



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – February 18, 2009 – 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  
Robert Middleton, Utilities Director  
David Lykins, Community Services Director  
Erika Goodwin, Planner  
Adam Benigni, Planner  
Robin Singer, Planning Director  
Russell Adams, CRA Director  
Michael Bauer, Natural Resources Director  
Katie Laakkonen, Environmental Specialist  
Denise Perez, Human Resources Director  
Georgia Mosier  
Mike Watkins  
Barbara Bruce  
Jon Igelhart  
Andy Woodcock

Gene Scott  
Everett Thayer  
Marvin Easton  
Stefan Bothe  
Sue Smith  
Veona Little  
Lisa Swirda  
Bobby Brooks  
Nancy Ianitelli  
Jerry Rutherford  
Bill Young  
Amy Taylor  
Daniel Linehan  
Brett Moore  
Heidi Grassley  
**Media:**  
Jenna Buzzacco, Naples Daily News  
Eric Staats, Naples Daily News  
  
Other interested citizens and visitors

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

Pastor Gene Scott, Celebration Community Church.

**ANNOUNCEMENTS .....ITEM 3**

Jon Igelhart, Florida Department of Environmental Protection (FDEP) presented the City Dock with a certificate and flag noting its Clean Marina designation.

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

***MOTION*** by Price to ***SET THE AGENDA*** removing ***Item 6-b(1)*** (Pet Parade) from the Consent Agenda for separate discussion; continuing ***Item 7*** (Hole-in-the-Wall conditional use and fence waiver) and ***Item 10*** (waiver of distance petition for Nature's Garden); and adding ***Item 24*** (discussion of letter to Collier Coastal Advisory Committee and Collier County Commission concerning navigational markers in Clam Bay. This motion was 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).

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

(8:40 a.m.) **Veora Little, 180 Edgemere Way South**, introduced a program to commence in Collier County in March entitled "Operation Medicine Cabinet" which allows citizens to safely dispose of unused and expired prescription and controlled substances at participating pharmacy locations so as to protect their families from prescription drug overdoses. She indicated that in the past year 50 Collier County families lost members in this way. **Stefan Bothe, 950 Nelson's Walk**, stressed the need to offer naming opportunities for the two downtown parking garages in order to raise funds. He also proposed charging for parking in the garages, either at daily or annual rates. In conclusion, Mr. Bothe urged that Council curtail use of consultants and rely on City staff whom he characterized as brilliant and knowledgeable. **Everett Thayer, 1690 Avion Place**, noted completion of right-of-way improvements near his neighborhood and expressed appreciation to Vice Mayor Taylor for her efforts in this regard.

**CONSENT AGENDA**

Vice Mayor Taylor requested that Item 6-b-1 be removed from the Consent Agenda for separate discussion so that she could abstain from voting due to employment by the petitioner.

**APPROVAL OF MINUTES.....ITEM 6-a**

January 12, 2009 Workshop and January 14, 2009 Regular Meeting, as submitted.

**SPECIAL EVENTS ..... ITEM 6-b**

- 1) Removed from the Consent Agenda for separate discussion (see below).
- 2) Annual Picnic – Royal Harbor Association Residents – Royal Harbor Association – 2615 Tarpon Road – 03/01/09.

***MOTION*** by Price to ***APPROVE CONSENT AGENDA*** except ***Item 6-b(1)***; 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).

**END CONSENT AGENDA**

**SPECIAL EVENT .....ITEM 6-b(1)**

***Amended request – addition – Third in Bloom "Pet Parade" – 13<sup>th</sup> Avenue South – 03/22/09***  
***Original request – Third in Bloom – Third Street South Association – Third Street South – 03/19/09, 03/20/09, 03/21/09, and 03/22/09 – originally approved by City Council on 11/05/08.*** Vice Mayor Taylor indicated that she would abstain due to her employment by the petitioner and the event sponsor.

**Public Comment:** (8:46 a.m.) None.

**MOTION** by Price to **APPROVE THIS ITEM** as submitted; seconded by Willkomm 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.)

**RESOLUTION (Continued – see Item 4 above) .....ITEM 7-a**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 09-CU02 TO ALLOW FOR THE RELOCATION OF THE EXISTING GOLF COURSE MAINTENANCE FACILITY FROM THE INTERIOR OF THE PROPERTY TO THE NORTH SIDE OF THE HOLE-IN-THE-WALL GOLF COURSE PROPERTY LOCATED AT 3600 GOODLETTE-FRANK ROAD NORTH, MORE FULLY DESCRIBED HEREIN; PROVIDING AN EXPIRATION DATE; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION (Continued / see Item 4 above) .....ITEM 7-b**  
**A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 09-FWW1 FOR A WAIVER FROM SECTION 56-37 OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO ALLOW A 6-FOOT WALL ON TOP OF A LANDSCAPE BERM (TOTAL HEIGHT OF WALL AND BERM VARYING BETWEEN 6 FEET AND 12 FEET), 3 SECTIONS OF 4-FOOT RETAINING WALL SURROUNDING WELL HEADS IN 2 LOCATIONS, 2 8-FOOT TALL ENTRY GATES AND A 6-FOOT BLACK CHAIN LINK SECURITY FENCE ALONG THE WESTERN PROPERTY LINE FOR THE HOLE-IN-THE-WALL GOLF COURSE LOCATED AT 3600 GOODLETTE-FRANK ROAD, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**ORDINANCE (Withdrawn / see below) .....ITEM 8**  
**AN ORDINANCE RELATING TO UTILITY RATES; ADDING SUBSECTION (i) TO SECTION 30-33, WATER SERVICE RATES; AMENDING SUBSECTION (2) OF SECTION 30-259, RECLAIMED WATER RATES, OF THE CODE OF ORDINANCES, CITY OF NAPLES TO REVISE THE WATER AND IRRIGATION (RECLAIMED) WATER RATES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (8:47 a.m.). City Manager William Moss noted that this is an item discussed most recently in late 2007 when a decision was deferred on a rate adjustment for reclaimed water, although action had been taken on potable water rates and sewer rates. In April of 2008, he further said, the Council had determined to delay action on reclaimed water rates until completion of the integrated water resources study. Workshops were held in September, October and November. Staff was then authorized to notify customers of the potential adjustment in reclaimed water rates which would be reviewed at the current meeting and at a public hearing scheduled for March 4.

Consultant Andrew Woodcock of Tetra Tech, Inc., presented his analysis based on Council input in April. (It is noted for the record that a printed copy of Mr. Woodcock's electronic presentation is contained in the file for this meeting in the City Clerk's Office.) Apportioning the cost of the Phase I transmission/distribution system among all customers, and reclassifying alternative water supply projects to water rates, had allowed revenue requirements to be re-evaluated, he said. He therefore cited a revised rate proposal per thousand gallons for potable

water as follows: general users / \$0.93; bulk users / \$0.49; and institutional users / \$0.62. He therefore recommended the following:

- Due to connection to the reclaimed (irrigation, reuse or alternative) water system being voluntary, an incentive to connect should be provided by increasing potable water rates in Tiers/Blocks 3 (30,001-45,000 gallons) and 4 (45,000+ gallons) for all customers with reclaimed/irrigation water availability (Tier 3 would increase from \$2.85 to \$3.28 and Tier 4 from \$3.42 to \$3.93). This increase would be in the form of a 15% irrigation availability surcharge.
- Implement the above rate increases over 2.5 years so as to achieve full cost recovery.

During Council discussion it was noted that even if a customer with access to reclaimed water is in the third or fourth tier of rates for potable water, this same customer might very likely be able to move down to the first and second tiers because potable water consumption would be proportionally reduced in relation to reclaimed water used for irrigation. Utilities Director Robert Middleton pointed out that Tiers 3 and 4 relate to potable water use for irrigation purposes; should any residence connect to the irrigation water system, its potable water usage rate would fall into the Tier 1 or 2 rate structure. Council Member Sorey added that, for permitting requirements, per capita usage must be at or below 200 gallons per day per household for irrigation and potable use. In response to Council Member Price, Mr. Woodcock stated that he could not predict when full participation would be achieved because connection is voluntary, although the proposed rates assumed that all customers with availability of service would connect.

Council Member Sulick pointed out that residents had experienced a time delay in months to accomplish the necessary plumbing modifications, pointing out that often the cost is in the thousands because some properties require more extensive work so that reclaimed water is used solely for irrigation and other exterior lines remain connected to potable water. Mrs. Sulick therefore noted the importance of relating these connection issues to the other neighborhoods which would eventually be connected to the reuse water system. She further received clarification from Mr. Middleton that anticipated delays in main installation in some sections of Port Royal were found to be less than anticipated and that this work should be accomplished in the upcoming summer months. Due to the costs incurred by property owners, City Manager Moss said that a program could be considered wherein customers could apply for a rebate in the form of billing credits for the first few months of service from either the reclaimed water or potable water systems. He recommended that action with regard to a rebate proposal occur at the outset so that all customers could avail themselves of the opportunity.

Council Member Sorey urged that his colleagues keep in mind the relationship between completing the reclaimed water system and the City's future consumptive use authorizations; this includes strategies which allow the City to employ alternative water sources to supplement the demand for reclaimed water. Consultant Woodcock said that, unlike most cities, Naples has chosen not to make connection to the reclaimed water system mandatory which complicates achieving the goals described. Mr. Sorey predicted that the City would in the future be faced with making connections mandatory and suggested that Council identify a time frame.

Council Member Sulick took issue with the proposed surcharge on Tiers 3 and 4, pointing out that not only is there widespread support in the Port Royal neighborhood for utilizing reclaimed water for irrigation, but there was a question as to whether homeowners would in fact enjoy a lower tier within the potable water rate structure since residential water consumption in that neighborhood often exceeds the minimum amount even without irrigation. She further commented that significant changes had occurred in the implementation of the reclaimed water system since it was presented to the neighborhood, including rates, funding and expectations. Nevertheless, she predicted that people would continue to connect as the quality and cost of the reuse product becomes better known and the City would therefore reap the environmental benefits of having as many connections to reclaimed water as possible.

Council Member Price concurred with Mrs. Sulick's opposition to the system being mandatory, pointing out that the advantages of utilizing reclaimed water would bring sufficient customers to the system. Until the City can provide a high quality product at a reasonable rate to everyone in the service area, Mr. Price said, he would continue to oppose mandatory connection; he further said that he would not support the proposed rate structure because it penalized users through their potable water rates at a time when they are also unsure with regard to the quality of the reclaimed water and the consistency of service.

Vice Mayor Taylor expressed the belief that it was not intended for the southern end of the City to become a test area for the reclaimed water system, but that the decision to extend the service first to those residents had to do with ongoing pressure problems for potable water. While expressing concern that the full system would not be completed until the end of the year, she nevertheless spoke favorably with regard to the concept of providing rebates mentioned earlier by City Manager Moss. She also characterized the direction of the City as positive and that a developing atmosphere of fairness was attributable to input from the property owner association and, in particular, resident Marvin Easton, as well as bulk users of reclaimed water. In conclusion, Vice Mayor Taylor said that she would however not at that point nor in the future support mandatory connections.

Council Member Heitmann also said she opposed mandatory connection to the reuse water system, but said that she was particularly concerned that the availability of the Golden Gate Canal as a supplemental water source was yet to be established. She said she could not support the proposed rate increase without the necessary information and answers to various questions. This situation she characterized as troublesome.

**Public Comment:** (9:17 a.m.) **Sue Smith, 11<sup>th</sup> Avenue South**, said that the implications of the plan to extend the reclaimed water system had not been sufficiently clear for the average citizen to understand; she also mentioned that a grant had been received from the South Florida Water Management District (SFWMD). Mrs. Smith said that the convergence of economic difficulties in the United States was also unprecedented, noting increasing costs to citizens, particularly in the area of utilities, and taking issue with revenues from the City's utility services being diverted to other purposes. **Marvin Easton, 944 Spyglass Lane**, urged that the irrigation water rate should be understandable, defensible, transparent, reasonable and fair. (It is noted for the record that supporting documentation provided by Mr. Easton is contained in the file for this meeting in the City Clerk's Office.) He characterized the current proposed rate structure as however deeply flawed, stating that the assumptions on which they are based by Tetra Tech are inaccurate,

asserting that both bulk users (golf courses) and the City government are understated by 50%. For example, he said discounts were given to golf courses for accepting service interruptions and storing water in their lakes, and the City was given discounts for watering in off-peak periods, although the City is under the same requirements as residential irrigation. Therefore, residential users were allocated four times the cost as bulk users, he said. He also said that on November 11 Tetra Tech had reported the existence of 9 bulk users when there are actually 11, nevertheless the consultants had justified a more favorable rate to these users because they store reclaimed water in lakes during off-peak hours. However, 4 of the 11 do not have pre-positioned lakes and therefore accept reclaimed water in the same manner as a residential site. In response to Council Member Willkomm, Mr. Easton reiterated the assumptions that he believed to be flawed, stressing that there were the same treatment costs involved, regardless of the end user. Regardless of whether service is interruptible, he also pointed out that 4 of the 11 bulk users are outside the city limits and are therefore assessed a 25% surcharge for City potable water, even though the proposed City rate is still lower than that of Collier County's water system.

Council Member Sulick asked Mr. Easton to address reallocation of administrative costs, and he noted that the consultant's report had shown the need to generate \$1.25-million from the reclaimed water utility with \$96,700 in administrative fees for which there had however been no indication of an offsetting amount. Therefore, he asserted, customers would be billed twice for the same administrative fees. In response to Council Member Price, Mr. Easton addressed the 15% surcharge recommended to be assessed to Tiers 3 or 4. He stated that while the City is to be commended on the manner in which it has handled implementing the system and communicating with residents, negativity had arisen in the City's requirement that customers sign a hold-harmless agreement and the proposed 15% penalty for failing to connect is also a negative aspect of the process. Regardless of penalty, residents of Port Royal, he said, would connect to the system only when they feel assured that chloride levels will not damage their landscaping, Mr. Easton said, also stressing that while such an approach may have been effective elsewhere, it is not applicable to Naples. **Jerry Rutherford, 2023 Harbor Lane**, received clarification that his home in the Brookside neighborhood was served only by the City's potable water system and therefore the notice regarding reclaimed irrigation water did not apply to him. City Manager Moss explained that the City is required to notify all customers of any rate change.

At this juncture, Council Member Heitmann also received clarification from City Manager Moss that anyone within the city limits, regardless of whether a well was used for irrigation, would be required to connect to the reclaimed water system if it were made mandatory and if the City did not make an exception in particular circumstances. **Georgia Moser, 1021 Spyglass Lane**, reported that her connection to the reclaimed water system had cost approximately \$2,000, including a special valve to reduce the pressure since the City has no means of controlling pressure to home irrigation systems. This process took just over two months, she added. She also said that she strongly opposed mandatory connections, particularly in light of the hold-harmless requirement which she said should be relinquished if connections were ever made mandatory. Nevertheless, she praised the City for having instituted a reclaimed water system but urged that the rate structure distribute costs evenly among all users, supporting Mr. Easton's comments, and asking that the Council reject the rates as proposed. **Mike Watkins, 439 Third Avenue North**, noted a letter he had provided (Attachment 2) and clarified that there were in fact 11 golf courses which he was representing, pointing out that providing reclaimed water

service to golf courses was simpler than serving individual residences and the City may discontinue flows to the golf courses at will. He said that the golf courses had been working with the City for 20 years and they hoped to continue the relationship.

Mayor Barnett reflected on the extensive number of workshops and meetings which had been conducted on this topic to date and predicted that Council action would not be favorable that day on the plan as presented. He expressed disappointment, noting that some Council Members had in fact been consistently opposed, but commending staff and Consultant Woodcock; he also thanked Mr. Easton for his input as well as recognizing the value of the input provided by other speakers. However, he added, the City must recover its costs for the reclaimed water system. Council Member Price responded by expressing frustration and embarrassment at the implication that the Council should approve the proposed rates due to the amount of time already involved in this process, stating that such a process is necessary to represent the citizens and asserting that the final result would be better for having undertaken the process.

Vice Mayor Taylor asked whether the rate schedule had been based on irrigation demand per user, and whether this was the sole criterion. Consultant Woodcock however said that rates were based not only on irrigation demand but also on the relative number of customers in the various classes as well as projected revenue from those classes. Mr. Easton nevertheless pointed out that 92% of the aforementioned \$1.25-million projected revenue from the system had been identified by Tetra Tech as based on irrigation demand, regardless of user type. Mr. Woodcock confirmed that the irrigation demand element was the primary factor in development of the rates.

Council Member Sulick expressed her appreciation to Consultant Woodcock, the City staff, and Mr. Easton for their efforts and stressed the need to achieve the most correct and fair rates possible. Council Member Sorey agreed with the concerns expressed by Mr. Price, stating that the City must move forward in developing a long-term integrated water plan, especially discontinuing potable water for irrigation and disposing of reclaimed water in a manner other than the City's prior practice of discharging it into the Gordon River. Therefore, he said, the effort which will achieve the best result for all entities in the City is an integrated water plan using alternative water for irrigation; apportionment of cost via the rates will ultimately be decided by a majority of Council, Mr. Sorey added. He further expressed appreciation to the people of Port Royal for their commitment in the process, but predicted that mandatory connections would eventually be required even though he said he does not support the proposed revisions in Tiers 3 and 4 of the potable water rates.

City Manager Moss explained that, regardless of whether rates are adjusted, the costs must be covered by the City's system. Therefore, by making no change, the costs would be distributed among all water customers; however, he said he believed that when the water rate structure was developed in December 2007 it had not included the cost of reclaimed irrigation water lines due to the assumption that the project would be based on special assessment or that costs would be recovered from irrigation water customers. Absent Council action, he added, that cost will be shifted resulting in another rate increase for all water customers who are currently absorbing the cost. He requested further indication of Council's expectations to allow staff to develop a rate structure that reflects that goal. Council Member Willkomm however asserted that there should be no implication that he had been swayed from his ongoing objection to the method by which

bulk users (golf courses) were charged, stating that the golf courses had been given an advantageous rate at the expense of home owners. He said he would not support any plan until this point is addressed.

Vice Mayor Taylor asked for a clear comparison of the City's projected reclaimed water rate with that of the County, noting prior concerns that by raising the rates to golf courses it would compromise City businesses which compete within the overall County business community.

Council Member Heitmann received clarification from Utilities Director Middleton that while the City's consumptive use permit application (raw water supply) did not call for additional withdrawals for drinking water from the Lower Tamiami Aquifer, there was a request for an allocation of water from the Golden Gate Canal as well as a request applicable to the Lower Hawthorn Aquifer should a reverse osmosis (RO) facility be necessary. It is also hoped that a consumptive use permit will be granted for a minimum of 20 years from the South Florida Water Management District, Mr. Middleton said, and further explained that should the City request additional pumping from the Lower Tamiami, its application would not be accepted. Alternative water sources must be found, City Manager Moss added, because the City must lower potable water consumption. Mrs. Heitmann said she is most concerned that a plan had not been formulated prior to the City being required to take a course of action. Therefore the Council is faced with the need to underwrite the cost for a system, despite it having been an unfunded mandate from the Florida Department of Environmental Protection (DEP) relative to discharge of effluent into the Gordon River. She said that this situation could have been prevented with the presence of a plan, causing her dismay when only to the number of votes necessary for a particular action are mentioned. A complete plan must be in place before proceeding with raising rates to customers, she concluded.

In response to Vice Mayor Taylor, Mr. Easton recommended ascertaining the usage of reclaimed water in gallons among all types of users, divided into the \$1.25-million cost to be recovered, and if the cost would be approximately \$0.50 to \$0.55 per thousand gallons, golf courses would pay more, with the City and residential users paying less. He then proposed that a group from the community could within a short period of time provide a rate structure on which Council could act; this rate, he said, would identify the particular user providing a particular type of monetary benefit to the system. He recommended forming a group including a representative from Port Royal, one from a golf course with storage lakes, one from a golf course without storage lakes, City staff, and an individual who serves on the current Blue Ribbon Financial Planning Committee with experience in rate setting.

In response to Mayor Barnett, City Attorney Pritt said that the ordinance could either be continued for first reading at another time or Council could merely indicate an unwillingness to adopt the measure, at which time staff could withdraw it. He however pointed out that notices had been mailed to utility customers showing the dates for upcoming hearings and recommended against multiple continuances due to the need to dispatch further notifications. City Manager Moss strongly recommended against continuance due to the necessity of mailing future public hearing notices should adoption of a rate ordinance be doubtful.



Various Council Members made suggestions for action with regard to the item under review, including withdrawal by staff and implementing a committee as suggested above. City Attorney Pritt cited withdrawal of the matter at that time as the most prudent. City Manager Moss then withdrew the item. The Council reviewed the advisability of further discussion at the next workshop on March 2; however, City Attorney Pritt pointed out that if an ad hoc committee was formed as suggested, such a group is governed by the Sunshine Law (Chapter 286, Florida Statutes), regardless of whether it is appointed by the City Manager or City Council. After further discussion, the following additional direction was given.

***Withdrawn by staff. Further discussion at March 2, 2009 workshop to provide direction; time certain to be determined. Marvin Easton requested to confer with staff and rate consultant to address differences in interpretations as noted above. Historical information on reuse system to be provided relative to setting of prior rates.***

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**Recess: 10:26 a.m. to 10:44 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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**RESOLUTION 09-12341.....ITEM 9**  
**A RESOLUTION DETERMINING WAIVER OF DISTANCE PETITION 09-WD3 AND RESIDENTIAL IMPACT STATEMENT PETITION 09-RIS4 FOR SIX DEGREES EXHIBITIONS, LLC, IN ORDER TO OBTAIN AN ALCOHOLIC BEVERAGE LICENSE TYPE 2COP WITHIN 500 FEET OF OTHER ESTABLISHED LICENSEES THAT SERVE ALCOHOL IN THE C2-A WATERFRONT COMMERCIAL DISTRICT, LOCATED AT 1100 SIXTH AVENUE SOUTH, UNITS 2 AND 3, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:44 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, Sulick, and Taylor/familiar with the site but no contact; Price/visited the site and spoke with the petitioner; Sorey/visited the site and received correspondence from the petitioner; and Heitmann/familiar with the site and spoke with the petitioner. Planning Director Robin Singer referenced a memorandum dated February 2, 2009, by Planner Mireidy Fernandez (Attachment 3), which provided a brief overview of the above petition, noting that staff recommended denial based upon the fact that no other art gallery within the City holds a beer and wine license, as well as concern regarding the extent of the gallery's operation and its possible future plans.

Petitioner Daniel Linehan provided an electronic presentation (Petitioner's Exhibit 4 appended hereto as Attachment 4) wherein he explained that the art gallery would also be hosting film festivals, therefore, a live entertainment permit had been sought and was granted. Furthermore, he said, he considered his establishment a full-service artistic venue promoting the arts, music and film events. Target demographics, he said, are art buyers and collectors, therefore, the serving of wine would specifically support events held on the site and would be closely monitored by the management, he added. He provided three letters: one thanking the establishment for allowing the Community School of Naples to hold an art exhibit (Petitioner's Exhibit 1 appended hereto as Attachment 5); one from the petitioners wherein assurance that wine would be served only during a scheduled event at the gallery (Petitioner's Exhibit 3 appended hereto as Attachment 6); and a third from the landlord of the Dockside Boardwalk in support of the alcohol license (Petitioner's Exhibit 2 appended hereto as Attachment 7).

During discussion which followed, it was clarified that alcoholic beverage service at other art galleries is accommodated under a caterer's license. Council Member Willkomm proffered a motion to allow alcohol to be served until 9:00 p.m. due to the fact that extended hours would require a residential impact statement beyond that time; Council Member Price seconded. although discussion continued. Mr. Linehan however noted that the live entertainment permit had been granted until 10:00 p.m. Mr. Willkomm withdrew the above motion to allow for further clarification. Council Member Sorey noted that the serving of alcohol was to be limited to scheduled events, and Vice Mayor Taylor then proffered a motion to continue this item to allow the petition to be re-advertised with extended hours; Mayor Barnett seconded.

Council Member Heitmann questioned the approval of the live entertainment permit as well as the serving of alcohol in that she considered the business as a multi-cultural center and not an art gallery; Ms. Singer noted that this had been staff's concern also. Council Member Sorey suggested, if continued, that Council carefully consider the precedent of allowing art galleries to obtain permits to serve alcoholic beverages; Council Member Sulick agreed, noting that she had also voted against the live entertainment permit for this establishment. Council Member Price said that his visit to the site had convinced him that it is an art gallery, but due to economics, the petitioner is unable to hire a caterer for every event. Therefore he said that he supported the petition then before Council. The business and its location is unique, he further said, pointing out his belief that government should provide the framework for businesses to succeed.

**Public Comment:** (11:36 a.m.) **Barbara Bruce, 46 Bennington Drive, #2**, (sworn separately), said that, as a former business owner in the City, she recommended that staff review alcohol licensing regulations. Caterers do not have traveling licenses, she said, although one-day-only permits are granted for the selling of alcohol; other establishments are giving it away which is permissible by City code. City Attorney Pritt stated that while illegal catering may be occurring, it should not be a consideration during this quasi-judicial hearing. Vice Mayor Taylor withdrew her motion to continue the item, concurring with Council Member Price regarding the uniqueness of the establishment; Mayor Barnett withdrew his second.

Discussion followed during which the motion below was proffered.

**MOTION** by Price to **APPROVE RESOLUTION 09-12341** amended as follows:  
*Section 2: "Serving of alcoholic beverages shall be permitted from 3:00 p.m. to 9:00 p.m. Wednesday through Saturday and from 7:00 p.m. to 9:00 p.m. Sunday. ~~The hours of operation...on Sunday.~~" This motion was seconded by Taylor and carried 5-2, all members present and voting (Heitmann-no, Price-yes, Sorey-yes, Sulick-no, Taylor-yes, Willkomm-yes, Barnett-yes).*

**RESOLUTION (Continued to 03/04/09 / see Item 4 above) .....ITEM 10**  
**A RESOLUTION DETERMINING WAIVER OF DISTANCE PETITION 09-WD2 FOR NATURE'S GARDEN OF NAPLES IN ORDER TO OBTAIN AN ALCOHOLIC BEVERAGE LICENSE WITHIN 500 FEET OF OTHER ESTABLISHED LICENSEES THAT SERVE ALCOHOL IN THE HC, HIGHWAY COMMERCIAL DISTRICT LOCATED AT 2089 9<sup>TH</sup> STREET NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 09-12342.....ITEM 11**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 09-CU01 FROM SECTION 58-933 OF THE CODE OF ORDINANCES IN ORDER TO OPERATE A CHILD CARE FACILITY IN THE BP, BUSINESS PARK COMMERCIAL DISTRICT LOCATED AT 2629 HORSESHOE DRIVE SOUTH, MORE FULLY DESCRIBED HEREIN; PROVIDING AN EXPIRATION DATE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:51 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony who had not been previously sworn; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Sulick, Barnett, Taylor and Heitmann/familiar with the site but no contact; and Price and Sorey/visited the site but no contact. Planner Adam Benigni briefly reviewed the above request noting that staff recommended approval.

**Public Comment:** (11:52 a.m.) None.

***MOTION by Taylor to APPROVE RESOLUTION 09-12342 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).***

**It is noted for the record that Items 12-a and 12-b were read and considered concurrently.**

**RESOLUTION 09-12343.....ITEM 12-a**  
**A RESOLUTION APPROVING THE AMENDED COLLIER COUNTY INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING AND SCHOOL CONCURRENCY BETWEEN THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY, COLLIER COUNTY AND ALL THE CITIES OF EVERGLADES CITY, MARCO ISLAND AND NAPLES; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**ORDINANCE 09-12344 .....ITEM 12-b**  
**AN ORDINANCE AMENDING THE CITY OF NAPLES COMPREHENSIVE PLAN TO INCORPORATE AMENDMENTS NECESSARY TO PROVIDE FOR SCHOOL CONCURRENCY; PROVIDING FOR TRANSMITTAL TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND OTHER REQUIRED REVIEW AGENCIES; PROVIDING FOR INCLUSION IN THE CITY OF NAPLES COMPREHENSIVE PLAN; AND PROVIDING AN EFFECTIVE DATE.** Titles read by City Attorney Robert Pritt (11:52 a.m.). Planning Director Robin Singer briefly reviewed the above items and noted that the Comprehensive Plan amendments contained those requested by the Department of Community Affairs (DCA) upon its review of the documentation. In response to Vice Mayor Taylor, Ms. Singer clarified that only new residential development, not annexation, would prompt the school concurrency process.

Noting the presence of Amy Taylor, Long Range Planner for the Collier County School Board, Council expressed its appreciation for her service as the School System's liaison to the City.

**Public Comment:** (11:56 a.m.) None.

***MOTION by Taylor to APPROVE RESOLUTION 09-12343 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).***

**MOTION** by Taylor to **ADOPT ORDINANCE 09-12344** 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 13**  
**AN ORDINANCE RELATING TO REVIEW AND APPROVAL OF LIVE ENTERTAINMENT; AMENDING SECTION 56-125, LIVE ENTERTAINMENT PERMIT, OF THE CODE OF ORDINANCES, CITY OF NAPLES, ADDING AN INTENT AND DEFINITIONS; REVISING THE STANDARD CONDITIONS FOR ALL PERMITS AND STANDARDS FOR REVIEW; PROVIDING FOR THE ADMINISTRATIVE REVIEW OF PERMIT RENEWALS AND CLARIFYING THE PROCEDURES FOR REVOCATION; PROVIDING A GRANDFATHERING PROVISION, A SEVERABILITY CLAUSE, A REPEALER PROVISION; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:57 a.m.) City Manager William Moss explained that the ordinance submitted reflected the recommended amendments by Council regarding only non-amplified outdoor live entertainment within 150 feet of a body of water (Section 56-125(e)(2)) as well as those reflected in the memorandum by Planning Director Robin Singer dated February 11 (Attachment 8) which included one suggestion from the Planning Advisory Board (PAB). Rather than a 150-foot waterfront limit, Council Member Sulick recommended 500 feet; however, Ms. Singer confirmed that the amendment addressed the actual location of the performers, not the establishment itself. Mrs. Sulick then stated her belief that if the property whereon outdoor live entertainment is offered abuts water, then entertainment should be non-amplified only due the fact that sound carries across the water. Ms. Singer however pointed out that a structure situated on a large parcel of waterfront land could however be positioned greater than 500 feet from water and therefore still not be allowed the amplified music. Ms. Singer also noted that the PAB had recommended against this limitation as well as the amended Section 56-125(a) (reflected in the motion below).

Vice Mayor Taylor asked the Council however to consider unintended consequences should amplified outdoor live entertainment be prohibited near the water, citing outdoor performers featured at the Naples Beach Hotel; Council agreed with Council Member Sorey who noted past expert testimony which had indicated that amplified music sound levels are more easily controlled than acoustic, such as a piano performance, and that the noise ordinance would still have to be adhered to. He said that any permit would be subject to revocation; therefore he could not agree with a waterfront prohibition.

**Public Comment:** (12:10 p.m.) None.

**MOTION** by Sorey to **APPROVE THIS ORDINANCE** on First Reading amending as follows: **Section 56-125(a): “Verified complaint means a complaint from a citizen or visitor and subsequently verified by a law enforcement officer...” and deleting Section 56-125(e)(2), renumbering subsequent subsections.** This motion was seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Taylor-yes, Price-yes, Sorey-yes, Sulick-yes, Willkomm-yes, Barnett-yes).

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**Recess: 12:10 p.m. to 12:27 p.m.** It is noted for the record that the same Council Members were present when the meeting reconvened. It is also noted the Items 14-a, 14-b and 14-c were read and considered concurrently.

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**ORDINANCE (Continued – see motion below) .....ITEM 14-a**  
**AN ORDINANCE ADOPTING COMPREHENSIVE PLAN AMENDMENT 08-CPA8**  
**ADDING A NEW FUTURE LAND USE DESIGNATION OF SENIOR LIVING**  
**RESIDENTIAL; AND PROVIDING AN EFFECTIVE DATE.**

**ORDINANCE (Continued – see motion below.) ..... ITEM 14-b**  
**AN ORDINANCE DETERMINING LARGE SCALE COMPREHENSIVE PLAN**  
**FUTURE LAND USE MAP AMENDMENT 08-CPA5 CHANGING 21.99 ACRES FROM**  
**THE COLLIER COUNTY FUTURE LAND USE DESIGNATIONS OF MIXED USE**  
**ACTIVITY CENTER AND URBAN RESIDENTIAL TO A CITY OF NAPLES**  
**DESIGNATION OF SENIOR LIVING RESIDENTIAL FOR THE BRIDGES AT**  
**GORDON RIVER LOCATED EAST OF GOODLETTE-FRANK ROAD, WEST OF THE**  
**GORDON RIVER, SOUTH OF GOLDEN GATE PARKWAY AND NORTH OF THE**  
**NAPLES ZOO, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN**  
**EFFECTIVE DATE.**

**ORDINANCE (Continued / see motion below) .....ITEM 14-c**  
**AN ORDINANCE RELATING TO THE BRIDGES AT GORDON RIVER PLANNED**  
**DEVELOPMENT; GRANTING REZONE PETITION 08-R1, REZONING A 21.99 ±**  
**ACRE PARCEL OF LAND LOCATED EAST OF GOODLETTE-FRANK ROAD, WEST**  
**OF THE GORDON RIVER, SOUTH OF GOLDEN GATE PARKWAY AND NORTH OF**  
**THE NAPLES ZOO, FROM COLLIER COUNTY ZONING DESIGNATIONS OF RMF-**  
**6, RMF-6(3) AND AGRICULTURAL, TO A CITY ZONING DESIGNATION OF PD,**  
**PLANNED DEVELOPMENT, TO ALLOW THE DEVELOPMENT OF A CONTINUING**  
**CARE RETIREMENT COMMUNITY; APPROVING THE PLANNED DEVELOPMENT**  
**DOCUMENT FOR THE DEVELOPMENT; PROVIDING A SEVERABILITY CLAUSE,**  
**A REPEALER PROVISION AND AN EFFECTIVE DATE.** Titles read by City Attorney  
Robert Pritt (12:27 p.m.). Planning Director Robin Singer reviewed her memorandum dated  
February 4 (Attachment 9), noting that this item had been continued and was to be held after  
5:00 p.m. per Council direction. Due to the fact that the necessary Comprehensive Plan  
amendments are not ready for Council action, staff requests that a continuance be granted to a  
date and time certain as desired by Council, she explained, adding that either the first or second  
reading of an ordinance could be heard after 5:00 p.m. The petitioner's legal counsel would be  
available either March 18 or April 1, Ms. Singer said, and if rescheduled to March 18, it had  
been requested that the hearing be held prior to 5:00 p.m.

**Public Comment:** (12:29 p.m.) None.

**MOTION by Taylor to CONTINUE ITEMS 14-a, 14-b, AND 14-c TO MARCH**  
**18, 2009, TIME CERTAIN PRIOR TO 5:00 P.M. TO BE DETERMINED.**

*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).*

**RESOLUTION 09-12345.....ITEM 15**  
**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE**  
**CITY OF NAPLES AND THE CITY OF NAPLES AIRPORT AUTHORITY FOR**  
**AIRPORT RESCUE FIREFIGHTING STAFFING; AUTHORIZING THE CITY**  
**MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING AN**  
**EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:30 p.m.).

**Public Comment:** (12:30 p.m.) None.

**MOTION** by Taylor to **APPROVE RESOLUTION 09-12345** 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 09-12346.....ITEM 16**

**A RESOLUTION DETERMINING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO CONSTRUCT A SINGLE-FAMILY RESIDENCE, GUEST HOUSE, SWIMMING POOL AND SPA, POOL PAVILION, DRIVEWAY, LANDSCAPING, AND EXTERIOR LIGHTING SEAWARD OF THE COASTAL CONSTRUCTION SETBACK LINE AT 4370 GORDON DRIVE; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:30 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony who had not been previously sworn; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Taylor and Heitmann/familiar with the site but no contact; Sulick/familiar with the site and personally know petitioner; Price and Barnett/visited the site but no contact; and Sorey/visited the site and spoke with the petitioner's agent. Assistant City Manager Roger Reinke provided a brief overview of the memorandum dated January 27 by Natural Resources Manager Michael Bauer (Attachment 10), noting that staff recommended approval and that the petitioner had agreed to construct a vegetated dune system. In response to Council Member Sorey, Engineer Brett Moore, petitioner's agent, confirmed that a ten-foot wide area of sea oats is to be planted the length of the beachfront as noted within the aforementioned memorandum.

**Public Comment:** (12:35 p.m.) None.

**MOTION** by Willkomm to **APPROVE RESOLUTION 09-12346 based upon testimony on the record and as contained in staff agenda memorandum regarding a ten-foot wide area of sea oats to be planted the length of the beachfront as part of the beach/dune ecosystem replacement.** 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).

**RESOLUTION 09-12347.....ITEM 17**

**A RESOLUTION REPEALING RESOLUTION 05-11043 WHICH ESTABLISHED A METHOD OF COLLECTING NON-AD VALOREM SPECIAL ASSESSMENTS LEVIED FOR THE CONSTRUCTION OF RECLAIMED WATER LINES IN THE PHASE I AND PHASE IA RECLAIMED WATER EXPANSION AREA; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:35 p.m.).

**Public Comment:** (12:36 p.m.) None.

**MOTION** by Taylor to **APPROVE RESOLUTION 09-12347** 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 09-12348.....ITEM 18**  
**A RESOLUTION RECOMMENDING ONE CITY RESIDENT FOR APPOINTMENT TO THE COLLIER COUNTY CONTRACTORS LICENSING BOARD FOR A THREE-YEAR TERM IN THE CATEGORY OF SPECIALTY CONTRACTOR; DIRECTING THE CITY CLERK TO PROVIDE SAID RECOMMENDATION TO THE COLLIER COUNTY COMMISSION FOR APPOINTMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:36 p.m.). Deputy City Clerk Jessica Rosenberg indicated that Eric Guite had applied; Council Member Willkomm proffered the motion reflected below.

**Public Comment:** (12:36 p.m.) None.

**MOTION by Willkomm to APPROVE RESOLUTION 09-12348 NOMINATING ERIC GUITE; which unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**RESOLUTION 09-12349.....ITEM 19**  
**A RESOLUTION APPROVING A SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT ACCEPTING GRANT MONEY TO CONSTRUCT AQUIFER STORAGE AND RECOVERY (ASR) EXPLORATORY WELLS AND CONDUCT TESTING; AUTHORIZING THE MAYOR TO EXECUTE THE LOCAL GOVERNMENTAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:36 p.m.). In response to Council Member Price, City Manager William Moss clarified that this item involves a new grant regarding well exploration and testing for aquifer storage and recovery (ASR) facilities at a site as yet to be determined. Council Member Sorey added that this ongoing exploration process would be in accordance with the recently adopted Integrated Water Resources Plan, that final results from the previous testing of an ASR test well on the Collier County Freedom Park site (Goodlette-Frank Road and Golden Gate Parkway) had not been received as yet and should these results be favorable it would be converted to a production well. An interlocal agreement with the County would then be necessary due to additional cost allocations, as well as allocation of the water produced, Mr. Sorey explained. Council Member Price cautioned that while he supports the ASR well concept, Council should be mindful of the City's financial commitment in accepting these matching-fund grants from the Big Cypress Basin Board, but Mr. Sorey explained that should Council decide not to go forward with the ASR component, the funding could indeed be returned. In response to Council Member Sulick, Mr. Sorey assured her that the final test results would be known prior to a Council commitment regarding the grant monies, perhaps within the next 30 days. Although the test results would be known, he however cautioned, the arsenic issue would remain until the well actually cycled water since certain areas of substrate contain arsenic pyrate which, when subjected to contact with oxygenated water like that on the surface, releases the arsenic.

In response to Council Member Sulick, Mr. Sorey explained that the City should continue to pursue the ASR wells to be able to provide adequate alternative water sources for use in its irrigation (reclaimed, reuse or alternative) water system currently under construction. A key element of the Integrated Water Resources Plan is the removal of 5- to 6-million gallons of water from the Golden Gate Canal, during the historical 60-day period in which no water can be taken

from the Canal, 6 to 10 ASR wells (of 100-million gallon capacity) would be needed to supplement the projected demand aforesaid.

City Manager Moss clarified that the \$1,230,000 cited in the staff memorandum dated February 10 by Utilities Director Robert Middleton (Attachment 11) is the current amount available in the Fund 440 and that \$300,000 would be the amount necessary to match the grant; he also pointed out that this item only authorizes acceptance of the grant. In response to Vice Mayor Taylor, he explained that, in his opinion, the next site for ASR exploration should be the municipal airport property due to its proximity to the Golden Gate Canal, although the opinion of a geologist would be sought prior to any recommendation; quarterly workshops regarding the Integrated Water Resources Plan had been planned, he added.

**Public Comment:** (12:48 p.m.) None.

***MOTION by Taylor to APPROVE RESOLUTION 09-12349 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).***

**ORDINANCE 09-12350.....ITEM 20**  
**AN ORDINANCE ADOPTING THE 2007 EDITION OF THE FLORIDA BUILDING CODE WITH AMENDMENTS TO CHAPTER ONE, ADMINISTRATION; AMENDING THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY AMENDING SECTION 16-112, FLORIDA BUILDING CODE ADOPTED, AMENDMENTS; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:49 p.m.).

**Public Comment:** (12:49 p.m.) None.

***MOTION by Taylor to ADOPT ORDINANCE 09-12350 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 09-12351.....ITEM 21**  
**AN ORDINANCE RELATING TO NOISE; AMENDING SECTION 22-37 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA, PROVIDING ADDITIONAL DEFINITIONS, PROVIDING FOR PERMIT REQUIREMENTS FOR AMPLIFIED SOUND IN COMMERCIAL AREAS, ENFORCEMENT, ACTIVITIES CONSTITUTING VIOLATIONS AND EXEMPTIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (12:49 p.m.) who then referenced his memorandum dated February 17 (Attachment 12) wherein he explained penalty provisions of the ordinance. In response to Council Member Willkomm, he said that according to State Statutes, an officer would indeed have the right to arrest someone committing a misdemeanor should he witness the act; Mr. Willkomm however questioned the advisability of arresting someone over a noise disturbance; Council Member Price agreed. Mayor Barnett noted that while he agrees with this statement in general, should a severe occurrence take place, such an action may be needed. Council Member Sorey pointed out that officer discretion, especially with the threat of arrest, may quiet an incident that could escalate. City Manager William Moss said that almost without exception, a verbal warning only is needed to rectify noise disturbances.

**Public Comment:** (12:58 p.m.) None.



**MOTION by Sorey to ADOPT ORDINANCE 09-12351 as submitted; seconded by Taylor and carried 6-1, all members present and voting (Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**BRIEFING BY CITY ATTORNEY.....ITEM 22**  
**FREDERICK GOHL, TRUSTEE – BRIEFING CONCERNING FLORIDA LAND USE ENVIRONMENTAL DISPUTE RESOLUTION ACT (FLUEDRA).** City Attorney Robert Pritt explained that due to the Florida Land Use Environmental Dispute Resolution Act (FLUEDRA), the above referenced Frederick Gohl, Trustee, may elect to implement this process with the aid of a mediator rather than file an appeal with the courts regarding a City Code Enforcement Board decision. The City has ten days to choose a mediation/special magistrate, agreeable to both parties, and having spoken with the petitioner’s attorney, Mr. Pritt noted that Senior Judge Ted Brousseau would be available to mediate the issue; Judge Brousseau had acted in this capacity in the past, he added. Council Member Sorey noted that the January 22, 2009, Code Enforcement Board minutes provides a detailed account of the above referenced action by the Board.

**Public Comment:** (1:01 p.m.) None.

**MOTION by Barnett to AUTHORIZE CITY ATTORNEY TO OBTAIN A MUTUALLY AGREED-UPON MEDIATOR/SPECIAL MAGISTRATE; 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).**

**(Added Item – see Item 4 above) .....ITEM 24**  
**CONSIDER DISPATCHING A LETTER TO THE COLLIER COUNTY COMMISSION WITH REGARD TO THE NEED FOR NAVIGATIONAL MARKERS IN CLAM BAY.** Council Member Sorey explained that this issue had been ongoing for many years and following a brief history of the navigational marker installation, recommended action as reflected in the motion below.

**Public Comment:** (1:04 p.m.) None.

**MOTION by Taylor to DIRECT MAYOR TO ADVISE COLLIER COUNTY COMMISSION AND COLLIER COASTAL ADVISORY COMMITTEE (CCAC) TO IMPLEMENT US CORPS OF ENGINEERS RECOMMENDATIONS TO MARK NAVIGATIONAL CHANNEL IN CLAM BAY. This motion was 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).**

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

(1:04 p.m.) Council Member Sulick noted that two City residents were needed for authorized seats on the Metropolitan Planning Organization (MPO) Citizens Advisory Committee. She also sought confirmation that vendors would not utilize the new parking garage during the upcoming Naples National Art Show. Vice Mayor Taylor stated that MPO support for federal stimulus package funding of the pedestrian underpass at US 41 and Gordon River was needed as well as assistance (food-tasting judge) with the Cultural Festival to be held at River Park. Council Member Price expressed his opinion that the aforementioned stimulus funding should be applied for with reference to unfunded mandates only. Council Member Sorey suggested that the City work with the Naples National Art Show staff to avoid criticism with regard to restricting public access of Cambier Park and Eighth Street South in light of the recent car show and comments

regarding this issue. He also recommended that second floor dining along Fifth Avenue South be revisited during a future workshop discussion.

**PUBLIC COMMENT.....**

(1:22 p.m.) **Bobby Brooks, representing Disabled Veterans Foundation**, provided an informational packet and noted that his organization would appreciate the opportunity to raise funds within the City. (It is noted for the record that the aforementioned material is contained in the file for this meeting in the City Clerk's Office. Mayor Barnett suggested that Mr. Brooks contact the City Manager regarding his request.

**EXECUTIVE SESSION.....ITEM 23  
EXECUTIVE SESSION TO DISCUSS LABOR NEGOTIATIONS STRATEGIES  
PERTAINING TO THE PROFESSIONAL FIREFIGHTERS OF NAPLES, IAFF LOCAL  
2174.**

**Executive Session: 1:26 p.m. to 2:24 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

(2:24 p.m.) No action announced.

**ADJOURN.....**

2:24 p.m.

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Bill Barnett, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

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Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 03/18/09

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME <i>Taylor Penelope A</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Naples City Council</i>
MAILING ADDRESS <i>995 13<sup>th</sup> STREET NW</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 Collier</i>	NAME OF POLITICAL SUBDIVISION: <i>City of Naples</i>
DATE ON WHICH VOTE OCCURRED	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.

**IF 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 February 18, 2009:

(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:

*I am currently employed by the sponsor of the event  
66 (1) & the petitioner*

Date Filed

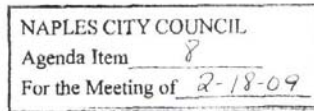
2/18/09

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.





February 17, 2009

Dear Honorable Mayor and City Council Members:

Just recently, the bulk effluent water rates were substantially increased for the golf courses. We worked with the city to come up with an arrangement that was acceptable to the city. Now, some residents are questioning the rate differential accorded to bulk users compared with what is being offered to certain residential areas. We accepted the city effluent water when it was not in vogue, and the quality was less than optimal. As a result, we bore the costs to mitigate the poor water quality without seeking reimbursement for such costs from the city. The infra structure laid to service golf courses has been paid for quite some time and was necessitated by the mandates, possibly unfunded, imposed on the city by the state. The city, as we understand it, was left with a choice to either pay fines or find a use for its waste water. We were glad to be of help based on the rates that were offered at the time not knowing that our plants will suffer damage. We have since learned a lot, and have modified our plantings, again at no cost to the city, to respond to the waste water we were receiving. If the costs are raised to an unbearable level that we certainly hope is not the case, we could be forced to look at alternate solutions including aquifer storage recovery wells and reductions in irrigated acreage. We also believe that there are scales of economy for the city to deliver the reclaimed water to its bulk users.

As local businesses with substantial impact on the local economy, we need our government's support today more than ever. The current state average for bulk users is \$.36 per 1,000 gallons of reclaimed water. The county rate is \$.38 per 1,000 gallons of reclaimed water. Any rates higher than that would place your city businesses in a competitively disadvantageous position. In today's business climate, we need to improve, not worsen, our competitive position the best we can. For that, we need your help.

Residential users will not only gain advantage as reclaimed water users by avoiding typical water restrictions during a drought similar to us, but they will also have guaranteed supply of effluent water unlike bulk users. We also believe that the cost, maintenance and otherwise, to supply reclaimed water to bulk users is measurably lower than it is for residential customers.

Once again, we respectfully bring to your attention that the rates currently in effect for us were recently offered and implemented after a substantial increase. We would also request that we are accorded some certainty about future increases to help us better plan our operations. The starting point will be a five years projection for the cost of reclaimed water to us. Whatever you do, please do not put us in a disadvantageous competitive situation compared with the businesses located in the county and the state. We are good corporate citizens, and appreciate your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Warr".

President, The Naples Beach Hotel & Golf Club

Cc: Bill Moss



City of Naples

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: February 18, 2009**

Agenda Section:	Regular		Prepared By: Mireidy Fernandez, Planner II
Agenda Item:	9	Legislative <input type="checkbox"/>	Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution to determine Waiver of Distance Petition 09-WD3 and Residential Impact Statement Petition 09-RIS4 for Six Degrees Exhibitions, LLC located at 1100 6 <sup>th</sup> Avenue South, Units 2 and 3.			
<b>SUMMARY:</b> City Council is asked to consider a resolution determining Waiver of Distance Petition 09-WD3 pursuant to Section 56-122(e) of the Code of Ordinances and Residential Impact Statement Petition 09-RIS4 for Six Degrees Exhibitions, LLC located at 1100 6 <sup>th</sup> Avenue South, Units 2 and 3, in order to obtain an alcoholic beverage license type 2COP within 500 feet of other established licensees that serve alcohol in the CS-A Waterfront Commercial district. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.			
<b>BACKGROUND:</b> Six Degrees Exhibitions, LLC, which comprises 1,335 square feet of space, is a retail art gallery that offers interactive art exhibits, yoga classes, non-smoking counseling sessions and has hosted fundraisers. The petitioner wishes to sell wine and beer at the establishment for consumption on-premises (Alcoholic Beverage License Type – 2COP). The waiver of distance is necessary since there are two other establishments with alcoholic beverage licenses within 500 feet of the site.			
<b>File Reference:</b> 09-WD3 and 09-RIS4 <b>Petitioner:</b> Six Degrees Exhibitions, LLC <b>Agents:</b> Rowan Samuel / Daniel Linehan <b>Location:</b> 1100 6 <sup>th</sup> Avenue South, Units 2 and 3 <b>Zoning:</b> C2-A Waterfront Commercial			
Planning Staff reviewed the 48 art galleries located in the City of Naples that held business licenses from 2008-2009 and found that none has been issued an alcoholic beverage license. The information was obtained via the Florida Department of Business and Professional Regulation database.			
<b>PUBLIC NOTICE/COMMENT:</b> On January 26, 2009 a total of 181 letters were mailed to all property owners located within 500 feet of the subject property. Also, notification letters have been sent to the two establishments that currently have an alcoholic beverage license within 500 feet of the subject establishment pursuant to Section 56-122(f)(3). To date there have been no responses to the mailing.			
<b>RECOMMENDED ACTION:</b> Denial of Waiver of Distance Petition 09-WD3 and Residential Impact Statement Petition 09-RIS4 for Six Degrees Exhibitions, LLC located at 1100 6 <sup>th</sup> Avenue South, Units 2 and 3. Denial is based on two factors: No other art gallery in the City with a business license holds a beer and wine license and staff is concerned about the extent of the gallery's operation and future plans.			
Reviewed by Department Director Robin D. Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss	
City Council Action:			

EXH 4 Pg 1

## Six Degrees Exhibitions "Who We Are"

*A synergy of Art, Music and Film*

Presented to: Naples City Council  
By: Daniel Linehan, Six Degrees Exhibitions  
2/18/09

### Business Concept

- A synergy of art, music and film
  - Supporting the many facets of artistic expression
  - Exposing sophisticated local and international artists to enhance the Naples cultural experience
  - An independent film pre-view venue for the Naples International Film Festival coming in November 2009
  - Create a artistic environment by providing Naples with a ultra sophisticated atmosphere

## Mission Statement

Provide an avenue for artists of all mediums to reach their potential while promoting arts awareness and community enrichment

## Target Demographics

- Art exhibitions, Music (Entertainment) and Film events
  - Demo target: 30-70 years old
  - Household income of at least \$50,000 plus
  - Focus on art buyers & collectors
  - Upscale & sophisticated clientele



EXH 4 Pg 2

### Events We've Held To Date

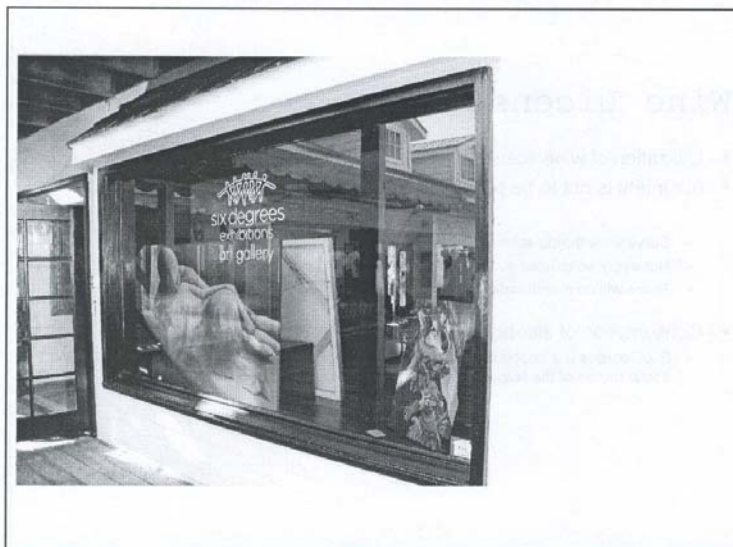
- Art Exhibits
  - Monika Bokelmann/Andrew Galler - two local painters
  - Yuniel Espinosa - his first art exhibit in the United States
  - Brian Keith - featuring a one of a kind GI Joe collection (over Veterans Day)
  - Trinh Mai - a local Vietnamese artist raising awareness against Human Trafficking
  - Robert Hayman Photography Exhibition
  - Nancy Iannitelli and John Serrian Art Exhibition
- Community School Fundraiser
  - Supporting young artists by helping to raise over \$3,000 in charitable donations to support KIDSCAN (kids with cancer)

### Wine License

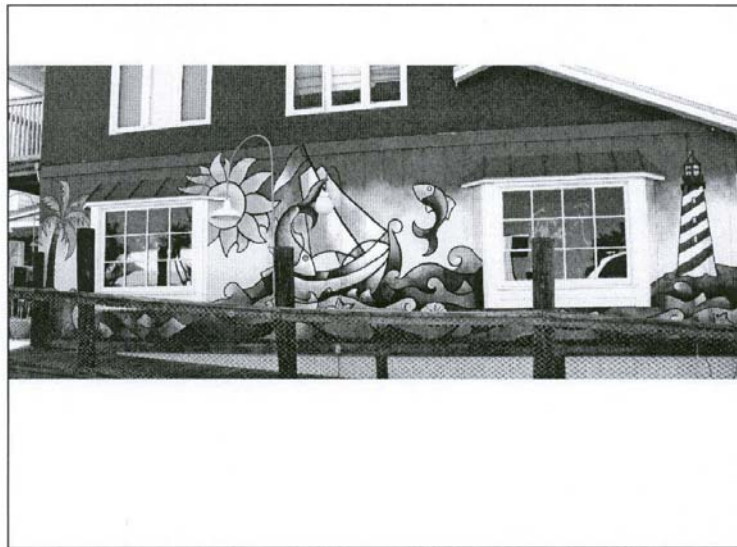
- Utilization of wine license is specifically to support our events
- our intent is not to be perceived as anything but a fine artistic venue
  - Serve wine during scheduled events only
  - Not every scheduled event will wine be served
  - There will no merchandising of alcoholic beverages
- Consumption of alcohol will be monitored by management
  - Six Degrees is a sophisticated, upscale venue and intends to uphold the conduct and social mores of the Naples Community

## Conclusion

- We humbly ask the Naples City Council to consider and approve this petition thus supporting our artistic business concept.



EXH 4 p53



PET HANDOUT #9

EXH #1



January 15, 2009

Daniel Linehan, Partner  
Six Degrees Exhibitions  
1100 Sixth Avenue South, Suite 2  
Naples, FL 34102

Dear Mr. Linehan,

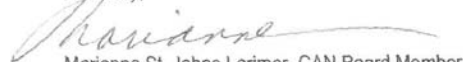
Once again I would like to thank you for opening up Six Degrees Exhibitions to the benefit held on December 3, 2008 by The Community School of Naples. It was a wonderful event and an opportunity to see the artwork and photography created by the Upper School students and teachers of The Community School of Naples. They are very talented, as is the terrific school jazz band.

KIDSCAN, part of the Cancer Alliance of Naples, was honored to be the beneficiary of the donations collected that evening. At the January 5, 2009 KIDSCAN Junior Board of Directors meeting, the board unanimously approved that these donations be earmarked for college or post-high school trade school scholarships for kids in the Collier County area who are currently suffering from cancer or have been affected by cancer. We are very, very grateful for helping KIDSCAN initiate this scholarship program.

We are also keeping in mind your offer of studio time and instruction to cancer stricken children in this area, in memory of your brothers. Be assured that between CAN and KIDSCAN, any child we come across who wishes to learn more about art will be given your name to discuss arrangements.

Again, we are very grateful for your generosity and wish you the best in 2009.

Sincerely,

  
Marianne St. Johns Larimer, CAN Board Member  
KIDSCAN Advisory Co-Chair

CC: Nick Lumia, KIDSCAN President  
CC: Tracey Lumia, Advisory Co-Chair  
CC: Kevin Dolan, CAN President  
CC: Kathy Nicklaus, CAN Executive Director

EXH #3



City Council  
City of Naples  
City Hall  
735 Eighth Street South  
Naples, FL 34102

**RE: Public Hearing to determine Waiver of Distance Petition 09-WD3 and Residential Impact Statement Petition 09-RIS4 for Six Degrees Exhibitions LLC, in order to obtain an alcoholic beverage license type 2COP within 500 feet of other established licensees that serve alcohol in the C2-A Waterfront Commercial District located at 1100 6<sup>th</sup> Avenue South, Units 2 & 3. A public hearing is on February 18<sup>th</sup> 2009.**

I am writing to you to clarify that the lease of Six Degrees Exhibitions with Dockside Boardwalk Trust includes hours of operation, which are minimum hours of operations not the maximum hours of operations. Since we are an anchored tenant the logic is that we are obligated by lease to stay open the minimum hours to create awareness to the public of full time use and operation of the entire Boardwalk establishment.

The hours of operation in which we are looking to be able to serve wine are:  
Wednesday, Thursday, Friday & Saturday 3 – 6pm & 7 – 11.30pm.\*  
Sunday 7 – 11.30pm.

Our cultural event schedule is as follows:

Wednesday – 3 – 6pm & 7 – 10pm Film Showing  
Thursday 3 – 6pm & 7 – 10pm Art Gallery Events  
Friday 3 – 6pm Art Gallery Events. 7 – 10pm Entertainment Events \*  
Saturday 3 – 6pm Art Gallery Events. 7 – 10pm Entertainment Events \*  
Sunday 7 – 10pm Film Showing

**We have agreed with Dockside Boardwalk that we will only be serving wine when we have a scheduled event at the gallery.**

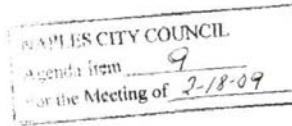
\*If the city of Naples passes the indoor acoustic allowance to 11.30pm as recommended by the City Managers' office, we would like to be included in that time frame as well and therefore we would ask for 11.30 pm on Friday & Saturday.

Sincerely,

Rowan Samuel  
Partner  
Six Degrees Exhibitions  
Tel: 239 331 2678

Bill Young  
Property Manager Dockside Boardwalk Trust  
CB Richard Ellis  
Tel: 239 250 4434





EXH #2

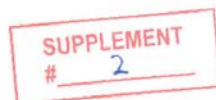
February 13, 2009

The undersigned landlord of Dockside Boardwalk does hereby support Six Degrees Exhibitions' petition for a Beer and Wine License to complement Six Degrees'-sponsored functions.

Respectfully submitted,



Michael Zografos  
Trustee  
Dockside Realty Trust





City of Naples



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: February 18, 2009**

Agenda Section: Regular	Prepared By: Robin Singer, Director Date: February 11, 2009	Department: Planning
Agenda Item: 13	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> First Reading of an Ordinance to amend Section 56-125, Live Entertainment Permit.		
<b>SUMMARY:</b> City Council is asked to consider an Ordinance on First Reading relating to Live Entertainment permits. This Ordinance will amend Section 56-125 of the Code of Ordinances		
<b>BACKGROUND:</b> City Council has considered amendments to the live entertainment permit ordinance at previous Workshops. Since the last version was discussed, staff made the following changes:		
<ul style="list-style-type: none"> <li>• Doors may be opened for staff ingress and egress;</li> <li>• Approvals are limited to the business owner at the time of approval;</li> <li>• Outdoor entertainment within 150 feet of a water body are limited to acoustic performances only;</li> <li>• Section (e)(3) was modified to clarify the application of the noise ordinance to these establishments;</li> <li>• Clarifications are provided in Sections (3) (4) and (5) that the City Council may be more restrictive in its determinations than the hours listed;</li> <li>• The renewal period for compliant establishments was changed to two years;</li> <li>• Section (h) was reworded.</li> </ul>		
The Planning Advisory Board met February 11, 2009 and recommended approval, by a vote of 6-1, of the live entertainment ordinance amendments subject to the following changes:		
<p><b>56-125(a)</b>  <i>Verified complaint</i> means a complaint from a citizen or visitor and subsequently verified by a law or code enforcement officer as a noise sufficient to constitute a violation of Section 22-37 or a violation of this section. A verified complaint may also include an incident witnessed and verified by a law or code enforcement officer, not initiated by a citizen or visitor.</p>		
The PAB also recommended against the prohibition of amplified outdoor entertainment for waterfront establishments established under 56-125(e)(2).		
<b>RECOMMENDED ACTION:</b> Approve an Ordinance on First Reading to amend Section 56-125 of the Code of Ordinances pertaining to Live Entertainment permits.		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

City of Naples

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: February 18, 2009**

Agenda Section:	Prepared By: Robin Singer, Director	
Regular	Date: February 4, 2009	Department: Planning
Agenda Item:	Legislative <input type="checkbox"/>	Quasi-Judicial <input checked="" type="checkbox"/>
14 (a), (b) and (c)		
<b>SUBJECT:</b>		
Request for continuance of the public hearings for Comprehensive Plan Amendment Petition 08-CPA8 creating a new Residential Senior Living land use, Large-Scale Comprehensive Plan Amendment Petition 08-CPA5 applying the new future land use to a 21.99 acre parcel and Rezone Petition 08-R1 rezoning the same parcel to a Planned Development district (The Bridges at Gordon River).		
<b>SUMMARY:</b>		
City Council is asked to consider a request for continuance of the public hearings for Comprehensive Plan Amendment Petition 08-CPA8 creating a new Residential Senior Living land use, Large-Scale Comprehensive Plan Amendment Petition 08-CPA5 applying the new future land use to a 21.99 acre parcel and Rezone Petition 08-R1 rezoning the same parcel to a Planned Development district from the February 18, 2009 hearing date to an alternate date and time.		
<b>BACKGROUND:</b>		
<p>The Senior Care annexation and development review, known as The Bridges at Gordon River, was before the City Council on December 17, 2008. City Council approved the annexation on First Reading and continued the remaining items, including two related comprehensive plan amendments, to after 5:00 pm on February 18, 2009 to allow time to complete required amendments of the Comprehensive Plan. The required amendments include the updates to address the Evaluation and Appraisal Report (EAR), and the annual update of the capital improvement element incorporation of the water supply facilities work plan.</p> <p>The required amendments will be before the Planning Advisory Board on February 11, 2009. Because Comprehensive Plan amendments are not ready for action by City Council, staff respectfully requests that City Council continue the Senior Care project and related amendments. The petitioner's agent has been informed of the delay and, after discussion with his client, has requested that the items be scheduled for either <u>March 18, 2009 in the morning</u> or on <u>April 1, 2009 after 5:00 pm.</u></p> <p>City Council approved the attached Resolution 08-12252 on November 5, 2008 allowing for the first public hearing before 5:00 p.m. As written, the resolution allows for the first reading to be held before 5:00 p.m. as part of the regular meeting and requires the second public hearing to be held after 5:00 p.m. If City Council wishes to have either first or second reading after 5:00 p.m., then the statutory requirements will be met and no resolution is required. The petitions will be re-advertised and re-noticed in accordance with State Statutes and the City of Naples Code of Ordinances.</p>		
<b>RECOMMENDED ACTION:</b>		
Continuation of Petitions 08- CPA8, 08-CPA5 and 08-R1 to the March 18, 2008 regular meeting.		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		



City of Naples



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: February 18, 2009**

Agenda Section:	Regular	Prepared By: Michael R. Bauer, Natural Resources Manager
		Date: January 27, 2009 Department: City Manager
Agenda Item:	16	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b>		
Resolution to approve a Coastal Construction Setback Line Variance to Construct a Single Family Residence, Guest House, Driveway, Swimming Pool and Spa, Pool Pavilion, Landscaping and Exterior Lighting at 4370 Gordon Drive.		
<b>SUMMARY:</b>		
City Council is asked to consider a Resolution to approve a Coastal Construction Setback Line Variance to construct a single-family residence, guest house, swimming pool and spa, pool pavilion, driveway, landscaping, and exterior lighting seaward of the Coastal Construction Setback Line.		
<b>BACKGROUND:</b>		
<p>The Code of Ordinances of the City of Naples establishes a Coastal Construction Setback Line (CCSL) (Ch. 52-33(a)), and construction of habitable structures seaward of that line is prohibited. Variances can be granted by the Mayor and City Council upon petition (Ch. 46-36) with the petition review process requiring public advertisement and a public hearing (Ch. 46-36(b)). Although not required, notice has been sent, as a courtesy, to property owners adjacent to the petitioner. The City's criteria for evaluating CCSL variances are set forth in Subsection 46-36(c) of the Comprehensive Development Code. Subsection 46-36(d) establishes guidelines for granting a variance. As part of this project, the Petitioner will enhance the beach/dune ecosystem by planting sea oats along the length of the property in a ten-foot wide swath.</p> <p>This variance request addresses the construction of a single family residence, driveway, swimming pool and spa, pool pavilion, landscaping and exterior lighting seaward of the CCSL at 4370 Gordon Drive on a vacant lot. The proposed project will be located more than 80-feet landward of an existing seawall fronting the beach. Currently, there is no vegetated dune area. However, the petitioner has agreed to enhance the dune area by planting sea oats seaward of the seawall to create beach and dune habitat where none presently exists. There will be no adverse effects to ground elevations, no effect on historic storm and hurricane tides, and no impact on the beach or dune system. The proposed construction will be sited in a manner that is consistent with City and State construction approvals. The proposed structures will not advance the line of coastal construction.</p>		
<b>RECOMMENDED ACTION:</b>		
Approval of a Resolution granting a Coastal Construction Setback Line (CCSL) variance for the construction of a single family residence, guest house, driveway, swimming pool and spa, pool pavilion, landscaping and exterior lighting at 4370 Gordon Drive.		
Reviewed by Department Director	Reviewed by Finance	Reviewed by City Manager
Roger Reinke	N/A	A. William Moss
Council Action:		

City of Naples



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: February 18, 2009**

Agenda Section:	Regular	Prepared By: Bob Middleton, Director
Agenda Item:	19	Date: February 10, 2009 Department: Utilities Department
		Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b>		
Resolution to approve accepting a South Florida Water Management District Alternative Water Supply Funding Agreement.		
<b>SUMMARY:</b>		
City Council is asked to consider a resolution to approve a South Florida Water Management District Alternative Water Supply Funding Agreement, Contract # 4600001680, to receive grant funding to pursue an aquifer storage and recovery (ASR) exploratory well program.		
<b>BACKGROUND:</b>		
City staff searches for funding sources in the form of grants to help fund utility projects throughout the City. Annually, the South Florida Water Management District (SFWMD) grants funding for water conservation programs through the Alternative Water Supply Funding Program.		
<p>On June 18, 2008, City Council approved an Interlocal Agreement with Collier County for the City to construct an ASR test well on the Freedom Park (Water Quality Park) site. Collier County received a construction permit from FDEP to construct an ASR well at the Water Quality Park to provide an alternative water supply for wetlands hydration during the dry season, however, the County did not have funding to begin the project. The SFWMD provided a matching grant to the City to construct the exploratory ASR well at the Water Quality Park that totaled \$561,000. This grant can only be used for construction activities at the Water Quality Park well. The water quality park exploratory ASR well has been completed. The preliminary well report indicates that ASR storage is possible at this location. The final well report will be complete by the middle of February 2009. City staff will provide recommendations to City Council to proceed with final ASR well construction</p> <p>On October 1, 2008, City Council adopted a resolution to accept modified Alternative 2 of the Integrated Water Resources Plan. This plan includes the construction of additional Exploratory ASR wells over the next two (2) years to store surface water and stormwater to supplement the irrigation water supply during dry weather conditions.</p> <p>The Big Cypress Basin has budgeted \$300,000 in matching grant funds for the City of Naples to proceed with construction of ASR exploratory wells in addition to the ASR well currently under development at the Freedom Park (Water Quality Park). This grant will be for construction of future Exploratory ASR wells.</p>		
<b>FUNDING SOURCE:</b>		
Matching funds for this grant are available in the Water/Sewer Fund (440). CIP 09K53 (Alternative Water Supply). Fund 440 has a budget for an alternative water supply, which includes the ASR well, sufficient to meet the grant match of \$1,230,000.		

City of Naples



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: **February 18, 2009**

Page Two

Agenda Item:

19

**RECOMMENDED ACTION:**

Approve a resolution to accept a South Florida Water Management District Alternative Water Supply Funding Agreement, Contract # 4600001680, for City staff to pursue an additional aquifer storage and recovery (ASR) exploratory well program in an amount of \$300,000.00.

Reviewed by Department Director  
Bob Middleton  
City Council Action:

Reviewed by Finance  
Ann Marie Ricardi

Reviewed by City Manager  
A. William Moss



Penalties

Page 1 of 1

Ann Lynch

**From:** Pritt, Robert [RPritt@ralaw.com]  
**Sent:** Tuesday, February 17, 2009 4:06 PM  
**To:** Bill Moss  
**Subject:** Penalties

The city's general penalty section 1-15 of Code, provides for (a) criminal penalties up to **\$500 fine and 60 days** imprisonment or both; (b) penalties through code enforcement (board); (c) citation in county court, (d) notice to appear; (e) water restrictions.

The criminal penalty is the maximum permitted by law.

The administrative fine under the code enforcement procedure (b) refers to Sec. 162.09 F.S. :

(2)(a) A fine imposed pursuant to this section shall not exceed **\$250** per day for a first violation and shall not exceed **\$500** per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed **\$5,000** per violation.

The citation (c) refers to 162.21 (5), F.S. : (b) A maximum civil penalty not to exceed **\$500**.

(c) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.

The notice to appear provision (d) refers to 162.23 F.S. but specifies the same fine as citation.

Robert D.Pritt  
Board Certified City, County & Local Government Lawyer  
Roetzel & Andress, L.P.A.  
850 Park Shore Dr. Third Floor  
Naples, FL 34103  
239.649.2714 (office)  
239.292.2147 (cell)

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Any federal tax advice contained herein or in any attachment hereto is not intended to be used, and cannot be used, to (1) avoid penalties imposed under the Internal Revenue Code or (2) support the promotion or marketing of any transaction or matter. This legend has been affixed to comply with U.S. Treasury Regulations governing tax practice.

SUPPLEMENT  
# 2

02/17/2009