



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – November 1, 2006 – 9:00 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor

Council Members:

William MacIlvaine
Gary Price, II
John Sorey, III
Penny Taylor
William Willkomm, III

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Vicki Smith, Technical Writing Specialist
Tara Norman, City Clerk
Stephen Weeks, Technology Services Director
Jessica Rosenberg, Deputy City Clerk
David Lykins, Community Services Director
Ron Wallace, Construction Mgmt. Director
Adam Benigni, Planner I
Tony McIlwain, Planner II
Robin Singer, Community Development Director
Chet Hunt, CRA Manager
Janet McCracken, Community Services Analyst
Paul Bollenback, Building Official
Ann Marie Ricardi, Finance Director
James Rivard, Fire Marshall
Willie Anthony
Michael McKellar
Vicky St. Fort
Carl Davis
Sharon Patti
Linda Cummings
Tom Ray
Elaine Hamilton
Don Wirth

Henry Kennedy
Nancy Oppenheim
Margaret Sulick
Lois Selfon
Teresa Heitmann
Linda Penniman
Sue Smith
Doug Finlay
Everett Thayer
Erika Hinson
Joann Rebeck
John Schoolmeester
Jan Hall
Lisa Garman
Heather Zurlo
Olivia Levine-Sweet
David Yehuda
Anita Yehuda
Taylor Wells
Norman Rocklin
Joseph Biasella
John Passidomo
Erin Degnan
Jim Bryant
Sharon Kenny

Kathleen Korb
Leo Salvatori
Chad Lund
Taylor Wells
Carl Erickson
Jim Smith

Matt Wiechart
Richard Yovanovich

Media:
Aisling Swift
Other interested citizens and visitors

INVOCATION AND PLEDGE OF ALLEGIANCE.....ITEM 2

Reverend Kathleen Korb, Unitarian Universalist Congregation

ANNOUNCEMENTS.....ITEM 3

Mayor Barnett proclaimed November 1, 2006, as League Club Day in honor of its 20th Anniversary.

SET AGENDA (add or remove items).....ITEM 4

MOTION by Nocera to SET THE AGENDA adding Item 20 (annexation report on Collier Perk of Commerce) and Item 21 (appointing member to Fifth Avenue South Action Committee (FASAC)), and removing from the Consent Agenda for separate discussion Items 7-f (employee attendance software) and 7-h (landscape maintenance). This motion was seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

It is noted for the record that the interview with Wafaa Assad, candidate for the FASAC, was conducted prior to Item 5 below (see Item 21).

PUBLIC COMMENT.....ITEM 5

(9:18 a.m.) **Teresa Heitmann, 2350 Forrest Lane**, thanked Utilities Director Robert Middleton for providing Aqualane Shores residents with explanations regarding the future reclaimed water system. She however asked when this project had originally come before Council, how the system was to be funded and further information on long-range planning for the system. Mayor Barnett replied that a complete chronological history of the project would be provided by City Manager Robert Lee to answer these questions. Council Member Willkomm said that although he understands that the City had been required by the Department of Environmental Protection (DEP) to install such a system, he requested that the financial logic behind the project be included within the above noted history. City Manager Lee confirmed that staff was at that time preparing a history of the project for dissemination to property owners along with the current status of this venture. Council Member Taylor requested that an explanation also be provided regarding the decision not to sell reclaimed water to Collier County as had previously been proposed by County Commissioner Fred Coyle. **Linda Penniman, 611 Portside Drive**, expressed appreciation to Natural Resources Manager Michael Bauer for making a presentation to the Presidents' Council regarding the status of water quality in Naples Bay and Moorings Bay. She proposed that an environmental impact fee be assessed to developers for use in improving water quality, saying this would be more appropriate than the proposed Public Art Fund (Item 18). **Sue Smith, 11th Avenue South**, urged the inclusion of all details regarding the reclaimed water projects in the aforementioned report to the public. **Doug Finlay, 3430 Gulf Shore Boulevard North**, stated that he generally opposes annexation but nevertheless does support the City's developing an annexation policy. He also noted that during the Pelican Bay annexation, as a member of the Community Services Advisory Board (CSAB), he had been told that adding an item to that board's agenda was not appropriate. However, a contact he had made with the Department of Community Affairs (DCA) informed him that this would have in fact been an appropriate discussion for the CSAB. However, Mr. Finlay said, he had in fact been refused a third time for this topic to be added to the CSAB agenda. He stressed that should any future

annexations take place, City advisory boards in fact have the opportunity for discussion of the matter. Mr. Finlay also noted the annual meeting of Naples Pathways Coalition on November 8, and expressed support of the US 41 (Tamiami Trail East) designation as a scenic highway. **Everett Thayer, 1690 Avion Place**, suggested the conversion of lakes on airport property to freshwater retention, questioned the proposed placement of the pathway along North Road near Avion Park, and urged completion of the improvements as quickly as possible. **Erika Hinson, 347 Central Avenue**, referenced an email which she read into the record (Attachment 1) regarding opposition of the proposed annexation of the Collier Park of Commerce.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 7-a
October 2, 2006, Workshop; and October 4, 2006, Regular Meeting as submitted.

SPECIAL EVENTS..... ITEM 7-b
1) “Jazzapolooza” – Kick off Dinner – Naples Jazz Society – Il Bellagio, Bayfront Center 11/10/06.

2) “Heart Walk” – American Heart Association – Cambier Park – 11/18/06.

RESOLUTION 06-11409.....ITEM 7-c
A RESOLUTION APPROVING A STUDENT SCHOOL YEAR TRANSPORTATION CONTRACT BETWEEN THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY AND THE CITY OF NAPLES FOR THE USE OF COUNTY SCHOOL BUSES TO TRANSPORT CHILDREN ON FIELD TRIPS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11410..... ITEM 7-d
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND FORESTRY RESOURCES, INC., FOR THE PURCHASE AND DELIVERY OF INORGANIC AND ORGANIC MULCH FOR USE IN CITY MEDIANS, RIGHTS-OF-WAY, CUL-DE-SACS AND PARKS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11411.....ITEM 7-e
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2006-07 BUDGET AND CIP TO CARRY FORWARD CERTAIN INCOMPLETE PROJECTS AND APPROPRIATE FUNDS FOR POLICE LEGAL FEES; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11412.....ITEM 7-g
A RESOLUTION APPROVING A SUPPORT SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND SUNGARD HTE, INC., TO FURNISH SOFTWARE SUPPORT AND MAINTENANCE FOR THE CITY’S FINANCIAL MANAGEMENT SYSTEM; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11413..... ITEM 7-i
A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND POST, BUCKLEY, SCHUH, AND JERNIGAN, INC. (PBS&J) TO PROVIDE PROFESSIONAL DESIGN, ENGINEERING AND PERMITTING SERVICES ASSOCIATED WITH THE DREDGING OF THE CANALS WITHIN THE EAST NAPLES BAY SPECIAL TAXING DISTRICT; AMENDING THE 2006-07 BUDGET ADOPTED BY ORDINANCE 06-11366;

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11414..... ITEM 7-j
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ARRINGTON-MARLOWE, LLC, FOR LONG TERM VISIONING FOR THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT; AMENDING THE 2006-07 BUDGET; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11415..... ITEM 7-k
A RESOLUTION APPROVING AN AMENDMENT TO A SUBRECIPIENT AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES FOR THE DISTRIBUTION OF FUNDS ISSUED UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT TO THE SUBRECIPIENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Nocera to APPROVE CONSENT AGENDA except Items 6-f and 7-h; seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

END CONSENT AGENDA

RESOLUTION 06-11416..... ITEM 7-f
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING A CONTRACT WITH ECHELON3 TECHNOLOGIES, INC., FOR THE PURCHASE AND INSTALLATION OF THE EXECUTIME TIME AND ATTENDANCE SOFTWARE AND HARDWARE SYSTEM; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:43 a.m.). Council Member Price indicated that the information provided in the supplemental packet had satisfactorily answered his questions regarding this item; he therefore moved approval.

Public Comment: (9:43 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 06-11416 as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11317..... ITEM 7-h
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND GROUND ZERO LANDSCAPING SERVICES, INC., FOR LANDSCAPE MAINTENANCE AT VARIOUS PUBLIC WORKS DEPARTMENT LOCATIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:43 a.m.). Council Member Price indicated that the information provided in the supplemental packet had satisfactorily answered his questions regarding this item; he therefore moved approval.

Public Comment: (9:44 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 06-11417 as submitted; seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Recess: 9:46 a.m. to 9:49 a.m. It is noted for the record that Item 8 was incorrectly read prior to this recess which was taken to allow staff to provide correct information. Council decided to consider Items 9 and 10 prior to Item 8 due to the aforementioned error. All Council Members were present when the meeting reconvened. It is also noted that Items 9-a and 9-b were read and considered concurrently.

ORDINANCE 06-11418.....ITEM 9-a
AN ORDINANCE DETERMINING REZONE PETITION 06-R5, REZONING THE BAYFRONT PLANNED DEVELOPMENT FROM PD, PLANNED DEVELOPMENT, TO A NEW PD, PLANNED DEVELOPMENT, IN ORDER TO PERMIT COMMERCIAL ACTIVITIES FOR EXISTING BOAT SLIPS, REPLACE AND INCREASE THE SIZE OF THE CABANA BAR, INCLUDING NEW BATHROOM FACILITIES, ADDITION OF ONE LIQUOR LICENSE, MODIFICATIONS TO PLANS FOR BUILDING 7 AND CHANGING THE HEIGHT OF BUILDING 6 FROM 40 TO 42 FEET, FOR PROPERTY LOCATED AT 401-499 BAYFRONT PLACE, MORE FULLY DESCRIBED HEREIN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

RESOLUTION 06-11419..... ITEM 9-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 06-RIS5 LOCATED AT 401-499 BAYFRONT PLACE, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Titles read by City Attorney Robert Pritt (9:49 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/familiar with the site but no contact; Price/familiar with the site and spoke with the petitioner; Nocera/spoke with the petitioner's agent; Taylor/spoke with members of the public regarding this item; and Barnett, MacIlvaine and Sorey/no additional contact. In response to Mayor Barnett's inquiry, staff indicated that no additional information regarding this item was to be presented.

Public Comment: (9:50 a.m.) None.

MOTION by Sorey to ADOPT ORDINANCE 06-11418 as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

MOTION by Sorey to APPROVE RESOLUTION 06-11419 as submitted; seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

It is noted for the record that Items 10-a and 10-b were read and considered concurrently.

ORDINANCE (Continued to 11/15/06 as a First Reading).....ITEM 10-a
AN ORDINANCE DETERMINING REZONE PETITION 06-R7 FOR PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM R3-12 TO PD, PLANNED DEVELOPMENT; APPROVING THE PLANNED DEVELOPMENT DOCUMENT FOR FOURTH AND FOURTH ASSOCIATES, LLC; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

RESOLUTION (Continued – see motion below)..... ITEM 10-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR
PETITION 06-RIS9 LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE
SOUTH AND 4TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND
PROVIDING AN EFFECTIVE DATE. Titles read by City Attorney Robert Pritt (9:51 a.m.) who recommended continuance of first reading to enable a renotification for the public hearing. He explained that rezoning petitions, including those requesting change in permitted, conditional or prohibited uses within a zoning district, require a special type of notice with a display ad in the newspaper seven days prior to the first hearing and five days prior to the second. Attorney John Passidomo, agent for the petitioner, waived comment at that time.

MOTION by Taylor to CONTINUE ITEMS 10-a AND 10-b to November 15,
2006, as a First Reading, depending upon legal advertising deadlines; seconded
by MacIlvaine and unanimously carried, all members present and voting
(MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes,
Barnett-yes).

In response to Council Member Price, City Attorney Pritt clarified that State public notice requirements must be adhered to. He also recommended, due to the quasi-judicial nature of this item, that no public comment be heard at that time. Mayor Barnett thanked all who had attended the meeting regarding the item, but reiterated that since no hearing would go forward, no public comment could be heard at that time.

Recess: 10:18 a.m. to 10:31 a.m. It is noted for the record that the same Council Members
were present when the meeting reconvened except Council Member Willkomm who
returned at 10:34 a.m.

ORDINANCE 06-11420.....ITEM 8
AN ORDINANCE APPROVING SMALL-SCALE COMPREHENSIVE PLAN
AMENDMENT PETITION 05-CPASS1 IN ORDER TO AMEND THE CITY'S FUTURE
LAND USE MAP FOR THIS PROPERTY FROM ITS CURRENT COUNTY
COMPREHENSIVE PLAN DESIGNATION OF URBAN COMMERCIAL/MIXED USE
ACTIVITY TO HIGHWAY COMMERCIAL FOR PROPERTY LOCATED AT 2616
GOODLETTE ROAD NORTH, MORE FULLY DESCRIBED HEREIN; AND
PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:11 a.m.). City Manager Robert Lee explained that a substitute resolution had been provided during the above recess. Council Member Price received concurrence from City Attorney Pritt that the item could nevertheless be heard at this time since public notice had been correct.

Public Comment: (10:33 a.m.) None.

MOTION by Sorey to ADOPT ORDINANCE 06-11420 as submitted; seconded
by Price and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes,
Taylor-yes, Willkomm-absent, Barnett-yes).

ORDINANCE 06-11421.....ITEM 11
AN ORDINANCE ADDING A NEW ARTICLE V, TRANSPORTATION
PROPORTIONATE FAIR-SHARE, TO CHAPTER 48, CONCURRENCY
MANAGEMENT PROGRAM AND MONITORING REQUIREMENTS OF THE CODE
OF ORDINANCES, CITY OF NAPLES, IN ORDER TO ALLOW FOR
PROPORTIONATE FAIR SHARE MITIGATION OF DEVELOPMENT IMPACTS ON
TRANSPORTATION CORRIDORS IN THE CITY OF NAPLES AS REQUIRED BY
THE 2005 AMENDMENTS TO FLORIDA'S GROWTH MANAGEMENT
LEGISLATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER

PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:34 a.m.).

Public Comment: (10:34 a.m.) None.

MOTION by MacIlvaine to ***ADOPT ORDINANCE 06-11421*** as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

ORDINANCE 06-11422.....ITEM 12
AN ORDINANCE RELATING TO THE FIFTH AVENUE SOUTH ACTION COMMITTEE, AMENDING SECTION 2-571 OF DIVISION 8 OF ARTICLE V, BOARDS, COMMISSIONS AND COMMITTEES OF CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF CLARIFYING THE STRUCTURE AND DUTIES OF THE FIFTH AVENUE SOUTH ACTION COMMITTEE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:34 a.m.).

Public Comment: (10:35 a.m.) **Jim Smith, 3355 Gordon Drive**, stated that in the absence of Attorney Richard Yovanovich, who has been a contributor with input regarding the drafting of this ordinance, Mr. Yovanovich had reviewed and agreed with amendments contained in this final product.

MOTION by MacIlvaine to ***ADOPT ORDINANCE 06-11422*** as submitted; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

At the request of Council Member Taylor, City Attorney Pritt enumerated the following membership of this group: 1) A member of the City Council, ex officio; 2) at least two members to be recommended by the Fifth Avenue South Association; 3) an architect; 4) a member at large, who shall be domiciled in the City; and 5) an alternate member who may be in category 2, 3, or 4 above.

RESOLUTION 06-11423.....ITEM 13
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU6 TO ALLOW FOR THE PURCHASE OF AN ADDITIONAL 20 UNITS OF RESIDENTIAL DENSITY IN THE 'D' DOWNTOWN ZONING DISTRICT AT 70 TAMiami TRAIL NORTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITION LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:37 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Price and Barnett/familiar with the site and spoke with the petitioner's agent; Nocera and MacIlvaine/familiar with the site but no contact; Taylor/familiar with the site and spoke with the petitioner's agent and members of the public; and Sorey/visited the site and spoke with the petitioner's agent. Planner Adam Benigni explained that the petitioner is requesting an additional 20 units of residential density in the "D" Downtown District. Attorney Erin Degnan, representing the petitioner, also noted that the property is located at 70 Ninth Street North, east of US41 and south of First Avenue South. She referenced exhibits depicting current site conditions and renderings of the proposed project (printed copies of which are contained in the file for this meeting in the City Clerk's Office). Ms. Degnan also stated that this project will contain a mixture of uses, including commercial office/retail space

with residential units constructed above. She said that the “D” Downtown District was created in order to allow a mixture of uses, including commercial, office, and residential; the primary function of this district, she further explained, is to promote the redevelopment of the downtown area, improving the aesthetics and physical appearance while encouraging full-time residential use. Pointing out that the residential units in this project are smaller and more affordable than those located west of US41, Ms. Degnan said that the residential components would also generate less traffic than an exclusively commercial endeavor. She also noted that the proposed purchase of the residential density by this project would be the first contribution to the Naples Downtown Public Open Space Trust Fund, which will enable the City to either acquire land, construct or reconstruct public open space in the district. Ms. Degnan said that the Design Review Board (DRB) had given preliminary approval and the Planning Advisory Board (PAB) had voted approval earlier that month. The Community Redevelopment Agency Advisory Board (CRAAB) had also approved allocated parking. This project meets all aforementioned requirements, Attorney Degnan said, and asserted that the City’s goal of a prosperous and viable downtown was being achieved; she therefore asked approval.

In response to Council Member Willkomm, Ms. Degnan explained that the petitioner would be purchasing a total of 27, on-street parking spaces at a cost of \$2,700 each, while providing 83 on-site spaces. Mr. Willkomm questioned the disparity between this cost per space and a charge of \$20,000 in other districts. Ms. Degnan stated that the other alternative would be payment in lieu of parking, which usually pertains to commercial development and which she said had been the higher cost referenced by Mr. Willkomm. City Attorney Pritt referenced Code of Ordinances, Section 58-916(a)(2)(a chart) which reflects the formula for determining parking space cost (Attachment 2).

CRA Manager Chet Hunt provided a brief history of this particular section, pointing out that it had been established in 2004 under different market conditions. He said that he had recommended removing the aforementioned chart from the Code so that cost could be set by Council resolution enabling adjustments on an as needed basis. He said he believed the intent to be to provide on-street parking at no charge. This had been extremely successful in the Fifth Avenue South area, Mr. Hunt said, the same principle had apparently been applied to the “D” Downtown District; however, due to drastic changes in market conditions, fees should be amended to reflect current conditions. He concluded that CRAAB had awarded the allocation as stated above per the Code and he therefore recommended approval of this item.

Council Member MacIlvaine concurred that the present fee schedule had been established to encourage development, but said that he also agreed that the fee schedule should be amended; nevertheless, this project should go forward based on the costs in place at this time.

Council Member Taylor however expressed concern regarding the density, which she said would be almost twice that of Bayfront, which itself is considered quite dense. Ms. Degnan explained that the two areas are zoned differently and that within the “D” Downtown District, a maximum 30 units per acre is allowed per code and this request is for fewer.

Council Member Sorey agreed with both Council Members MacIlvaine and Taylor, noting that decreased cost per residential unit can be achieved only through increasing density. Although the above costs should be reviewed, he said, there is nonetheless a need for development incentives. Mr. Sorey also urged that a Master Plan for this area be obtained, noting the need

both for green space and a parking garage before this area becomes as dense as the Fifth Avenue South Special Overlay District. Noting past conditions in the “D” Downtown District, Vice Mayor Nocera reminded Council of the need for incentives to encourage much needed development. He said that while he agreed with the comments regarding density of this project, the goal should remain in the forefront since the area had in the past been forgotten by the City. He stated that he would therefore vote approval.

Council Member Price however urged consistent monitoring of the District and cautioned that altering the development incentives in place may indeed have an adverse affect on the desired. Council Member MacIlvaine reminded Council that the overall density of the “D” Downtown District is not to exceed 12 units per acre; therefore, if several intense projects are developed, it would limit future development of other parcels. Planner Adam Benigni stated that with the approval of the 20 units under consideration, approximately 780 units remain for development in the district.

Council Member Taylor pointed out that Renaissance Village development should leave little concern for the continued development of the area where limited land remains for this purpose in the urban center of the City; therefore, she said that the intensity of this project (27.69 unites per acre) should be reconsidered. She said that her concern lies with additional traffic on Tenth Street and the interests of the neighbors; furthermore, Tenth Street has always been a pedestrian thoroughfare, Miss Taylor noted, pointing out that this project is nevertheless not affordable housing.

Ms. Degnan reiterated that the project achieves the goals and intent of the “D” Downtown District; otherwise the Code should be amended accordingly. While Miss Taylor stressed that it was within the purview of the Council to determine any increased density, Vice Mayor Nocera cautioned that fairness must prevail; saying that he believes this particular project is exactly what was envisioned when the Code was written. Miss Taylor contended, however, that the history of Fifth Avenue should not be overlooked; namely that the small, original shops had been forced out by rising rents. Council Member Price pointed out however that decreased density would in fact act to precipitate higher lease costs for small businesses.

Council Member MacIlvaine summarized that the district contains 118 acres and that an average of 12 units per acre is allowable per the Code. If a greater density is allowed to this site, then cost per unit will decrease and less intense structures will be built other places within the district. He said that he feels this developer had done exactly what was desired by the City, therefore this item should be approved.

Public Comment: (11:20 a.m.) **Willie Anthony, 559 14th Street North**, said that while he favors redevelopment, as a resident in the vicinity of the proposed project, he had reservations with regard to intensity. He therefore urged that an overall review of the redevelopment desired in the area take place. **Michael McKellar, 1586 Third Street South**, stated that he is the pastor at a church on Tenth Street, that he drives the roadway everyday, and that he supports this project. **Vicky St. Fort, 4653 Rio Poco Court**, owner of the Busy Bee and Butterfly Christian Academy on Tenth Street South, said that it was their intention is to remain open, transferring the children elsewhere, and thanked the petitioner for allowing the center to remain in the present location until the end of the school year. **Carl Davis, Tenth Street North business owner**, expressed full support of this project.

Council Member Willkomm stressed that while Council could approve this proposed density, it is not a mandatory decision. He said that he feels this project is too dense for the City of Naples therefore he could not vote approval.

Public Comment (cont.): (11:29 a.m.) **Sharon Patti, 1055 Eighth Avenue North**, Vice President of Lake Park Association, stated that the neighborhood is concerned with the amount of traffic that would be introduced onto Tenth Street upon completion of this project. Therefore, residents seek to have a traffic circle (roundabout) installed at Tenth Street and Sixth Avenue North to protect the neighborhood and she also said that parking issues already exist in the area. The reality is that this development abuts, and therefore affects, the Lake Park neighborhood, pointing out that the church on Tenth Street provides 70 additional parking spaces in the daily.

Planner Benigni clarified that, like all parking in the “D” Downtown area, he would include the below-ground parking of the development in that category. He then referenced an email from Traffic Engineer George Archibald (a copy of which is contained in the file for this meeting in the City Clerk’s Office) clarifying use of the existing alleyway egress/ingress and parking requirements, noting that Mr. Archibald had no opposition to this project with regard to traffic and that staff recommends approval.

Further discussion clarified that no parking of this development could be labeled as restricted. Council Member Sorey noted that an element of the motivation for redevelopment had been this open parking concept. Council Member Taylor cautioned that concern for parking must be addressed, especially with the escalation of redevelopment that is to come. City Attorney Pritt suggested that Council include as a condition that no restricted parking spaces be allowed, to which Ms. Degan then indicated the petitioner would agree to such a condition.

MOTION by MacIlvaine to APPROVE RESOLUTION 06-11423 amended as follows: “Section 2. ~~(If approved)~~ That this approval is subject to the following conditions: Approval by CRAAB for on-street parking allocation. No parking space may be restricted.”. This motion was seconded by Sorey and carried 5-2, all members present and voting (Sorey-yes, Price-yes, MacIlvaine-yes, Willkomm-no, Taylor-no, Nocera-yes, Barnett-yes).

Recess: 11:55 a.m. to 1:30 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Willkomm who returned at 1:31 p.m. and Council Member Taylor and Vice Mayor Nocera, who returned at 1:34 p.m.

RESOLUTION 06-11424.....ITEM 14
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU10 TO ALLOW FOR AN OUTDOOR DINING AREA WHICH DOES NOT DIRECTLY ABUT FIFTH AVENUE SOUTH AT 868 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:30 p.m.). This being a quasi-judicial proceeding, Notary Public Jessica Rosenberg administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/familiar with the site and spoke with the petitioner’s agent; Price and Barnett/visited the site and spoke with the petitioner’s agent; Nocera, Taylor and MacIlvaine/no contact; and

Sorey/visited the site and spoke with the petitioner's agent and the owner of Mango's Mangrove Café.

Planner Tony McIlwain explained that this petition is to allow an outdoor dining area adjacent to 868 Fifth Avenue South. Attorney Erin Degnan, agent for the petitioner, noted that the installation would consist of tables and chairs, and is to be in the alleyway adjacent to a building presently under construction at the aforementioned address. She explained that on September 6, 2006, Council had approved conversion of the alley to pedestrian use, and a Staff Action Committee (SAC) waiver for outdoor dining in the alley. Conversion of the alley to pedestrian use is a concept originally envisioned by planning consultant Andres Duany and implemented in the Fifth Avenue South Special Overlay District plan, Ms. Degnan said. A public right-of-way permit had been issued by the City's Engineering Division for hardscape and landscape improvement to the alley, she said, estimating this cost of approximately \$100,000 to the petitioner. The proposed location of the tables is consistent with outdoor dining throughout Fifth Avenue South. She stated that the Planning Advisory Board (PAB) had voted approval on October 11, and that the petitioner agreed to the conditions contained in the resolution, therefore she asked approval. Planner McIlwain then listed the referenced conditions (Attachment 3), noting that if outdoor heaters are desired, they must be permanent, U.L. listed, and installed per manufacturer's guidelines.

Discussion followed regarding the possibility of increased pedestrian traffic to the alley should a parking garage be constructed nearby, necessitating the revocation of the conditional use permit at a future time. Ms. Degnan pointed out that outdoor dining permits are, by their nature, conditional and that if the City would desire to amend the five-foot pedestrian passageway throughout the alley, the petitioner would request the right to be heard prior to such an amendment. Council decided that stronger language was needed within the resolution regarding this matter and the motion below was made addressing these concerns.

Public Comment: (1:49 p.m.) **Sue Smith, 11th Avenue South**, noting that she is an owner of a site nearby, cautioned Council that these outdoor dining areas, in her opinion, encroach into the public thoroughfares on Fifth Avenue South, making it difficult to transverse some areas. While having no personal objection to this particular project, she explained, as a citizen she nevertheless feels the outdoor dining areas are becoming too numerous.

MOTION by Sorey to APPROVE RESOLUTION 06-11424 amended as follows: Section 2. (If approved) That this approval is subject to the following conditions: "....4. In addition to provisions contained in Section 56-127(f)(1), or in this resolution, the City Council may amend or revoke this conditional use permit at its discretion, upon six (6) months prior notice, and opportunity for hearing prior to revocation or amendment." This motion was seconded by Price and unanimously carried, all members present and voting (Sorey-yes, Taylor-yes, Price-yes, Willkomm-yes, Nocera-yes, MacIlvaine-yes, Barnett-yes).

It is noted for the record that Items 15-a and 15-b were read and considered concurrently.

**RESOLUTION 06-11425.....ITEM 15-a
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU9 TO
ALLOW FOR THE PURCHASE OF AN ADDITIONAL 5 UNITS OF RESIDENTIAL
DENSITY IN THE 'D', DOWNTOWN ZONING DISTRICT AT 950 6TH AVENUE
NORTH, MORE FULLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK
TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE
AND AN EFFECTIVE DATE.**

RESOLUTION 06-11426..... ITEM 15-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR
PETITION 06-RIS11 LOCATED AT 950 6TH AVENUE NORTH, MORE FULLY
DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:53 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Nocera and Barnett/familiar with the site and spoke with the petitioner's agent; Price and Sorey/visited the site and spoke with the petitioner's agent; Taylor/familiar with the site and spoke with the petitioner's agent and members of the public; and MacIlvaine/familiar with the site but no contact. Planner Adam Benigni explained that this item was a request for an increase in density of five additional units per Section 58-907 of the Code of Ordinances and, if approved, would increase the units per acre for this parcel to 19.35.

Attorney Erin Degnan, agent for the petitioner, stated that the proposal is for a new mixed-use development with 12 multi-family units and 11,000 square feet of commercial space at the northern entrance to the "D" Downtown District. The request is to purchase additional density for five of the aforementioned residential units. This project promotes the goals of the district, she said, and the residential component is consistent in achieving the purpose of the mixed-use, infill development with particularly residential character in order to promote the full-time, residential use in the District. She pointed out that the commercial space is consistent with surrounding commercial use and that the project will also improve the aesthetics and physical appearance of the area. Ms. Degnan concluded by saying that the Design Review Board (DRB) had given approval of preliminary design in August, 2006, with Community Redevelopment Agency Advisory Board (CRAAB) allocating 24 on-street parking spaces in March. The Planning Advisory Board (PAB) voted approval at its October 11; she therefore requested approval of Council.

In response to Council Member Taylor, City Manager Robert Lee explained that an engineer had been hired by the City to review traffic in the area of Sixth Avenue North and Tenth Street and that the traffic circle/roundabout above referenced (see Item 13, Public Comment) will be considered with the study; that some type of traffic calming is to be used at that intersection. Miss Taylor stressed her concern regarding vehicles traveling through the single-family neighborhood to avoid this intersection.

Public Comment: (2:03 p.m.) **Teresa Heitmann, 2350 Forrest Lane**, stated that she is also a property owner in the "D" Downtown District and, as such, is excited about the proposed developments in the area but expressed concern that such issues as utilities, stormwater drainage, trash removal services and parking needs are still in need of addressing. **Sue Smith, 11th Avenue South**, questioned why changes to the fee schedule for parking spaces (as referenced in Item 13 above) had not been addressed during the recent recodification process. She also expressed concern regarding the use of rights-of-way for this increased parking when this parking might be needed at a later date for the public. Vice Mayor Nocera clarified that it is being used as an incentive for redevelopment in this area. He said that the spaces remain public, that no right is actually relinquished by the City. Council Member Sorey requested clarification of whether the interior parking spaces would be unrestricted, to which Ms. Degnan said that due to the smaller scope of this project (comparing it to Item 13 above), of the 27 on-site spaces provided, the petitioner would ask that 12 spaces be reserved for the 12 residential units to be constructed.

Further discussion followed regarding the need for amending the parking space fee structure (see Item 13 above), but Council Member Price advised caution in imposing restrictions since development would then occur elsewhere; he stressed his belief that redevelopment must take place in this area of the City and can be ignored no longer. He said that although some adjustments may be needed as the redevelopment goes forward, investors will go elsewhere if incentives are no longer given for development in the “D” Downtown District. Council Members Willkomm and MacIlvaine however expressed strong disagreement, saying that developers recognize the value and location of this area (near to Fifth Avenue South). Mr. MacIlvaine pointed out that the ordinance as drafted was correct for the market at that time, but it must now be updated to reflect current market value of these parking spaces and the properties themselves. Mayor Barnett said that he did not deem it unreasonable to label a smaller interior parking area as designated for residents who also deserve consideration.

Council Member Sorey said that previous Councils had decided to provide financial incentives to encourage redevelopment in this area to which he said he is committed; however, decisions must be made in advance such as the location of a parking garage if needed in the future. He reminded Council of the positive changes to Fifth Avenue South and the positive affect these changes have had to the City and also Collier County. Therefore, he said he would suggest additional language such as that in Item 13 above be incorporated into this resolution, but specify that no more than 12 spaces be restricted for the residential units due to the smaller nature of this project.

Prior to the following roll call a brief discussion of the building height ensued in which Ms. Degnan confirmed that this height is 42 feet to the parapet.

MOTION by Sorey to **APPROVE RESOLUTION 06-11425 (Item 15-a)** amended as follows: “~~Section 2: That this denial of a conditional use pursuant to section 46-34 of the Land Development Code is based on the following: This approval shall be subject to the following condition: No parking spaces shall be restricted, except for up to twelve (12) spaces for residential use.~~”. This motion was seconded by Price and unanimously carried, all members present and voting (Sorey-yes, Taylor-yes, Price-yes, Willkomm-yes, Nocera-yes, MacIlvaine-yes, Barnett-yes).

MOTION by Sorey to **APPROVE RESOLUTION 06-11426 (Item 15-b)** amended as follows: Title: “....LOCATED AT 950 ~~FIFTH~~ SIXTH AVENUE ~~SOUTH~~ NORTH, MORE FULLY...”~~Section 1. “....located at 950 Fifth Sixth Avenue South North is hereby...”~~“~~Section 2: That this denial of a conditional use pursuant to section 46-34 of the Land Development Code is based on the following: This approval shall be subject to the following condition: No parking spaces shall be restricted, except for up to twelve (12) spaces for residential use.~~”. This motion was seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11427.....ITEM 16
A RESOLUTION DETERMINING VARIANCE PETITION 06-V10 FROM SECTION 58-146 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES A MINIMUM 40 FOOT FRONT YARD SETBACK IN ORDER TO REDUCE THE REQUIRED FRONT YARD ALONG 4TH AVENUE NORTH FROM 40

FEET TO 20 FEET AT 373 GULF SHORE BOULEVARD NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:35 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Nocera, Barnett, Taylor and MacIlvaine/familiar with the site but no contact; Price/visited the site but no contact; and Sorey/familiar with the site, reviewed the video of the Planning Advisory Board (PAB) meeting of October 11, 2006, and spoke with surrounding neighbors. Planner Tony McIlwaine explained that the subject property is located within the R1-15 zoning district and the petitioner is requesting a reduction in the required front yard of 20 feet to facilitate a larger building envelope. He said that staff is recommending denial based upon a finding that the criteria for granting such a variance had not been met. Furthermore, he noted that the PAB had voted to recommend denial during the aforementioned meeting. City Attorney Pritt cited recent changes to the Code of Ordinances regarding variances, recommending review of the memo from Community Development Director Robin Singer, dated October 31, 2006, detailing the denial standards and staff's analysis for this petition (Attachment 4). Attorney James Bryant, agent for the petitioner, stated that he was provided with a copy of the aforementioned document and that he felt it was actually favorable to his client. In light of this document, however, Council Member Taylor expressed the desire that Planner McIlwain proceed with a review of this petition; Attorney Bryant agreed.

Attorney Bryant summarized his opinion of the criteria as follows: (1)(a) unique circumstances not created by the applicant do exist in that the subject property is located on a corner lot and 100 feet in width, substantially less than surrounding corner properties located on the Gulf of Mexico and therefore the applicant is unable to build a home of comparable size as adjacent homes; (1)(b) special conditions or circumstances do exist which are peculiar to the land which are not applicable to other land in the same neighborhood or district for the same reasons as previously stated; and (1)(c) hardship would result if this variance were not granted due to the size of the parcel and the size of any structure that could be built on the parcel prohibits the sale of the property. He therefore stated that the subject petition meets all of these requirements. He then continued to (2) of the memo, which are "Group 2" standards and explained that he felt the petition does meet all of these especially (g), the variance would enable the construction of a home similar to surrounding homes on corner lots, and (i) in that he said that this parcel had been on the market for five years due to lot size, that he knew of no other properties in the area of the Gulf of Mexico on the market for such an extended period of time. (It is noted for the record that Mr. Bryant later clarified that initially the petitioner had purchased the property to build a home but due to changes in retirement plans had built in another location in the City.)

Council Member Price commented that he felt none of the Group 1 criteria had been met and that only some, not all, in Group 2 had been met as required, to which Council Member Sorey agreed. Mr. Sorey asked whether the petitioner was aware of the parcel size and setback requirements for the subject district at the time of purchase; Attorney Bryant said that he could not answer that question. Mr. Sorey then pointed out that these conditions were however in existence when the petitioner purchased the property, therefore the criteria for this variance, especially (1)(a), had not been met. In response to Mr. Bryant, Council Member Willkomm explained that limitations established by setback requirements are existing when property is bought and that in not meeting the standards for approval, this variance should be denied. Furthermore, he said, when all standards necessary have been met for granting of a particular

variance, then and only then, may Council consider granting that variance. In summary, Mr. Bryant said that he felt this parcel to nevertheless be unique; therefore he urged approval. Mr. Willkomm responded that these conditions however existed at the time of purchase and were therefore preexisting. In response to Vice Mayor Nocera, Mr. Bryant conceded that a home could be built on the parcel as the setbacks now apply, but that the home would not be comparable to any other corner lot home located on Gulf Shore Boulevard, on the Gulf of Mexico side.

Planner McIlwaine detailed the memo (see Attachment 4) as follows: (1)(a) the setback requirements existed when the property was purchased and these are the same requirements as applied to all R1-15 zoning district parcels; (1)(b) regarding special conditions, he noted that the 100 foot width of the subject property meets the minimum requirement for the zoning district and that the total lot size is 36,000 square feet, the minimum for the district is 15,000 square feet, noting that other properties with the same configuration do exist within the R1-15 zoning district; and (1)(c) he noted that the language should have read: “The failure to grant the variance would not result in unnecessary and undue hardship to the property”; that a home could be built with a building envelope containing a home with a first floor area of 9,750 square feet. He concluded his summary with standard (2)(d), explaining that the required yards are the minimum, that staff, while it appreciates the difficulties experienced by the petitioner, could not recommend approval of this variance.

Public Comment: (3:02 p.m.) **Henry Kennedy, 498 Devil’s Lane**, stated that he feels real estate in the City and the City’s economy is investor driven.

MOTION by Taylor to DENY RESOLUTION 06-11427 as submitted; seconded by Sorey and unanimously carried, all members present and voting (MacIlwaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

ORDINANCE (First Reading).....ITEM 17
AN ORDINANCE PERTAINING TO WATERWAYS, AMENDING SECTIONS 42-5(d), 42-52, 42-53(a)(3), 42-81, 42-83(1), 42-85, 42-112, 42-113, 42-141, 42-142(a), 42-143(5), (6), (7) and (10), 42-144, 42-145, 42-175, AND 42-202(a) AND (e) OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF AMENDING RULES AND REGULATIONS FOR WATERWAYS FACILITIES AND RESOURCES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:04 p.m.). City Manager Robert Lee explained that the City is currently pursuing a permit for the operation of the two City mooring fields due to the fact that these fields, when installed, did not have the necessary permits in place. As part of this process, the City signed a Consent Order and Temporary Use Agreement with the DEP (Department of Environmental Protection) and while most of the standards have been met, he said, one of the requirements is the control of use of these mooring fields. These restrictions are the subject of this ordinance, City Manager Lee said, and informed Council that a resolution with further restrictions would be forthcoming and is also part of the aforementioned agreement. He pointed out that the most substantive change to the ordinance under consideration restricts use of the mooring field to four consecutive days, with a maximum stay of eight days in any thirty-day period. Council Member MacIlwaine requested clarification as to how a day is defined, to which Community Services Director David Lykins explained that, in keeping with marine terminology, a day is considered an overnight stay, therefore beyond any four consecutive, overnights, mooring would be restricted. City Attorney Pritt added that this

language is used throughout the ordinance with apparent DEP approval; he recommended that Council also approve the language as it stands.

Public Comment: (3:08 p.m.) None.

MOTION by ***Sorey*** to ***APPROVE THIS ORDINANCE*** at First Reading as submitted; seconded by ***Willkomm*** and unanimously carried, all members present and voting (***MacIlvaine***-yes, ***Nocera***-yes, ***Price***-yes, ***Sorey***-yes, ***Taylor***-yes, ***Willkomm***-yes, ***Barnett***-yes).

ORDINANCE (First Reading).....ITEM 18

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF NAPLES, TO ADD A NEW SECTION 46-42 TO THE LAND DEVELOPMENT CODE FOR THE PURPOSE OF ESTABLISHING A PUBLIC ART PROGRAM FOR THE DEVELOPMENT OF PUBLICLY SITED WORKS OF ART FOR NEWLY CONSTRUCTED OR RENOVATED PUBLIC AND PRIVATE BUILDINGS, PARKS, AND OTHER PUBLIC AREAS WITHIN THE CITY; ESTABLISHING A PUBLIC ART FUND; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:08 p.m.).

Community Services Director David Lykins repeated his presentation of this item which had occurred at the October 30 Workshop summarizing the change in the program's title to Dollars for Art instead of Percentage for Art, as it had been deemed too cumbersome to base the amount of participation on a percentage of the total construction cost of a project. Due to the fact that the City does not require a total construction cost as part of its permitting process or the issuance of CO's (Certificate of Occupancy), it was decided to require one dollar per square foot of construction, he said. He noted that this is the major element of this ordinance being amended from prior presentations; that public input had been received over the past two years; and although this is a new concept as far as Naples is concerned, numerous such programs have succeeded throughout the State and the country as a whole. In response to Council Member Taylor, he said that a meeting held in January 2006, to which developers had been invited, revealed support from the development community, and not just art on commercial properties, but also within private sites.

Public Comment: (3:14 p.m.) **Tom Ray, 7299 Stonegate Drive**, was not present to speak when called. **Elaine Hamilton, 2335 Tamiami Trail North**, Executive Director of the Public Arts Council, said that her organization had unanimously passed a resolution supporting this ordinance and that she felt the intent, which is to encourage developers to incorporate creative elements into projects, must be emphasized. **Don Wirth, 2425 Tarpon Road**, explained that he had had experience in another community with the inception of a public arts program, which had enjoyed a very successful outcome; he said he therefore fully supports this program. He stated that instead of viewing this proposal as a tax, he perceives it as an enhancement of property values. **Taylor Wells, Director of Naples Art Association at the von Liebig Art Center**, said that he believed, from past experience in other communities, that this program would aid in the revitalization of the City and improve the quality of life. **Sue Smith, 11th Avenue South**, agreed with the concept that art has a positive influence, but stated that she disagreed with this program and that she feels it is a tax. **Norman Rocklin, 3430 Gulf Shore Boulevard North**, member of the City's Public Arts Advisory Committee (PAAC), stressed that ~~the~~ developers would be encouraged to design their own concepts of art and reminded the public that this ordinance does not apply to residential construction.

Council Member MacIlvaine said that he believes this should remain a voluntary action on the part of the developers and that by approving this ordinance Council is imposing additional taxation upon developers.

Council Member Sorey suggested the following amendments: 1) 4th Whereas clause: "...artwork to be incorporated..." and 2) Section 1: "Sec. 46-42. Public Art. (b) ...of the City Council. based on roughly 1% of the average...". He said that he felt the fee should not be in the ordinance but elsewhere in the Code. City Attorney Pritt agreed, saying that the fee should be contained in the corresponding resolution. Mr. Sorey then moved approval, with the aforementioned amendments, adding that this is not a new concept and that he feels it to be an additional element improving the quality of life for City residents.

Council Member Willkomm stated that he however feels the ordinance to be imposing a tax, noting that the Planning Advisory Board (PAB) had voted against this ordinance and that this should go before the voters as a tax for their approval or disapproval.

Vice Mayor Nocera said that although he supports this enactment; he questioned the entity to choose the art, therefore suggesting a professional be retained. Council Member Taylor explained that what she considers stringent criteria already exist with reference to the qualifications of the artists allowed to submit proposals, pointing out that the piece is then to be reviewed by PAAC and City Council would have final approval of each piece or design. Director Lykins added that an initial selection will be made by the owner of the development and then presented to PAAC for its input before coming before Council for the final approval. Miss Taylor then pointed out that art is not just a sculpture or a painting on a wall; it could be a mosaic or bench. Mr. Sorey reminded Council that the owner of the property will be purchasing the art with the expectation that it will increase in value and therefore this could not be considered a tax; the only time the fund would receive payment occurs for smaller developments or if the developer chooses not to select the art themselves.

Council Member Price concluded the discussion by saying that he feels art makes the world a better place, especially for the future generations; therefore, he supports this ordinance although he personally does not want to choose the art.

MOTION by Sorey to **APPROVE THIS ORDINANCE** at First Reading amended as follows: 4th Whereas "...artwork to be incorporated..." Section 1: "Sec.46-42.Public Art. (b).....of the city council. based on roughly 1% of the average...". This motion was seconded by Taylor and carried 5-2 all members present and voting (Willkomm-no, Nocera-yes, MacIlvaine-no, Taylor-yes, Price-yes, Sorey-yes, Barnett-yes).

RESOLUTION (Added Item).....ITEM 20
A RESOLUTION DIRECTING THE CITY MANAGER, ON BEHALF OF THE NAPLES CITY COUNCIL, TO FILE A COPY OF THE URBAN SERVICES REPORT WITH THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY; DIRECTING THE CITY MANAGER TO MAIL WRITTEN NOTICE TO EACH PERSON WHO RESIDES OR OWNS PROPERTY WITHIN THE AREA PROPOSED TO BE ANNEXED REGARDING THE COLLIER PARK OF COMMERCE ANNEXATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:43 p.m.). City Manager Robert Lee indicated that in response to that week's workshop (October 30), this item had been added to the agenda for discussion and to enable additional requested information to be provided. (It is noted for the record that copies of this information in contained in the file for this meeting in the City Clerk's Office.) This forum will allow the petitioners to speak before

Council. At that time City Attorney Pritt explained that this was not to be a hearing regarding the actual annexation and therefore was legislative in nature.

Attorney Leo Salvatori, representing the Collier Park of Commerce (CPOC) Property Owner's Association, noted that he would not be addressing the annexation itself, but rather the transmission of the Urban Services Report (USR) regarding CPOC to Collier County Board of County Commissioners. He then reviewed the information contained in the memorandum to Council dated October 31, 2006 (Attachment 5), adding that Collier County had in spring of 2005 been involved in the initial discussions of the CPOC regarding a possible petition for annexation into the City by virtue of the fact that Collier County owns 11% of the developed property. In June of 2005, County Manager Jim Mudd had advised that the County would not object nor oppose the annexation.

Chad Lund, Vice President of the CPOC Property Owner's Association, addressed financial aspects, which are also contained in the above referenced memo (see Attachment 5). He said that he considered the CPOC one of the finest business parks of its kind within the State which he attributed to the Association's strong policing powers, especially relative to maintenance of the trees, landscaping and drainage easements. Mr. Lund next addressed the roadway within the subdivision, indicating that the CPOC owners had proposed to provide \$175,000 to fund resurfacing, with the work to cost approximately \$160,000; this project is expected to withstand up to ten years of vehicular use before this need would arise again.

Council Member Willkomm questioned the assertion that CPOC is contiguous to Naples, that it may abut the airport but not the City proper. Mr. Lund responded that the CPOC shares the same utilities and his understanding is that the abutment to the airport property (City owned) does in fact make it contiguous to the City. He added that with the location of CPOC, the fact that it will not actually impact the existing roadways of the City should be considered advantageous and beneficial.

In response to Council Member Price, Mr. Lund explained that deed restrictions afforded the property owners' association the right to mandate design standards and some leasing restrictions (or right of first refusal) would be retained by the association, such as Port Royal restricts such things as standing seam roofs, which he said he believes the City otherwise allows. Council Member Price stated that, with annexation, he had calculated \$552,000 would be paid to the East Naples Fire District over the first four years. Mr. Lund also cited the following considerations: no homesteading would be involved since the properties are commercial and the value of the properties will continue to increase; and as far as long term benefits, residential properties contribute eighty cents on each dollar of taxation while commercial contributes \$1.20. He further noted that 20 acres are presently undeveloped and will eventually contribute \$170,000 in impact fees as well as approximately \$165,000 worth of additional annual revenue. Therefore, Mr. Lund concluded that the long term benefits outweigh the short term effects.

Finance Director Ann Marie Ricardi pointed out that the total value of the properties under discussion is \$81.1 million, referencing the supplemental information provided to Council for that meeting (Attachment 6). Ms. Ricardi also responded to Council Member Taylor, explaining that the total costs presented do factor in certain variables such as possible unforeseen expenses regarding the lake within the complex, for which an additional \$20,000 had been allotted. Director Ricardi also clarified that infrastructure is in place for the undeveloped properties so

that no cost would be incurred by the City when they do develop. Further discussion followed of the aforementioned figures presented involved those representing cumulative changes; which Ms. Ricardi pointed out that by year ten, following the proposed annexation, all funding by the City would be returned and a positive amount in this category realized; by year 20, the City would have seen \$1.5 million in revenues. Ms. Ricardi added in response to Council Member Price that, the difference in assumptions in the supplement and the USR is that in the supplement she had factored in development of the vacant 20 acres; two in year three and two in year six following annexation. Additionally she said that presently CPOC contracts its waste removal but that the City would assume these services within a certain prescribed timeframe.

Public Comment: (4:15 p.m.) **Lois Selfon, 71 12th Avenue South**, cautioned against any further annexation and urged City Council to maintain a good working relationship with the Collier County Board of County Commissioners, referencing a conversation she reported took place wherein a Council Member supposedly said that County children are not to be encouraged to use City facilities. Mayor Barnett responded by saying that above comments from the petitioners indicated that the County would have no objection to the annexation should it go forward. He took issue with Ms. Selfon's comments regarding the purported quote of a Council Member to the effect that County children are not welcome in City parks; this, he said, could not have been correct. City Manager Lee, in response to a request from Council Member Price, explained that though the process of annexation is currently being reviewed by Council for amendment, Council had wished to review the USR before it was transmitted to Collier County. He further clarified that approval of the resolution currently before the Council does not constitute an approval of annexation, which would entail two readings of an ordinance and public hearings. The first possible reading of such an ordinance could be scheduled would be in December. **Margaret Sulick, 3295 Fort Charles Drive**, stated that annexation should not represent a cost the taxpayers of the City, and she also questioned the advisability of expanding the City without public input. She also pointed out that the Internet contained a notation that, the CPOC is in the process of being annexed into the City of Naples which was purported to dramatically ease the process being encounter in obtaining building permits. She said that she strongly objected to this comment appearing in conjunction with CPOC property. She also said that the City should benefit from annexation, other than fiscally, and urged completion of the annexation policy and process discussions before any further additions to City territory are contemplated.

It is noted for the record that Mayor Barnett left the meeting at 4:27 p.m.

Public Comment (cont.) (4:27 p.m.) **Nancy Oppenheim, 968 Fifth Street South**, urged careful review of fiscal impacts and recommended that the City develop its applicable policies and procedures before any further annexation is considered; stating that she feels residents wish for Naples to remain a small city. City Manager Lee referred to the October 30 workshop wherein the above referenced annexation procedure had been discussed and that corresponding resolutions would be forthcoming at the next City Council regular meeting. He pointed out that one of the recommendations had been that any proposed annexation be initially brought before Council prior to staff developing an USR so as to enable Council to determine its interest. Council Member Sorey explained that the actual annexation policy would be developed during the upcoming visioning process, which will include voluminous public discussion in the coming year. Council Member Willkomm stated that he felt no annexation should be considered until policy formulation is complete and procedures in place. Vice Mayor Nocera noted that annexation had always been voluntary, that a subject area must first approach the City. **Henry Kennedy, 498 Devil's Lane**, took issue with what he characterized as the lack of notification of annexation discussions, referencing the October 30 agenda wherein no mention of annexation was made in regard to the CPOC item. In further response to questioning by Mr. Kennedy,

Finance Director Ricardi clarified that no increased burden upon taxpayers, nor fiscal deficit, would be realized if annexation of CPOC should go forward. Mr. Kennedy further expressed the belief that there is no potential for affordable housing being constructed within the CPOC area, that the owners of the existing structures would in fact not allow it. Council Member Price noted that the Council at that point was determining whether to go forward with the process of considering the annexation of CPOC; Mr. Kennedy recommended that the process be halted until sufficient public input was provided for and policies and procedures in place to guide the Council. Mr. Price agreed with the need to establish policies and with the importance of public input.

Council Member MacIlvaine said that his concerns regarding a financial cost to City taxpayers had been allayed by additional information provided by Finance Director Ricardi, and that he felt the USR should therefore be transmitted to Collier County. Council Member Taylor disagreed, expressing the belief that annexation policies and procedures should first be finalized, including obtaining public input; therefore, she said she would not support transmitting the USR at that time. Council Member Willkomm said that he strongly agreed with Miss Taylor. Council Member Price explained that he feels that CPOC would be an asset to the City, but that annexation should be considered at some time in the future. He reference Chad Lund's prior comments regarding the CPOC retaining certain policing rights, saying that this should have been previously made known to Council and should be discussed prior to a USR release.

Council Member Sorey, however, took the position that an annexation policy in fact exists and that although changes had been discussed, none had been made regarding voluntary annexation. He also referred to the visioning process which had been delayed due to Council's desire for maximum public input; however, he reminded Council that property owners currently have the right to petition for annexation, necessitating a Council decision as to whether to move forward. Therefore, he said he would move approval to transmit the CPOC USR to Collier County, although annexation itself would be considered at a later date.

MOTION by Sorey to APPROVE THIS RESOLUTION as submitted; seconded by MacIlvaine and failed 3-3 (MacIlvaine-yes, Nocera-yes, Price-no, Sorey-yes, Taylor-no, Willkomm-no, Barnett-absent).

Following the above tie vote, City Attorney Robert Pritt read into the record the reconsideration policy (Resolution 95-7397, a copy of which is contained in the file for this meeting in the City Clerk's Office). He clarified that, since a tie had occurred, any Council Member participating in the aforementioned vote would be empowered to request a reconsideration. City Manger Lee requested clarification of whether further staff time would be authorized on this matter, and Council determined that no further staff time should be dedicated to this annexation. Vice Mayor Nocera urged public comment to enable Council Members to consider whether a reconsideration should take place at a later date. City Attorney Pritt noted that Collier County had transmitted to the City an initiating resolution regarding an interlocal boundaries service agreement, which should be addressed by the November 14, 2006, deadline. Council Member Sorey suggested that this be considered at the next workshop (November 13) and that a special meeting be called to take action on that mater; he also pointed out that reconsideration of this item must be presented at the next regular meeting (November 15).

**RESOLUTION 06-11428.....ITEM 21
A RESOLUTION APPOINTING ONE MEMBER TO THE FIFTH AVENUE SOUTH
ACTION COMMITTEE FOR AN INTERIM PERIOD, COMMENCING NOVEMBER 1,
2006, AND EXPIRING MAY 31, 2007. Title read by City Attorney Robert Pritt (5:01 p.m.).**

Public Comment: (5:02 p.m.) None.

MOTION by Willkomm to NOMINATE Wafaa Assaad to the Fifth Avenue South Action Committee; carried 5-0 (Willkomm-yes, Price-absent, Nocera-yes, Taylor-yes, MacIlvaine-yes, Sorey-yes, Barnett-absent).

It is noted for the record that Council decided to consider Item 6 prior to Item 19 following a brief recess.

Recess: 5:04 p.m. to 5:19 p.m. It is noted for the record that the same Council Members were present except Council Member Taylor who arrived at 5:31 p.m., Mayor Barnett returning later in the meeting.

Public Comment: (5:20 p.m.) Joe Biasella, no address provided, commended the appointment of Police Chief Victor Morales. He also expressed concern with what he depicted as the increasingly inappropriate nature of anonymous comments allowed by the Naples Daily News online blog. He said that Council should consider responding to this situation in some manner. Vice Mayor Nocera however urged the public to contact the Naples Daily News since the Council would have no power in this regard.

RESOLUTION 06-11430.....ITEM 6
A RESOLUTION OF THE NAPLES CITY COUNCIL, SITTING AS THE CITY OF NAPLES BOARD OF APPEALS, DETERMINING APPEAL OF JAMES D. WOODY, ERICKSON ASSOCIATES, LLC, FROM THE ADMINISTRATIVE DECISIONS OF THE BUILDING OFFICIAL AND THE FIRE MARSHAL REGARDING NECESSITY OF BUILDING AN AIRCRAFT HANGAR IN CONFORMANCE WITH NFPA 409 FIRE SUPPRESSION REQUIREMENTS, CONCERNING THE ALLEN HANGAR PROJECT AT 300 FREEDOM WAY, NAPLES, FLORIDA, PERMIT NO. 501760; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:26 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. Ex parte disclosures indicated that none of the Council Members present had received any contact with reference to this matter.

Building Official Paul Bollenback explained that, as contained in the appeal application, (a copy is contained in the file for this meeting in the City Clerk's Office) consideration of a conflict between the Florida Building Code (FBC) and the National Fire Protection Code (NFPC) is being requested regarding the construction of the Allen Hangar, an aircraft facility to be located at 300 Freedom Way in the City of Naples (Naples Municipal Airport). Mr. Bollenback said that as a City official, he enforces the FBC and Fire Marshall James Rivard enforces the NFPC.

Mr. Bollenback said that being considered a Group II hangar is due to the square footage, it must be equipped with a foam type fire suppression system pursuant to National Fire Protection Agency (NFPA 409) standards. The applicant had however taken the position that the FBC (Section 411.7.7) contains an exception which in effect waives this requirement for a Group II hangar, described as one which is used for private aircraft and in which no major maintenance or overhaul is to be provided. Mr. Bollenback noted that although the FBC contains the aforementioned exception, the NFPC clearly imposes the requirement; in the case of a conflict regarding life safety issues, the most stringent regulatory statutes prevail (FBC Sec. 553.73).

Carl Erickson of Erickson Associates, LLC, designer of the subject hangar, stated that he has always adhered to the most stringent requirements but that in this instance a conflict in fact does not exist, that in the FBC there is a clearly stated exception (Attachment 7, Summary of Facts). Both the owner and insurer had deemed that the building would not contain a foam type

suppression system, City permitting having been received in October, 2005, he said. Mr. Erickson pointed out that not only had pre-application meetings with City staff been held, but the required inspections had been conducted during construction with no objections being raised regarding the lack of this particular type of fire suppression system until approximately two months prior to completion of the project. He stressed his concurrence that, as a common practice, the most restrictive of requirements should be met, but that a clearly stated exception for private aircraft storage was in place with reference to a hangar where no major repairs or maintenance would take place. He therefore urged that his client's appeal be granted.

Matt Wekkers, TLC Engineers for Architects, designer of the sprinkler system for the hangar, explained that foam fire suppression systems are designed for control of property damage in the case of fire, that it is in fact not intended as a life safety application. He pointed out that this requirement could be traced back to the International Building Code (IBC) from which the FBC adopted these requirements; noting that approximately 15 years ago the IBC incorporated the above referenced exception due to the high cost of the foam suppression systems. He stressed that the exception applies only to Group II hangars, that the intent of the IBC in requiring the foam system was to suppress fires that would come into contact with diesel fuel. If no major repairs or maintenance take place within the hangar, then the need for the system is moot, he explained. Mr. Wekkers pointed out that a sprinkler system does indeed exist within the structure in question so that, in the case of a fire, persons would be able to exit the building safely. The foam system would merely aid in the protection of the aircraft and building. In response to Vice Mayor Nocera, he explained that the hangar is constructed of concrete and that a foam system, if installed, would consist of a chemical agent contained in a storage tank. Water would then be mixed with the chemical and disbursed to what he referred to as foam generators, adding that this basically produces a bath of suds from above which, in approximately a ten-minute period, is three feet in depth, although the aforementioned sprinklers would also be in operation. Mr. Wekkers further explained that the purpose of the foam is to cool and smother the fire; that estimates for installation of the system in this structure are \$450,000.

In response to Council Member Price, Mr. Wekkers further explained that a Group II hangar is a classification based on size and content of construction materials; he then read into the record the exception found in FBC 411.7.7: "Group II hangars storing private aircraft without major maintenance or overhaul are exempt from foam suppression requirements."

City Attorney Pritt noted that the FBC and the NFP are Florida Statutes and that they are also incorporated in the City's Code of Ordinances, therefore making them mandatory. He said that his interpretation of this matter is that the applicant believes that no conflict between the FBC and NFPC exists, therefore the exception would be applicable; however, staff purports that a conflict does exist and that the most stringent fire safety requirements would therefore apply, necessitating the installation of the foam type suppressant system. Mr. Erickson further explained that in FBC 411.7.7, and also in the FBC 412.2.6., NFPA 409 is actually cited, therefore no conflict could exist (see Attachment 7).

Building Official Bollenback reiterated that both he and Fire Marshall Rivard disagree with the above premise regarding life safety and the foam suppressant system, pointing out that the foam does provide for personal safety along with decreasing property damage. Fire Marshall Rivard then read into the record NFPA 409, the definition of an aircraft hangar: "A building or other structure inside any part of which aircraft are housed or stored and which aircraft might undergo

service, repairs or alterations.” He explained that NFPA 409 contains the minimum requirements for the proper construction of hangars and does not contain the exception noted in the FBC; he further said that he had been on contact with the NFPA and the State Fire Marshall and both had agreed with his opinion that a conflict does exist. Therefore, the more stringent requirement should be followed and the foam suppressant system be installed. Fire Marshall Rivard also distinguished a Group II hangar from a Group III hangar, which he said does not require a foam system, the Group III hangar being one that is no greater than 12,000 square feet in size; the subject hangar is 18,000 square feet. He also expressed concern regarding fuel fires because planes always contain some fuel, pointing out that the safety of first responders must be considered as well.

Council Member Price noted the letter from Arthur Allen, owner of the subject hangar, in which confirmation is given that no major maintenance or overhaul will take place within the hangar, and that it is to be used solely to store his private aircraft. In response to Council Member Price, City Attorney Pritt explained should the Board allow the exception in this case, its decision is covered by sovereign immunity and would not accrue liability in the event of a fire.

Building Official Bollenback also noted that, regardless of the stage of construction, a violation must be remedied before a CO (Certificate of Occupancy) can be issued. Council Member Willkomm pointed out that the applicant had however submitted design and building plans, that these plans had been approved by City staff and therefore the structure had been built accordingly. However, late in the construction process, the requirement for a foam suppression system is being added as a condition for the CO, Mr. Willkomm said. In response to Council Member Sorey, Mr. Bollenback said that a wet pipe sprinkler system only had been contained in the building plans, and that these plans should not have been approved. Council Member Price stated that he nevertheless felt that the exception would supercede and no foam system should be mandated in this instance.

City Attorney Pritt then directed the Board to his memorandum dated October 30, 2006 (Attachment 8, Page 3) in which he pointed out that in applying FBC Sec. 553.73(9)(a), it appears that the Building Official and the Fire Marshall have resolved any conflict in favor of the most strict code (NFPA 409) requiring foam. He continued regarding FBC Sec. 553.53(9)(b), citing the following: “Any decision made by the local fire official and the local building official may be appealed to a local administrative board (City Council acting as the Board of Appeals) designated by the municipality, county, or special district having fire safety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the FBC or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable.” In summation, he said that this means that the Council, sitting as the Board of Appeals, must find in favor of the foam requirement unless it finds such a requirement to be unreasonable. Council Member Sorey further noted provision (3) Option to appoint Special Master (Attachment 8, Page 2), pointing out that due to a lack of petitions before the Board of Appeals, Council had been assigned the function should such a hearing become necessary. In addition, the Special Master option was incorporated into the legislation because it was recognized that conditions could exist wherein a professional opinion might become necessary. Council Member Willkomm however said that he did not feel it necessary to invoke such an option in this instance.

Discussion followed indicating that the insurance company had asked that the foam system not be installed due to its potential for causing corrosion which would damage the aircraft stored within the structure; Fire Marshall Rivard conceded that this was indeed a possibility, depending on the type of chemical used to produce the foam.

City Attorney Pritt explained to the Board that it must base its decision on the facts presented and that there are provision for review by the State depending on the outcome of this hearing. In response to Council Member Taylor, he also noted that this appeal contains a 30-day timeframe in which to be resolved.

Pursuant to City Attorney Pritt's memo (Attachment 8, Page3, last sentence), Council Member Willkomm said that he found requiring installation of the foam suppression system to be unreasonable due to the following: 1) the cost involved after the fact, the project being nearly at completion; and 2) in concurrence with Council Member Price, the exception should supercede all other provisions.

During his closing statements, Architect Carl Erickson pointed out that the hangar does have a wet pipe sprinkler system and the aircraft, fueled or unfueled, cannot, pursuant to manufacturer's warranty, be stored with more than 500 pounds which is a small amount relative to what the aircraft's fuel capacity. He explained that the aircraft is actually fueled for flight outside the hangar. He also clarified that the insurance company's concern is largely due to the possibility of accidental discharge of the foam suppression system and the damage that would be sustained to the aircraft. Mr. Erickson concluded that the decision before the Board is whether a conflict or a clearly stated exception exists regarding the installation of the foam suppressant system in the subject Group II hangar. In response to further questioning from the Board, he verified that the owner of the subject hangar and the aircraft to be stored therein had not wanted the foam suppression system from the inception of the project, including the design stage, and that it had not been included in the approved building plans.

It is noted for the record that Mayor Barnett returned to the meeting at 6:28 p.m.

Mr. Wekker interjected at that time that if the hangar were to be reconstructed by installing dry wall, then the foam system would not be a requirement, but this would cost more than the aforementioned \$450,000 for the foam; therefore this appeal had been brought forward. Fire Marshall Rivard concurred, adding that if this situation had come to his attention earlier in the construction process, he would have recommended this as a solution. Fire Marshall Rivard and Building Official Bollenback further pointed out that as of October 1, 2006, the fire review is included with the initial stages of the building permit review process, therefore, a situation such as this one would most likely be avoided in the future

MOTION by Price to APPROVE RESOLUTION 06-11430 REVERSING DECISION; *seconded by Willkomm and unanimously carried all members present and voting (Taylor-yes, Willkomm-yes, Sorey-yes, Nocera-yes, MacIlvaine-yes, Price-yes, Barnett-yes).*

EXECUTIVE SESSION.....ITEM 19
(6:36 p.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to domestic security issues.

Executive Session: 6:36 p.m. to 6:48 p.m. It is noted for the record that all Council Members were present when the meeting reconvened. There was no action taken on this item when the meeting reconvened.

CORRESPONDENCE AND COMMUNICATIONS.....

Vice Mayor Nocera noted that the City Manager had reported 280 trash containers not in compliance with recently enacted enclosure requirements and City Manager Robert Lee also noted that approximately two dozen requests for exceptions had been received. Vice Mayor Nocera also commended Mayor Barnett on his recent response to County Commissioner Fred Coyle's correspondence regarding County disbursements to the City. Council Member Taylor asked for the next workshop agenda to include a discussion of any items to be provided to State Representative Mike Davis during his upcoming visit to City Council. Miss Taylor also expressed concern with the October 31 memo from CRA Manager Chet Hunt regarding communication from Fifth Avenue South property owner Jim Smith (a copy is contained in the file for this meeting in the City Clerk's Office), suggesting that additional dialog with Mr. Smith however take place. Council decided to move forward with additional requests for proposals (RFP's) for the Eighth Street South and Sixth Avenue parking garage project, but to also heed Miss Taylor's suggestion regarding further communication with Mr. Smith. Miss Taylor also suggested that Council consider at its next meeting, a discussion of the "D" Downtown zoning ordinance and clarify its vision for the Tenth Street area, such as the number of units per acre to be allowed, location for a parking garage, green space, and the cost per parking space. She said that she felt there is however inadequate time for development of a Master Plan, to which Council Member Sorey agreed. Council Member MacIlvaine requested a reconsideration of Item 20 (see above) and City Attorney Robert Pritt reiterated that due to the tie vote, the Council must at the next meeting determine whether to reconsider the matter. Mayor Barnett expressed disagreement with a recent Naples Daily News guest commentary by Council Member Taylor regarding the City's annexation policy, expressing the view that the map presented at a prior meeting by staff had merely represented areas which might be considered for annexation; the policy to date had not changed whatsoever, he added.

ADJOURN.....
7:10 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 12/6/06

Transcription of email from Erika Hinson, which she read into the record during public comment on 11/01/06:

“Dear City Council Members:

After working all day I had to come home to watch City Council on TVO and I was distressed. My husband and I finally took a two week vacation, returning last night, which was Sunday, only to be alerted by this mornings Naples Daily News about the annexation of Collier Park of Commerce. Truly I thought after the Pelican Bay annexation attempt City Council would realize that we, the citizens of Naples, want to decide what we, as a City, want to be. Most people have their schedules a week in advance, whether its work, tennis, golf, boating, or any other function, it takes more than two days notice to change a schedule and spend an entire day to attend City Council. Most Council meetings I attend you say that you are all glad when citizens appear before you to express our opinion. Currently, most business owners are gearing up for an early starting season, homesteaders are coming back opening up their homes, and some of us are out campaigning for next week’s elections, all distractions from the current City business. After the Pelican Bay annexation issue I thought the City would be more cautious and judicious about jumping into any annexation issues. This parcel of land isn’t even accessible to us without going out of the County, out of the City limits. It is only commercial? How will it change our demographics? Why take on new parcels that are not contiguous? How much will it cost and why now? What is the goal? How big do we really want to be? What do we want to look like when we look in the City mirror? Please slow down. Is the City in financial ruin as intimated the other day when it wasn’t when Pelican Bay wanted in? What has changed? Please step back, slow down.”

ZONING

§ 58-916

Sec. 58-916. Standards for on-street parking.

(a) On-street parking may be allocated to meet the required parking for private property that is 100,000 square feet or less if the following standards are met:

- (1) The district is divided into 2 geographic areas: north of Central Avenue and south of Central Avenue. The on-street parking must be located in the same geographic area as the private property.
- (2) On-street parking allocation is based upon the following requirements, including a payment for each space allocated from the parking pool. (Fees are effective as of the date of the ordinance from which this division is derived, and effective October 1, 2004, and every October 1 thereafter, the fee shall increase at a rate of 5 percent.)

<i>Size of Land Parcel (square feet)</i>	<i>On-Street Per-Space Payment</i>	<i>% Allowable of Required Parking</i>
0 to 15,000	0	100%
15,001 to 30,000	0	50%
30,001 to 60,000	\$2,500.00	25%
60,001 to 100,000	\$5,000.00	15%
100,001 and above	Not applicable	0%

- (3) The payment of the per-space fee shall be made to the city Parking Trust Fund.
- (4) Once an allocation of parking to a private property owner for new construction is approved, the owner has 1 year to obtain a building permit. If a building permit is not obtained within that timeframe, the parking shall be available to any property owner within that geographic area.
- (5) Bed and breakfast inns may not utilize on-street parking to meet parking requirements.

DEPARTMENTAL REVIEW

Name of Reviewer: F.M. James Roward
Date: Sept. 21, 2006
Fire Department
Location:

Petition No. 06-CU11 (CAMBER PLACE) (06.00030119)
Petitioner: FB DEVELOPMENTS

868 5TH AVE S

CITY

PLACE AN X IN THE TEXT BOX BESIDE THE APPLICABLE STATEMENT:

☐

Not applicable to this department.

☐

No objection to request as submitted.

☒

Recommend conditional approval with stipulations as follows:

Conditional use to allow outdoor dining consisting of six tables with four seats per table is approved by this department with stipulations.

Outdoor dining on a public way that also serves as the means of egress for residential occupancies must be monitored to assure paths of egress remain open.

No furnishings, decorations, or other objects shall obstruct exits, access thereto, egress therefrom, or visibility thereof. [101-7-1.10.2.1]

Where the AHJ finds the required path of travel to be obstructed by furniture or other movable objects, the authority shall be permitted to require that such objects be secured out of the way or shall be permitted to require that railings or other permanent barriers be installed to protect the path of travel against encroachment. [161-7.1 10.2.2]

Another concern in outdoor dining areas is the use of "Outdoor Patio Heaters". Patio heaters have been restricted in another area similar to this use. The reasoning behind this is that code prohibits use of heating devices within 10 feet of any structure and the propane cylinders are prohibited in means of egress.

This department suggests that if outdoor heaters are needed, permanent L.L. Listed heaters installed as per manufacturer's recommendation be used.

☐

Recommend denial for the following reasons:

Comments:

TO: Dr. Robert Lee, City Manager
THROUGH: Robin Singer, Community Development Director
FROM: Tony D. McIlwain, Planner II
DATE: October 31, 2006
SUBJECT: Variance Petition 06-V10 - Agenda Item 16

On October 18, 2006 City Council approved the second reading of ordinance 06-11408 pertaining to variances. This ordinance established new text and standards for approval in section 46-37 of the Land Development Code. Pursuant to the City Attorney's request, Planning staff has reviewed variance petition 06-V10 and applied the new variance criteria to the petitioner's application. Below is an analysis of the new standards for approval and how these standards relate to the variance request (staff's analysis is in bold text).

Standards for approval. In order to approve a variance, with or without conditions, city council shall find, based upon substantial competent evidence, the following:

(1) That at least 2 of the following Group 1 standards have been met:

a. The plight of the applicant is due to unique circumstances not created by the applicant, an agent of the applicant or a predecessor in title of the applicant;

The plight of the applicant is that the subject property has three front yards and one side yard. This has not been self-created. Rather, the yard determination for this parcel is a result of language in Code Section 44-8 that defines a front yard as a yard which abuts a street or the gulf. This property has a front yard along Gulf Shore Boulevard North, Fourth Avenue North and the Gulf of Mexico. The southern boundary of the property is a side yard as defined by Code section 44-8. In this respect there are also no unique circumstances for this property as the yard designations are consistent with the definitions set forth in section 44-8 of the Land Development Code.

b. Special conditions or circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same neighborhood or district;

There are no special conditions or circumstances that are peculiar to this property. The subject property measures at 100' x 360' for a total of 36,000 square feet with 100' in width; both of these criteria meet the minimal standards for the R1-15 zoning district of 100' lot width and 15,000 square feet in lot area. Additionally, there are other properties in the vicinity that share the same yard configuration of three fronts and one side such as this property. They are located at 425 Gulf Shore Boulevard North, which is directly across the street from the subject property, 21 Gulf Shore Boulevard North, 63 Gulf Shore Boulevard North and 2 Gulf Shore Boulevard South.

NOT
c. The failure to grant the variance would result in unnecessary and undue hardship to the property;

NOT
Failure to grant the variance would result in unnecessary and undue hardship to the property. The zoning does not prohibit the building of a home on the site. Based on the square feet of the parcel, a home could be constructed that has 9,750 square feet of building area on the first floor within a building envelope of 15,400 square feet. Therefore, the subject parcel is large enough to accommodate a home that meets the minimum floor area (2,000 square feet for a two-story building) in the R1-15 zoning district.

(2) That all of the following Group 2 standards have been met:

a. The variance does not permit the establishment or enlargement of any use or structure which is not permitted in the district in which the variance is requested.
This request would not violate this standard.

b. The variance is the minimum variance that will make possible the reasonable use of the building, structure, or service system.
The variance is for a reduction of 20 feet from the required front yard as established in section 58-146 of the Land Development Code. There is staff analysis to support that no variance is necessary to build a home on the property.

c. The variance will promote, or will not be inimical to, the health, safety and welfare of the community.
There is no evidence to suggest that granting the variance will be injurious or detrimental to the health, safety and welfare of the community.

d. The variance will be consistent with and in harmony with the general intent and purpose of this land development code:
The variance will not be consistent with or in harmony with the intent of the Land Development Code. Required yards are the minimum standards as enumerated in the zoning provisions of the Land Development Code. Additionally, Code section 58-146(4) allows for a reduction to provide relief to properties that have more than one front yard.

e. The variance will not be inconsistent with the comprehensive plan;
The variance will be consistent with the Comprehensive Plan, as this property will remain a single-family site.

f. The variance is the most practical or logical solution to the need for relaxation of the literal requirements of this land development code;
The variance is not the most practical or logical remedy for this property. An exploration of different architectural vernacular may allow a home to be designed that will allow frontal views of the Gulf of Mexico.

g. The granting of the variance will achieve equal or greater aesthetic character than a literal interpretation of this land development code would otherwise produce;
Aesthetic character is subjective, however, while the variance will allow more frontage along the Gulf and Gulf Shore Boulevard North, it will also allow a proposed home to encroach 20 feet closer to 4th Avenue North.

h. The variance will not be injurious to the surrounding neighborhood or adjacent properties.
There is no evidence to suggest that approving the variance along 4th Avenue North will be injurious to adjacent properties.

i. The failure to grant the variance would deprive the owner of the reasonable use of property;
There is no evidence to suggest that the owner cannot enjoy reasonable use of this property.

COLLIER PARK OF COMMERCE
PROPERTY OWNER'S ASSOCIATION, INC.

Memorandum

Date: October 31, 2006

To: Mayor Bill Burnett
City of Naples

From: Mr. T. Chadwick Lund, as Vice President of
Collier Park of Commerce Property Owner's Association, Inc.

Copy: Dr. Robert E. Lee, Ms. Ann Marie S. Ricardi, and Ms. Robin Singer

Subject: Collier Park of Commerce Annexation Petition

Thank you again for your time wherein we discussed our pending Annexation Petition. Points that we would like to discuss at tomorrow's council meeting include the following:

1. The financial data that was provided to council assume a static situation. There are still approximately 20 acres available for development within the Collier Park of Commerce. Our engineers estimate that if these vacant parcels were developed consistent with development now existing in the Park, that said development would generate approximately \$172,000 in municipal impact fees; and, in addition, approximately \$164,000 per year in municipal ad valorem taxation if assessed at 80% of their improved value.
2. In response to an inquiry made, following annexation we would like to discuss changing the property from its current county industrial zoning, to a business park designation which allows for current industrial uses, but also mirrors the current predominant use of the park for business and professional offices.
3. The Association's agreement to contribute \$175,000 for road right-of-way improvements in accordance with our meetings with City Staff, as well as the policing powers of the Association relative to maintenance of the trees, landscaping and drainage easements.
4. The fact that the County was alerted in June 2005 of the Association's interest in annexation incident to the County's ownership of property in the Collier Park of Commerce; my phone call with County Manager, Jim Mudd, wherein Mr. Mudd advised me that the County would not object nor oppose the annexation; and my conversations with Commissioner Henning wherein he acquiesced to the annexation if the owners felt the City would provide the owners with a higher level of service.
5. The consent of East Naples Fire Control District incident to their purchase of property from my company. Their consent is attached to the Annexation Petition.

We look forward to seeing you at tomorrow's meeting. If you should have any questions, please do not hesitate to call.

TO: Dr. Robert E. Lee, City Manager
FROM: Ann Marie S. Ricardi, Finance Director
DATE: October 30, 2006
SUBJECT: CPOC Urban Services Report Updates

At the Council meeting, City Council asked that I make several changes to the financial format on the CPOC Urban Services Report.

- 1) Update to reflect 20 years, not ten
- 2) Provide a summary page of all funds
- 3) Add in the growth related to the vacant properties (20 acres, one of which will probably be tax exempt)
- 4) Provide a break even point for the combined funds.

Attached for your reference are all four spreadsheets updated for the 20 years, plus a fifth page in the front which summarizes the four funds. The General Fund spreadsheet now includes a projection for the 20 vacant acres (8 parcels) which will be developed over the next few years. My assumptions were that the smallest parcels would develop first, and the parcels would develop over a period of ten years. These will not increase costs, but will increase revenues. Due to time constraints, I was only able to estimate an increase in ad valorem taxes in the General Fund and impact fees in the Utility Tax Fund, but there will also be a revenue increase to the Stormwater fund, as these properties develop.

Because these funds are now combined, the break even point is showing in year 1. The increased revenue in the Stormwater fund covers the losses in the other funds. For those specifically interested in the General Fund alone – that has a break even point at year 10.

City of Naples, Florida

All Fund Summary- Annexation Collier Park of Commerce

	1	2	3	4	5	10	15	20
	Change FY06-07	Change FY07-08	Change FY08-09	Change FY09-10	Change FY10-11	Change FY15-16	Change FY20-21	Change FY25-26
Net General Fund Impact	(47,397)	(50,734)	(52,140)	(130,296)	28,235	72,071	139,705	242,405
Net Utility Fund Impact	33,640	34,650	(9,791)	45,552	37,863	81,778	42,615	41,373
Net Stormwater Impact	172,000	171,600	171,180	170,739	170,276	167,589	164,161	159,784
Net Water Sewer Impact	(14,000)	(14,420)	(14,853)	(15,298)	(15,757)	(18,267)	(21,176)	(24,549)
Net Street Fund Impact	(5,908)	(11,277)	(6,259)	(7,647)	(10,641)	(8,898)	(10,124)	(11,546)
Impact All funds	138,343	129,819	88,137	63,050	209,976	294,274	315,180	407,468
Cumulative Impact	138,343	268,162	356,299	419,348	629,324	1,861,841	3,389,583	5,225,516

[illegible]

		City of Naples, Florida																			
		Stormwater Fund Impact - Anticipation																			
		Collier Port of Commerce																			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
		FY08-09	FY07-08	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18	FY18-19	FY19-20	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25	FY25-26
Stormwater Utility Fund	Change	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000
Change for Service \$414,111.11																					
TOTAL REVENUE		190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000
Expenditures																					
Water Wastewater	8,000	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400
Lake Maintenance	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
ROYAL EXPENDITURES	8,000	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400
Change in Financial Position		172,000	171,600	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200	170,200

City of Naples, Florida
Water Sewer Fund Impact - Annexation
Collier Park of Commerce

Water Fund	Change FY02-07	Change FY07-08	Change FY08-09	Change FY09-10	Change FY10-11	Change FY11-12	Change FY12-13	Change FY13-14	Change FY14-15	Change FY15-16	Change FY16-17	Change FY17-18	Change FY18-19	Change FY19-20	Change FY20-21	Change FY21-22	Change FY22-23	Change FY23-24	Change FY24-25	Change FY25-26
Revenue																				
Water Surcharge (75%)	(34,000)	(34,400)	(34,800)	(35,200)	(35,600)	(36,000)	(36,400)	(36,800)	(37,200)	(37,600)	(38,000)	(38,400)	(38,800)	(39,200)	(39,600)	(40,000)	(40,400)	(40,800)	(41,200)	(41,600)
TOTAL REVENUE	(34,000)	(34,400)	(34,800)	(35,200)	(35,600)	(36,000)	(36,400)	(36,800)	(37,200)	(37,600)	(38,000)	(38,400)	(38,800)	(39,200)	(39,600)	(40,000)	(40,400)	(40,800)	(41,200)	(41,600)
Expenditures																				
No Change	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Change in Financial Position	(34,000)	(34,400)	(34,800)	(35,200)	(35,600)	(36,000)	(36,400)	(36,800)	(37,200)	(37,600)	(38,000)	(38,400)	(38,800)	(39,200)	(39,600)	(40,000)	(40,400)	(40,800)	(41,200)	(41,600)
Cumulative Change	(34,000)	(68,400)	(102,800)	(137,200)	(171,600)	(206,000)	(240,400)	(274,800)	(309,200)	(343,600)	(378,000)	(412,400)	(446,800)	(481,200)	(515,600)	(550,000)	(584,400)	(618,800)	(653,200)	(687,600)

v

Board of Appeal Application

Applicant Name James Woody Application Date September 25, 2006
 Property Owner City of Naples Airport Authority Applicant Phone # 239-8439-1999
 Lessor Arthur L. Allen Property Address 300 Freedom Way

Appeal from (specify specific code or ordinance): The foam requirements of NFPA 409 based on the exception listed in section 411.7.7 of the 2001 Florida Building Code (Also found in section 412.2.6, in the 2004 FBC)

Summary of Facts:

Erickson Associates, LLC designed an 18,000 sqft private aircraft hangar for Mr. Arthur Allen to house a Gulfstream G550. The Project was permitted by the City of Naples Building Department on October 18, 2005 as a Group II Aircraft Hangar per NFPA 409 without foam suppression per the exception listed in section 411.7.7 of the 2001 Florida Building Code which reads as follows:

411.7.7 Aircraft hangars shall be provided with the suppression requirements of NFPA 409

Exception: Group II hangars housing private aircraft without major maintenance or overhaul shall be exempt from foam suppression requirements.

Prior to the submission for permit, the architect attended a pre-application meeting with a representative from the Building Department and the Naples Fire Department where all parties agreed the project met the letter of the exception listed in section 411.7.7. On June 21, 2006, 30 days prior to the anticipated Certificate of Occupancy issue date, the fire inspector stated that Foam Suppression was required stating that NFPA 409 does not contain the exception listed in the Florida Building Code and citing Chapter 553.73(1)(d) of the Florida Statutes, which has been inserted below for your review:

Contrasting requirements between the Florida Building Code and the Naples Fire Department Code and the Naples Code of Ordinance established pursuant to §§ 622.022 and 623.022, none are resolved by agreement of the applicant, the commission and the State Fire Marshal in favor of the government that offers the greatest degree of protection or alternatives that would justify an equivalent degree of life safety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator mutually agreeable to both parties to resolve the conflict in favor of the government that offers the greatest life safety or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.

The design team understands and agrees that in the case of contradictions the more restrictive code governs. Our position is that this is not a contradiction. This is a clearly stated exception that refers directly to NFPA 409

Owner's Signature [Signature]
 Applicant's Signature [Signature]

Date 9/29/06

Date 09.26.06

TO: Hon. Bill Barnett, Mayor & Naples City Council
FROM: Robert D. Pritt, City Attorney
DATE: October 30, 2006
SUBJECT: Board of Appeals-James D. Woody, Erickson Associates (Allen Hangar Project) – Agenda Item 6

This memo is intended to provide guidance to Council, sitting as the Board of Appeals, in handling the above appeal primarily due to the interplay between state and local building and fire codes. Of course, the decision-making is up to Council sitting as the board.

Facts: James D. Woody, Erickson Associates filed an appeal dated September 25 and 29, 2006, and stamped as received October 2, 2006, challenging a decision of the Naples Building Official and of Naples Police and Emergency Services Department on recommendation of the City's Fire Marshal concerning whether the Allen Hangar Project, a private airport hangar, must provide foam suppression.

Decision(s): 1. NPDES

- a. Fire Marshal-Dated August 22, 2006--Letter from Fire Marshal Rivard, confirmed by Chief dated October 3, 2006.
- b. Building Official--Memo from Paul Bollenback dated October 19, 2006.

Jurisdiction:

Board of Appeals--Florida Building Code.

The Florida Building Code is incorporated into the Naples City Code and is mandatory under state law in any event. (Ch. 553 F.S.). The City Council is designated by city code as the Board of Appeals. (Sec. 2-82). Its jurisdiction includes hearing and deciding appeals of the building official's decisions in the application and interpretation of the Florida Building Code and NFPA 1, Fire Prevention Code. Appeals of the Building Official's decision must be filed within 30 days after the decision or order has been rendered by the Building Official.

Board of Appeals--Florida Fire Prevention Code.

The Florida Fire Prevention Code is also incorporated into the Naples City Code (Sec. 24-81) and is also mandatory under state law (ch. 663 F. S.) The City Code also provides for appeals of the fire marshal's decision) which claim that the meaning of the Code was misconstrued. The appeal is to a "board of appeals appointed in accordance with the Florida Fire Prevention Code within 30 days from the date of the decision appealed".

The City does not have a specified "fire prevention code board of appeals" but the City Council sitting as the Board of Appeals has jurisdiction over NFPA 1 interpretation (see above).

The section of the Fire Prevention Code in question is NFPA 409, which, according to the Fire Marshal, is incorporated into NFPA 1. **Therefore, it appears that the City Council, sitting as the Board of Appeals, has jurisdiction over the subject matter of the dispute through its powers specified in 2-82, City Code.**

Since there is no other formally-constituted city board of appeals for Fire Prevention, and since that section (24-81, City Code) refers to a "board of appeals" **it would appear that the City Council, sitting as the Board of Appeals has jurisdiction in that capacity also.**

Issues presented:

1. Procedure

Was/were the appeal(s) timely? This is 30 days from the date of the decision appealed. If not timely, the Board of Appeals would not have jurisdiction and the decision should stand.

Since dates of filing and of receipt of decisions are not clear in the documents provided this office to date, testimony evidence will have to be taken to make this determination.

As to the Fire Marshal's decision (dated August 22) and the date on the appeal (September 29 at earliest), **the appeal does not appear to be timely.** However, if the Board construes the date as the date the NPESD Chief rendered his determination (October 3, 2006), **the appeal could be considered timely.**

As to the Building Official's decision, it is unclear when a decision was made. It seems to have been made after the appeal was filed (October 19, 2006). If so, the appeal, as it applies to the Building Official's decision would have been prematurely filed. The general rule is that a prematurely-filed appeal **can be deemed to be timely** as of the date the decision is actually made, assuming it is still pending (which it was).

Since the Building Official's decision appears to be based upon the Fire Marshal's decision, and NFPA 1 (and NFPA 409) rather than a Building Code issue, the Board of Appeals could decide the case even if the appeal of the Fire Marshal' decision were not timely.

2. Merits

This case is primarily an interpretation and application of language in the Florida Fire Prevention Code. The Board of Appeals will be called upon to make its best interpretation of those codes and in effect to determine whether foam application will have to be done in this instance.

The issue is apparently whether the Allen Hangar, as Group II, still must apply foam fire suppressant.

The Board of Appeals should hear testimony on these factual issues and make a decision in the form of a Resolution.

The Building Code appears to have an exception to the foam requirement if the hanger is privately owned and no aircraft maintenance is done in it. The Fire Prevention Code, in NFPA 409 does not contain that exception.

3. Option to appoint Special Master.

Council, as the Board of Appeals, has the option of appointing a special master to hear the case and render a recommended decision. This was part of the revisions to the Board of Appeals a few years ago. The City's Board of Appeals had previously met only once every 4

or 5 years, so Council designated itself as the Board of Appeals but provided for appointment of a special master if it is determined to be necessary.

4. State law provisions re: Conflicts

Florida Building Code Sec. 553.73:

“(9)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.”

- Applying this law it appears that the Building Official and Fire Marshal have resolved any conflict in favor of the most strict code (NFPA 409) requiring foam.

5. State law provisions re: Standard of Review/Appeals

Florida Building Code Sec 553.73:

(9) (b) Any decision made by the local fire official and the local building official may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

- This means that the Council, sitting as the Board of Appeals, **must find in favor of the foam requirement unless it finds that to be unreasonable.**