



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Special Workshop Meeting – April 28, 2000 – 8:30 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present: Bonnie R. MacKenzie, Mayor
Joseph Herms, Vice Mayor
Council Members:
Gary Galleberg
William MacIlvaine
Fred Tarrant
Penny Taylor
Tamela Wiseman

Also Present:
Kevin Rambosk, City Manager
Kenneth Cuyler, City Attorney
Tara Norman, City Clerk
Jessica Rosenberg, Recording Specialist
Kelly Espinoza, Admin. Specialist
James Dean
Bill Boggess
Betty Pennington
Beverly Grady
David Emerson Bruner
Jacqueline Hubbard Robinson
Thomas Franchino
Terrence Lenick
Jane Cameron Hayman
Gary Wilson

Media:
AnneElena Foster, Naples Daily News

INTERVIEWS WITH CANDIDATES FOR THE POSITION OF CITY ATTORNEY

Gary Wilson
Beverly Grady
David Emerson Bruner
Jacqueline Hubbard Robinson
Terrence Lenick
Jane Cameron Hayman
Ronald Stetler
Thomas Franchino

Noting time constraints of Council and staff and stating her belief that this action is a foregone conclusion, Council Member Wiseman made a motion to hire the law firm of Porter, Wright, Morris & Arthur; however, this motion failed for the lack of a second. Because Council Member Tarrant is a civil litigant against the City, Council Member Galleberg questioned his participation in the selection of the City Attorney; therefore, he made a motion to adjourn the meeting and retain Roetzel & Andress for the present time. Council Member Tarrant stated that he had filed the complaint to address the City's development agreement with the Royal Poinciana Golf Club (RPGC) which he called illegal, and which would compel City taxpayers to fund approximately \$750,000.00 for County road and drainage improvements. He added that he had recommended meeting with the RPGC Board of Directors to resolve the matter; however, because this was not possible, he felt he had no alternative. Mr. Tarrant further explained that his action does not relate to the current administration or City Manager; therefore, he believed there was no conflict of interest. Mr. Galleberg, however, stated there is an inherent conflict, in that Mr. Tarrant would be participating in the selection of the defendant's attorney in the aforementioned suit. Mr. Tarrant requested a legal opinion. Council Member Wiseman then seconded Council Member Galleberg's motion; however, Vice Mayor Herms recommended proceeding with the meeting and interviewing the applicants. Mayor MacKenzie recommended requesting City Attorney Kenneth Cuyler to provide legal advice on this question. Council Member MacIlvaine stated that as a member of RPGC he would abstain from voting. (See Attachment 1, Form 8B Memorandum Of Voting Conflict For County, Municipal, and Other Local Public Officers.) Mr. Galleberg requested legal advice on that issue as well.

Public Input: None.

MOTION by Galleberg to ADJOURN THE MEETING RETAINING THE CURRENT CONTRACT WITH ROETZEL & ANDRESS, UNTIL RESOLUTION OF COUNCIL MEMBER TARRANT'S LAWSUIT; seconded by Wiseman. This motion failed 2-3 (Tarrant-no, Herms-no, Wiseman-yes, Galleberg-yes, MacIlvaine-abstain, Taylor-absent, MacKenzie-no).

Council Member Galleberg made a motion that Council Member Tarrant recuse himself from deliberations until Council receives input from City Attorney Cuyler. Vice Mayor Herms stated that Council Members are permitted to participate in discussions regardless of voting conflict. Mr. Tarrant however stated that out of deference to Mr. Galleberg, he would refrain from questioning the applicants.

Gary Wilson interviewed.

City Manager Kevin Rambosk noted that staff would supply each candidate/firm with an employment application in order to confirm the submitted information.

Beverly Grady interviewed.

When City Attorney Cuyler arrived at the meeting, further discussion of Council Member Tarrant's lawsuit ensued. Council Member Wiseman, however, voiced objection to his first

speaking with Vice Mayor Herms outside of Council Chambers. Council Member Tarrant stated that although he must abstain from voting on the RPGC issue, conflicts can and do readily occur, such as one that took place during the Naples Landing lawsuit wherein Mayor MacKenzie and City Attorney Cuyler had attended a meeting with the attorney retained by the City, an action later questioned by Council.

City Attorney Cuyler explained that a voting conflict pertains to a financial interest that may inure to a public official's special private gain. Although Mr. Tarrant's lawsuit is for a declaratory judgment and an injunction, he said there are monetary considerations involved, such as recovery of attorney's fees. He therefore advised Council Member Tarrant to abstain from voting on the applicants in an abundance of caution. Mr. Tarrant stated that he would not attempt to recover, nor would he accept, any fees in regard to his lawsuit. City Attorney Cuyler then noted that Council Member MacIlvaine's abstention on a Royal Poinciana vote would be acceptable because of the possibility of financial involvement; nevertheless, his abstention on attorney selection may not be appropriate. Mr. Cuyler then suggested negotiating a new contract with Roetzel & Andress, saying that this would give the Council more time to resolve its pending issues.

Regarding the aforementioned Naples Landing case, Mayor MacKenzie explained that Attorney William Povlitz had requested she meet with him to review the circumstances of her participation in the lawsuit. Because she had had inadequate time to review the record and prepare for the meeting, she requested City Attorney Cuyler to accompany her to ensure the accuracy of her information; Mr. Povlitz had voiced no objection to this. Once Council determined this to be an inappropriate use of the City Attorney; Mayor MacKenzie said she had reimbursed the City. Council Member Tarrant then stated this is equivalent of a Council Member hiring the City Attorney on a matter involving City litigation wherein there is a conflict of interest. Therefore, his being prohibited from voting on the City Attorney selection would be unfair. Council Member Galleberg however questioned the applicability of the Naples Landing lawsuit to the matter at hand. City Attorney Cuyler further added that he could only offer advice, but that Mr. Tarrant would ultimately make his own decision. He also confirmed that he believed Mr. Tarrant could work with the new City Attorney without constituting a problem. Mr. Tarrant then stated that he would recuse himself from voting on the selection of the new City Attorney. Mr. Cuyler stated that Council Member Tarrant may remain in the room and participate in the discussion.

Recess 10:32 a.m. to 10:40 a.m. It is noted for the record that all Council Members except Vice Mayor Herms were present when the meeting reconvened.

David Emerson Bruner interviewed.

Jacqueline Hubbard Robinson interviewed.

City Manager Kevin Rambosk noted a communication from Porter, Wright, Morris & Arthur to be distributed. (A copy of a legal opinion furnished by this firm pertaining to the possible conflict of interest resulting from the aforementioned lawsuit is contained in the file for this meeting in the City Clerk's Office.)

Recess: 11:45 a.m. to 12:22 p.m. It is noted for the record that all Council Members were present when the meeting reconvened. Vice Mayor Herms returned to the meeting during this recess.

Council discussed the meeting schedule for review of proposed charter amendments; a copy of the tentative meeting schedule is contained in the file for this meeting in the City Clerk's Office.

Terrence Lenick interviewed.

Recess: 1:10 p.m. to 1:20 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.

Jane Cameron Hayman interviewed.

Ronald Stetler interviewed.

Thomas Franchino interviewed.

Because the agenda specifies interviews only, Council Member Galleberg questioned whether Council could actually select a candidate. Mayor MacKenzie indicated that Council generally selects the candidate and authorizes the Mayor, City Manager, and labor attorney to conduct negotiations, with Council approving the final contract. She pointed out that the agenda itself indicates that formal action may be taken on any item discussed.

Council Member Galleberg made a motion to continue the contract with Roetzel & Andress until its expiration date because of the firm's knowledge of City affairs, its fee schedule, and because the transition between City Attorney Cuyler to Roetzel & Andress attorney Beverly Grady would be minimal. He added that he believed the City has received excellent representation and unbiased advice from this firm. Council Member Wiseman seconded the motion; however, further discussion ensued.

Vice Mayor Herms stated that his confidence in Roetzel & Andress had suffered largely due to issues relating to the height charter amendment. He added that he believed Porter, Wright, Morris & Arthur (as represented by Gary Wilson) would offer the best overall representation due to its extensive background and vast personnel, and would provide quick responses to Council. Mr. Galleberg clarified that Council had directed that the City Attorney not review the height charter amendment; however, Mr. Herms noted that Mr. Cuyler did review it during the election at the request of a Council Member and later advised against enacting an associated ordinance. He indicated that this led to his opinion that the City was not receiving unbiased representation.

Council Member MacIlvaine recommended that Council review the applicant law firms' qualifications, whether to use an in-house or outside attorney, or whether to retain a sole practitioner or a firm. He then indicated that he would prefer an outside attorney who is a member of a law firm, and urged retaining Roetzel & Andress until contract expiration citing Beverly Grady's qualifications and continuity.

Council Member Tarrant however indicated that he was disappointed with Roetzel & Andress, largely because of advice it had given with respect to Hamilton Harbor, the Wilderness Country Club annexation, and the Royal Poinciana Golf Club issues, which he said had lead to serious litigation. He therefore supported retaining Porter, Wright, Morris & Arthur. Council Member Taylor stated that she had been troubled that Mr. Cuyler had not forewarned Council of the concerns relative to the height charter amendment and voiced support for Porter, Wright because of its qualifications and because of the legal opinion it had just rendered on the potential conflict of interest in Council Member Tarrant's participation in this selection process. Council Member MacIlvaine, however, indicated reluctance in retaining Porter, Wright because it does not have a local specialist in municipal law.

Referring to the City's wastewater plant lawsuit, Council Member Tarrant stated that Roetzel & Andress had identified a Georgia firm with appropriate expertise to handle this case; however, he had discovered that this firm did not have a license to practice law in Florida. Council Member Wiseman clarified that this would not prevent a firm from acting as co-counsel or from providing legal services. She added that Roetzel & Andress is the only applicant firm that has board certified attorneys, and noted that she believed its contract price is fair, and commended both the

firm's and Attorney Cuyler's performance. Council Member Wiseman however indicated that she is troubled that Council would choose a candidate on the same day of the interviews, indicating there would be no opportunity to check references. Despite the extent of Jacqueline Hubbard Robinson's credentials, she stated that she prefers a law firm and urged retaining Roetzel & Address. City Manager Rambosk indicated that the Human Resources Department had not had sufficient time to research the candidates' information.

Public Input: None.

MOTION by Galleberg to CONTINUE THE CONTRACT WITH ROETZEL & ANDRESS UNDER THE CURRENT TERMS UNTIL ITS EXPIRATION DATE IN SEPTEMBER 2000, WITH THE UNDERSTANDING THAT BEVERLY GRADY WILL BE THE LEAD ATTORNEY; *seconded by Wiseman and carried 4-2 (Wiseman-yes, MacIlvaine-yes, Tarrant-abstain, Galleberg-yes, Herms-no, Taylor-no, MacKenzie-yes).*

Although voicing agreement with the legal opinion rendered by Porter, Wright, Council Member Tarrant stated that he would abstain because he had previously indicated that he would do so. (See Attachment 2, Form 8B Memorandum Of Voting Conflict For County, Municipal, and Other Local Public Officers.)

OPEN PUBLIC INPUT

None.

ADJOURN (3:30 p.m.)

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME FIRST NAME MIDDLE NAME <i>MacIvane, William R.</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>
MAILING ADDRESS <i>522 Pine Grove Lane</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Naples</i>	COUNTY <i>Collier</i>	NAME OF POLITICAL SUBDIVISION: <i>Naples</i>
DATE ON WHICH VOTE OCCURRED <i>4/28/00</i>		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, William R. MacIvor, hereby disclose that on 4/28/2000, 1900:

(a) A measure came or will come before my agency which (check one)

possible
☐ inured to my special private gain; or

☐ inured to the special gain of _____, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows:

Voting for a new city attorney who might
be used to defend an anti-annexation lawsuit
~~might~~ against Royal Poinciana G.C. and the
City of Naples, and believing that the
outcome of the lawsuit might affect me
financially, I (upon prior advice by Ken
Cayler) believed I should abstain.

Later information may alter future
decisions on voting on the matter
of the R/P annexation.

May 31, 2000
Date Filed

William R. MacIvor
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME FIRST NAME MIDDLE NAME <i>TARRANT REED</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS <i>175-3rd St. South</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Maple, Florida</i> COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED <i>4/28/00</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

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In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
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- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Fred Tarrant, hereby disclose that on April 28, 2000:

(a) A measure came or will come before my agency which (check one)

☒ inured to my special private gain; or

☐ inured to the special gain of _____, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows:

In light of my lawsuit for a declaratory judgement and an injunction, I am abstaining from voting on the applicants for the interim City Attorney position.

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.