



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – November 19, 2008 – 8:30 a.m.**

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Mayor Barnett called the meeting to order and presided.

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**ROLL CALL .....ITEM 1**

**Present:**

Bill Barnett, Mayor  
Penny Taylor, Vice Mayor

**Council Members:**

Teresa Heitmann  
Gary Price, II  
John Sorey, III  
Margaret Sulick  
William Willkomm, III

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**Also Present:**

William Moss, City Manager  
Robert Pritt, City Attorney  
Tara Norman, City Clerk  
Roger Reinke, Assistant City Manager  
Vicki Smith, Technical Writing Specialist  
Jessica Rosenberg, Deputy City Clerk  
Linda Bedtelyon, Public Art Coordinator  
Mireidy Fernandez, Planner  
Adam Benigni, Planner  
Russell Adams, CRA Executive Director  
Robin Singer, Planning Director  
James McEvoy, Deputy Fire Chief  
George Archibald, Traffic Engineer  
Robert Menzies  
Peter Manion

Sharon Kenny  
Doug Finlay  
Dorothy Hirsch  
Mark Fuller  
Michael Harper  
Andrea Clark Brown  
Merlin Lickhalter  
Jim Boula  
Daniel Linehan  
Rowan Samuel  
Skip Zink

**Media:**

Jenna Buzzacco, Naples Daily News  
Other interested citizens and visitors

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

Reverend Michael Harper, Naples Community Hospital.

**ANNOUNCEMENT .....ITEM 3**

Mayor Barnett presented a proclamation to the National Society Daughters of the American Revolution, Big Cypress Chapter in honor of its 40<sup>th</sup> anniversary.

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

***MOTION by Taylor to SET THE AGENDA removing Item 7-a (approval of minutes) and Item 7-b(14) (Fun Time Early Childhood Academy reception) from the Consent Agenda for separate discussion; considering Item 20 (parking garage art contract) immediately after Consent Agenda and Item 21 (executive session) immediately after Item 6 (executive session/11:30 a.m. time certain); and adding Item 22 (addition of members of Blue Ribbon Financial Planning Committee) and Item 23 (advertising of upcoming resolution regarding collection of non-ad valorem assessments). This motion was seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**PUBLIC COMMENT.....ITEM 5**

(8:36 a.m.) **Dorothy Hirsch, 626 Regatta Road**, called Council's attention to a November 2008 *National Geographic* article regarding the detrimental effects of light pollution, and a possible cause of breast cancer. **Doug Finlay, 3430 Gulf Shore Boulevard**, urged that the City proceed cautiously regarding the purchase of the Renaissance Village (formerly Grand Central Station) in light of present economics and suggested that grant funding be researched; he suggested the Trust for Public Lands (TPL) and Florida Communities Trust (Florida Department of Community Affairs/DCA) as contacts.

**CONSENT AGENDA**

**APPROVAL OF MINUTES.....ITEM 7-a**

Removed from Consent Agenda for separate discussion / see below.

**SPECIAL EVENTS ..... ITEM 7-b**

- 1) Open Mic Night and Bands – City of Naples – Cambier Park Bandshell – 01/15/09, 02/19/09, 03/19/09, 04/16/09 and 05/21/09.
- 2) Outdoor Movie Nights – City of Naples – Cambier Park Bandshell – 01/17/09, 01/31/09, 02/28/09, 03/21/09, 04/18/09, 05/09/09 and 05/30/09.
- 3) Empty Bowls Luncheon – Barron Collier High School Potter Guild – Cambier Park Bandshell and Pavilion – 01/31/09.
- 4) Naples Patriotic Moments – Veterans of Foreign Wars, Post 7369 – Sugden Plaza – 02/08/09, 02/09/09, 02/10/09, 02/11/09, 02/15/09, 02/16/09, 02/17/09, 02/18/09, 02/22/09, 02/23/09, 02/24/09, 02/25/09, 03/01/09, 03/02/09, 03/03/09, 03/08/09, 03/09/09, 03/10/09, 03/22/09, 03/23/09, 03/24/09, 03/29/09, 03/30/09, 03/31/09, 04/05/09, 04/06/09 and 05/10/09 (scholarship presentation).
- 5) Ferrari Club Car Show – Downtown Naples Association and the Ferrari Club – Fifth Avenue South – 02/14/09.
- 6) Third on Canvas – Third Street South – 02/16/09 and 02/17/09.
- 7) MS Walk – National Multiple Sclerosis Society – Lowdermilk Park – 02/21/09.
- 8) St. Patrick's Day Celebration – Village on Venetian Bay – 03/12/09.
- 9) Walk-a Thon – NAMI of Collier County – Cambier Park – 03/21/09.
- 10) Annual Butterfly Release – AVOW Hospice – Cambier Park Bandshell – 03/22/09.
- 11) Southwest Florida AIDS Walk for I CAN – Island Coast AIDS Network, Inc., (I CAN) – Cambier Park – 04/04/09.
- 12) Sidewalk Sale – Village on Venetian Bay – 04/24/09, 04/25/09 and 04/26/09.
- 13) Fundraiser – Taste of Collier, Inc. – Bayfront – 05/03/09.
- 14) Removed from Consent Agenda for separate discussion / see below.

**MOTION by Taylor to APPROVE CONSENT AGENDA except Item 7-a and 7-b(14); seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**END CONSENT AGENDA**

**APPROVAL OF MINUTES .....ITEM 7-a**

Council Member Price proffered a motion to continue the approval of the November 3, 2008, Workshop and November 5, 2008, Regular Meeting minutes as reflected below.

**Public Comment:** (8:40 a.m.) None.

**MOTION by Price to CONTINUE ITEM 7-a TO DECEMBER 3, 2008, REGULAR MEETING; seconded by Sorey and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**SPECIAL EVENT .....ITEM 7-b(14)**

**GRAND OPENING RECEPTION – FUN TIME EARLY CHILDHOOD ACADEMY – 12/07/09.** Vice Mayor Taylor noted that she would abstain from voting on this item as she is scheduled to photograph the event

**Public Comment:** (8:40 a.m.) None.

**MOTION by Sorey to APPROVE ITEM 7-b(14) as submitted; seconded by Price and carried 6-0-1 (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-abstain, Willkomm-yes, Barnett-yes). (See Attachment 1, Form 8-B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)**

Vice Mayor Taylor commended Taste of Collier, Inc. (Item 7-b(13) above), noting that the event had been relocated to Bayfront and the fact that no complaints had ever been registered.

**RESOLUTION 08-12265.....ITEM 20**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND MARK T. FULLER TO CREATE SITE-SPECIFIC ARTWORK TO BE INTEGRATED WITH THE NEW PARKING GARAGE LOCATED AT SIXTH AVENUE SOUTH AND EIGHTH STREET SOUTH; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (8:41 a.m.) City Clerk Tara Norman, whose department also acts as Public Art Coordinator, noted the presence of Mark Fuller, selected to create the artwork for the new parking garage (located at Eighth Street and Sixth Street South).

In response to Council Member Sorey, Sharon Kenny, Public Art Advisory Committee (PAAC) Chair, provided a brief overview of the previous day's PAAC special meeting and Mrs. Norman noted the provision of motion text regarding this matter (Attachment 2). Ms. Kenny also explained that she had chaired the Parking Garage Artist Selection Committee which had made the final decision regarding Mr. Fuller's work; however, PAAC had convened in an attempt to answer questions previously raised during a Council meeting regarding this selection. She noted that Andrea Clark Brown, project architect and Andrew Eisele, landscape architect, had also attended, as well as the artist who provided a model of the piece he proposed for the parking garage site. At that time Ms. Kenny read the aforementioned PAAC motions reaffirming an earlier approval of Mark Fuller and his proposed artwork and a second motion wherein PAAC affirmed its satisfaction with

responses received during that meeting from Mr. Fuller regarding concerns raised by the project architects in prior correspondence (Attachment 3). Ms. Kenny further pointed out that, as stated by Mr. Fuller, the proposed piece is conceptual and would evolve as the process proceeds; she also noted that he would work closely with Ms. Brown and Mr. Eisele to address any remaining issues regarding the placement and safety of the artwork.

Council Member Willkomm indicated that the proposed piece had been reviewed by Building Inspector Paul Bollenback who stated that it would meet all applicable codes with regard to structure and hurricane resistance. In response to Mr. Willkomm, Ms. Kenny stated that none of the anticipated landscaping would be lost along Eighth Street South; confirming this, Mr. Fuller also explained that the height and placement of the artwork would be determined by the placement of the landscaping.

Referencing excerpts of past PAAC meetings she had provided (Attachment 4), Council Member Sulick stressed that Architect Brown was to have provided a recommendation as to the type or style of art best suited to the site and that Ms. Brown had pointed out “that the proposed structure would utilize extensive landscaping to create a park-like atmosphere thereby complimenting nearby Cambier Park”. Mrs. Sulick also cited the July 2, 2008, PAAC minutes wherein a requirement had been included in the City’s artwork donation agreement requiring a payment equal to 5% of the value for maintenance of the donated artwork. Mrs. Sulick said that she questioned this additional cost above what she termed an art impact fee imposed upon development. Council Member Sorey however clarified that the 5% applied to donated artwork placed on City property, not the artwork under discussion. Ms. Kenny pointed out that funding had been set aside for maintenance of the parking garage artwork, but Mrs. Sulick stated that her concern had been with the failure to heed the above referenced comments that the architect would provide recommendations as to its type or style. Mr. Sorey indicated his belief that this had not been included within the actual public art ordinance and moved for approval. Mayor Barnett seconded, saying that if the statements regarding architect recommendations had been mandated, then there would be no need for a selection committee. Mrs. Sulick reiterated her support of seeking Ms. Brown’s recommendations, stating that she would rather utilize the funding for art at the parking garage as City support of the Gordon River pedestrian underpass (US 41) art gallery, that Ms. Brown’s structures contain art elements and this additional artwork would not be necessary. Mayor Barnett pointed out that Ms. Brown had been a member of the selection committee, the majority of which had voted for Mr. Fuller’s work and reaffirmed its support as noted above.

Vice Mayor Taylor voiced strong support of the concerns regarding safety of the piece noted by Ms. Brown and Mr. Eisele, noting Ms. Brown’s request to be indemnified (see Attachment 3), expressing the belief that Architect Brown continues to have concerns about the safety of the piece proposed. Miss Taylor characterized it as reckless of the Council to proceed without hearing further from Ms. Brown. She also referred to her memorandum, which had been provided for the November 5 workshop, (a copy of which is contained in the file for this meeting in the City Clerk’s Office), and noted that under the City’s purchasing requirements it was the selection committee, not the PAAC, which made the choice of the Fuller artwork. In addition, she said, the concerns of the architect and landscape architect were not brought forward from the selection committee to the PAAC in any public forum. Miss Taylor also stated that the chair of PAAC had not wished the discussion of these concerns to be brought forward to City Council.

**Public Comment:** (8:58 a.m.) **Merlin Lickhalter, member of both the PAAC and the Selection Committee,** noted the above cited motions. **Andrea Clark Brown, 340 Eighth Street South,** architect for the parking garage project and member of the artist selection committee, noted the previous day's PAAC special meeting and explained that one issue remained as a concern, the pieces on the proposed artwork that are designed to spin (Attachment 5) which would be installed at a height within reach of young children. She indicated that discussion had ensued regarding the possibility of elevating the piece and/or honing the edges of the lexan squares, although her concern had remained with rotation of these pieces during high winds. Ms. Brown also noted that landscaping had been proposed for placement around the artwork and said that if some alterations could be made to address the aforementioned safety issue, she would embrace what she described as beautiful artwork. In response to Council Member Price, Ms. Brown clarified that Mr. Fuller had kept the piece lower out of respect for the surrounding tree canopy but reiterated that if the moving pieces were out of reach and the superstructure grid of the piece were not accessible to climbing, she could support it. These issues and suggestions regarding the composition of his design should however be addressed by the artist, she concluded.

Artist Mark Fuller explained that the intent of the piece had not been that the lexan panes spin constantly, but to shift in the wind, which would constantly rearrange their positions as well as their ability to refract light. The panels actually change colors as they move, he said, adding to the interest of the piece which is to be enjoyed from a distance. The panes extend from the vertical mounting less than eight inches, he explained, suggesting that should a landscaping buffer, and perhaps a fence be installed within the hedge, such a barrier would preclude anyone from coming into contact with the panes or climbing the structure. This had been discussed during the prior day's special PAAC meeting, he noted, as well as during initial contact with the City, pointing out that space could be provided between the artwork and the aforementioned fencing to allow any necessary maintenance of either the artwork or the landscaping. Mr. Fuller also noted that he had suggested removing the lower panes, as well as the horizontal braces to a height of 42 inches and PAAC had indicated that this would compromise the design, recommending simply the landscaping barrier. In response to this, he said that he had offered to alter the piece by limiting the movement of the panes and designing the panes with open area to allow the wind to move through them, and additionally limiting their response to air movement such as that of a weather vane. These details could be discussed as the conceptual piece is developed into the final artwork, he stressed.

Council Member Sulick stated that while she liked the proposed artwork, she continued to have concern with regard to safety, especially smaller children being attracted to the colorful panes. Council Member Sorey pointed out that, as referenced above, it had been favorably reviewed both by the City's risk management staff and the Building Department; following discussion as to extending the completion date, Mr. Sorey proffered the motion reflected below. City Attorney Pritt indicated that he would consult with the artist as to any remaining issues with the subject contract.

In response to Vice Mayor Taylor, Mr. Fuller provided a brief background of prior pieces he had provided for other governmental entities, as well as an explanation of the process of designing such artwork. Although the final design may vary from the initial presentation, it will be vary similar, he stressed. He also explained that engineering plans would be provided to the City's Building Department for the entire design, not merely the foundational and anchoring aspects, assuring

Council Member Willkomm that the artwork would be designed to withstand in excess of 160 mile per hour winds.

Vice Mayor Taylor indicated that her intent to vote against the contract due to her belief that the piece would not continue the park-like atmosphere of the area; the art of Naples is its landscaping, she added. Furthermore, she said, the piece, if installed as depicted, would be placed in a shaded area and would not receive sunlight so as to fully reflect the colors as intended. She suggested that the artist return with another design for consideration. Council Member Willkomm said that while he strongly disagrees with the dollar for art program, he intended to support this project due to recommendations by the PAAC and Selection Committee. He also stated that should the aforementioned fee not be reviewed and abolished, he would recommend that the funds collected be donated to the art department of Lake Park Elementary School.

***MOTION by Sorey to APPROVE RESOLUTION 08-12265 amending contract completion deadline for art work as follows: “March 16, 2009 ~~February 28, 2009~~”. This motion was seconded by Barnett and carried 5-2, all members present and voting (Taylor-no, Willkomm-yes, Sorey-yes, Sulick-no, Heitmann-yes, Price-yes, Barnett-yes).***

Vice Mayor Taylor requested that the public art ordinance be scheduled for review by Council, recommending a workshop discussion, noting past discord with its establishment; however, consensus was not reached regarding this suggestion (3-4 / Price, Barnett, Heitmann, and Sorey dissenting).

**RESOLUTION 08-12266.....ITEM 8  
A RESOLUTION ESTABLISHING A NEW ANNEXATION POLICY AND AMENDING  
THE PROCEDURES FOR CONSIDERATION OF ANNEXATION PETITIONS;  
REPEALING RESOLUTION 06-11473; AND PROVIDING AN EFFECTIVE DATE.**

Title read by City Attorney Robert Pritt (9:45 a.m.). In response to Council Member Price, Council Member Sorey explained his request for pertinent annexation sections of the 2007 visioning plan, *Preserving Naples* to be provided had been due to his questioning of language contained in the above referenced resolution; namely, Section 1(c). He suggested that “potentially” be changed to “significantly” or “substantially.” This amendment would then reflect the results of the visioning survey of residents and the intent of that section, he stated. Mr. Price and Vice Mayor Taylor pointed out that the loss of political influence had not been quantified in the visioning process and that they could therefore not support such an amendment. Additionally, Mr. Price indicated that major annexations would be brought before voters in a referendum. Vice Mayor Taylor stated that the introduction to the above referenced section indicates that the standards and objectives are to be a consideration when reviewing an annexation petition, therefore allowing review of an annexation to be done on a broader scope.

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

***MOTION by Price to APPROVE RESOLUTION 08-12266 as submitted; seconded by Sulick and carried 6-1, all members present and voting (Taylor-yes, Sulick-yes, Heitmann-yes, Price-yes, Sorey-no, Willkomm-yes, Barnett-yes).***

**ORDINANCE (First Reading).....ITEM 9**  
**AN ORDINANCE RELATING TO PLANNED DEVELOPMENT STANDARDS;**  
**AMENDING THE CODE OF ORDINANCES, CITY OF NAPLES SUBSECTIONS (a)**  
**and (d) OF SECTION 46-32 TO CORRECT THE SECTION TITLE AND TO INCREASE**  
**THE MINIMUM LAND AREA REQUIRED TO REZONE A PROPERTY; AMENDING**  
**SECTION 46-33 TO CHANGE THE SITE PLAN REVIEW PROCESS TO ADD A SITE**  
**PLAN WITH DEVIATIONS PROCESS AND TO DELETE THE GENERAL**  
**DEVELOPMENT AND SITE PLAN PROCESS; AMENDING SECTION 58-803 TO**  
**CHANGE THE SUBMITTAL REQUIREMENTS FOR PLANNED DEVELOPMENTS;**  
**AMENDING SECTION 58-807 TO CLARIFY SIGNIFICANT CHANGES TO PLANNED**  
**DEVELOPMENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER**  
**PROVISION AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:52 a.m.). Council Member Willkomm commended Mr. Pritt and Planning Director Singer for their memorandums which contained responses to his questions from that week's workshop. (Copies of the memorandums are contained in the file for this meeting in the City Clerk's Office.) He however noted an additional question regarding the language contained in Section 46-32(d) wherein Council could approve a waiver of the minimum size of a parcel (five acres) prior to its consideration for rezoning. City Attorney Pritt suggested amending this section as reflected in the motion below, thereby removing this ability to grant a waiver/deviation in size, this would not be considered until the actual public hearings by Council in regard to a rezoning; Council agreed.

In response to Council Member Sulick, Planning Director Singer explained the methodology for determining the average size of one platted City block: the size is estimated at 2.7 acres, and it is usually surrounded by streets and/or alleys which separate it from surrounding parcels and further delineate it. Mrs. Sulick stated that her understanding of the intent of Council had been to increase the minimum size of PD Planned Developments thereby avoiding their impacts to adjacent residential areas; she emphasized that she would not support any PD under the five acre minimum. Vice Mayor Taylor however noted her concern with the 41-10 (Heart of Naples, "D" Downtown) area in that a five acre minimum requirement would deter redevelopment due to the smaller parcels contained in that district. Mrs. Sulick pointed out that the ordinance would apply to the entire City and not just 41-10. Council Member Price explained that the petitions would be considered on a case-by-case basis and that a waiver could be granted as referenced above; a minimum standard must nevertheless be determined, he added. Council Member Sorey agreed, observing that the denoted City block, or 2.7 acres, is a greater standard than previously contained in the Code. Mr. Price indicated that he would not support the additional language regarding the city block remaining in the ordinance recommending that it be struck as reflected in the motion below.

Council Member Price expressed concern that the GDSP (General Development and Site Plan) process would, with these amendments, be replaced with a site plan. Planning Director Singer confirmed that should a PD petition be brought forward to Council, site plans would require Council approval. Under the existing GDSP process, she further explained, Council reviewed the GDSP only when it had requested to do so.

Council Member Sorey noted that in Section 46-33(g)(3)(a), commencement of construction, had been required within 24 months but suggested that with current economic conditions this be amended to reflect 48 months, as well as retaining references to extensions which could be granted by the City Manager or Council (Section 46-33(g)(3)(b)); City Attorney Pritt and Council agreed as reflected in the motion below.

**Public Comment: (10:14 a.m.) Dorothy Hirsch, 626 Regatta Road,** expressed support for the ordinance. **Doug Finlay, 3430 Gulf Shore Boulevard,** also agreed with the ordinance.

City Attorney Pritt requested that, for clarity relating to administrative procedures and PD standards, the title of the ordinance be amended as reflected in the motion below. Additionally, he recommended that the word “guidelines” be amended to “standards” in Sections 46-32(d) and 46-33(f); Council agreed.

In response to Council Member Sulick, Council Member Sorey explained that the City has requirements in its Code of Ordinances regarding the maintenance of a property prior to the commencement of construction. Mr. Sorey also noted that on Page 14 of the draft ordinance, Section 58-803, in the strikethrough amendments the word “for” should be deleted; Council agreed as reflected in the motion below.

**MOTION by Willkomm to APPROVE THIS ORDINANCE on First Reading amending as follows: Title: “...RELATING TO ADMINISTRATIVE PROCEDURES AND PLANNED...”; Section 46-32(d): “Standards Guidelines...less than 5 acres of land or at least ...waived by the city council...”; Section 46-33(f): “Standards Guidelines...”; Section 46-33(g)(3)(a): “...construction shall commence within ~~24~~ 48 months ...”; and Section 58-803: “...~~review for developments~~...”. This motion was seconded by Sulick and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**Recess: 10:24 a.m. to 10:39 a.m.** It is noted for the record that the same Council Members were present when the meeting reconvened except Vice Mayor Taylor who returned at 10:40 a.m.

**RESOLUTION 08-12267.....ITEM 11**  
**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 08-LE11 AND RESIDENTIAL IMPACT STATEMENT PETITION 08-RIS15 FOR LIVE ENTERTAINMENT AT SIX DEGREES EXHIBITIONS, LLC, LOCATED AT 1100 SIXTH AVENUE SOUTH, SUITES 2 AND 3, MORE FULLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:39 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: all indicated familiarity with the site but no contact except Council Member Sorey who had visited the site. Council Member Willkomm proffered a motion of approval and Mayor Barnett seconded.

Planning Director Robin Singer explained that the subject establishment is an art gallery and that the petitioner had requested the indoor live entertainment permit for exhibit openings. Council Member Sorey expressed concern that an entity other than a restaurant had applied for a live



entertainment permit and Council Member Heitmann agreed. Ms. Singer confirmed that this was out of the ordinary and explained that the application had been submitted in order to avoid constantly applying for special event permits. Mr. Sorey further clarified his concern as setting a precedent. In response to Council Member Price, petitioner Daniel Linehan indicated that an alcohol permit would be sought in the future. Co-petitioner Rowan Samuel agreed to a 10:00 p.m. cessation time for the entertainment suggested by Mr. Price, stating that no drums would be involved and that doors and windows would remain closed. Council Member Willkomm amended his above motion to reflect the aforementioned 10:00 p.m. timeframe; Mayor Barnett, as the seconder, agreed.

In response to Council Member Price, City Manager William Moss explained that not all of the City's police officers had been trained in the use of noise meters and that due to recent numerous Council comments, staff was currently reviewing the noise ordinance and would be providing recommendations in the near future regarding amendments.

Council Member Sulick urged caution in approving this item. Mr. Linehan however said that the planned activities would be similar to a school artwork exhibit with student musicians providing jazz. Additionally, should a Cuban artist's work be on display, then Cuban music would be provided as background. Mrs. Sulick indicated that this represented a special event and, as such, a special event permit should be pursued, not the live entertainment permit referenced above.

Discussion of the establishment's location in the Dockside Boardwalk complex followed and Mayor Barnett reiterated his support. However, Council Member Heitmann reiterated her concern that numerous live entertainment permits would be forthcoming should this item be approved. Vice Mayor Taylor noted that the area where the gallery is located, is largely surrounded by commercial.

While predicting that this approval would indeed generate additional requests, Council Member Sorey indicated that his support was in light of current economic conditions and his belief that Council should aid City businesses whenever possible.

**Public Comment:** (10:55 a.m.) None.

***MOTION by Willkomm to APPROVE RESOLUTION 08-12267 amending as follows: Section 3(1): “ 7:00 p.m. to 10:00 p.m. ~~11:00 p.m.~~...”. This motion was seconded by Sorey and unanimously carried, all members present and voting (Sorey-yes, Taylor-yes, Price-yes, Willkomm-yes, Sulick-yes, Heitmann-yes, Barnett-yes).***

**RESOLUTION 08-12268.....ITEM 12  
A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 08-FWW6  
FOR A WAIVER FROM SECTION 56-37(b)(1) TO ALLOW A 5 FOOT ALUMINUM  
PICKET FENCE TO BE PLACED ON TOP OF A 4 FOOT CONCRETE RETAINING  
WALL AT FUN TIME EARLY CHILDHOOD ACADEMY, 102 12<sup>TH</sup> STREET NORTH,  
MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**  
Title read by City Attorney Robert Pritt (10:55 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 and spoke with members of the entity's Board of

Directors; Sulick/familiar with the site but no contact; Price and Heitmann/visited the site and spoke with Peter Manion, representing the petitioner; Barnett/familiar with the site and spoke with Mr. Manion; Sorey/visited the site, spoke with Board members and has personal involvement with Fun Time; and Taylor/familiar with the site. However, Miss Taylor indicated her intent to abstain due to employment with the academy. Planner Adam Benigni provided a brief overview of the petition, explaining that the retaining wall surrounding the building had been necessary under Federal Emergency Management Agency (FEMA) regulations which do not require but encourage such structures. The waiver had been necessary as the “D” Downtown zoning requirements prohibited a fence over two feet in height unless located within the building footprint. In response to Vice Mayor Taylor, Mr. Benigni confirmed that the requested fence is indeed mandated by the Florida Building Code (FBC) for childcare facilities with a minimum height to be four feet surrounding playground areas. Skip Zink, agent for the petitioner, explained that landscaping would be used to visually buffer the concrete retaining wall, especially along the western perimeter within a 15-foot easement granted by the Naples Daily News (owners of the property adjacent to the subject site) for such a purpose.

**Public Comment:** (11:00 a.m.) None.

***MOTION*** by Willkomm to **APPROVE RESOLUTION 08-12268** as submitted; seconded by Sorey and carried 6-0-1 (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-abstain, Willkomm-yes, Barnett-yes). (See Attachment 6, Form 8-B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

**ORDINANCE (First Reading).....ITEM 10**  
**AN ORDINANCE REGARDING THE FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT; AMENDING SUBSECTION (d)(1) OF SECTION 58-1134 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF INCREASING THE NUMBER OF PARKING SPACES REQUIRED FOR RESIDENTIAL UNITS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:01 a.m.).

**Public Comment:** (11:01 a.m.) None.

***MOTION*** by Price to **APPROVE THIS ORDINANCE** on first reading as submitted; seconded by Sorey and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 13**  
**AN ORDINANCE RELATING TO THE FIREFIGHTERS’ PENSION AND RETIREMENT SYSTEM; ADDING SUBSECTION 9 TO SECTION 29-232, REQUIREMENTS FOR RETIREMENT; PROVIDING FOR A ONE TIME SUPPLEMENTAL RETIREMENT BENEFIT FOR ELIGIBLE FIREFIGHTER RETIREES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:02 a.m.).

**Public Comment:** (11:02 a.m.) None.

***MOTION*** by Price to **APPROVE THIS ORDINANCE** on first reading as submitted; seconded by Willkomm and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**RESOLUTION 08-12269.....ITEM 14**

**A RESOLUTION APPROVING A REVISED COMMERCIAL USE AGREEMENT FORM FOR USE AT THE CITY OF NAPLES MUNICIPAL DOCK; AUTHORIZING AND DIRECTING USE OF SAME; REPEALING RESOLUTION 08-12232; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:02 a.m.).

Mr. Pritt explained that Resolution 08-12232 would be repealed because the commercial use agreement approved had contained a provision regarding the calculation of the annual use fee increase and proven to be of concern to charter boat captains. The agreement had listed the greater of (a) 4% or (b) the Consumer Price Index (CPI); the agreement under consideration contains 2.5% or the CPI increase. In response to Vice Mayor Taylor, Council Member Price indicated that the CPI over the past 5 years had varied between 2% to just over 3%.

**Public Comment:** (11:07 a.m.) None.

***MOTION*** by Sorey to ***APPROVE RESOLUTION 08-12269*** as submitted; seconded by Barnett and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 15**

**AN ORDINANCE AMENDING SECTION 17, ON-STREET PARKING, OF THE PUBLIC RIGHT-OF-WAY CONSTRUCTION STANDARDS HANDBOOK ADOPTED BY ORDINANCE 07-11595 TO REVISE THE TITLE OF SECTION 17, PROVIDE A PERMITTING PROCESS AND TO CREATE STANDARDS FOR PERMITTING VALET PARKING IN THE PUBLIC RIGHT-OF-WAY; AND AMENDING THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO ADD SECTION 36-68, VALET PARKING; ADDING SUBSECTION e. TO SECTION 50-103(e)(2), VALET PARKING OPTION; DELETING SECTION 58-1134(f)(9)e DELETING THE VALET PARKING CRITERIA FROM THE FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT; DIRECTING THE CITY CLERK TO PREPARE A SUPPLEMENT TO THE RIGHT-OF-WAY CONSTRUCTION STANDARDS HANDBOOK; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

Title read by City Attorney Robert Pritt (11:07 a.m.).

**Public Comment:** (11:08 a.m.) None.

***MOTION*** by Barnett to ***APPROVE THIS ORDINANCE*** on first reading as submitted; seconded by Sorey and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**RESOLUTION 08-12270.....ITEM 16**

**A RESOLUTION APPROVING A THREE-YEAR PROFESSIONAL SERVICES AGREEMENT WITH ENVIRO-TECH TO PROVIDE GREASE AND ODOR CONTROL FOR THE WASTEWATER COLLECTIONS SYSTEM AND WASTEWATER TREATMENT PLANT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

Title read by City Attorney Robert Pritt (11:08 a.m.). Council Member Sorey cited the October 27 memorandum from Utilities Director Bob Middleton mentioning “spikes of excess grease” and questioned whether this was a significant concern. (It is noted for the record that the aforementioned memorandum is contained in the file for this meeting in the City Clerk’s Office.) City Manager William Moss explained that while this was indeed not considered significant, it had

been an ongoing concern with enforcement of the prohibition of disposing of the grease as well as numerous inspections taking place in restaurants around the City in this regard. This problem increased when in the past year the Collier County waste plant stopped accepting grease for disposal, and while grease traps are required in the City, they must be cleaned and maintained to function properly. Mr. Sorey questioned whether the code should be enforced in regard to ongoing maintenance of the traps, would the cost to the City be lowered for items such as that under consideration with less grease entering the City's infrastructure. Mr. Moss stressed that the chemicals would still be needed and that he would review resources regarding enforcement and report to Council at a later date.

**Public Comment:** (11:12 a.m.) None.

**MOTION** by Sorey to **APPROVE RESOLUTION 08-12270** as submitted; seconded by Taylor and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**RESOLUTION 08-12271.....ITEM 17**  
**A RESOLUTION AMENDING THE 2008-09 BUDGET ADOPTED BY ORDINANCE 08-12201 FOR THE PURPOSE OF INCLUDING THE CONSTRUCTION COSTS FOR THE REPAIR OF THE NORTH JETTY AT DOCTORS PASS IN THE MOORINGS BAY SPECIAL TAXING DISTRICT CAPITAL IMPROVEMENT PROJECT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:12 a.m.). City Manager William Moss noted that this item merely re-appropriates funds within the budget for this project.

**Public Comment:** (11:13 a.m.) None.

**MOTION** by Sorey to **APPROVE RESOLUTION 08-12271** as submitted; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 18**  
**AN ORDINANCE PERTAINING TO POLLUTANT DISCHARGE; AMENDING SUBSECTIONS (b) AND (c)(2) OF SECTION 42-5 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF PROHIBITING THE USE OF COPPER SULFATE OR ANY OTHER COPPER-CONTAINING HERBICIDE IN CITY LAKES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:13 a.m.).

**Public Comment:** (11:13 a.m.) None.

**MOTION** by Taylor to **APPROVE THIS ORDINANCE** on first reading as submitted; seconded by Barnett and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

In response to Council Member Price, City Manager William Moss confirmed that staff had been understanding of direction regarding education and awareness of residents of this amendment, which had been received that week's workshop during discussion of same.

**ORDINANCE (First Reading).....ITEM 19**  
**AN ORDINANCE RELATING TO WATER AND SANITARY SEWER EXTENSIONS AND CONNECTIONS, SYSTEM DEVELOPMENT CHARGES AND CONNECTION FEES; AMENDING ARTICLE VII, FEES AND CHARGES, OF CHAPTER 30 OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF CALCULATING REVISED IMPACT FEES TO MEET THE FUTURE GROWTH RELATED NEEDS OF THE CITY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:14 a.m.). City Manager William Moss reviewed his memorandum dated November 6, 2008 (Attachment 7) wherein a brief history and overview of this item had been provided. He also confirmed that new development and redevelopment would indeed fund any additional infrastructure needed for provision of their utility service. In response to Council Member Sulick, Mr. Moss indicated that the size of the meter servicing a property determines the actual impact fee levied.

**Public Comment:** (11:16 a.m.) None.

***MOTION by Sorey to APPROVE THIS ORDINANCE on first reading as submitted; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

Council Member Willkomm commended City Manager Moss for his initiative with regard to the revising of the above item; Council encouraged him to continue his review of the Code of Ordinances to ascertain whether additional amendments are needed.

**RESOLUTION 08-12272 (Added Item / see Item 4 above) .....ITEM 22**  
**A RESOLUTION APPOINTING TWO MEMBERS TO THE BLUE RIBBON FINANCIAL PLANNING COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:17 a.m.). Council Member Sorey suggested former Council Member William MacIlvaine for this committee. Mr. Price listed Paul Boltz and Robert Hershenhorn (economist and banker, respectively) and Vice Mayor Taylor recommended Daniel Baer (financial adviser). In response to Council Member Willkomm, Mr. Price explained that the Committee would meet the second Friday of each month for two hours and that it should be limited to the required ten persons thereby allowing input by each member. The first meeting is scheduled for December 12 at 9:00 a.m., Mr. Price indicated.

**Public Comment:** (11:23 a.m.) None.

***MOTION by Barnett to APPROVE RESOLUTION 08-12272 APPOINTING PAUL BOLTZ AND ROBERT HERSHENHORN which unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**(Added Item / see Item 4 above) .....ITEM 23**  
**AUTHORIZE THE ADVERTISEMENT OF A NOTICE OF INTENT REQUIRED BY SECTION 197.3632; RESOLUTION TO BE CONSIDERED ON 12/17/08 REGARDING NON-AD VALOREM SPECIAL ASSESSMENT.** City Manager William Moss, referencing his memorandum dated November 18 (Attachment 8), explained this item and addressed the need for advertising any intent with regard to non-ad valorem special assessments; he noted that the resolution regarding this matter would be presented to Council during the December 17 regular meeting.

**Public Comment:** (11:25 a.m.) None.

*Consensus to proceed with advertising as presented.*

**CORRESPONDENCE AND COMMUNICATIONS.....**

(11:25 a.m.) Council Member Sorey noted that City facilities would be reviewed for energy efficiency in the near future and that funding for the Gordon River pedestrian underpass (US 41) art gallery would perhaps be available through the Tourist Development Council (TDC); the application would be due in March. In response to Council Member Heitmann, City Manager William Moss indicated that should Council desire to move forward with the appraisal of the Renaissance Village (formerly Grand Central Station) property, at that time staff would research possible grant opportunities as referenced above (see Item 5). Vice Mayor Taylor expressed concern that the Planning Advisory Board on November 12th had indicated opposition to an enabling ordinance allowing Business Improvement Districts (BIDs) as well as concern regarding correspondence from Skip Quillen (Attachment 9) which also addressed BIDs. Council Member Sulick questioned the authority of the Public Art Advisory Committee (PAAC) with regard to its assessment to an owner of a maintenance percentage for donated art and the management of advisory committees in general. Council Member Willkomm requested clarification as to whether the financing documents regarding the City's parking garage currently under construction (located at Eighth Street and Sixth Avenue South) had been finalized; City Manager Moss confirmed this had indeed been completed. Mayor Barnett suggested that staff research the possibility of the City investing in Certificates of Deposit (CD's) which are insured and earn higher interest rates on occasion. Council Member Price cautioned that short term CD's do not usually offer the higher interest rate of return; longer term should be considered unsafe at this time.

**PUBLIC COMMENT.....**

(11:38 p.m.) None.

**EXECUTIVE SESSION.....ITEM 6**

(11:39 a.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to COLLIER COUNTY, MARINE INDUSTRIES ASSOCIATION OF COLLIER COUNTY, INC., AND CAPTAIN ERIC ALEXANDER v FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION, THE CITY OF NAPLES, AND CITIZENS TO PRESERVE NAPLES BAY, INC.; Case No's. 2D07-1744, 2D07-1777, and 2D07-1796 and DOAH Case No's. 05-2034, 05-2035, 05-2036 and 05-2037.

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**Recess: 11:41 a.m. to 11:50 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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**Executive Session: 11:50 a.m. to 12:32 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

(12:35 a.m.) Following a brief discussion as to its wording, the motion reflected below was proffered.

**MOTION by Sorey that THE CITY SHALL NOT FILE AN APPEAL WITH FLORIDA SUPREME COURT; MATTER WILL THEN RETURN TO FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION (FFWCC) IN DECEMBER, AT WHICH TIME CITY SHOULD SEEK CONTINUANCE OF THE MATTER PENDING OUTCOME OF STATE LEGISLATION REGARDING APPLICABLE RULES AND THE FFWCC's INTERPRETATION THEREOF. This motion was seconded by Taylor and**

*carried 6-1, all members present and voting (Willkomm-yes, Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-yes, Barnett-yes).*

**EXECUTIVE SESSION REGARDING FIRE LABOR RELATIONS.....ITEM 21**

**Executive Session: 12:36 p.m. to 1:39 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Heitmann who left at 1:22 p.m. during this session and did not return.**

(1:39 p.m.) No action was announced.

**ADJOURN .....**  
1:39 p.m.

\_\_\_\_\_  
Bill Barnett, Mayor

\_\_\_\_\_  
Tara A. Norman, City Clerk

Minutes prepared by:

\_\_\_\_\_  
Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 12/17/08



FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
ST NAME—FIRST NAME—MIDDLE NAME <i>TAYLOR, PENELOPE ANN</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>
MAILING ADDRESS <i>995 13<sup>th</sup> STREET NORTH</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>NAPLES</i> COUNTY <i>FL 34102</i>	NAME OF POLITICAL SUBDIVISION: <i>City Council of Naples</i>
DATE ON WHICH VOTE OCCURRED <i>11/19/08</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE

### WHO MUST FILE FORM 8B

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

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

### INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

#### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

#### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)



**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Penny Taylor, hereby disclose that on November 19, 2008:

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

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, \_\_\_\_\_;
- ☐ inured to the special gain or loss of my relative, \_\_\_\_\_;
- ☐ inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- ☐ inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

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

*City Council Meeting 76.14  
11/19/08*

*I am currently working with  
True Line on their opening.*

Date Filed

*11/27/08*

Signature

*[Signature]*

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

Public Art Advisory Committee  
Special Meeting  
November 18, 2008

Attachment 3  
Page 1 of 1

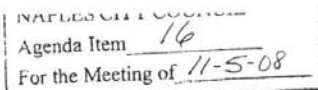
FIRST MOTION

By **Member Merlin Lickhalter** that the Public Art Advisory Committee reaffirm its earlier approval of the Selection Committee's choice of Mark Fuller and affirm the piece of artwork as the recommended for the garage. **Seconded by Member Norman Rocklin and carried 6-1** (Albert-yes, Burke-yes, Lickhalter-yes, O'Brien-yes, Rocklin-yes, Taylor-no, Kenny-yes).

SECOND MOTION

By **Member Merlin Lickhalter** that the Chair of the Public Art Advisory Committee present to the City Council the results of the Committee's discussion where the concerns of the architect and landscape architect were fully discussed with the artist, and that the Public Art Advisory Committee is satisfied with the responses received. **Seconded by Member Norman Rocklin and unanimously carried** (Albert-yes, Burke-yes, Lickhalter-yes, O'Brien-yes, Rocklin-yes, Taylor-yes, Kenny-yes).

SUPPLEMENT  
# 2



## Andrea Clark Brown + David Poorman Architects PA

340 Eighth Street South, Naples, Florida 34102, p 239 263 3898 / f 239 263 6025  
www.andreabrownanddavidpoormanarchitects.com AAC002302 Architecture Interior Design

RECEIVED

NOV 04 2008

MAYORS OFFICE

Attachment 1  
Page 1 of 2

Dear Mayor Barnett and Members of the City Council:

What a privilege and delight it has been to review the portfolios of our distinguished three artist "finalists" for the Public Parking Facility at 8<sup>th</sup> and 6<sup>th</sup> Ave. South! The process has been both informative and inspiring, and bodes well for a high quality response to other Public Art opportunities in Naples.

After our committee's ranking and discussions, following the three artist's presentations, the vote determined that Mark Fuller's design was the top pick.

I am writing this letter to express my serious professional concerns along with the shared concerns of my colleague Andrew Eisele of JRL regarding the art piece selected for development and installation at the site of the parking garage. These concerns were expressed and reiterated by both Andrew and myself at the selection hearing, but apparently were not shared by our board members at the time of the ranking and vote.

Our concerns are the following:

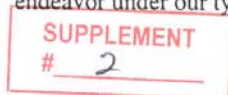
The Mark Fuller piece selected has both serious safety and maintenance issues that could place a grave responsibility and liability on the City.

The piece proposed has many moving parts, intended to be caught by breezes, which must withstand hurricane force speeds during the seasonal weather changes. The fasteners proposed, though stainless steel, can, and may, erode over time (3-5 yrs), as many similar fasteners have shown to be adversely affected by our salt air and winds. If these pieces fail, the lexan squares held in place by the stainless fasteners, could come loose and become projectiles unintentionally.

The moving panels are at heights which could easily turn in the face of infants, children and adults, and in heavier breezes could actually hit an observer at close range with surprising force. Given that there are square edges on each panel, the danger is something to be closely considered.

The structure of the pieces, are both approachable and able to be climbed. The artist suggested that a spiny or thorny plant be placed at the base of the sculptures to keep the piece out of reach (though approachability was intended for the pieces). This type of planting options poses other responsibilities for the City, not the least of which would be that the thorns/spines could cut or hurt a pedestrian/or curious child intrigued by the colored glass (lexan) pieces of the sculptural grid.

The lexan pieces themselves would require (over time) individual cleaning, in order to present the optimal character of the artistic expression. This cleaning could be more than an annual endeavor under our typical weather conditions.



## Andrea Clark Brown + David Poorman Architects P.A.

340 Eighth Street South, Naples, Florida 34102 • 239.263.3898 • 239.263.6025  
www.brownpoormanarchitects.com AA0002302 Architecture Interior Design

Attachment 1  
Page 2 of 2

Though I, and Andrew Eisele are both enthusiastic about the various artistic and design features that make Mark Fuller's piece admirable and exciting, we are also both believe in the need and responsibility to say that we would *not* recommend this piece for the Public Art Program due to our considerable concern for life, health and safety of the Public who may be hoping to appreciate this intriguing design proposal.

As such, I am, without hesitation, (along with Andrew Eisele) recommending that the Council reconsider the selection of this piece/artist and defer to an alternative art piece by Mr. Fuller, or others, that has *all* aspects of the Public safety clearly in mind.

Simply stated, I, Andrea Clark Brown AIA and Andrew Eisele, ASLA will not, and *do not* endorse the construction of Mr. Fuller's piece, regardless of its design interest, for all of the reasons stated above in this letter.

Respectfully submitted for your consideration

Sincerely,

Andrea Clark Brown, AIA

SUPPLEMENT



Public Art Advisory Committee Regular Meeting – September 28, 2007 – 11:30 a.m.

Member O'Brien provided additional information regarding the intent of former Fifth Avenue South Association Director Deb Newman in administering this program, noting that she had undertaken an effort to raise funds for the purchase of loaned pieces on behalf of the Association. He therefore recommended that staff invite current DNA Director Gochler to provide an outline of program goals. For example, he said, if the association has made statements or commitments to the artists that the loaned pieces would be purchased, then the City must consider that factor. Member O'Brien also indicated that the City must consider if it wants to manage a program to provide exhibit space, as opposed to mounting a permanent collection. He stressed that it is imperative to clarify the City's intent in this regard, especially if it will provide exhibit space with introduction of new pieces.

Chairman Kenny also indicated that the City must consider if it prefers to administer Images of Our Environment separately from the City's public art program and fund. Analyst McCracken said she believed the DNA would prefer for the program to be administered independently in order to retain its focus in the Fifth Avenue South area. She also indicated that although she did not believe the DNA intended for the City to purchase the artwork currently on loan, she would contact DNA Director Gochler for further clarification. Member O'Brien suggested that the City purchase artwork for permanent installation, either the current pieces or new ones, should the City agree to manage the program, because it is unlikely that artists would be willing to loan large pieces given the escalating cost of sculpture materials. He also cautioned that management of a rotating collection would be difficult and time-consuming.

Analyst McCracken pointed out that the insurance values of the current work on loan range from 5,000 to \$100,000, although it is not clear whether those figures are comparable to a purchase price.

The Committee briefly discussed the nature of the current loan agreements, including the ability of an artist to terminate the agreement. Analyst McCracken explained that the City acquires liability insurance for the loaned artwork, while the gallery owner or artist must insure for theft/damage. She observed that should the City purchase the artwork, it would also have to provide theft/property damage insurance.

***MOTION by Lickhalter to ACCEPT the proposal by the Downtown Naples Association for the City to control and manage the Images of Our Environment art program, with the condition that the City retain the flexibility to administer the program as it chooses. This motion was seconded by O'Brien and unanimously carried (Albert-yes, Burke-absent, Lickhalter-yes, O'Brien-yes, Rocklin-absent, Taylor-absent, Kenny-yes).***

**OTHER BUSINESS.....ITEM 7**  
In response to Member Lickhalter, Community Services Analyst Janet McCracken stated that the proposed parking garage project at Eighth Street South and Sixth Avenue, which is subject to the public art requirement, would most likely be completed in December of 2008. The other municipal project requiring participation is replacement of a maintenance shop, she said, which would be completed in the 2007-08 fiscal year. She further noted that unlike artwork proposed for private development, PAAC must forward a recommendation to City Council for approval of the public art component of municipal projects. Ms. McCracken informed the Committee that she had met with Community Development Director Robin Singer and the architects of the parking garage project to discuss its public art requirement. The stakeholders of the project will have input, she said, and then the Committee will review the public art plan. In further

Andrea Clark Brown

Public Art Advisory Committee Regular Meeting – September 28, 2007 – 11:30 a.m.

discussion of the process for approving public art in municipal buildings, Ms. McCracken indicated that a selection committee composed of stakeholders and community members would review artist proposals for the project. She also pointed out that the selection criteria set forth in the public art ordinance and guidelines will likely require revision to reflect the proposed text amendment previously approved by PAAC, which will be considered by the Planning Advisory Board in November and City Council in December.

In response to Member Lickhalter, Ms. McCracken clarified that the aforementioned stakeholders include the Community Redevelopment Agency (CRA) and City staff from various departments such as engineering and utilities representatives. She further explained that the Committee's role will be to select the artist, however Architect Andrea Clark Brown will make a recommendation as to the type or style of art best suited to the site, given the design of the structure.

Member Lickhalter expressed concern that artist selection must occur in the near future because permitting for the parking garage project will begin in early 2008. Ms. McCracken explained that CRA Executive Director Russ Adams and Community Development Director Singer would address this issue at an upcoming City Council meeting. She also noted that she had obtained several examples of public art in parking garages, which she has provided to Architect Brown and the landscape architect for the project. The request for artist proposals will be drafted by staff, Ms. McCracken said, but PAAC will have the opportunity to provide input. The Committee then briefly discussed the methods by which public art can be acquired in order to accommodate various timeframe limitations.

The Committee also reviewed a list of private development projects (a copy of which is contained in the file for this meeting in the City Clerk's Office) approved by the Design Review Board (DRB) which are subject to the public art requirement. Ms. McCracken explained that three of the projects, including Supreme Building, Fun Time Nursery, and the Sixth Street South Villas are between 5,000 and 10,000 square feet in size, which means that under the current ordinance they are required to contribute to the public art fund instead of placing art onsite. However, she said, if the text amendment previously approved by the Committee is implemented by City Council, the three aforementioned projects would be allowed to place art onsite. Ms. McCracken said she would confirm that the project developers had been informed of the possible revision to the guidelines. Member Lickhalter however pointed out that a building permit cannot be obtained without PAAC approval of the public art plan, in which case the projects under discussion may experience a delay if they choose to place art onsite.

In response to Chairman Kenny, Ms. McCracken explained that the Moorings Park project will contribute to the public art fund because it did not have a suitable location for public art.

Chairman Kenny requested that staff provide the Committee with regular financial statements for the public art fund, detailing the amount in escrow and the funds currently available; Analyst McCracken agreed to provide monthly reports.

Analyst McCracken informed the Committee that she has made information available on the City's website with regard to public art plans for private development such as the recently approved Naples Yacht Club expansion. She also reviewed other opportunities to increase media coverage, including a WGCU program on art and local magazines "N" and "Gulfshore Life".





*City of Naples*

City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

**Public Art Advisory Committee Regular Meeting – November 29, 2007 – 11:30 a.m.**

**CALL TO ORDER ..... ITEM 1**

Chairman Kenny called the meeting to order and presided (11:33 a.m.).

**ROLL CALL ..... ITEM 2**

**Present:**

Sharon Kenny, Chairman  
Penny Taylor, City Council Member (arrived at 11:34 a.m.)  
Eugene Burke  
Merlin Lickhalter (arrived at 11:44 a.m.)  
Jack O'Brien  
Norman Rocklin

**Absent:**

Marcia Albert

**Also Present:**

Janet McCracken, Community Services Analyst  
Rachael McLean, Technical Writing Specialist  
Other interested citizens and visitors.

**(It is noted for the record that Member Taylor arrived at 11:34 a.m.)**

**APPROVAL OF MINUTES ..... ITEM 3**

**MOTION by O'Brien to APPROVE the meeting minutes as submitted;  
seconded by Taylor and unanimously carried (Albert-absent, Burke-yes,  
Lickhalter-absent, O'Brien-yes, Rocklin-yes, Taylor-yes, Kenny-yes).**

**PRESENTATION BY ANDREA CLARK BROWN, PARKING GARAGE ARCHITECT ..... ITEM 4**

Architect Andrea Clark Brown gave an electronic presentation regarding the proposed design configuration and landscape plan for the parking garage to be constructed at Eighth Street South and Sixth Street and identified various opportunities for the placement of public art on the site. (It is noted for the record that a printed copy of this material is contained in the file for this meeting in the City Clerk's Office.) She stressed her willingness to collaborate in this regard with the public art program and pointed out that the proposed structure will utilize extensive landscaping to create what she described as a park-like atmosphere that compliments nearby Cambier Park. The garage, she said, will provide 323 parking spaces on 3 levels not to exceed 42 feet in height; in addition, she briefly reviewed the objectives with regard to energy-efficient and environmentally-sensitive building concepts, which she said may reduce the facility's long-term maintenance costs. Ms. Brown suggested placement of public art near the Eighth Street

Public Art Advisory Committee Regular Meeting – July 2, 2008 – 11:30 a.m.

in Collier County would be welcome to participate. Mr. Nappo stated that the artwork would function as an ethnography or a memorial to the City's pioneers, with a focus on the history of the area's waterways. Member Taylor further clarified that the artwork would likely illustrate the history of Naples Bay as a working waterfront, noting that ceramic tile had been selected as the medium, due to the site's location and proximity to water. Mr. Nappo then explained the manner in which the students' designs would be transferred to tile, stressing that the images would not be altered from their original form. Further discussion ensued with regard to other aspects of the project, including temporary exhibition of all artwork produced regardless of final selection, dissemination of flyers through Collier County Public Schools to recruit participants, the Association's fundraising plan, and the possibility of developers contributing to the project through the City's public art ordinance (Section 46-42). Mr. Nappo projected that the budget for the artwork component, including Consultant Bloom's salary, would range from \$100,000 to \$200,000. He also confirmed that homeschooled children would be invited to participate in the program.

Member Taylor noted that Consultant Bloom would provide regular updates to the Committee with regard to this project. Chairman Kenny thanked Mr. Henning and Ms. Reiterer for their presentation.

**ARTIST SELECTION PANEL FOR PARKING GARAGE PROJECT .....ITEM 5**

Community Services Analyst Janet McCracken stated that construction of the parking garage at Eighth Street South and Sixth Avenue is underway and the call to artists for the public art component would be issued the following day. She reviewed a preliminary schedule (Attachment 1) for the public art project, which has been provided to project architect Andrea Clark Brown, who agreed that it remained feasible despite further delays. Ms. McCracken explained that Chairman Kenny would preside over the artist selection panel, which will also include Member O'Brien and one other Committee Member, noting that participants must be available during August for review of submittals. She therefore requested that Members Albert and Lickhalter be considered, noting that Members Rocklin and Burke would not be able to attend due to their summer schedules. Following a brief discussion, Member Lickhalter agreed to serve on the selection committee. Chairman Kenny noted that Member Albert would have various opportunities in the future for additional participation.

In response to Member Taylor, Ms. McCracken explained that, in regard to the artist selection process, a submittal of qualifications would include a letter of interest and the artist's resume, as well as ten slides illustrating his or her work. The artist selection panel, she said, will narrow the candidate field to three based on the submittals, and the finalists will be given approximately eight weeks to develop a project proposal; the Public Art Advisory Committee (PAAC) will then review the proposals and select one, which will be submitted to City Council for contract approval. Ms. Taylor suggested that it would be prudent to include Council in the process by presenting an overview of the three finalists' slides, and therefore artistic styles, prior to formally selecting and notifying the artists. Chairman Kenny agreed, noting that it would allow PAAC and/or staff to address concerns early in the process, although also expressing the hope that Council would not influence the panel's ultimate selection. Ms. Taylor said she believed that City Council would merely offer input at that stage although it ultimately has authority over the contract with the artist. She further stressed that it will be the City's first commissioned artwork for a municipal project, noting also the significant budgetary challenges which may render the project contentious. Ms. McCracken clarified that each finalist will be allowed 45 minutes to present a site-specific proposal to PAAC, noting that Council Members may attend the



Public Art Advisory Committee Regular Meeting – July 2, 2008 – 11:30 a.m.

signage would be installed near Tin City to identify the underpass/art installation to both pedestrians and vehicular traffic on US 41. Ms. Reiterer also briefly addressed various options for lighting at the site, in addition to electric infrastructure.

In response to Member Albert, Member Taylor explained that the Naples Art Association would direct the artwork component, noting that Architectural Network, Inc., had offered to contribute to the proposed project by donating conceptual design plans. In response to Chairman Kenny, Mr. Henning explained that various options were under consideration with regard to a security system for the site, including installation of cameras and integration with the system utilized at the nearby Bayfront Inn. Member Lickhalter expressed support for the preliminary designs presented; Member O'Brien commended Mr. Henning and Ms. Reiterer for including prominent signage, noting that many residents are unaware of the pedestrian underpass. In further discussion, Mr. Henning explained that the conceptual designs identify the project as the Naples Gordon River Pedestrian Underpass or NGRPU Art Gallery, but an official name had not yet been selected. Community Services Analyst Janet McCracken also pointed out that the conceptual design team had integrated material treatments to discourage skateboarders from using the area. Community Redevelopment Agency (CRA) Executive Director Russ Adams noted that cyclists would be required to dismount and walk through the underpass. Member Lickhalter pointed out that he had observed a potential hazard at the existing underpass in the form of material projecting at head-level; Mr. Adams said that iron detailing had been installed to direct pedestrians away from the hazard, but it would be addressed in the future.

CRA Executive Director Adams also reviewed funding sources, including \$50,000 for improvements to the existing underpass as allocated in the current year's budget, a portion of which had already been expended to install lighting to address safety concerns. He also noted that \$60,000 may be available from the CRA pathway improvements fund, although both the CRA and City Council must approve that type of allocation. Funds provided by the CRA, he said, may cover construction and lighting costs, but additional expenses related to the administration of the project and the art installation must be funded through the Naples Art Association's efforts. Mr. Adams said he believed the CRA would nevertheless fund long-term routine maintenance of the site, as it does for other public areas in the CRA district, provided that the Association transferred ownership of the public art installation to the City or CRA. He noted that repairs must however be covered by the public art fund or another entity.

Analyst McCracken explained that a provision had recently been included in the City's artwork donation agreement, requiring the donor to provide a payment equal to 5% of the value for maintenance, a practice which is common to donation programs. She also noted that Traffic Engineer George Archibald and Risk Manager Lori Parsons had indicated that the Florida Department of Transportation (FDOT) must issue a permit for the project prior to construction; an interlocal agreement between the City and FDOT would also be necessary to clarify operation and maintenance responsibilities, she said.

Analyst McCracken stated that Council had agreed that the Association would manage the project and waived the City's criteria for artist selection. Frank Nappo, President of the Naples Art Association/von Liebig Art Center, thanked the City for appointing Member O'Brien, curator at the von Liebig Art Center, to serve on the Committee. He stated that in conjunction with the Association, consultant Linda Bloom would manage the project, noting that children from the community would be creating the artwork. Member Taylor clarified that any child who resides



Design Proposal For Public Art  
City of Naples, Florida





FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
ST NAME—FIRST NAME—MIDDLE NAME <i>Taylor, Penelope A</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>
MAILING ADDRESS <i>995 13<sup>th</sup> St N</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Naples</i>	NAME OF POLITICAL SUBDIVISION: <i>City of Naples</i>
DATE ON WHICH VOTE OCCURRED <i>11/19/08</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

### WHO MUST FILE FORM 8B

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

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

### INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

#### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

#### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Penny Taylor, hereby disclose that on November 19, 2008:

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

- ☒ Inured to my special private gain or loss;
- ☐ Inured to the special gain or loss of my business associate, \_\_\_\_\_;
- ☐ Inured to the special gain or loss of my relative, \_\_\_\_\_;
- ☐ Inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- ☐ Inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

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

*City Council Meeting 11/19/08*

*Item 12*

*I am currently working with  
Fun Time on their opening*

*11/19/08*

Signature

Date Filed

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

City of Naples



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: November 19, 2008**

Agenda Section:	Regular	Prepared By: A. William Moss, City Manager
Agenda Item:	19	Date: November 6, 2008 Department: City Manager
		Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b>		
Ordinance on First Reading to Amend Chapter 30, Article VII, Water and Sanitary Sewer Extensions and Connections, System Development Charges and Connection Fees.		
<b>SUMMARY:</b>		
City Council is asked to consider an ordinance on first reading to amend the water and sewer system development charges.		
<b>BACKGROUND:</b>		
<p>The water and sewer system development charge (also referred to as an impact fee or capital facilities fee) is a fee charged to new development in order to recover associated capital expenses required to meet the demand on a capital facility caused by new development. The fee imposed on new development should be sufficient to insure that current utility customers do not pay for required expansion of utility facilities to meet the utility demands created by new development.</p> <p>A system development charge is authorized by Florida Statutes. The charge may be imposed if there is a current study to justify the charge. The system development charge must provide a "rational nexus". That is, the charge must be directly associated with the cost of new facilities required to meet the increased demand on the facility. Revenues received must be used for expanded capacity of the utility system and not for operating expenses. Revenues may not be used to reconstruct existing facilities used by current customers.</p> <p>Ordinance No. 07-11859, adopted on December 5, 2007, increased the water and sewer system development charges. The current charge for water is \$2,549 per equivalent residential unit (ERU). The current charge for sewer is \$2,779 per ERU. An equivalent residential unit is a measure of the typical water and sewer usage by a single residence.</p> <p>While there are many standards used to measure an ERU for <u>water</u>, the City has determined that an ERU is equal to the flow associated with a 5/8 inch water meter. Therefore, a new single-family residential unit that requires a 5/8 inch meter will pay the above referenced water system development charge. A one inch meter allows 2.5 times the water flow, so the system development charge for water is 2 ½ ERU's, which is \$6,373. For business and institutions, the charge is also based on the size of the water meter. For multi-family, the water system development charge is based on the meter size or the number of units, whichever is greater.</p> <p>The <u>sewer</u> system development charge for single-family and multi-family development is one ERU per residential unit (not the size of the water meter). For business and institutions, the charge is based on the size of the water meter.</p>		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**Regular Meeting Date: **November 19, 2008**

Page Two

Agenda Item:

19

**BACKGROUND (cont.):**

During the FY 2008-09 Capital Improvement Workshop meeting held in June, City Council agreed that the system development charges should insure that new development and "redevelopment", both residential and commercial, pay system development charges associated with the increased capital expenditure required to meet the utility demand of new development and redevelopment.

TetraTech conducted the original system development charge study in September, 2007. Following the June Capital Improvement Workshop meeting, they were asked to review their original study and provide recommendations to insure that new development and redevelopment pays the appropriate system development charge. They were also asked to determine whether the system development charge is appropriate for the recently adopted Integrated Water Resources strategy.

TetraTech completed their review and provided recommendations to City Council on September 29, 2008. They advised that the system development charge adopted in December, 2007 is appropriate for the capital facilities associated with the recently adopted Integrated Water Resources strategy. The system development charge will fully recapture the impact of growth on the system. They recommended a Code amendment that would allow collection of additional system development charges for single-family residential units (recommendation would apply to single-family sewer system development charge only). Rather than a flat rate, the ERU would be based on the size of the water meter for single-family structures. A structure with a 5/8 inch meter would be considered one ERU for sewer. A larger structure requiring larger water meters would pay more.

A review of Chapter 30, Article VII, Fees and Charges, suggests major revisions are necessary to update the Code. The attached ordinance provides substantive changes to the Code, but it does not increase fees and charges. It does amend the way the sewer system development charge is calculated for single-family structures. It provides system development charge credits for redevelopment (i.e. demolition and rebuild), and it allows refunds if development does not occur. It provides for alternate ways to calculate system development charges.

**RECOMMENDED ACTION:**

Adoption of the Ordinance on First Reading to amend Chapter 30, Article VII, Water and Sanitary Sewer Extensions and Connections, System Development Charges and Connection Fees.

Reviewed by Department Director

A. William Moss

Reviewed by Finance

NA

Reviewed by City Manager

A. William Moss

City Council Action:

**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: November 19, 2008**

Agenda Section:	Prepared By: A. William Moss, City Manager	
Regular	Date: November 18, 2008	Department: City Manager
Agenda Item:	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
To Be Added		

**SUBJECT:**  
Notice of Intent required by Section 197.3632, concerning possible Special Assessment Districts.

**SUMMARY:**  
Upon the approval of City Council by motion, a resolution electing use of the uniform method of collecting one or more series of a non-ad valorem special assessment will be considered on December 17, 2008.

**BACKGROUND:**  
Section 197.3632, Florida Statutes, requires that the City must hold the public hearing and adopt a resolution of intent to use the uniform method of collection for any assessment program in the calendar year prior to any such collection. This resolution, which does not obligate the City to use the method or impose a special assessment, must be adopted by January 1 and sent to the Collier County Tax Collector, the Collier County Property Appraiser, and the Florida Department of Revenue by January 10. Section 197.3632 requires published notice of the public hearing once each week for four consecutive weeks immediately preceding the hearing date. The City Manager suggests that City Council agree to the publication of notice and consideration of the resolution and public hearing on December 17, although actual adoption of the resolution will be at the discretion of the City Council.

This resolution is generic in its nature. It merely provides that City Council is contemplating the imposition of one or more series of special assessments for capital improvements and/or essential services. In order for any special assessment district to be established in the year 2009, a resolution must be adopted prior to December 31 of the preceding year.

One possible assessment district that may be considered in the next year is a dredging project under evaluation by East Naples Bay Taxing District. Another possible district involves the "Business Improvement District" as may be petitioned by property owners on 5<sup>th</sup> Avenue South.

Adoption of the resolution on December 17, 2008 will allow the opportunity to create a special improvement district in 2009 with imposition of such assessment on the property tax bill issued in November 2009. If this resolution is not adopted by December 31 (or by March 1 upon the approval of the Collier County Tax Collector and Property Appraiser), collection of the special assessment would not appear on the tax bill until November 2010.

**SUPPLEMENT**  
# 2

City of Naples



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date:** November 19, 2008

**Page Two**

Agenda Item:		
To Be Added		
<b>BACKGROUND (cont.):</b>		
Adoption of the resolution on December 17, 2008 does not require City Council to establish a special assessment district, but it does allow City Council the latitude to establish such district to be desired.		
Prior to publication of the notice, which is each week for four consecutive weeks immediately preceding, the City Manager seeks permission to publish the Notice of Public Hearing.		
<b>RECOMMENDED ACTION:</b>		
Motion to approve advertising a Notice of Intent required by Section 197.3632, electing to use the uniform method of collecting one or more series of non-ad valorem special assessments.		
Reviewed by Department Director A. William Moss	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		



C.C./TAYLOR

## CULINARY CONCEPTS

November 14, 2008

Russ Adams  
Naples City Council

RECEIVED

NOV 14 2008

MAYORS OFFICE

Dear Russ,

I am writing this letter to express my disappointment in yesterday's first 5<sup>th</sup> Avenue BID "Steering Committee" Meeting at City Hall.

I was shocked, as apparently you were to see an uninvited guest... a representative of the DNA attend our meeting and although I like Michelle there was in my opinion absolutely no reason or precedent for her attendance.

I would like to make my thoughts absolutely clear. As the individual who brought the idea of a Business Improvement District to the city and as the BID designated spokesperson under no circumstances will I attend further BID steering committee meetings with DNA representation... further I resent any coercion to try and convince me to include the DNA with the BID.

The ULI states very clearly that a BID is an organization of landlords and tenants – not landlords, tenants and other organizations! The individuals being taxed should in my opinion have sole representation.

There are over 1000 BIDS that work in the US. The business model is clear... why anyone would think that the City of Naples needs to compromise and deviate from a clear successful business plan – just to appease an organization that feels obviously threatened is beyond me. I harbor no ill will towards The DNA... and feel that the two organizations can partner to create great things together for 5<sup>th</sup> Avenue.

However if the city feels differently and wants to join the two groups I will respectfully wish you well and resign as the BID spokesman now, and be content with helping to point the way for a better tomorrow.

837 5th Avenue South, Suite 100 • Naples, Florida 34102  
Phone (239) 262-4677 • Fax (239) 430-2227  
[www.gr8food.net](http://www.gr8food.net)



## CULINARY CONCEPTS

I further feel that if we are to go forward we must expand the steering committee membership to include a broader coalition of tenants and landlords to gage a true consensus of opinion, my suggestions would be to invite landlords Larry Wynn, Reiner, Filhault, Dr. Mesta and Wafaa Assad (of the PBA) as well as tenants – Gloria Novak, Beth of the Wind in the willows, and any others you might wish to attend.

Please understand I am by no means trying to disrupt the BID process, and with or without me a BID is a great, proven idea, that will work.  
However I fell my integrity is at risk if I am being pressured to agree with something I just don't... Meaning the incorporation of the BID into or with the DNA.

I would appreciate a response at your discretion.

Sincerely,

Skip Quillen

Cc: Bill Moss

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