUPPORTING EFFORTS BY THE PRIVATE SECTOR TO  
REHABILITATE OR REPLACE THE RIVER PARK APARTMENTS; AND PROVIDING  
AN EFFECTIVE DATE. Title read by City Attorney Chiaro. (11:27 a.m.)**

City Manager Richard Woodruff said this resolution would allow the private sector to apply for Federal and State funding and relayed staff's recommendation for approval.

**Public Input:** None (11:28 a.m.)

**MOTION by Pennington to APPROVE Resolution 96-7619 as submitted; seconded by Sullivan and unanimously carried, all members present and voting (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)**

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**Break 11:29 a.m. - 11:40 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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**RESOLUTION 96-7620.....ITEM 7**  
**A RESOLUTION REVOKING CONDITIONAL USE RESOLUTIONS NOS. 95-7343 AND**  
**95-7389 WHICH GRANTED APPROVAL FOR STAGE ENTERTAINMENT FOR**  
**MAGEIRO'S RESTAURANT; AND PROVIDING AN EFFECTIVE DATE.** Title read by  
City Attorney Chiaro. (11:43 a.m.)

City Attorney Chiaro explained that this was a quasi-judicial proceeding and asked Council Members to disclose any conversations or communications they have had with the petitioner or other parties regarding this item. These disclosures, she said, would include the nature and date of the contact and any visits to the property; however, such disclosures should not be considered as evidence. Mayor Muenzer, Vice Mayor Korest, and Council Members Pennington and Tarrant reported no contact with any of the parties since the November 1, 1995 hearing. Council Member Van Arsdale stated that he had talked to Mageiro's owner, Michael Miceli, and general manager, Michael Griffin. He also reported conversations with neighbors Priscilla Griffin and Edward Dotter and stated that he had visited the restaurant's parking lot, Michael's Cafe parking lot, and the adjacent 10th Street North area. Council Member Sullivan stated that, on January 13th, he had a brief conversation with Mr. Miceli who expressed hope for an impartial hearing. Council Member Prolman reported no contact other than one unrelated conversation with Mr. Miceli.

City Attorney Chiaro then clarified that the proceeding would determine whether the facts presented are sufficient to revoke the conditional use granted by Resolutions 95-7343 and 95-7389. She reviewed the hearing's format and outlined procedure relating to testimony and other evidence. City Attorney Chiaro then administered a voluntary oath to members of the audience and staff who would testify in this matter.

Planning Director Missy McKim referred to the January 5, 1996 staff memorandum and provided background information regarding the conditional use for staged entertainment at Mageiro's Restaurant, 2840 Ninth Street North. (Attachment 2). Ms McKim used overhead transparencies to review Section 86-203(d) of the Comprehensive Development Code, which sets the conditional use criteria, and indicated the following violations: 1) excessive parking lot noise; 2) inadequate buffering between the parking lot and adjacent homes, and; 3) incompatibility with the adjacent properties. (Attachment 3) Ms. McKim then cited violations to conditions set forth in Section 2 of Resolutions 95-7343 and 95-7389: 1) entertainment was not accessory to the restaurant use; 2) entertainment noise exceeds Comprehensive Development Code guidelines, and 3) entertainment was not confined to the interior of the restaurant. (Attachment 4) At this time, City Manager Richard Woodruff noted that violations of the condition relating to dancing would not be considered at this hearing. He also said staff would present testimony from police officers and neighbors to confirm direct violation of these conditions and would request the full revocation of the conditional use for staged entertainment.

Attorney Michael Volpe, representing Mageiro's Inc., distributed a pamphlet for Council's use during the hearing (Attachment 5). In his opening statement, Attorney Volpe made the following representations: 1) Resolutions 95-7343 and 95-7389 confirm that Mageiro's had met the conditional use criteria and evidence regarding the continued adherence to this criteria was irrelevant; 2) Council's actions during the September 5, 1995 Workshop Meeting would have no bearing on these resolutions since it was not a public hearing; 3) the only final action by Council on this issue, during

the November 1, 1995 hearing, was the defeat of a motion to revoke the conditional use. He further contended that only events since the November 1, 1995 hearing should be considered and reiterated that the conditional use, in essence, rezoned the property. As such, and according to the Code of Ordinances, the Code Enforcement Board was the proper authority to determine if there was a violation of conditions under which a conditional use had been granted. He also stated, for the record, that this hearing pertained to "staged" entertainment and not live entertainment.

City Attorney Chiaro responded by pointing out that the case law provided by Attorney Volpe was not Florida case law and it was within Council's purview to proceed with the revocation hearing. Council Member Pennington noted that the violation relating to dancing within the restaurant would be heard by the Code Enforcement Board since no conditional use had been granted for that activity.

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**Break 12:23 p.m. - 12:54 p.m. It is noted for the record that Mayor Muenzer invited media representatives to remain with the Council Members during break. It is also noted for the record that roll call was taken when the meeting reconvened and the same Council Members were present.**

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In response to questioning by City Manager Richard Woodruff, Commander Steven Moore, Police Operations Bureau, referred to 11 police incident reports between November 6, 1995 and January 4, 1996 relating to noise emanating from Mageiro's Restaurant, 2840 Ninth Street North (Attachment 6). He also noted additional noise complaints registered on December 9th, January 14th and January 17th and explained that Notices to Appear were issued on December 3rd, December 9th, January 14th, and January 17th.

Upon cross examination by Attorney Volpe, Cmdr. Moore described the procedure by which Police and Emergency Services respond to noise complaints and reviewed each of the 11 incident reports included in Attachment 6. Reading from the reports, he indicated that the majority of complaints came from residents along the Tenth Street North and all but one occurred after 11:00 p.m. In addition to the four Notices to Appear, three warnings were issued. Cmdr. Moore said one of the calls did pertain to parking lot noise and explained that final disposition of the four Notices to Appear would be determined in Misdemeanor Court.

Dr. Woodruff further questioned Cmdr. Moore about the total police incident reports relating to Mageiro's Restaurant since November 1, 1995 (including incidents other than noise complaints) wherein Attorney Volpe interjected that only noise complaints should be considered. City Attorney Chiaro, however, clarified that although a noise ordinance violation requires a determination of a court of law, Council could consider revocation of the conditional use based upon evidence and testimony that the conditions of the conditional use had been violated. She also stated that Cmdr. Moore's testimony only substantiated that complaints had been filed and warnings or notices to appear had been issued.

At this time, Dr. Woodruff questioned Priscilla Griffin, who resides at 2821 Tenth Street North. In her testimony, Ms. Griffin made the following representations: 1) her home is situated approximately 30 feet from Mageiro's parking lot; 2) a wood fence separates her property from Mageiro's parking lot; 3) Since November 1, 1995, she summoned the police on November 9, 10, 13, 17, 26, December 8, 9, 27, 28, and January 4, 14, 17, to complain about the Mageiro's loud music



and parking lot noise; 3) her records indicate that the majority of her complaints occurred after 11:00 p.m.; 4) the noise emanating from Mageiro's had worsened since the November 1, 1995 hearing. In response to Attorney Volpe, Ms. Griffin indicated that she met with responding police officers on 4 or 5 occasions; usually 20 or 30 minutes elapsed between when she heard the music and when she called the police.

Dr. Woodruff then questioned Cathy Dotter who resides at 2911 Tenth Street North. Ms. Dotter stated that her property is approximately 200 feet from Mageiro's and is separated from the restaurant by a wooden fence. She stated that she called the police on November 24, and 25, December 8, and 15, and January 14, when she was awakened by loud music and noted that these complaints occurred between 11:00 p.m. and 12:30 a.m. She also noted that Mageiro's General Manager, Michael Griffin, was not available when she called the restaurant about the noise. In response to Attorney Volpe, Ms. Dotter said most of her complaints occurred on the weekends and indicated that if Mageiro's was simply a restaurant, there would be less parking lot noise. She also stated that she had not observed a security guard in Mageiro's parking lot.

City Manager Woodruff then stated that he had no further witnesses.

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**Break 2:02 p.m. - 2:09 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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Attorney Volpe questioned Michael Miceli, sole shareholder of Mageiro's Inc., who made the following representations: 1) Mageiro's Restaurant has occupied the property at 2840 Ninth Street North since October 1994; 2) he is the lessor and not the owner of this property; 3) the live entertainment offered by Mageiro's is ancillary to the restaurant business; 4) Mageiro's gross revenue from food and non-alcoholic beverages exceeds the 51% minimum required by its liquor license, and; 5) Mageiro's Restaurant holds current City of Naples and Collier County occupational licenses.

Mr. Miceli then described attempts to reduce music and parking lot noise which included stationing a security guard in the parking lot, engaging the services of an architect to design a sound-lock entrance, and soliciting proposals for sound-proof glass installation. Mr. Miceli explained that he did not install sound-proof glass since it was not shown to be effective and the architect had yet to design the sound-lock entrance. (A copy of related documentation is contained in Attachment 5.) Attorney Volpe then noted, for the record, that Mageiro's Inc., had taken affirmative steps to correct the noise problem. In response to further questioning, Mr. Miceli stated that he had directed his staff to reduce the speaker volume and noted that the band "Tim Poindexter and Thunder" was no longer playing at Mageiro's.

Attorney Volpe's next witness was Michael Griffin, General Manager of Mageiro's Restaurant, who described restaurant operations which, he said, includes food service until 2:00 a.m. He confirmed that a security guard was hired to monitor noise escaping from the restaurant and to curb parking lot disturbances. He also pointed out that the guards had not reported hearing music in the parking lot. As Mageiro's General Manager, he said he had received three noise ordinance citations and that responding police officers had threatened to "take him to jail." Council Member Tarrant requested that Kevin Rambosk, Chief of Police and Emergency Services, review this allegation. Mr. Griffin also questioned the validity of some complaints since the band was not playing at the time.

**Public Input: (3:00 p.m.)**

**Cathy Dotter, 2911 Tenth Street North**

Mrs. Dotter read from a log she said she had kept since the November 1, 1995 hearing and noted dates when she was awakened by parking lot noise but did not register a complaint with the police. She asked Council to allow Mageiro's to continue as a restaurant only.

**Edward Dotter, 2911 Tenth Street North**

Mr. Dotter reminded Council that he only summoned the police when his family was actually awakened by Mageiro's music. He asserted that the music is not accessory to the restaurant and asked Council to revoke the conditional use and restore peace to his neighborhood.

**Priscilla Griffin, 2821 Tenth Street North**

Mrs. Griffin said that Mageiro's noise problems had worsened since the November 1, 1995 hearing and that after a new band was hired, Mageiro's was still cited under the noise ordinance. She urged Council to not only revoke the conditional use for staged entertainment but also to prevent a club from ever opening in that location again. Ms. Griffin then thanked Council, the Planning Department, and Police and Emergency Services for their efforts.

**Ray Gravlin, 2821 Tenth Street North**

Mr. Gravlin said that he had visited Mageiro's restaurant 30 to 40 times since September, 1995 and only twice observed a parking lot guard. He indicated that Mageiro's had been uncooperative and had threatened complaining neighbors with lawsuits. Mr. Gravlin also provided Council with Mageiro's advertisements emphasizing the night club over the restaurant.

In response to Council, City Attorney Chiaro reiterated that Council focus is whether the conditions upon which the conditional use was granted had been violated; evidence relating to the attitude of the management or future activities of the restaurant was not relevant.

Attorney Volpe questioned Messrs. Gravlin and Dotter. Mr. Gravlin described an occasion when he summoned police about Mageiro's loud music and confirmed that the police officers heard the music from his back yard prior to issuing a citation. Mr. Gravlin reiterated that Mageiro's management had intimidated neighbors by telling police that they would sue for harassment. Mr. Gravlin said he visited the restaurant on several occasions since November 1st to see if dancing was encouraged, to observe hours of dining, and to monitor the music's volume. He also testified that although the kitchen was open after 10:30 p.m., few patrons were eating.

Edward Dotter confirmed prior testimony of his wife, Cathy Dotter, regarding the dates and times of loud music and parking lot noise and read from a log that he and his wife had kept to record the disturbances. He noted 11 instances of excessive parking lot noise and 7 instances of loud band music. He said he summoned the police five times because of the music and noted that on November 30th, he advised Council Member Van Arsdale of the excessive noise. According to his notes, only one of these instances occurred before 11:00 p.m.

**Rebecca Swift, 2810 Tenth Street North**

Ms. Swift declined to speak when called.

**Rob Swift, 2810 Tenth Street North**

Mr. Swift declined to speak when called.

**Vern Sass, 2990 Tenth Street North**

Mr. Sass declined to speak when called.

**Lisa Peteler, 963 Trail Terrace Drive**

Responsible for Mageiro's marketing and advertising, Ms. Peteler stressed that Mageiro's focuses on the restaurant and that their late night menu sets Mageiro's apart from other area restaurants. In response to Attorney Volpe, Ms. Peteler confirmed that the entertainment helps Mageiro's dinner business and confirmed that the majority of Mageiro's revenue is generated from the sale of food. During questioning by Dr. Woodruff, Ms. Peteler represented that Mageiro's had conducted an informal, verbal survey of the patrons who did not express any complaints about the volume of the music.

**Michael Griffin, 2840 Ninth Street North (General Manager of Mageiro's)**

Mr. Griffin declined to speak when called.

**Michael Miceli, 2840 Ninth Street North (owner of Mageiro's Restaurant)**

Mr. Miceli declined to speak when called.

**Evelyn Mumm, 1009 29th Avenue North**

Mrs. Mumm referred to the January 13, 1996 letter from Mageiro's neighbors urging Council to revoke the conditional use. She said the letter was enough for her and hoped it would be enough for Council. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.)

**Public Input Closed: (4:05 p.m.)**

City Manager Woodruff explained that he would not call Council Member Van Arsdale as a witness since it would preclude him from voting on the issue. He also stated that Council Member Van Arsdale had not provided staff with the letter, outlining his personal observations regarding Mageiro's, as referenced in staff's January 5, 1996 memorandum. Dr. Woodruff then summarized the testimony of the witnesses which, he said, conclusively demonstrated that the conditions of the conditional use relating to the noise guidelines and confinement of the entertainment to the restaurant, had been violated. He then relayed staff's recommendation that Resolution Nos. 95-7343 and 95-7389 be revoked.

Attorney Volpe renewed his objections to the proceedings asserting that it was not within Council's authority to revoke this conditional use. He said Mageiro's entertainment was accessory to the restaurant since more than 50% of its revenue was derived from food service and asserted that Section 2 (3) in each of the resolutions was intended to prohibit staged entertainment from *appearing* outside the restaurant. Attorney Volpe then argued that the City's noise ordinance was subjective and pointed out that the adjacent Michael's Cafe had recently been granted a conditional use for staged entertainment. Attorney Volpe reminded Council that Mageiro's parking lot noise should not be considered and indicated that another tribunal would be asked to determine whether Mageiro's had violated the noise ordinance. He concluded by stating his view that this hearing failed to provide substantial, competent evidence that any of the conditions of the conditional use had been violated since November 1, 1995.

**MOTION** by Pennington to **APPROVE** Resolution 96-7620 revoking the conditional use based upon non-compliance with the conditions contained in Paragraphs 2 and 3 of Section 2 of Resolution Nos. 95-7343 and 95-7389 and **AMENDED** as follows:

- 1) replace references to live entertainment with "staged entertainment;"
- 2) the 6th "WHEREAS" clause to state: "Since November 1, 1995, 14 complaints were received, and staff recommends that City Council revoke the conditional use to allow the adjacent residential properties peace and quiet enjoyment.;"
- 3) effective date is 30 days from date of passage;
- 4) the 5th "WHEREAS" clause to state: "City Council finds that the noise level of the restaurant has exceeded Section 106-239(h) of the Comprehensive Development Code; the noise from the entertainment can be heard outside the restaurant, at the rear property line." This motion was seconded by Sullivan.

*After the discussion which appears below, this motion carried 5-2 (Korest-no, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-no, Van Arsdale-yes, Muenzer-yes)*

*A motion by Tarrant to table Item 7 for further consideration failed for lack of second.*

Vice Mayor Korest questioned how Council could determine a noise ordinance violation without a ruling by a court of law and whether the evidence presented was sufficient to revoke the conditional use. Council Member Tarrant stated, for the record, that he did not make any assumptions from the representations of Mageiro's manager Michael Griffin regarding statements by the police and recognized that there are two sides to every story. Although he was not satisfied with Mageiro's efforts to stop the noise, Council Member Tarrant said that he preferred compromise over revocation. Further Council discussions focused on whether "entertainment," as referenced in the resolutions, meant the music or the entertainers. Council Members Pennington and Van Arsdale reasoned that if the music escaped the building, the entertainment was not being confined. Council Member Pennington also noted that testimony relating to parking lot noise was not considered in his motion. Council Member Sullivan commented that when Council granted the conditional use, the express intent was to confine the music to the building. Attorney Volpe then requested a 30 day delay in the effective date of the revocation to allow Mageiro's to honor current entertainment contracts.

**ORDINANCE 96-7621.....ITEM 9**  
**AN ORDINANCE AMENDING SECTION 58-66 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA, TO EXEMPT INDIVIDUAL SALES PERSONS FROM THE PAYMENT OF LICENSE FEES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Chiaro. (5:27 p.m.)

**Public Input:** None (5:27 p.m.)

**MOTION** by Korest to **ADOPT** Ordinance 96-7621 on second reading; seconded by Van Arsdale and unanimously carried, all members present and voting. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)

**RESOLUTION 96-7622.....ITEM 8**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BETWEEN HERBERT A. MARLOWE, JR., Ph.D., AND THE CITY OF NAPLES, FOR SERVICES NOT TO EXCEED \$10,000.00 AS A FACILITATOR TO ASSIST WITH THE CITY'S COMPREHENSIVE PLANNING PROCESS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Chiaro. (5:28 p.m.)

Referring to workshop discussions, City Manager Richard Woodruff stated that the following language would be added: 1) Section 2 (Paragraph 1) "Compensation shall not exceed \$10,000.00 without approval by City Council of an addendum to this contract," and; 2) Section 3 - Effective date shall continue through May 31, 1996.

**Public Input:** None (5:29 p.m.)

***MOTION*** by Pennington to ***APPROVE*** Resolution 96-7622 ***AS AMENDED***; seconded by Van Arsdale and carried 6-1. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-no, Van Arsdale-yes, Muenzer-yes)

**ORDINANCE (First Reading).....ITEM 11**  
**AN ORDINANCE ADDING SUBSECTION (f) TO SECTION 50-85 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO INCLUDE A PROVISION REGARDING THE MODIFICATION OF COLLECTIVE BARGAINING AGREEMENTS DUE TO FINANCIAL URGENCY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Chiaro. (5:30 p.m.)

City Manager Richard Woodruff explained that the addition of this subsection was necessary to reflect recent modifications to the Florida Statutes.

**Public Input:** None (5:31 p.m.)

***MOTION*** by Pennington to ***APPROVE*** this ordinance on first reading, seconded by Sullivan and unanimously carried, all members present and voting. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)

**RESOLUTION 96-7623.....ITEM 12**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE TASK ORDER NO. 1-96 IN SUBSTANTIALLY THE FORM ATTACHED HERETO BETWEEN HOLE, MONTES AND ASSOCIATES, INC. AND THE CITY OF NAPLES, FOR PROFESSIONAL SERVICES ASSOCIATED WITH PROVIDING WASTEWATER TREATMENT PLANT AND RECLAMATION FACILITY CONSTRUCTION PHASE SERVICES; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Chiaro. (5:32 p.m.)

City Manager Richard Woodruff referred to the Scope of Services and stated that this Task Order would allow Hole, Montes, & Associates, Inc. to proceed with the construction management phase. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.)

**Public Input:** None (5:39 p.m.)

***MOTION*** by Sullivan to ***APPROVE*** Resolution 96-7623 as submitted; seconded by Sullivan and unanimously carried, all members present and voting. (Korest-yes,

*Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)*

At this time, Mayor Muenzer noted that Item 24, relating to an amendment to the noxious plant ordinance, had not been officially added to the agenda.

**MOTION** by Prolman to **ADD ITEM 24 TO THE REGULAR AGENDA;** seconded by Pennington and unanimously carried, all members present and voting. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)

.....ITEM 17  
**AUTHORIZATION TO ISSUE AND AFTER-THE-FACT PURCHASE ORDER FOR EMERGENCY REPAIRS TO A WATER MAIN AT FLEISCHMANN BOULEVARD AND GOODLETTE-FRANK ROAD.** Contractor: Cross Country Pipe & Rail, Naples, Florida / Total Price: \$21,748.43 / Funding: CIP Project #96L02. (5:41 p.m.)

Utilities Director Dan Mercer explained how this water main break occurred and stated that it was not the fault of the Coastland Mall contractor.

**Public Input:** None (5:42 p.m.)

**MOTION** by Sullivan to **APPROVE** Item 17 as submitted; seconded by Pennington and unanimously carried, all members present and voting. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)

(Continued).....ITEM 18  
**CONSIDER AWARD OF BID FOR CONSTRUCTION OF STORAGE ROOM AT THE NORRIS COMMUNITY CENTER.** Contractor: Highpoint General Contracting, Naples, Florida / Bid Price: \$13,500.00 / Funding CIP Project #95G10. (5:42 p.m.)

City Manager Richard Woodruff explained that this item was a bid award to construct a 10' x 52' exterior storage room at the rear of the Norris Community Center and stated that Highpoint General Contracting was the low bidder. Council Member Prolman requested more detail about the addition and suggested that it be considered in conjunction with future improvements to the community center. Dr. Woodruff suggested that this item be continued in order for staff to provide more information.

**Public Input:** None (5:45 p.m.)

**MOTION** by Pennington to **CONTINUE** Item 18 to the February 7, 1996 Regular Meeting. Motion was carried by consensus.

.....ITEM 23  
**AUTHORIZATION TO WAIVE COMPETITIVE BIDDING IN ORDER TO PURCHASE DECKING MATERIAL FOR THE CITY DOCK.** Vendor: Marine Lumber, Naples, Florida/ Total: \$23,450.00. (5:46 p.m.)

City Manager Richard Woodruff explained that the City's contract with Nautilus Dock and Dredging

for the City Dock redecking had been voided and carpenters would be used to install the decking. Dr. Woodruff said that prior to the contract's cancellation, Nautilus Dock and Dredging had ordered the decking material which is currently in stock at Marine Lumber. He relayed staff's recommendation to award the bid and stated that the total price of \$23,450.00 reflects an approximate \$3,000.00 discount.

**Public Input:** None (5:48 p.m.)

***MOTION*** by Tarrant to ***APPROVE*** Item 23 as submitted; seconded by Sullivan and unanimously carried, all members present and voting. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Muenzer-yes)

**ORDINANCE (First Reading).....ITEM 24**  
**AN ORDINANCE AMENDING SUBSECTION (c) OF SECTION 106-235 OF THE COMPREHENSIVE DEVELOPMENT CODE BY ADDRESSING TRIMMING AND REMOVAL OF NOXIOUS PLANTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Chiaro. (5:50 p.m.)

City Manager Richard Woodruff confirmed that revisions requested by Council during the Workshop Meeting had been incorporated into the proposed ordinance. Dr. Woodruff also announced that staff would work towards designating one day per year to allow property owners to remove and dispose of their noxious trees. Additionally, he said staff would request that the \$30,000.00, currently budgeted for grants, be used to remove noxious plants from City owned property.

**Public Input:** None (5:53 p.m.)

***MOTION*** by Prolman to ***APPROVE*** this ordinance on first reading; seconded by Pennington and carried 6-1. (Korest-yes, Pennington-yes, Prolman-yes, Sullivan-yes, Tarrant-no, Van Arsdale-yes, Muenzer-yes)

**OPEN PUBLIC INPUT .....**  
None. (5:53 p.m.)

**CORRESPONDENCE and COMMUNICATIONS .....**  
Mayor Muenzer announced that there would be no Workshop Meetings prior to the February 7, 1996 Regular Meeting.

**ADJOURNED .....**  
5:55 p.m.

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Paul W. Muenzer, Mayor

Tara A. Norman

Deputy City Clerk

Virginia A. Neet  
Deputy City Clerk

Minutes approved: February 21, 1996

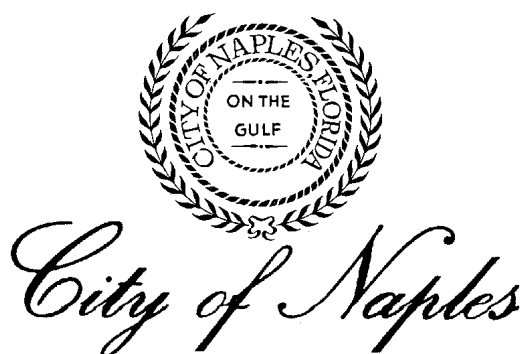
Attachment 1  
1/17/96 Regular Meeting

Supplemental Attendance List

Frank Blanchard  
Inge Johnstone  
Harry Huber  
Dr. Michael Stephen  
Robin Thomes  
Richard Lydon  
John Wadsworth  
Andrea Clark Brown  
Virginia Corkran  
Katherine Chlumsky  
George Buonocore  
Dale E. Chlumsky  
David Rice  
Tony Ridgeway  
Joan Tobin  
Eileen Arsenault  
Ed Dering  
Cathy Dotter  
Edward Dotter  
Priscilla Griffin  
Ray Gravlin  
Rebecca Swift  
Rob Swift  
Vern Sass  
Lisa Peteler  
Michael Griffin  
Mike Miceli  
Evelyn Mumm



Other interested citizens and visitors.



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January 17, 1996

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