City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – March 18, 2009 – 8:30 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL .....ITEM 1

Present:	**Council Members:**
Bill Barnett, Mayor (left 4:20 p.m.)	Teresa Heitmann
Penny Taylor, Vice Mayor	Gary Price, II
	John Sorey, III
	Margaret Sulick
	William Willkomm, III

Also Present:

William Moss, City Manager	Michael Smith
Robert Pritt, City Attorney	Jim MacArthur
Tara Norman, City Clerk	Marianne Megela
Roger Reinke, Assistant City Manager	John Passidomo
Vicki Smith, Technical Writing Specialist	Will Dempsey
Robin Singer, Planning Director	Matt Kragh
David Lykins, Community Services Director	Mrs. William Kroeschell
Mireidy Fernandez, Planner	Mrs. Sam Noe
Jessica Rosenberg, Deputy City Clerk	Richard Yovanovich
Adam Benigni, Planner	John Allen
Erica Goodwin, Planner	Stefan Bothe
James McEvoy, Deputy Chief NPFD	Everett Thayer
Robert Middleton, Utilities Director	David Dillard
Stephen Weeks, Technology Services Director	David Tetzlaff
Ron Wallace, Streets & Stormwater Director	Don Vining
Gregg Strakaluse, Engineering Manager	Jonathan Palmer
Ann Marie Ricardi, Finance Director	Dwight Richardson
Jennifer Fox, Park Manager	Gale Scott
Nick Casalanquida	
Tommye Barrie	**Media:**
Josh Evans	Jenna Buzzacco, Naples Daily News
Tina Palmese	Eric Staats, Naples Daily News
Don Vayda	
Clarence Tears	Other interested citizens and visitors

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

Pastor Michael Smith, New Hope Ministries.

ANNOUNCEMENTS .....ITEM 3

Mayor Barnett presented proclamations regarding Naples Toastmasters Club Day, designated as April 4, and Water Conservation Month, presented to Big Cypress Basin Director Clarence Tears and designated as the month of April.

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

Prior to setting the agenda, Vice Mayor Taylor noted her memorandum regarding her desire to reconsider the cancellation of stakeholders meetings for the CRA District (Community Redevelopment Area) which had occurred during that week's CRA meeting. During discussion which ensued, Council indicated a desire to consider this further to which Council Member Price observed that it should occur within a CRA meeting and the consensus below was forthcoming.

> ***Consensus to schedule a CRA meeting to follow the 03/30/09 Council workshop for reconsideration of the cancellation of the stakeholders meetings for the CRA District.***
>
> ***MOTION by Price to SET THE AGENDA 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).***

PUBLIC COMMENT.....ITEM 5

(8:44 a.m.) **Everett Thayer, 1690 Avion Place,** spoke with regard to removal of Australian pines adjacent to the airport property and danger that they will be uprooted during the coming hurricane season. However, he said he believed that a lower quotation than the City obtained for the work could be obtained due to limited root structure.

RESOLUTION 09-12373.....ITEM 6

A RESOLUTION OF THE NAPLES CITY COUNCIL HONORING WILLIAM KROESCHELL AS THE 2009 RECIPIENT OF THE SAM NOE AWARD; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:47 a.m.)

Public Comment: (8:49 a.m.) None.

> ***MOTION by Sorey to APPROVE RESOLUTION 09-12373 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).***

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) .....ITEM 7

PRESENTATION OF THE SEPTEMBER 30, 2008 COMPREHENSIVE ANNUAL FINANCIAL REPORT. (It is noted for the record that a copy of the report as well as the Statement on Auditing Standards (SAS) No. 114 is contained in the file for this meeting in the City Clerk's Office.) Tommye Barie, representing CPA Associates, auditors, made a presentation of the results of the Comprehensive Annual Financial Report for the year ended September 30, 2008, a copy of which is contained in the file for this meeting in the City Clerk's Office. Ms. Barie indicated that her firm had issued an unqualified opinion, noting that the Independent Audit Report and Management Letter had raised no issues with regard to compliance matters. Among the items mentioned was ten new standards with which the audit must comply designed to achieve greater government transparency and demanding increased documentation with regard to risk factors and internal controls. Council Member Price asked whether the firm had reviewed the City's mythology with regard to administrative charge-backs.

Ms. Barie said that, after a brief examination, she believed that the City had been thorough in assessing amounts against internal services funds, but questioned the need to apply charge-backs at the department level within the general fund. Mr. Price, however, said he believed charge-backs within the general fund would allow the City to more accurately discern its actual costs and adjust accordingly. He also received confirmation from Ms. Barie that the City could establish its own policies with regard to charge-backs and that there is no requirement that charge-backs be applied equally, merely a foundation on which the method of allocation is based. Council Member Sorey also received assurance from City Manager William Moss that the three items cited in the management letter would be addressed.

Public Comment: (9:01 a.m.) None.

MOTION by Price to ACCEPT THE REPORT as submitted; 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).

CONSENT AGENDA

APPROVAL ON MINUTES.....ITEM 8-a

February 17, 2009 Workshop and February 18, 2009 Regular meeting, as submitted.

SPECIAL EVENTS ..... ITEM 8-b

1) Writers Conference and Book Fair – Naples Press Club – VonLiebig Art Center – 04/04/09 and 04/05/09.

2) Relay for Life of Naples – American Cancer Society – Gulfview Middle School – 04/17/09 and 04/18/09.

3) Amateur Canoe Race – Great Dock Canoe Race, Inc. – Crayton Cove – 05/09/09.

4) 23rd Fitness Challenge Triathlon – Bike Route and Gulf Coast Runners – Naples Beach Hotel and Golf Club – 06/07/09.

RESOLUTION 09-12374.....ITEM 8-c

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND BORAN, CRAIG, BARBER AND ENGEL CONSTRUCTION CO., INC., TO PROVIDE DEMOLITION AND EXPANSION OF THE FLEISCHMANN PARK FIELDHOUSE RESTROOMS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. Vice Mayor Taylor said she was dissatisfied that the project was not slated for completion until September 1st since the fields are used by several teams in late summer; she said it should be completed no later than the end of July. However, City Manager William Moss indicated that completion was however expected by August 1. Council Member Sorey also pointed out there was a plan to provide temporary restroom facilities if necessary. Miss Taylor also stressed the importance that the field house is open and usable since many of the sports organizations also sell food items to raise funds.

RESOLUTION 09-12375..... ITEM 8-d

A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN THE CITY AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY DATED OCTOBER 16, 2008; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 09-12376.....ITEM 8-e
A RESOLUTION APPROVING A FIRST AMENDMENT TO INTERLOCAL AGREEMENT TO PROMOTE UNDERGROUNDING OF UTILITY FACILITIES AND RELATED IMPLEMENTATION ACTIVITIES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 09-12377..... ITEM 8-f
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT FISCAL YEAR 2009-10 COLLIER COUNTY TOURIST DEVELOPMENT COUNCIL CATEGORY "A" GRANT APPLICATIONS FOR BEACH RENOURISHMENT AND PASS MAINTENANCE AND NAPLES BEACH MAINTENANCE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 09-12378.....ITEM 8-g
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT FISCAL YEAR 2009-10 GRANT APPLICATION TO THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION UNDER THE FLORIDA BOATING IMPROVEMENT PROGRAM FOR REPAIR OF THE CITY DOCK; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Heitmann requested a subsequent workshop discussion to review for Council the particular grants which are being sought and to assess the City's opportunities for funding.

> ***MOTION** by Sorey to **APPROVE CONSENT AGENDA** 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).*

END CONSENT AGENDA

ORDINANCE 09-12379.....ITEM 9
AN ORDINANCE AMENDING THE CITY OF NAPLES COMPREHENSIVE PLAN TO UPDATE THE CITY OF NAPLES CAPITAL IMPROVEMENTS ELEMENT OF THE COMPREHENSIVE PLAN PURSUANT TO FLORIDA STATUTES SECTION 163.3177(3)(b); 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. Title read by City Attorney Robert Pritt (9:06 a.m.) who noted that this is one of the few instances wherein an ordinance actually is required to have one reading only. In response to Council, Planning Director Robin Singer also clarified that various other Comprehensive Plan related actions on the agenda were however in the submittal stage and would be transmitted to the Florida Department of Community Affairs (DCA) for comment prior to final passage. Ms. Singer also noted that sheets had been provided for members of the public to register to receive notification from DCA of other issues which may arise in the approval process.. City Attorney Pritt also noted that those who register will receive a courtesy informational statement concerning publication of the state planning agency's notice of intent.

Ms. Singer then explained that the amendment under review would incorporate into the Comprehensive Plan the current Capital Improvement Program (CIP), although such plans subsequently adopted will receive the same action. There are not items, however, that are

development-related in that they would be correcting a particular deficiency; Ms. Singer said that staff recommends approval.

Public Comment: (9:09 a.m.) City Attorney Pritt made note that no one had registered to speak on this item.

> ***MOTION** by Taylor to **ADOPT ORDINANCE 09-12379** 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 10

AN ORDINANCE AMENDING THE CITY OF NAPLES COMPREHENSIVE PLAN, TO INCORPORATE AMENDMENTS NECESSARY TO ADDRESS THE CITY OF NAPLES ADOPTED EVALUATION AND APPRAISAL REPORT; 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. Title read by City Attorney Robert Pritt (9:10 a.m.). As with Item 9, City Attorney Pritt noted that anyone wishing to receive notices from the Florida Department of Community Affairs (DCA) should register on the sheets provided at the rear of the Council Chamber. Planning Director Robin Singer indicated that this amendment would incorporate changes generated from the Evaluation and Appraisal Report (EAR) as well as implementing the City's visioning plan and incorporate a sub-element to Public Utilities called a Public Utilities Water Supply Plan. Staff, she said, is recommending approval with new policies recommended by the Planning Advisory Board (PAB), although the changes originating from the Community Services Advisory Board (CSAB) were not being recommended for inclusion and would be addressed at a future time. (It is noted for the record that the materials cited in this discussion are contained in the file for this meeting in the City Clerk's Office.)

In further discussion, Ms. Singer recommended that in the "Water Resources Management and Conservation" section of the "Response to the Evaluation and Appraisal Report" the following text be removed as it applies to conservation and coastal management: "No beach renourishment projects are currently underway." In response to Council Member Price, Ms. Singer indicated that the parks and recreation level of service (LOS) standards would not be changed as recommended by the CSAB, although eventually adjustments should be made to take into account the fluctuation which occurs when seasonal residents choose permanent residency in the area. This, she said, is however not directly related to the thrust of the Comprehensive Plan which addresses growth, so other bench marks are being considered such as user counts or dwelling units as opposed to strictly population.

In response to Council Member Price, Ms. Singer made a similar assertion with regard to the LOS for beaches, noting that the City could be found deficient based on statistical information and effectively be unable to make any changes beyond annexation. Mr. Price, however, said he was opposed to altering LOS standards without being mindful of the effect upon the community's quality of life and character. Standards, he said, should not be based on other communities but on the expectations of the citizens of Naples. He said the report under discussion had been his first indication that the City was approaching a deficiency in beaches, and urged that further discussion occur with regard to an issue of this significance.

Mr. Price also took issue with a passage in the Future Land Use Element (FLUE) under 1-4.1 which, as worded, would omit the requirement that new, non-residential developments submit a residential impact statement (RIS). Ms. Singer indicated that this revision had been made due to an anticipated amendment to the Code of Ordinances which would substitute a set of criteria for a residential impact statement. Mr. Price, however, requested that the RIS requirement be restored, characterizing it as a critical component of the petition process and urging that it remain until the Code is actually amended. In fact, he said, the Code of Ordinances does not reflect the Comprehensive Plan and noted that this has been his abiding concern. City Manager William Moss however raised the issue of the process by which the Council would effect a legislative change if the requirement continued to reside in the Comprehensive Plan. Commenting however on the volume of information given Council Members for review, Mr. Price contended the opposite, namely, that a conflict was actually being created through removal at that juncture of the residential impact statement from the Comprehensive Plan. City Attorney Pritt however observed that the overall planning document does not preclude various requirements being imposed in the Land Development Code, such as residential impact statements; otherwise, a planning document can become a zoning code, which is not the intent, he added.

Vice Mayor Taylor urged that the Council fully discuss not making changes in the LOS for parks and recreation. Planning Director Singer said that she believed changes could in fact occur between submission of the proposed amendments and actual adoption, although such amendments are generally done in response to input from the DCA. She said she would however confirm this with DCA. Miss Taylor said that Council should have a clearer understanding of the various implications involved.

Council Member Sulick asked whether by increasing the LOS ratio for beach access the City would then be obligated to provide more parking because a greater density of population is being allowed per mile of beach. Ms. Singer said that while it may imply that a greater number of beach access points would be provided, an additional parking requirement would not be a given in this case.

In response to Vice Mayor Taylor, Ms. Singer read the following as Policy 6-14 which had been proposed by the Planning Advisory Board (PAB): "Establish a process and voluntary funding source for the future purchase and protection of historic resources." Ms. Singer referred to Council's discussion at the March 16 workshop that the funding source would be private. Miss Taylor also recommended that the process be referred to as encouraged rather than established so as to avoid implying City involvement in either monitoring or funding. Council Member Price also took issue with the Council not having had an opportunity to fully review the recommendations that the PAB had worked to provide. (See staff memo dated March 2, a copy of which is contained in the file for this meeting in the City Clerk's Office.) He also said he believed that the Council typically would have had a separate discussion of the Comprehensive Plan prior to the session at which action would be taken. City Attorney Pritt however clarified that the current meeting was in fact the opportunity for that discussion prior to transmission of the Comprehensive Plan to the required State agencies.

Ms. Singer also briefly reviewed issues which were discussed by the PAB regarding the second recommended policy addition (1-10.1, Establish new lighting standards that address

environmental concerns and the health and safety of citizens) and pointed out that further discussion will be required at both the PAB and Council level to deal with other text changes which would occur based on generalized policy statements such as these. Mr. Price stated that a procedure such as this had confirmed for him the reason that the Comprehensive Plan and Code of Ordinances do not agree, noting that policies such as this are included without a public discussion. This is fair neither to the PAB nor the process, stating his opposition to adding the two PAB-recommended policies at that time as well as the aforementioned change relative to the RIS and the revised LOS standards for parks and recreation.

After further discussion, Planning Director Singer expressed the view that issues such as these could in fact be added during the final adoption hearing, also pointing out that the two PAB items relate to matters already contained in the plan and stating that the transmittal letter drafted after the adoption hearing could cite any changes to the DCA. City Attorney Pritt nevertheless cautioned that the DCA may not accept City actions either to add items after the first submittal or, on the other hand, failure of the City to incorporate changes identified by the DCA. He therefore suggested that the Council form a consensus of any changes so that they could be incorporated prior to submittal to the State.

Council Member Heitmann also took issue with the volume of material provided to Council Members who had five days in which to review it; she asked for clarification that by voting in favor she would be supporting all the implications therein. City Manager Moss said that the Council had in fact discussed these elements in the past in smaller increments; he also suggested that the Council make various other changes, such as those proposed by the PAB, sometime in the months following adoption. Council Member Heitmann however cited references to the Trent Green Report which she said she had not received even though by voting in favor she would be supporting moving forward with the report's recommendations, such as a plan to reroute traffic in the 41-10 (Heart of Naples/D-Downtown) neighborhood. Further, Mrs. Heitmann questioned the policy on annexation, expressing opposition to the use of the word pursue which she characterized as too strong a sentiment in light of the City's willingness to consider annexations only when approached. Ms. Singer quoted the policy contained in the FLUE: "The City of Naples does not seek to aggressively pursue or promote annexation to the City. The following standards and objective will be considered when reviewing a petition for annexation." She also pointed out that this policy was a result of the visioning process and had been adopted by resolution.

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

> ***MOTION*** ***by Price to*** ***APPROVE THIS ORDINANCE ON FIRST READING*** ***with the following amendments: 1) delete from the Water Resources Management and Conservation of the Response to the Evaluation and Appraisal Report (EAR) the following: "No beach renourishment projects are currently underway." and 2) restore requirement for a residential impact statement in Policy 1-4.1 as follows: "All new non-residential development, redevelopment, and reuse abutting residential neighborhoods shall submit a residential impact statement that details ~~employ~~ mechanisms to ensure compatibility (through buffering and landscaping) with abutting residential neighborhoods and identifies programs to mitigate the impacts of noise, traffic, odor, and glare. Applications that do not adequately and reasonably address***

compatibility (through buffering and landscaping) and the project impacts including noise, traffic, odor and glare pursuant to the established criteria in the Code of Ordinances shall not be approved." This motion was seconded by Taylor and carried 6-1 ((Heitmann-no, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Recess: 9:44 a.m. to 10:00 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened. It is also noted that Items 11, 12-a and 12-b were read and considered concurrently as reflected below, City Attorney Robert Pritt having read the title to each at 10:02 a.m.

ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE ADOPTING COMPREHENSIVE PLAN AMENDMENT 08-CPA8 ADDING A NEW FUTURE LAND USE DESIGNATION OF SENIOR LIVING RESIDENTIAL; AND PROVIDING AN EFFECTIVE DATE. During the reading of the title to this ordinance, it was noted that this item is legislative in nature.

ORDINANCE (First Reading).....ITEM 12-a
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. During the reading of the title to this ordinance, it was noted that this item is legislative in nature.

ORDINANCE (First Reading)..... ITEM 12-b
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; AND PROVIDING AN EFFECTIVE DATE. City Attorney Robert Pritt explained that even though public testimony could be taken simultaneously on Items 11, 12-a, and 12-b an oath should be administered to all to cover any comments made with reference to 12-b, the only matter of the three considered quasi-judicial in nature. 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/no additional contact from previous disclosures; Sulick/conversation with petitioner's agent the day before; Price/discussion with petitioner's agent, City staff, and members of the public, receipt of various emails, visit to the site, and conversation with the petitioner; Barnett/conversation with the petitioner's agent since the last consideration of this matter; Taylor/discussions with the petitioner's agent and City staff, conversations with members of the public, and conversations with representatives of The Conservancy;

Heitmann/conversation with petitioner's agent, and numerous emails and conversations with the public; and Sorey/familiarity with the site and visit to the site, member of the Board of the Naples Zoo adjacent to the site, various discussions with the public including emails and letters, discussion with representatives of The Conservancy, but unable to return a telephone call from the petitioner's agent.

Planning Director Robin Singer reviewed Item 11 which she indicated had been initiated by the City and which would establish a new land use category for senior living facilities. This will both address the potential new development described under Items 12-a and 12-b, she said, as well as deal with any other assisted living, adult congregate living, or continuing care retirement communities which may in the future be proposed within the city limits. The initial proposal, Ms. Singer said, had been to allow 25 units per acre with one assisted living or skilled nursing unit for every four independent living units; however, if no independent living units were included, the maximum would be 50 units per acre. However, a subsequent Council discussion had reduced the number to 18 independent living units; 36 units per acre would however be allowed either for a project which contained only skilled nursing units or on areas considered surplus density after other limits had been met, such as the aforementioned one-to-four ratio. A special land use category is justified due to various factors which reduce impacts on surrounding areas, such as less traffic impact than would be present if the structure were merely multi-family at the same density. Staff therefore recommends approval of this ordinance, Ms. Singer concluded.

Planning Director Singer then referred to Items 12-a and 12-b which were petitioner-generated and would first apply the aforementioned new zoning category to a 22-acre parcel near the intersection of Goodlette-Frank Road and Golden Gate Parkway to be known as the Bridges of Gordon River and then permit a PD Planned Development designation for the continuing care retirement community as proposed.

Attorney John Passidomo, agent for Senior Care Development, reviewed the above referenced project using an electronic presentation. (It is noted for the record that a printed copy of this presentation is contained in the file for this meeting in the City Clerk's Office.) He noted that the 22-acre parcel under consideration occupies an enclave among properties that have been annexed in the past 20 years. He also cited the usages in the immediate area such as Coastland Mall, a small strip mall, and the tallest office building in Collier County, as well as parks and other types of public facilities to establish the compatibility of the proposed project. He further asserted that traffic generation for the complex would be equivalent to 134 single family homes at 6.11 units per acre, or would equate to one-fifth of the traffic that would be expected from various uses allowed under the applicable Collier County regulations. Even though the proposed density is no greater than various multi-family projects in the urban area, he added, the traffic generation would nevertheless be considerably less. (Attachment 1) Another factor cited was a 64% usable open space calculation for the Bridges of Gordon River which Mr. Passidomo contended was unprecedented in a location adjacent to a major arterial highway in the area. In fact, landscape buffering will result in no visual impact to any of the neighboring parcels, including The Conservancy, Naples Zoo and Bears Paw development as well as along the Gordon River Greenway. He then displayed architectural renderings depicting proposed views at the entrance and from the waterway, and noted various fiscal impact analyses (Attachment 2).

Estimated average sales price per unit was quoted at $270,000, although predicted to be substantially higher resulting in greater fiscal impacts than articulated at that time, Mr. Passidomo said.

Attorney Passidomo then addressed the public waterfront access easement that would be provided as part of the linkage in the Gordon Rive Greenway as well as a gateway pavilion in the northeast corner of the site to be provided to the public at the developer's expense (Attachment 3). Citing the Council's preliminary approval of annexation, Mr. Passidomo listed the public benefits to the City as: compatibility with the urban core, fiscal/economic contributions, and provision of a link in the Gordon River Greenway with a public entrance from Golden Gate Parkway.

Council Member Price received clarification that the Council's order for deliberations in quasi-judicial proceedings (Item 12) was first to hear the petitioner's statements, then the staff presentation, followed by members of the public; however, Council Members would be free to question any of these individuals during the course of their comments. At the conclusion of this series, the petitioner is afforded the opportunity for rebuttal and closing comments at which time Council Members may also pose questions.

Planner Adam Benigni addressed the two petitions listed under Item 12 by indicating that, pursuant to a non-binding motion of City Council in December, the 429 independent living units proposed had been reduced to 396; the proposal for 92 skilled nursing units however remains the same. In addition, buffering/landscaping along Golden Gate Parkway would be constructed in Phase I, the petitioner would agree to maintain the natural preserve area in perpetuity, excess water quality credits would be conveyed to the City, and the petitioner would fund the first two years of revenue shortfall to the City in the total amount of $11,200. However, he also noted, the motion on the proposed revisions had in fact failed in the aforementioned non-binding vote. Should the Council approve the Comprehensive Plan and rezone amendments creating the senior living residential zoning category, he said, staff recommends applying that category to the Bridges of Gordon River project. Planner Benigni further called Council's attention to the above conditions as they now appear in Section X, Land Owner Covenants, in the PD (Planned Development) document (a copy of which is contained in the file for this meeting in the City Clerk's Office). Subsection 1 of this portion of the narrative, however, would allow the Golden Gate Parkway landscape improvements to be installed either at issuance of a certificate of occupancy (CO) for Phase I or a building permit for Phase II, whichever is earlier, he added.

Planner Benigni then confirmed with the petitioner that, according to Section V, Dedication of Public Pedestrian Waterfront Access Easement, if the land owner submits a petition to amend the PD zoning prior to issuance of a CO for the buildings on the property, the public access easement automatically becomes null and void. Petitioner's agent Passidomo however explained that it had proven more appropriate from the City's standpoint to have public access easements actually placed on the land before the project commences, although such easements would no longer be in effect if the land owner petitioned to rezone the property prior to the issuance of a CO for the plan which had been approved in conjunction with the public access easement. There would be no improvements to the access easement during this time, and provision of any further easements would be a subject of the subsequent petition, Mr. Passidomo also explained. Council Member

Sorey further clarified that a successor petitioner with a different project should not be bound by a public access easement granted for a predecessor. In response to Vice Mayor Taylor, City Attorney Pritt indicated that the Council could however insist on the easement continuing, regardless of whether the current plan is ultimately constructed even though the applicant's proposal in this instance is not unreasonable. Mr. Passidomo also pointed out that without the construction of the project, a public access easement through impenetrable land would be of little benefit.

With regard to Item 11 (Comprehensive Plan amendment), Council Member Willkomm received confirmation from Planning Director Singer that no minimum lot size would be required for this category to be applicable. She also clarified that this zoning category could be applied to any area in the city limits that the Council found appropriate. Mr. Willkomm indicated that this had caused him concern.

Council Member Sulick sought clarification as to the reason that no parking requirement was listed in the new senior care zoning (Item 11), and Planning Director Singer explained that this ordinance dealt with density and uses in a future land use element in the Comprehensive Plan and, as such, was not a zoning category and therefore did not address parking. Vice Mayor Taylor asked whether the City could decline the new future land use element and still approve the Bridges of Gordon River project. Ms. Singer said that there was potential for other projects which would use such a Comprehensive Plan designation, however, its inclusion would facilitate positioning of like facilities in appropriate locations, noting that a statement to this effect could also be incorporated in the Comprehensive Plan. However, due to the existence of accessory uses in the project under review, the density would be over 18 units per acre if the assisted living and continuing care portions are also considered as individual dwelling units, Ms. Singer said. She also pointed out that a high rise tower land use category had been applied to the Moorings Park facility (Goodlette-Frank and Pine Ridge Road) which allows up to 25 units per acre, although this would not be compatible with the Bridges of Gordon River due to the 92 skilled nursing units.

Public Comment: (10:45 a.m.) Nick Casalanquida, Collier County Department of Transportation, Director of Transportation Planning Development and Review, provided a diagram (Attachment 4) illustrating vehicular connections to Goodlette-Frank Road and connecting to Fleischmann Blvd., assuring the Council that the petitioner would coordinate the County's traffic network with adjacent property owners. He said this configuration would also serve the Gordon River Greenway, the Naples Zoo, and a rear access for the Bridges of Gordon River, pointing out that the Council was being asked to endorse the proposal for the development to pay a pro-rata share of the roadway construction depicted in the diagram. In response to Council Member Heitmann, Mr. Casalanquida said that this was intended to be the subject of a developer contribution agreement which would finalize discussions that had occurred for some time at the County level. Planner Adam Benigni clarified that the diagram submitted would be added to PD narrative as Exhibit C. In addition it was clarified that Section X of the PD narrative as submitted at this meeting would be revised to indicate under Subsection 5: "Pay a pro-rata share of ~~the~~ Collier County's expense of designing, permitting, and construction the public access road …" Agent Passidomo concurred with this change but further clarified that unless the project was annexed and approved, the land owner would not be contributing to the

cost of the aforementioned roadway. **David Tetzlaff, Naples Zoo (formerly Jungle Larry's Caribbean Gardens),** asserted his support for the project. He said that it would benefit both the quality and character of the community which includes all economic levels, even though residents of the Bridges of Gordon River would most likely be those who would donate to a variety of non-profit endeavors such as the Philharmonic, the Zoo and Botanical Gardens. **Don Vining, 4115 Cutlass Lane,** expressed the belief that the project is the best use of the property as an alternative to commercial construction, also noting his support for annexation. He conveyed the comments of Dolph Von Arx also in support of annexation of this parcel, particularly from the standpoint of creation of both construction jobs and support service jobs thereafter, as well as preserving the Gordon River Greenway. Mr. Vining also said that he and he wife would seriously consider residing at the development. **Jim MacArthur, 204 Bear's Paw Trail, representing the Board of Governors of Bear's Paw Country Club,** spoke in support of the project and concurred with the comments of prior speakers. He also expressed the belief that the buildings would not be visible from the Gordon River Greenway.

Council Member Price said that there was a critical need for this type of project and predicted a continuing demand, making it an appropriate topic for Council's consideration. He also commented on the high quality of the development as related in his meetings with the petitioner's agent. He also stressed the importance of achieving less density and intensity than could be allowed under current land use regulations, characterizing it as a critical location for the Gordon River. However, he took issue with the assertion that significant numbers of current Naples citizens are potential residents of the project and said that projects should also not challenge the limits of the community's character. Referring to the proposed future land use element, he said that both density and intensity were concerns because the assisted living units in the aforementioned one-to-four ratio had not been addressed and also expressed disagreement with the approach contained in Item 11 (future land use element). In addition, he was critical of the building length which exceeds the 200 foot limit currently in the Code of Ordinances; he said that one of the buildings was proposed at 550 feet and others also well over the aforementioned limit. These issues, therefore, are elements which define the community, he said, disputing the assertions by the petitioner that the project would in fact be compatible. Later in the discussion, Mr. Price received clarification from staff with regard to approximate building lengths.

Mr. Price then questioned the planning staff regarding the source of the language in Section 3 of the proposed ordinance under Item 11 which had been provided as a supplement to the meeting packet. (Attachment 5). Planning Director Singer explained that the changes had been made in conjunction with the petitioner although "continuing care retirement communities and similar adult living facilities" had been inserted by staff so as to not limit the applicability to facilities that may not necessarily include independent living units but would have internal amenities in similar types of facilities. However, it would require staff to analyze whether the land use applied, depending on whether amenities were open to the general public or restricted to residents of the complex, or whether there are independent living units included, she added. Nevertheless, the intent, Ms. Singer said, was to accommodate facilities that were entirely made up of assisted living or skilled nursing or entirely independent living units, but would have the same characteristics with regard to internal amenities even though they may not strictly comport with the continuing care residential community (CCRC) category. However, she also clarified that if a project were to include skilled nursing facilities that would generate traffic from outside

as opposed to internal trip capture, it would be more of a downtown mixed use land category than a CCRC. Mr. Price said that he believed that a zoning district was being created so that it could be applied to the Bridges of Gordon River rather than establishing a future land use designation with a more broad spectrum of facilities in mind that would support the greater good. Citing the examples given by the petitioner of the density of various downtown projects (Attachment 1), Mr. Price received clarification that in the D Downtown District, a project of up to 30 units per acre could be allowed under the conditional use process.

Council Member Price then addressed Item 12, stating his concern for the building length, confirming that the approximate measurements of the residential structures are:

- Building 1 – 403' x 172'
- Building 2 – 550' x 195'
- Building 3 – 310' x 222'
- Building 4 – 393' x 195'

Mr. Price said that, despite this proposal being a PD, the staff had not addressed the variation building length from the Code. He therefore asked that staff address the public benefit or rationale for making this concession to standard requirements. Planner Benigni said that this may be attributable to the desire for residents to move within the development without exiting a covered area of some type. Also, he cited raised landscaped areas incorporated into parking decks as a positive factor, as well as modulation in the exterior design of the buildings; he also said that the location on the outskirts of the City would not represent a detriment to other areas. Planning Director Singer however said that she believed the 200-foot limit had been established to prevent a repetitive wall of buildings which interrupt vistas as opposed to structures like those in the proposed project which are internal to a development. She also noted various strategies employed in this development to interrupt building mass. Mr. Price, however, said that the 200-foot restriction had been imposed as a direct corollary to the future land use element in the Comprehensive Plan which emphasizes that scale and design should be consistent with community character. Upholding these standards is what the people expect from city government, he added.

Council Member Price then summarized his objections to the project: concern that, despite its being accessory, the one-to-four ratio (independent living to skilled nursing) would add density and should be accounted for in some manner; and the fact that the building size/length is in excess of the City's standards in the Code of Ordinances and also exceeds the expectations of the community.

Vice Mayor Taylor however also commented on density, but pointed out that 25 of the 74 condominiums which are on the beach in the Moorings and Coquina Sands developments exceed the density of the Bridges of Gordon River. She also noted the 490-unit density of Naples Community Hospital (NCH), in a structure measuring 650' X 585' which borders a residential area on the west side of US 41. By its existence, she added, NCH has engendered development of many peripheral medical uses within the downtown area which is however embraced by the community even though it far exceeds requirements in the Code of Ordinances. She also noted that her colleagues had accepted a waiver of Code requirements in order to construct a City parking garage. The Bridges of Gordon River, she said, will be the forerunner of further CCRC

Roll call votes by Council Members are recorded in random order, pursuant to City Council policy.

uses which would not only be welcomed by the community but is not unlike other facilities such as NCH which are also supported by the community and which represent a symbiotic relationship between residential and medical. In fact, she said, when the Wellness Center opened as part of the hospital complex, surrounding residents were pleased that it was in closer proximity to their homes.

With regard to the buildings proposed for Bridges of Gordon River, Miss Taylor pointed out that, despite their length, there were various means by which the façade was mitigated, citing the staff's uncertainty of the source of the 200-foot limit. She therefore expressed her support for the project and for inclusion of CCRC's as the future of the community.

In further response to Vice Mayor Taylor, City Manager William Moss indicated that the staff was unsure at that point how transfer of excess water quality credits from the development to the City would be facilitated, noting that it is uncommon to expect that such a transfer would take place. Council Member Sorey also noted that this is a new concept in water management, although the objective is that if water quality credits were generated by this project beyond its need, there might be an opportunity to enter into an agreement of this sort. He said that there had been proposals that water quality credits could be banked or sold, supporting this provision with regard to the Bridges of Gordon River, and pointing out the South Florida Water Management District (SFWMD) intended to establish procedures in this regard.

Miss Taylor asked that the staff address whether the Comprehensive Plan amendment under consideration had been drafted with the Bridges of Gordon River in mind. Planning Director Singer said that the amendment most likely would not have been proposed at that time, although there is a need for a land use category that specifically addresses the type of use proposed as well as other facilities such as Mooring Park. She also mentioned that density of the current project had been reduced during the process and that staff believed that the use should be a more generalized category in anticipation that a facility of entirely assisted living would be proposed. She also explained that facilities like NCH are limited by lot coverage as opposed to density, and pointing out that the goal had been to develop criteria which the community may find acceptable. It was also noted that state law allows CCRC's to open their amenities to the public for the first five years. Staff, she said, had approached the Comprehensive Plan amendment from the standpoint that would allow activities not necessarily considered a CCRC but exhibiting the same characteristics such as internal trip capture.

Attorney Passidomo further clarified that the five-year term with regard to amenities is contained in both the state law and the Bridges of Gordon River PD document and was intended to allow the cost to be defrayed through admitting outside users so that the amenities are also available for the earliest residents. Thereafter, the amenities would be limited to those who occupy independent units on-site. In further response to Vice Mayor Taylor, Mr. Passidomo indicated that the land on which the Bridges of Gordon River is proposed to be built is not owned by Senior Care Development as this is the entity that is acquiring the property. Title to the land is held by a group of investors which acquired various parcels from which the site was assembled.. He said that he did not know the identity of all the land investors although none of his clients had either a legal or equitable interest as a land owner.

Council Member Sulick received clarification that the City's density restrictions within the mid-rise category is 15 to 18 units per acre. She however pointed out that some low-rise structures in the Moorings and Coquina Sands are also 18 units per acre. Mrs. Sulick also questioned the process by which a parcel could be rezoned by the City when it had not yet been annexed. Petitioner's Attorney Passidomo explained that land owners are reluctant to annex without knowledge of the land use that would be approved. He cited Naples Bay Resort which was handled in this manner, but contrasted it with the Hole-in-the-Wall golf course annexation wherein the owners asserted that there were no future land use plans. This petitioner is seeking assurance, therefore, that the exact heights, densities, intensities and uses under a master plan will be approved, all of the elements being acted upon simultaneously. This also allows the City to decide whether to accept what is proposed in totality, he added. Council Member Sulick maintained her concern that this was not the proper order, but City Attorney Pritt explained that annexation agreements have not been allowed since a court decision in 2002. At that time annexation agreements had been deemed to disallow public input into the annexation process. Therefore, all elements may be heard but no final action occurs until all are finalized. Should the petitions under review at that meeting be approved, he said, the Council would conduct a future hearing which will include annexation, Comprehensive Plan amendment and rezoning with the City Council making no commitment until the final hearing.

Council Member Sulick then took issue with Vice Mayor Taylor's equating NCH to this project since the hospital is a commercial entity although the Bridges of Gordon River has commercial and residential elements. She also observed that the project was either trying to avail itself of the advantages of each category or that both were being circumvented. She noted that there is in fact an example of this type of facility already in the City, namely, Moorings Park.

Council Member Sorey said he however discerned a need for a future land use designation for the category under review, noting the need for economic diversification and expressing the hope that the City of Naples would be able to attract other projects like the Bridges of Gordon River. He also said that he believed the 200-foot building length restriction had originated from concern for blocking views along the beach or US 41. Therefore, it had been intended to address the visual impact to the general public; however, this being a PD, only the residents would view the buildings, and therefore the connectivity needed to address the demographics of potential residents would be addressed. In addition, PD's are used to allow for mixtures of zoning categories, he said, and asserted that there is a clear financial advantage to the City from annexation of the property. Council Member Price, however, indicated that during his tenure on the Planning Advisory Board (PAB) the 200-foot restriction had been implemented, not to do with the areas referred to by Mr. Sorey, but to address an issue of massing in projects proposed in the area of the Gordon River. Rather than articulation, however, a meaningful break in the building was required, Mr. Price added.

In response to Council Member Heitmann, Attorney Passidomo clarified that inherent in PD's is the relaxation of certain standards which in this case is the length of the buildings. The Council, he noted, had approved residential buildings at Moorings Park in the 500 to 600 foot range which, like the Bridges of Gordon River, are site-specific determinations and open to the Council exercising its judgment and discretion. He said that there are however no additional concessions which could be made with regard to the current project. Mrs. Heitmann nevertheless expressed

concern that the City was also setting a land use standard. Planning Director Singer said that the advantage to a new land use category as proposed would actually reduce impacts on the community as opposed to a rezone to residential on this parcel which would not have the same assurances.

Council Member Heitmann then questioned the provision that allows connection to the City's reclaimed water system. Mr. Passidomo said that the water line is now on the opposite side of the street and the project would connect if the City were to extend the system within its proximity. Josh Evans, project engineer, clarified that while there is no connection available at the present time, nor is there excess reuse water capacity available from the City, the project seeks to eventually connect. He also said that he anticipated there would be capacity in the future due to the proposal to supplement reuse water with water from the Golden Gate Canal. Mrs. Heitmann maintained however that there was a variation between this interpretation and the wording of the document which identifies the time of connection as being the point when the City extends a line. Messrs. Evans and Passidomo indicated that this wording would be refined.

Council Member Willkomm said that while he believed the concept has merit, he could not support the project since it is in the jurisdiction of Collier County and should have been proposed to the County Commission. He took the position that the proposal was however being made to City Council due to what he characterized was the extreme residential density desired for the project which not only would not have been approved by the County but was inappropriate for the City of Naples. Mr. Willkomm said that each high-density development approved served to damage the quality of life that draws people to the community, and instead of protecting and preserving the City's quality of life, the interests of developers would be served. He said he rejected the concept that projects like this are the future of Naples if they entail elements of compromise and the insidious erosion of the community's quality of life.

Recess: 11:55 a.m. to 12:21 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 11, 12-a and 12-b continued.

City Manager Moss indicated that the issue raised previously by Council Member Heitmann would be addressed between first and second readings of the applicable ordinance as to the party responsible for connecting to the reclaimed (reuse/irrigation) water line. However, Council declined to hear a further presentation from the project architect with regard to the length and height of the proposed buildings. Acknowledging diverse opinions among Council Members, Mayor Barnett noted the preponderance of support which had been expressed by members of the public, including representatives of both the nearby Wilderness and Bears Paw developments, and support conveyed from Dolph Von Arx. He further praised the project and said that the Council continually defines the character and nature of the community; he also said that he would rather have this project as part of the City than for it to remain in the County jurisdiction so that the City can exert certain controls.

> ***MOTION by Sorey to APPROVE THIS ORDINANCE (Item 11) on First Reading as submitted; seconded by Taylor and carried 4-3, all members present and voting (Price-no, Sorey-yes, Sulick-no, Willkomm-no, Taylor-yes, Heitmann-yes, Barnett-yes).***

***MOTION* by Sorey to *APPROVE THIS ORDINANCE (Item 12-a)* on First Reading as submitted; seconded by Taylor and carried 4-3, all members present and voting (Taylor-yes, Sulick-no, Heitmann-yes, Price-no, Sorey-yes, Willkomm-no, Barnett-yes).**

It was noted that a new Section X and Exhibit C (see Attachment 4) had been supplied revising the Subsection 5 therein to include funding a pro rata share of Collier County's expense in regard to a public access connecting the site to Goodlette-Frank Road. Council Member Sorey also noted for the record that the above issue raised with regard to connection to the reuse water line would be addressed prior to second reading.

***MOTION* by Sorey to *APPROVE THIS ORDINANCE (Item 12-b)* on First Reading AS AMENDED in Section X and Exhibit C as noted above; seconded by Taylor and carried 4-3, all members present and voting (Heitmann-yes, Taylor-yes, Price-no, Sorey-yes, Sulick-no, Willkomm-no, Barnett-yes)**

City Attorney Pritt clarified that the above items would be brought before Council for final action after a Florida Department of Community Affairs (DCA) review, estimated at a minimum of 60 days.

RESOLUTION 09-12380.....ITEM 16

A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 09-LE3 AND RESIDENTIAL IMPACT STATEMENT PETITION 09-RIS5 WITH AN AFTER 9:00 P.M. EXTENDED HOURS WAIVER FOR THE CAFÉ LOCATED AT 821 FIFTH AVENUE SOUTH, UNIT G-1, MORE FULLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (12:31 p.m.) This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Taylor, Heitmann and Sorey/familiar with the site but no contact; and Sulick, Price and Barnett/familiar with the location, having visited on several occasions, but no contact. Planning Director Robin Singer indicated that live entertainment is already authorized at the location; however, the recently adopted ordinance revisions allow the petitioner to request that the prevailing permit be altered from indoor to outdoor to allow doors and windows to remain open. In addition, the petitioner is requesting to add entertainment on Sunday so that the parameters would then be Friday between 7:00 p.m. and 10:00 p.m., Saturday between 6:30 p.m. and 9:30 p.m., and Sunday between 5:30 p.m. and 8:30 p.m. The four musicians, however, will remain in the same location as currently. Staff recommends approval, Ms. Singer said.

Petitioner Tina Palmese said that, in actuality, live entertainment is offered on Saturdays only and the additional dates would be used only as seasonal demand warrants. Doors and windows remaining open, she said, allows maximization of seating capacity, although she assured the Council that the music variety would continue to be tasteful jazz and blues. She also stressed that the restaurant had experienced a 30% to 40% decrease in business from the prior year.

Council Member Heitmann expressed concern with the potential for other requests for outside entertainment on Fifth Avenue South similar to that which is allowed on Third Street South. Noise is an on-going concern in the area around Fifth, she said. Council Member Sorey received clarification from Ms. Palmese that she believed Fifth Avenue would be positively impacted by music from the various restaurants being heard from the street. Stating that she was sympathetic

to the reasons for the request, Council Member Sulick said that she had nevertheless observed people standing in the street listening to the music when the establishment had had its doors open the previous weekend. Therefore, she cautioned that there was the danger of this occurring at other locations on Fifth. Council Member Willkomm however ascertained that noise problems would be addressed under the previsions of the City's current ordinance. Council Member Sorey predicted that the remainder of restaurants would now make similar requests, characterizing it as a strategic question to be dealt with at this juncture since it would result in a change for Fifth Avenue South. In response to Council Member Price, Planning Director Singer clarified that, under the current regulations, if doors and windows are to be left open, live entertainment is considered to be outdoor rather than indoor, noting that various permits specify that doors and windows will remain closed.

Vice Mayor Taylor cautioned that comparisons not be made between Third Street South and Fifth Avenue due to the difference in area size and configuration of the thoroughfares. Therefore, allowing doors and windows to be left open at a restaurant on Fifth would constitute marketing a particular establishment, she said, concurring with the caution expressed by Council Members Sulick and Sorey. Mrs. Sulick also observed that the restaurants on Third Street are designed for outdoor café-style dining while those on Fifth are not, causing tables and chairs to be positioned on the sidewalk because the buildings have been constructed to the setback; she also said that the proliferation of dining on the sidewalk on Fifth has caused inconvenience for pedestrians. In addition, she said she had observed the instance where the doors were left open at The Café and that the music was in her view loud, causing concern that this could be multiplied with many other establishments. Council Member Heitmann said that she also is increasingly concerned that the evening environment on Third Street South is resulting in patrons carrying beverages between establishments which might result in a local trend toward the situation in areas like Key West. Viability of the street, she added, must be balanced with the need to maintain the quality of the commercial area.

Mayor Barnett observed that this enterprise had been severely impacted by the length of time involved for renovations of the building and said that the request should not be denied, particularly in light of the need to attract business to the downtown area. He said if other petitions come forward, the Council has the option of denial. Council Member Price, while expressing concern with achieving a balance, said that a certain degree of increased activity on Fifth similar to Third may in fact be desirable. In response to Mr. Price, Ms. Palmese explained that some clientele prefer inside dining while others would rather remain outside, the latter being more inclined to stay at the establishment for shorter periods. However, with the doors closed, the outdoor seating is no longer desired by patrons. Nevertheless, Ms. Palmese noted, people standing outside the restaurant to listen to the music had not been a problem from a congestion standpoint.

Council Member Willkomm said he supported this request and urged the Council to decide it on its own merits, not in light of potential requests from other establishments. Problems should be documented, dealt with and addressed when a permit is presented for renewal, he said, although he also noted that maintaining clear sidewalks must be enforced.

Council Member Sulick then received clarification that in the Fifth Avenue South Special Overlay District there is no requirement to provide parking spaces for outdoor dining; Mrs. Sulick therefore characterized this as an expansion of a restaurant without fulfilling the required parking, warning of unintended consequences for an area that is considered mixed use.

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

> ***MOTION by Willkomm to APPROVE RESOLUTION 09-12380 AS AMENDED in Section 3-1 that "The musicians ~~shall~~ may include …". This motion was seconded by Barnett and carried 5-2, all members present and voting (Sulick-no, Sorey-yes, Taylor-yes, Heitmann-no, Willkomm-yes, Price-yes, Barnett-yes)***

Vice Mayor Taylor observed a need for future review of an appropriate balance of businesses and residential on Fifth Avenue South and Third Street South. (See also Correspondence and Communication , Page 32.)

ORDINANCE (First Reading).....ITEM 13

AN ORDINANCE RELATING TO HAMILTON HARBOR MARINA; DETERMINING REZONE PETITION 09-R1 REZONING HAMILTON HARBOR MARINA FROM A PLANNED DEVELOPMENT TO A NEW PLANNED DEVELOPMENT, CHANGING THE MAXIMUM SEATING CAPACITY FOR BOTH INDOORS AND OUTDOORS AT THE CLUBHOUSE FROM 100 TO 150, CORRECTING CLERICAL ERRORS AND CHANGING THE LIVE ENTERTAINMENT DESIGNATION FROM A CONDITIONAL USE TO A PERMITTED USE, SAID PROPERTY CONTAINING APPROXIMATELY 175.44 ACRES LOCATED AT 7077 HAMILTON AVENUE, MORE FULLY DESCRIBED HEREIN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:03 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm and Barnett/no contact; Sulick, Taylor and Heitmann/familiar with the site but no contact; and Sorey/no new contact or site visit. (It is noted for the record that Council Member Price was away from the dais when ex parte disclosures were made; however, prior to action on this item Mr. Price disclosed that he had recently visited the site but there had been no other contact.) Planning Director Robin Singer said that the amendment would allow an increase in seating capacity from 100 to 150 and to eliminate the requirement that live entertainment be granted via conditional use since the current live entertainment ordinance would now prevail should any changes be desired. Staff recommends approval, she added.

City Attorney Pritt recommended that references to the Comprehensive Development Code be changed to Land Development Code to match current terminology.

Public Comment: (1:06 p.m.) None.

> ***MOTION by Willkomm to APPROVE THIS ORDINANCE on First Reading amending Exhibit "A" throughout as follows: "…~~Comprehensive~~ Land Development Code…"; seconded by Barnett and carried 4-3, all members present and voting (Heitmann-no, Price-no, Sorey-yes, Sulick-no, Taylor-yes, Willkomm-yes, Barnett-yes).***

RESOLUTION 09-12381.....ITEM 14
A RESOLUTION DETERMINING PETITION 09-N1 FOR THE EXPANSION OF A NONCONFORMITY IN ORDER TO ALLOW THE ADDITION OF ELECTRICAL SERVICE TO AN EXISTING ACCESSORY DOCK WHERE THERE IS NO PRINCIPAL STRUCTURE ON PROPERTY LOCATED AT 4375 GORDON DRIVE, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Attorney Robert Pritt (1:06 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/familiar with site and met with petitioner's agent; Sulick/familiar with the site and contact with the property owner association; Taylor/familiar with the site and brief conversation with petitioner's agent; Price and Barnett/visited the site and conversation with petitioner's agent; and Heitmann and Sorey/visited the site but no contact.

Planning Director Robin Singer indicated that this petition involves a site with no principal structure since a home was removed, although the dock remains. However, for environmental reasons, demolition of the dock was not required. Since the property owner across the street seeks to utilize the dock exclusively until a single-family home is constructed, the staff deemed that the nonconformity petition process should be the manner in which the request is handled in the interest of the surrounding neighborhood. The Planning Advisory Board (PAB) modified the staff's conditions which appear in the resolution presented so that the fifth allows the dock to be rebuilt if destroyed. Staff recommended approval with the conditions as stated, she said.

Attorney Richard Yovanovich appeared on behalf of the petitioner and displayed an aerial photograph of the site (a copy of which is contained in the file for this meeting in the City Clerk's Office) showing the location of the dock and the site occupied by those wishing to utilize the dock. When the site in question had been acquired, the purchaser was not aware that the use was nonconforming since the structure had already been removed. There is no intent to expand the existing dock, he said, which had been the concern of the Port Royal Property Owners Association. While the dock would be used in its current configuration, if destroyed, current code requirements would be met. Mr. Yovanovich also pointed out that, should there be a primary structure on this property, the dock could be leased; however, in the current proposal, the neighbor across the street, a relative of the property owner, would be using the dock with no additional vehicle traffic involved.

Council Member Sulick indicated that the Port Royal Property Owners Association desired that the title to the two properties in question be joined, relating other instances when the failure to do so had caused conflicts with regulations or requiring application for a nonconformity. In addition, the association sought to have the dock retain its original footprint since, if replaced, it could be expanded. In further dialog with Attorney Yovanovich, Mrs. Sulick ascertained that electrical service would be housed in a box mounted on posts and landscaped. (It is noted for the record that a depiction of this installation is contained in the file for this meeting in the City Clerk's Office.) Council Member Sulick however asserted that a dock on a home site without a structure is against current City zoning regulations; however, Ms. Singer clarified that the Code prohibits construction of an accessory use prior to the construction of the primary structure, making the matter before the Council a use nonconformity.

In response to Council Member Willkomm, Mr. Yovanovich noted that the petitioner was asking to be allowed to repair the existing dock should it be damaged; if it is to be replaced, current requirements must be adhered to.

Public Comment: (1:19 p.m.) None.

> ***MOTION** by Willkomm to **APPROVE RESOLUTION 09-12381** as submitted; seconded by Barnett and carried 6-1, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-no, Taylor-yes, Willkomm-yes, Barnett-yes).*

RESOLUTION 09-12382.....ITEM 15

A RESOLUTION DETERMINING PETITION 09-V01 REQUESTING A VARIANCE FROM SECTION 58-914(9) OF THE CODE OF ORDINANCES, CITY OF NAPLES, WHICH ALLOWS INSTALLATION OF A GROUND SIGN FOR PROPERTIES WITH AT LEAST 150 FEET OF FRONTAGE ALONG U.S. 41 IN ORDER TO ALLOW A GROUND SIGN ON A PROPERTY WITH APPROXIMATELY 99 FEET OF FRONTAGE ON U.S. 41, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:19 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/no contact; Sulick, Barnett and Taylor/familiar with the site but no contact; and Price, Heitmann and Sorey/visited the site but no contact.

Planner Adam Benigni noted that ground signs in the "D" Downtown zoning district are allowed only when there is 150 feet of roadway frontage; the Planning Advisory Board (PAB) had recommended approval of only the portion of the proposed sign containing a pillar and the street number. Staff has however recommended denial, he added.

Bob Vayda, representing Stofft Cooney Architects, indicated that his firm occupies the offices in the structure on the site in question which is a multi-tenant building south of Seventh Avenue North. Visitors had experienced difficulty locating the building due to a lack of signage, he said, but since the building is no longer at full occupancy, inclusion of signage would be of assistance to current tenants. Proposed is a ground/monument sign, adjacent to the sidewalk and centered on the property which has 99 feet of frontage. Mr. Vayda displayed a diagram which he said had been presented to the PAB (a copy of which is contained in the file for this meeting in the City Clerk's Office), noting that materials would match the stone/stucco building exterior. He further explained that architectural articulation prevented a sign from being placed on the facade, and even though signage would be allowed on the side of the building, Mr. Vayda said, the proposed 26 square foot sign with four-inch tall letters was deemed more appropriate than a 60 square foot sign affixed to the structure.

Vice Mayor Taylor ascertained from staff that denial was being recommended due to failure to meet Variance Conditions 1, 2, 3, 4 and 7. Council Member Willkomm characterized the petitioner's sign proposal as attractive and conveyed his support. Council Members Sulick and Willkomm also noted the lack of address numbers on buildings all along US 41 and Mrs. Sulick joined Mr. Willkomm in supporting the proposal. Council Member Price observed that the 150 foot minimum frontage had been imposed to control a proliferation of ground signs, but also noted that that this site is most likely one of the few that does not meet the frontage standard. He

also pointed out receipt of the PAB minutes which he said had saved him considerable review time due to diligence with which the petition had been reviewed. He said he would also support the petition. Council Member Heitmann suggested that the sign be slightly lower in height so that passing pedestrians and cyclists might be visible to vehicles exiting driveways onto US 41. Mr. Vayda agreed to lower the height and move the sign slightly away from the sidewalk. After further discussion, the following action was taken.

Public Comment: (1:39 p.m.) None.

> ***MOTION by Heitmann to APPROVE RESOLUTION 09-12382 amended as follows: substituting the following for Section 2: "That this approval is for the signage as proposed by the petitioner with the exception that it is placed an additional 12" from the sidewalk (for a total of 20") and that it is a maximum of 48" in height; in addition, final approval with regard to safety must be obtained from the City Traffic Engineer." This motion was 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).***

Recess: 1:39 p.m. to 1:53 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 09-12383.....ITEM 17

A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 09-LE4 AND RESIDENTIAL IMPACT STATEMENT PETITION 09-RIS6 WITH AN AFTER 9:00 P.M. EXTENDED HOURS WAIVER FOR FLACO'S LOCATED AT 4947 NINTH STREET NORTH, UNIT 110, MORE FULLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:53 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; however, Planning Director Robin Singer noted that the petitioner's agent had been called away unexpectedly. The agent had nevertheless requested that the Council's deliberations go foward. City Council Members then made the following ex parte disclosures: Willkomm and Barnett/no contact; Sulick Taylor, and Heitmann/familiar with the site but no contact; and Price and Sorey/visited the site but no contact. Ms. Singer described the petition as a request for live entertainment to include a maximum of two performers with one amplified guitar player and singer, indoors, Friday and Saturday evenings between 6:30 and 10:00. Staff recommends approval, she added.

Public Comment: (1:55 p.m.) None.

> ***MOTION by Willkomm to APPROVE RESOLUTION 09-12383 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).***

RESOLUTION 09-12384.....ITEM 18

A RESOLUTION AMENDING THE 2008-09 BUDGET ADOPTED BY ORDINANCE 08-12197 CHANGING THE CAPITAL PROJECTS IN FUND 340, CAPITAL PROJECTS FUND, AND FUND 390, STREETS AND TRAFFIC FUND; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:55 p.m.). City Manager William Moss explained that this is the formal action necessary pursuant to the workshop discussion of February 17th during which the Council examined in detail each project and designated which would be funded or deferred. The total reduction amounts to $318,613, he

added, and pointed out that the Council would also not be asked to approve a transfer of approximately $500,000 from the fund balance for fire station repairs.

Public Comment: (1:56 p.m.) None.

> ***MOTION by Sorey to APPROVE RESOLUTION 09-12384 as submitted; seconded by Sulick and carried 6-1, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-no, Barnett-yes).***

RESOLUTION 09-12385.....ITEM 19

A RESOLUTION AMENDING THE 2008-09 BUDGET APPROVED BY ORDINANCE 08-12197 TO PROVIDE FOR THE MID-YEAR BUDGET AMENDMENT OF THE COMMUNITY REDEVELOPMENT AGENCY (CRA) BUDGET; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:57 p.m.). City Manager William Moss indicated that this action would adjust the Community Redevelopment Agency (CRA) budget to recognize that no revenues ($300,000) would be received from the sale of parking spaces and that $220,000 would not be expended for street lighting in the current fiscal year. Council Member Price also clarified that while the decision with regard to the lighting deferral had occurred at the CRA level, approval of budget amendments is the role of the City Council. Council Member Willkomm received clarification from City Manager Moss that this action would have no effect on the refinancing of the parking garage (Eighth Street South and Sixth Avenue).

Public Comment: (1:59 p.m.) None.

> ***MOTION by Price to APPROVE RESOLUTION 09-12385 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 09-12386.....ITEM 20

A RESOLUTION APPROVING THE PURCHASE OF A DELL EQUALLOGIC REDUNDANT STORAGE AREA NETWORK SYSTEM; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER TO DELL, INC.; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:59 p.m.). City Manager William Moss indicated that this system is preferable to tape backup of computer files which would have required approximately ten hours to accomplish. This proposed system handles such systems as budgeting/accounting, 911 emergency and email storage, he said, and is a joint purchase under the authority of the State of Florida. Mayor Barnett spoke in support of the expenditure in the current fiscal year. Council Member Price, however, asked whether an alternative course of action had been considered due to funding concerns. Mr. Moss said that he believed this to be the best choice because the law requires that City records remain open to the public, particularly the large volume of email that must be stored, and taking into consideration the extent of business systems which must be managed. Mr. Price nevertheless expressed his opposition due to the current economic situation, seeking further assurances that no other less costly solution exists. Stephen Weeks, Technology Services Director, confirmed that a lesser system would not provide the redundancy that is called for in backing up information, noting that one unit is to be assigned to Police and one to Technology Services. He also said that consolidated storage of all data could be achieved with this system as opposed to utilizing multiple servers. In response to Council Member Heitmann, Mr. Weeks explained that a redundant system would support City needs should one or the other of the aforementioned locations became inoperative; he further noted that over time additional storage capacity had

continued to be needed to support the City's demand. In response to Vice Mayor Taylor, he said that continuing to add servers multiplies the time, and therefore the cost, required to execute file backup. Council Member Price however asked the staff to further differentiate between the proposed system and the cost of adding capacity to the current system. Mr. Weeks estimated that ten hours per week were being devoted to managing the current system, although once the new system is in operation there would no longer be this time demand. Mr. Price therefore estimated that time savings would result in the proposed system being amortized in four years. However, Mr. Weeks pointed out that this amortization does not take into account operational issues which plague the current data storage framework. In moving approval, Council Member Sorey said that he was satisfied in conversations with staff that this expenditure was needed at that juncture. He also pointed out that the current financial audit had identified the need for off-site data storage.

Public Comment: (2:09 p.m.) None.

> ***MOTION** by Sorey to **APPROVE RESOLUTION 09-12386** as submitted; seconded by Heitmann and carried 5-2 (Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-no, Willkomm-yes, Barnett-yes).*

RESOLUTION 09-12387.....ITEM 21

A RESOLUTION APPROVING AN INTERLOCAL SERVICE BOUNDARY AGREEMENT AND ACCORD AND SATISFACTION BETWEEN THE CITY OF NAPLES, COLLIER COUNTY AND THE GOVERNING BOARD OF THE COLLIER COUNTY WATER-SEWER DISTRICT FOR PROVIDING WASTEWATER TREATMENT SERVICE FOR THE COLLIER COUNTY GOVERNMENT COMPLEX; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL SERVICE BOUNDARY AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:10 p.m.) who explained that this agreement would resolve an on-going dispute between the City and Collier County with regard to water and sewer service to the County's governmental complex on US 41 and Airport-Pulling Road. Also provided for is a transfer of treatment responsibilities and service area changes to achieve better equalization between the operations of the two utilities.

Public Comment: (2:12 p.m.) None.

> ***MOTION** by Barnett to **APPROVE RESOLUTION 09-12387** 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 09-12388.....ITEM 22

A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE CITY MANAGER IN EXECUTING A SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT TO PROVIDE MATCHING GRANT FUNDS IN THE AMOUNT OF $1,500,000 FOR WATER QUALITY AND FLOOD MITIGATION IMPROVEMENTS WITHIN DRAINAGE BASINS THROUGHOUT THE CITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:12 p.m.). City Manager William Moss noted that this grant is in the amount of $1.5-million which would however be allocated elsewhere by the grantor had the agreement not been executed by March 13th. Approximately half of this amount would be devoted to the upper Gordon River mitigation project although, should the City's plans change, an amendment could be submitted to allow allocation to other projects. Council Member Price

noted that the total cost of the tasks involved in this grant funding is $7.8-million; however, Ron Wallace, Streets & Stormwater Director, explained that any expenditures which the City chooses to make in the covered categories would, under the grant agreement, be matched by South Florida Water Management District (SFWMD) up to $1.5-million. Mr. Moss also pointed out that since the projects are multi-year in nature, additional grants would be sought for future work. Mr. Price, however, said there was reason to believe that no additional grant funding would be available for upcoming years. This was confirmed by Mr. Wallace who cited the public-private effort being considered with Hole-in-the-Wall golf course as a possible concern in this regard. He said he had spoken with SFWMD management and had learned that should the City reach an agreement with Hole-in-the-Wall it was anticipated that the first year cost would be fully funded from the current grant with the City's responsibility for matching the expenditure actually being required in the following year. This flexibility is in the current grant, he said, so that funding could be provided for the projects which the City eventually determines to undertake.

Council Member Price cautioned that the projects listed, such as Hole-in-the-Wall, had not been fully examined, and City Manager Moss said that should the Council not support this endeavor, an amendment to the grant agreement would be processed. Mr. Wallace also clarified that accepting the grant would not however obligate the City to undertake any of the projects listed therein. In this regard, City Attorney Pritt noted Paragraph 14 of the agreement which provided that all grant funds not expended by the City would be returned within 60 days of termination of the agreement.

Public Comment: (2:19 p.m.) None.

> ***MOTION by Sorey to APPROVE RESOLUTION 09-12388 as submitted; seconded by Barnett and carried 5-2, all members present and voting (Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-no, Barnett-yes).***

Despite the time constraints cited, Council Member Price nevertheless expressed discomfort with executing the agreement prior to Council being afforded the opportunity for full analysis of the projects identified. Mr. Willkomm said that his negative vote should not be attributed to the City Manager's reasoning for signing the document. In response to Council Member Heitmann, Mr. Moss explained that the grant had been awarded based solely on the three categories listed (Attachment #6). In response to Vice Mayor Taylor, Mr. Wallace confirmed that staff had identified the three projects; Miss Taylor recommended that when grant funding is sought in the future, consideration be given to the need to connect to City sewers the septic tank users outside the city limits who are nevertheless City water customers. City Manager Moss said that the staff was proceeding with this effort.

RESOLUTION 09-12389.....ITEM 23

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND AECOM, INC. AKA BOYLE ENGINEERING, CORP., FOR CONSTRUCTION ENGINEERING SERVICES FOR IMPROVEMENTS TO THE COVE STORMWATER PUMP STATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (2:23 p.m.). Council Member Heitmann received clarification that this project would entail a complete equipment change-out although it did not

entail complete replacement of the containment structure. Council Member Price, however, questioned whether a portion of the inspection and project management functions could be accomplished by City staff rather than outside sources. Ron Wallace, Streets & Stormwater Director, clarified that there were indeed some functions that could be handled in this manner, but stressed that there was still substantial demand for the technical services of an engineer of record. Billing, however, would be on a time and materials basis. He also explained, in response to Council Member Heitmann, that the project would not increase capacity of the pumping station but replace faulty equipment that no longer operates at current permitted capacity. Council Member Sorey said that while he did not perceive an alternative strategy, stormwater is not treated prior to flowing into Naples Bay at this location. Mr. Wallace, however, pointed out that water quality improvements were in the offing in Drainage Basin III, upstream from this point of discharge.

Public Comment: (2:29 p.m.) None.

> ***MOTION by Taylor to APPROVE RESOLUTION 09-12389 as submitted; seconded by Barnett and carried 6-1, all members present and voting (Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

RESOLUTION 09-12390.....ITEM 24

A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH OBTAINING ENGINEERING AND SURVEYING ASSISTANCE IN ORDER TO DEVELOP A SCOPE AND FEE FOR CANAL DREDGING IN PORT ROYAL; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:29 p.m.). City Manager William Moss reminded Council that in order to fund this work, a subsequent budget adjustment would be required, observing that under the current special assessment program, the City could not plan for expenditures of this nature because the need is not known until a petition is brought forward. Council Member Price ascertained from Ron Wallace, Streets & Stormwater Director, that staff time would in fact be involved in developing a request for qualifications (RFQ) and undertaking the selection process. Thereafter, negotiations with the top ranked firm would be necessary to establish a fee for services which will then be reviewed by the property owner association for a determination on whether to proceed with the project. City Manager Moss pointed out that this procedure comports with the City's policy which entails the preliminary costs involved in ascertaining estimates for the neighborhood to be funded by the City. Only if the special assessment goes forward will these initial costs be recoverable by the City, he added. In response to Council Member Sulick, Mr. Wallace said that he could not confirm whether the Port Royal Property Owner Association had yet surveyed members, the City having received a letter from the Association with an aerial representation of areas desired for dredging. Mr. Moss said that at this stage, the City's policy allows the homeowner association to speak on behalf of the property owners, although a petition signed by 50% of the property owners will eventually be required.

Public Comment: (2:36 p.m.) None.

> ***MOTION by Taylor to APPROVE RESOLUTION 09-12390 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 09-12391.....ITEM 25
AN ORDINANCE RELATING TO OPEN FIRES IN CITY PARKS AND ON BEACHES; AMENDING SECTIONS 28-36 AND 42-112 OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO ALLOW OPEN FIRES IN CITY PARKS AND ON THE CITY BEACHES BY PERMIT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:36 p.m.). In response to Council Member Willkomm, City Attorney Pritt stated that he believed the general penalty section of the Code of Ordinances would apply to instances when this ordinance may be violated.

Public Comment: (2:38 p.m.) None.

> ***MOTION by Taylor to ADOPT ORDINANCE 09-12391 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 (see consensus below) .....ITEM 26
A RESOLUTION APPROVING A USE AGREEMENT WITH THE NAPLES CONCERT BAND FOR THE USE OF CAMBIER PARK AND THE BAND SHELL LOCATED WITHIN CAMBIER PARK AT 755 EIGHTH STREET SOUTH, NAPLES, FLORIDA; AUTHORIZING THE CITY MANAGER TO EXECUTE A FIVE-YEAR USE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:38 p.m.). City Manager William Moss explained that the five-year agreement with the Naples Concert Band was due to expire and while negotiations between Band representatives had taken place, to date the parties had not reached agreement. (It is noted for the record that the staff report with regard to this item is appended as Attachment #7.) Council Member Sorey identified what he described as two strategic issues in addition to those identified in the staff report; namely, whether concerts are to be allowed in Cambier Park when there is a concurrent special event in progress on Fifth Avenue South, and identification of which entities are to be charged for use of the park. With regard to the latter, Mr. Sorey pointed out various inconsistencies which had occurred. He also clarified that none of the musical presentations were classified as traditional events, unlike the Naples National Art Show and Swamp Buggy Parade, each of which are not charged for use of City resources.

Public Comment: (2:43 p.m.) **Marianne Megela, Naples Art Association,** reported the Naples National Art Show dates in 2010 (February 20 and 21) but noted that the Association had not been allowed by the City to finalize these dates pending establishment of a new special events policy. Nevertheless, she said, the Association would work with any other entity requesting park usage during the above time. **Gale Scott, Conductor-Laureate Naples Concert Band,** cited what she termed a long, professional relationship between her group and City Council but that most recently Band representatives had been advised that no other events would be permitted during street closures on Fifth Avenue South. However, Ms. Scott said, the Band's performance dates for the coming year had been submitted as usual before December 31st. In the past, she said, once the Band's dates had been approved by City staff, other performing groups scheduled the remaining dates. Although the City had indicated that April and May street closures would conflict with three of the Band's proposed dates, the Band had been unable to ascertain further specifics from staff. Also, Ms. Scott explained, even though the Band was able to work with the Art Association on the aforementioned February 2010 dates, the Cambier Park calendar did not contain Fifth Avenue South street closure dates because of separate calendars in the Community Services Department. Ms. Scott then provided historical background, noting that

the Band had formed in 1972 at the behest of George Reardon, a former City Parks & Recreation Department Director. Prior to construction of the bandshell in the mid-1980's, the Band had performed outside the Norris Community Center. The Naples Concert Band had raised $167,000 of the $300,000 needed to construct a bandshell, and in 2002, the Band found an anonymous donor who contributed $250,000 toward a major renovation of the facility, although over $400,000 was eventually contributed by the Band toward the $575,000 cost. In conclusion, Ms. Scott noted that a bronze plaque on the bandshell designates it as the home of the Naples Concert Band. With the contributions and history noted above, she said, this places the Band in a priority position to be allowed first refusal with regard to concert dates.

In response to Council Member Price, Ms. Scott confirmed that March 28, 2010 is the date wherein a conflict with the Fifth Avenue South event is asserted. Council Member Sorey expressed his appreciation to the Band, but asked whether, if given priority on dates, it would relinquish the right of first refusal. (Later in the discussion City Attorney Pritt clarified that, as opposed to giving priority over concert dates, a right of first refusal would entail any other users to first clear dates with the Naples Concert Band. Mr. Pritt also advised against executing a use agreement with a five-year term due to the change in Council makeup which occurs at each election. He also recommended against negotiating agreements in the setting of a Council meeting. However, City Manager Moss pointed out that the language conveying right of first refusal was in fact not before the Council in the current proposed draft.) Ms. Scott said that while the words right of first refusal were not contained in the proposed document, there was a critical need for a comprehensive City calendar of all events to facilitate scheduling. Vice Mayor Taylor confirmed that a nine-performance series was consistent with prior years; Ms. Scott indicated that the contract allows for seven with the option of adding performances if dates are available.

Dwight Richardson, past president of Naples Concert Band, asserted that the group had been mischaracterized as merely one among various other musical groups since the Cambier Park Bandshell is in fact the home of the Naples Concert Band. He equated this arrangement to the street right-of-way which had been vacated for the Naples Players facility on Fifth Avenue South and the Naples Art Association which was granted land in Cambier Park for a gallery. These, he said, are three cultural institutions which make significant contributions to the life of the City. The Band, he said, requires the certainty that is afforded by agreements like those with the other two organizations. In the case of the Band, its financial solvency requires a minimum of eight concerts, but unless the dates are known in advance, not only the concerts but rehearsals and coordination of members is compromised. Mr. Richardson indicated that the Community Services Advisory Board had conveyed its support for the Band and expressed the view that a Sunday afternoon concert during a Fifth Avenue South street closure event would not constitute an over-use of City facilities. In conclusion, Mr. Richardson quoted the following language (Section 5 of proposed Use Agreement) as that which would be acceptable to the Band: The Band will be entitled to use of the Premises at no cost to the Band. The Band shall have first choice of the dates over other users of the Premises. Such use shall consist of 8 concert dates from October 1st through April 30th. Such dates shall be requested by the Band by December 31st of the previous year and the City shall confirm such dates within 30 days. Additional concert dates may be allocated at the discretion of the City. The City shall not allow any events that involve street closures to alter the dates of the Band concerts. **Jonathan Palmer, Naples**

Concert Band member, conveyed his concurrence with the prior two speakers. He said that he perceived no issue of conflict between Band concerts and Fifth Avenue South street closures, requesting that the wording noted above by Mr. Richardson be approved and that the City continue to provide the Band with the traditional $500 annual stipend which, he noted, pales in comparison to the contributions made by Band members over the years.

In response to Mayor Barnett, Community Services Director David Lykins indicated that Gulf Coast Big Band presented six concerts per year.

Council then reviewed the policy matters enumerated in Attachment #7 in addition to those posed by Council Member Sorey above. During the discussion, Council Member Sulick proposed that the Naples Concert Band be given the same designation as a traditional entity like the Naples Art Association, Naples Players, Swamp Buggy Parade and July 4th parade. This, she said, would convey the support that it deserves and compensate the Band for its service to the City. After discussion of the various terms of use agreements with various groups in Cambier Park, all Council Members except Vice Mayor Taylor indicated support for a five-year agreement with Naples Concert Band for approximately eight events. With regard to the issue of date priority, it was also clarified that the Naples Art Association chooses its Naples National dates and informs artists one year in advance; it was also noted that the show is traditionally held the weekend following Presidents Day and the Coconut Grove Art Festival in which many of the same artists participate. Vice Mayor Taylor took the position that major users of Cambier Park must cooperate so that all have an opportunity, not necessarily which group proposes its date(s) first. Community Services Director Lykins pointed out that the scheduling issue is however not among those entities which regularly use Cambier Park but whether a concert should occur during a two-day street closure on Fifth Avenue. Noting the additional parking provided by the City's two downtown garages, Mayor Barnett said he did not object to the Band performing on the same weekend when a street closure occurs.

Vice Mayor Taylor took the position that the Naples Concert Band performances should be deemed a traditional event therefore eliminating the necessity for any type of use agreement and giving them a status that affords a priority in consideration within the Community Services Department. However, there would be no guarantee of dates for use of Cambier Park. Council Member Sulick pointed out that the conflict with a Fifth Avenue Event is indeed with parking since street closures eliminate some 300 spaces but increase the parking demand by virtue of the art show and a concert. Council Member Price said that he believed an agreement with the City was preferable for the Band than being categorized as a traditional event. Council Member Willkomm said that the Band would not be able to plan without a contract; otherwise, the group would be dependent on the perspective of the City Council in office at the time. Vice Mayor Taylor said that Council had directed staff that no major events should occur simultaneously with a street closure; she also reminded Council of the concerns expressed by Third Street South businesses when Fifth Avenue is closed to traffic. A concert that draws 5,000 people to Cambier Park, she said, is a major event. In additional dialog concerning the Naples National Art Show and a concert, City Manager Moss recommended that the assertions made by both groups that they would coordinate their use of the park be specified in any written agreement with the Band. Representatives of the Naples Concert Band indicated that they would be able to provide the City with concert dates as much as five years in advance.

Community Services Director Lykins further explained that, rather than characterizing certain events as traditional, the City now classifies them as sponsored events which will appear in this manner in upcoming special events text changes Groups so designated would be fully underwritten in cost by the City as to the staging and hosting of a particular sponsored activity. As an example, he enumerated such events as the Swamp Buggy Parade, Great Dock Canoe Race, July 4th and Martin Luther King Day Parade, stressing that the correct terminology is City-sponsored activity. Council Member Sulick clarified that her desire was to grant the Band the same level of concern and deference given to the Naples Players and Naples Art Association because she perceived the Band as the third cultural entity of the City. In further discussion Vice Mayor Taylor however noted that neither of the first two entities had received funding for their buildings from the City although they occupied City-owned land. The City had contributed funding to the construction of the bandshell in Cambier Park, she added. She said that it was understandable that the Band would seek assurances for concert dates, and maintained her position that the Band's concert schedule should be viewed from the standpoint of scheduling as other on-going events like the Swamp Buggy Parade.

In response to Council Member Heitmann, Mr. Lykins explained that the City underwrites an annual cost of $500 toward the purchase of sheet music by the Band; however, like other bands that perform in Cambier Park, they collect donations from the public, both for such items as uniforms and also to establish various music scholarships. Council Member Sorey, however, also established that the Band is not charged for use of the park facilities, including associated expenses such as park security, maintenance and clean-up.

In response to Council Member Sulick, Community Services Director Lykins stated that, with the exception of Naples Players, Naples Art Association and the Girl Scouts, agreements are for five years or less. In this latter category he mentioned such organizations as the Naples Gators Youth Football program which is conducted at Fleischmann Park, the Naples Rowing Association which is using a City-owned site off Riverside Circle, and Celebration Community Church in Cambier Park.

Mr. Lykins also confirmed that Naples Concert Band had for the past season completed a special event permit application for its concerts.

As enumerated in Attachment #7 (Item 3), Council discussed whether the carrying capacity of the downtown area could accommodate a street closure event on Fifth Avenue South and a concert in Cambier Park on the same weekend. Council Member Price suggested setting a capacity figure for a particular day to determine whether an event could be conducted, but Council Member Willkomm suggested that the standard in this regard should be length of time an event would entail. Council's consensus, as noted below, would allow any concert to occur in Cambier Park simultaneously with a Fifth Avenue South street closure event.

Jennifer Fox, Cambier Park Manager, then testified that while performances by the Naples Concert Band attract the largest audiences of the other musical groups staging in the park, the public generally begins to arrive in the hour before a concert and disperses immediately thereafter. In response to Council Member Sorey, Ms. Fox stated that staff did not perceive a parking conflict between a concert in Cambier Park and a Fifth Avenue South street closure

Roll call votes by Council Members are recorded in random order, pursuant to City Council policy.

event; she also pointed out that with the opening of the new parking garage across from Cambier Park, no disorganized parking in rights-of-way had been noted. Also in response to Council Member Sulick, Ms. Fox confirmed that there were no conflicts observed in the case of a concert being conducted on a Friday evening while set-up was underway for a Fifth Avenue South event.

Community Services Director Lykins also clarified that while the City requires a financial report of those entities which are conducting fundraising on City property, no such requirement had been imposed on any of the groups that conduct concerts in Cambier Park. Naples Concert Band representative Dwight Richardson further explained that his organization is required to report to the Florida Department of Community Affairs with regard to all monies collected.

City Manager Moss pointed out that, based on prior Council direction with regard to other events, the $500 annual stipend had been removed from the proposed use agreement with Naples Concert Band. Various Council Members however indicated that the Band should be viewed as an exception in this regard, but Council Members Sorey and Willkomm indicated opposition. Mr. Lykins also noted that the City does not charge the Band for other ancillary expenses related to its use of the park and, further, that the City does not grant this stipend to any other band using its facilities. City Manager Moss however identified another cost associated with the Naples Concert Band, namely, the storage, maintenance and replacement of equipment which is also shared with other performers. Mr. Richardson also said that the Naples Concert Band had funded risers which are used by other groups.

> ***Consensus as follows: Revised contract to be submitted for Council approval with the following: five-year term; priority with regard to dates over other users (8 concerts) which are to be provided to the City by December 31st of the prior year (except Naples National Art Festival); required to submit special event application; concerts may occur simultaneously with street closure events on Fifth Avenue South; no requirement to report to the City with regard to fund raising; and continue to provide Band annual $500 stipend. Revised agreement to be submitted for future Council approval.***

Following the above consensus, the Council concurred that a topic of discussion at a future workshop would involve identifying the groups which are charged for use of Cambier Park.

RESOLUTION 09-12392.....ITEM 27

A RESOLUTION APPROVING AN AGREEMENT FOR PROVISION OF LEGAL SERVICES WITH THE LAW FIRM OF LEWIS, LONGMAN & WALKER, P.A. FOR LEGAL ADVICE AND REPRESENTATION OF THE CITY REGARDING POLICE AND FIRE PENSION PLAN ISSUES RELATED TO CHAPTER 175, FLA. STAT., INCLUDING POTENTIAL STOP-START OR OTHER PENSION PLAN AMENDMENTS, AND ADVICE CONCERNING LABOR NEGOTIATIONS RELATED TO PENSION ISSUES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (4:06 p.m.) who noted that Chapter 185, Florida Statutes, should have been included within the scope of issues to be addressed by this law firm.

Council Member Price sought an estimate of the total cost anticipated with this agreement, expressing a need for the type of control that had not occurred in a previous arrangement for special legal representation. Assistant City Manager Roger Reinke indicated that the maximum

hourly fee is $250 and that 20 to 40 hours of work would be required, depending on the extent of labor negotiations and taking into account that at some point pension ordinances would be rewritten. Mr. Price recommended that a $15,000 limit on expenditures with this firm therefore be set, but Council Member Sorey suggested that, once a scope of work is more clearly defined, the staff provide this to the Council for its further concurrence. City Attorney Pritt, however, recommended that the staff approach Council for further authorization prior to allowing expenditures to exceed the above set limit.

In further response to Council Member Price, Mr. Reinke explained that no request for qualifications (RFQ) had been issued due to the fact that few firms in the state specialize in working with cities on these types of issues. He also noted that he had dealt with the firm in the City of Marco Island and that both he and Human Resources Director Denise Perez had attended conferences where members of this firm had spoken on pension matters. However, he also said that other firms he had contacted had indicated that they perform services exclusively for pension boards. City Manager William Moss said that, while there is no mandatory selection, he recommends a legal firm based on reputation and experience, pointing out that there are demands for timely advice in this specialty that may not be available from the City's general counsel. Council Member Price requested further confirmation from City Attorney Pritt that the aforementioned selection process had been followed when selecting other outside legal counsel. Mr. Pritt pointed out that the firm under consideration is a specialist in the field, particularly in stop-start pension programs. He also confirmed for Vice Mayor Taylor that Roetzel & Andress did not at the present time have experience with stop-start framework.

City Manager Moss expressed reservations with regard to identifying a maximum expenditure because of unknown elements with regard to services needed and difficulty in obtaining further Council authorizations during its summer recess. He said that he did not believe $15,000 was a realistic expectation in light of the complexity that might be involved in this type of legal advice. Mayor Barnett moved for approval without an expenditure cap but with the understanding that the staff would keep Council apprised of costs.

Public Comment: (4:19 p.m.) None.

> ***MOTION** by Barnett to **APPROVE RESOLUTION 09-12392** as submitted; seconded by Willkomm and carried 4-3, all members present and voting (Heitmann-no, Price-no, Sorey-yes, Sulick-yes, Taylor-no, Willkomm-yes, Barnett-yes).*

Recess: 4:20 p.m. to 4:25 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Mayor Barnett who left at 4:20 p.m. and did not return.

CORRESPONDENCE AND COMMUNICATIONS.....

Council Member Sulick complimented her colleagues with regard to the conduct of their deliberations at this meeting. Council Member Price received clarification that Council had already provided sufficient authorization for the Third Street South tree replacement. Mr. Price also mentioned what he described as a common thread which appears to be developing in the deliberations of the Blue Ribbon Financial Committee, that being a need for citizens to volunteer to assist in filling various needs within city government. He said that an organization similar to the Peace Corps might be developed. He also noted a measure being sponsored by State Senator Michael Bennett which would dramatically change the manner in which cities receive ad

valorem taxes. This legislation is being opposed by the Florida League of Cities but supported by the League's county counterpart, he added, but requested that the City of Naples make a statement in opposition to the local legislative delegation.

Consensus: Mayor to address a letter as noted above.

Council Member Heitmann requested that the Council receive letters submitted to the auditors by the City Manager and City Attorney with regard to potential liabilities, citing concerns with reference to Item 21 on that day's agenda. City Manager Moss further clarified that the letters in question are required by the auditing firm to provide various certifications, and the City Attorney is asked to provide reference to potential legal exposure. Mrs. Heitmann also confirmed that a Community Redevelopment Agency (CRA) meeting would be scheduled on the upcoming City Council workshop day (March 30), and Vice Mayor Taylor noted that the topic of that session would be stakeholders' visioning.

Council Member Sorey suggested that the City adopt a policy that would allow a member of various boards to prepare minutes; otherwise, directing various members of City staff to accomplish this task would in reality be merely a transfer of responsibility. Council Member Heitmann however expressed concern about volunteers taking minutes, noting that the minutes prepared by the Rate Study Committee did not include various comments she had addressed to the group. This type of work, she said, demands professionalism and someone without bias, stating that it is vital that minutes accurately reflect discussion. Mr. Sorey, however stated that it had already been decided that the minute process would be changed for a number of City committees. Mrs. Heitmann said that this had not been determined and would be discussed on April 13. Council Member Sorey also proposed that improvements be made to the restrooms at the Fishing Pier, recommending that the City apply for funding assistance from the Tourist Development Council (TDC). Various Council Members concurred.

Vice Mayor Taylor suggested that the Council discuss in workshop session the degree of separation required of establishments which serve alcohol. She said that this had been prompted by comments from the public to the effect that the only type of establishments which can afford high rents on Fifth Avenue South are bars and restaurants. By not adhering to the Code of Ordinances in regard to separation she said that saturation of one type of business could occur and should therefore be explored by the Council. Mrs. Heitmann suggested that business owners address this as a group, particularly as it applies to reduction of rents. Council Member Sulick however said that unless acceptable uses are changed in the zoning code, this could not be otherwise addressed, pointing out that the City continually grants exception to the required distances between liquor establishments. She confirmed that her conversations with merchants and restaurateurs had yielded this point of view, stressing that Fifth Avenue South is difficult for retail establishments because it is not perceived as a shopping district but rather an area for banking and night life. However, she said, changes in this regard should be generated by property owners on Fifth and by market forces which have been affected by the economic downturn. Mrs. Sulick noted that the Andres Duany plan for Fifth Avenue South called for the east end to be more tourist oriented. She also said that the central district was to be considered the civic center with the Naples Art Association and Naples Players faculties; however, the cultural walkway linking the two now contains restaurant tables and chairs. The west end was to be banking and merchants, she added, although the City has allowed the encroachment of dining and liquor licenses into the entire stretch of Fifth Avenue South. Any changes must come from

Roll call votes by Council Members are recorded in random order, pursuant to City Council policy.

the stakeholders on the street, she stressed. Council Member Willkomm concurred that the property owner group should be the source of viable alternatives, but also referred to the "D" Downtown zoning district as an example of a means by which the City might however effect changes through land use regulations, but only with property owner input. Council Member Price expressed his appreciation to staff, especially Technical Writing Specialist Vicki Smith and Video Programming and Production Manager David Fralick for their work.

PUBLIC COMMENT.....

None. (4:42 p.m.)

ADJOURN.....

4:42 p.m.

_____

Bill Barnett, Mayor

Minutes prepared by:

_____

Tara A. Norman, City Clerk

Minutes Approved: 04/15/09

A - 610 Building (Conditional Use Petition 06-CU9)
6th Avenue North & 10th Street North
12 units on 0.62 acres = **19.35 units/acre**
11,000 SF commercial space

B - Supreme Building (Conditional Use Petition 07-CU11)
1st Avenue South (Between 8th and 9th Streets)
14 units on 0.48 acres = **29.17 units/acre**
7,500 SF commercial space

C - 101 Building (Conditional Use Petition 06-CU13)
101 8th Street South
8 units on 0.37 acres = **21.62 units/acre**
6,000 SF commercial space

D - Enterprise Plaza (Conditional Use Petition 06-CU6)
70 9th Street North
36 units on 1.3 acres = **27.69 units/acre**
24,400 SF commercial space

Attachment 1
3/18/09 City Council Regular Meeting
Page 1 of 1

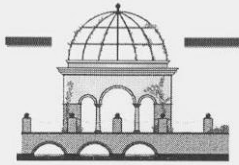
Roll call votes by Council Members are recorded in random order, pursuant to City Council policy.

Fiscal Impact Analysis

By 20 years after annexation, the development of this property will generate approximately:

- **Taxable Value of $175,587,724 (in FY 2027 dollars)**
- **$193,094 annually in ad valorem taxes for the city (in FY 2027 dollars)**
- **$3,040,000 in cumulative positive impacts to the City's operating funds**
  - $1,156,645 for the City general fund
  - $343,132 for the City streets fund
  - $541,850 for the City stormwater fund
  - $999,376 for the City utility tax fund
- **$990,000 in building permit, inspection, and other related fees**
- **$800,000 in city impact fees**
  - $255,000 in fire impact fees
  - $160,000 in police impact fees
  - $385,000 in parks and recreation impact fees
- **$1,431,690 in county road impact fees**
- **$1,600,000 in water and sewer development fees**
- **$26,073,446 in ad valorem taxes paid to the city, the county, the school board, and the water management district (cumulative)***

*per Wilson Miller Fiscal Impact Analysis dated August 4, 2008



Public Benefits: 12

1. Compatability
2. A Light Touch on the Urban Core
3. **Fiscal and Economic Contributions**

Attachment 2
3/18/09 City Council Regular Meeting
Page 1 of 2

Roll call votes by Council Members are recorded in random order, pursuant to City Council policy.

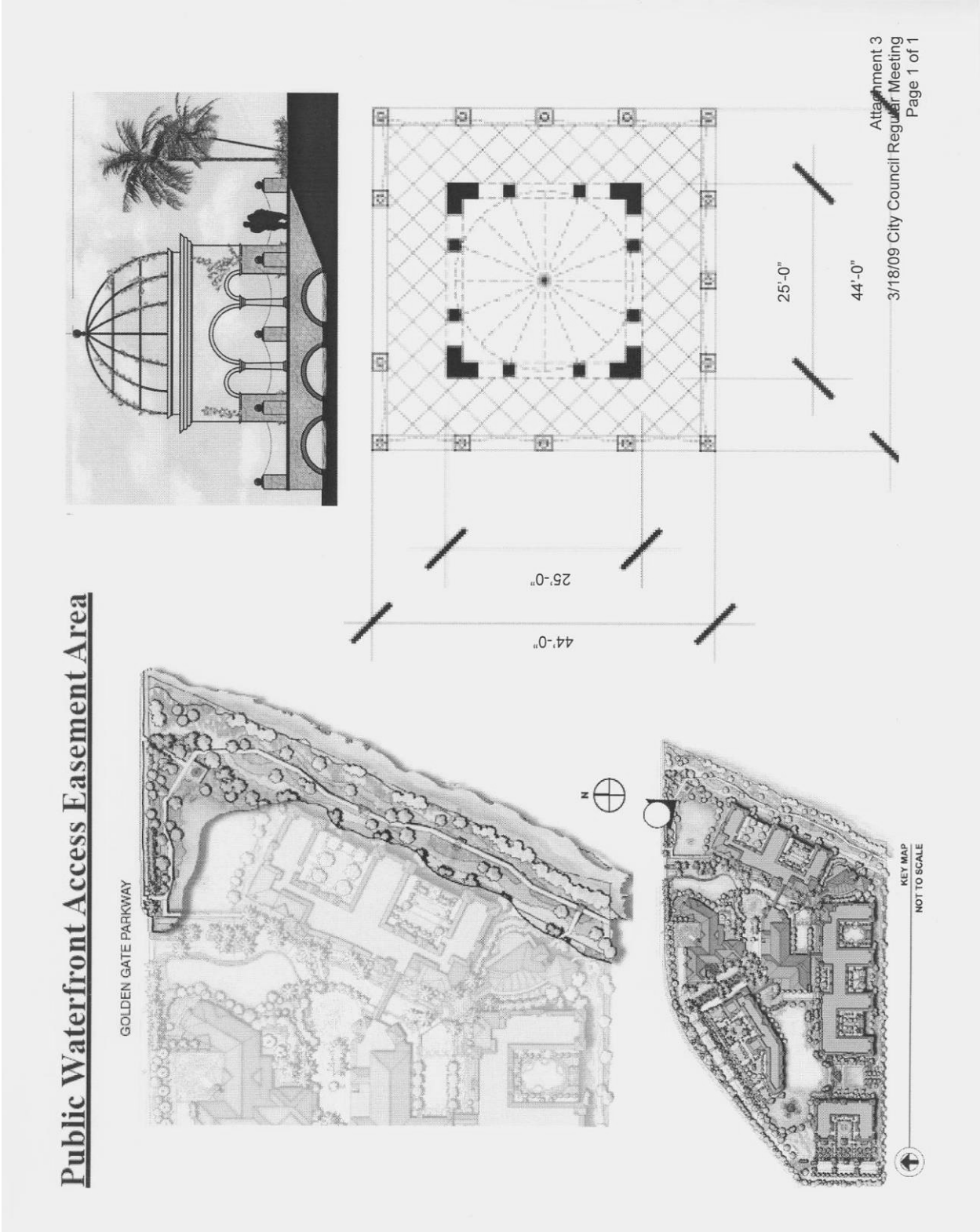
Table 3.1 The Fiscal Impacts of the Project on the City

	5 Year Total	10 Year Total	20 Year Total
Operating - Revenue	$5,111,179	$13,074,228	$32,827,373
Operating - Cost	$4,723,008	$11,952,183	$29,716,287
	==========	==========	==========
Operating - Net Impact	**$388,171**	**$1,122,045**	**$3,111,085**
Operating Present Value*	**$276,537**	**$618,906**	**$1,077,356**
Capital - Revenue	$799,705	$799,705	$799,705
Capital - Cost	$1,024,731	$1,024,731	$1,024,731
	==========	==========	==========
Capital - Net Impact	**-$225,026**	**-$225,026**	**-$225,026**
Combined Net Impact	**$163,145**	**$897,018**	**$2,886,059**
Combined Present Value*	**$88,524**	**$430,893**	**$889,343**

*Note: 10% Discount Rate

Table 3.3 20-Year Average Annual Economic Impacts of the Project

	Permanent Impacts	Construction Impacts	Total Average Impacts
Economic Output			
Jobs	434	156	590
Output/Total Sales	$35,200,026	$14,752,909	$49,952,936
Earnings	$13,982,372	$5,080,147	$19,062,519


Public Waterfront Access Easement Area
GOLDEN GATE PARKWAY
N
KEY MAP
NOT TO SCALE
44'-0"
25'-0"
25'-0"
44'-0"
Attachment 3
3/18/09 City Council Regular Meeting
Page 1 of 1

#12 STAFF

Attachment 4
3/18/09 City Council Regular Meeting
Page 1 of 2

SECTION X

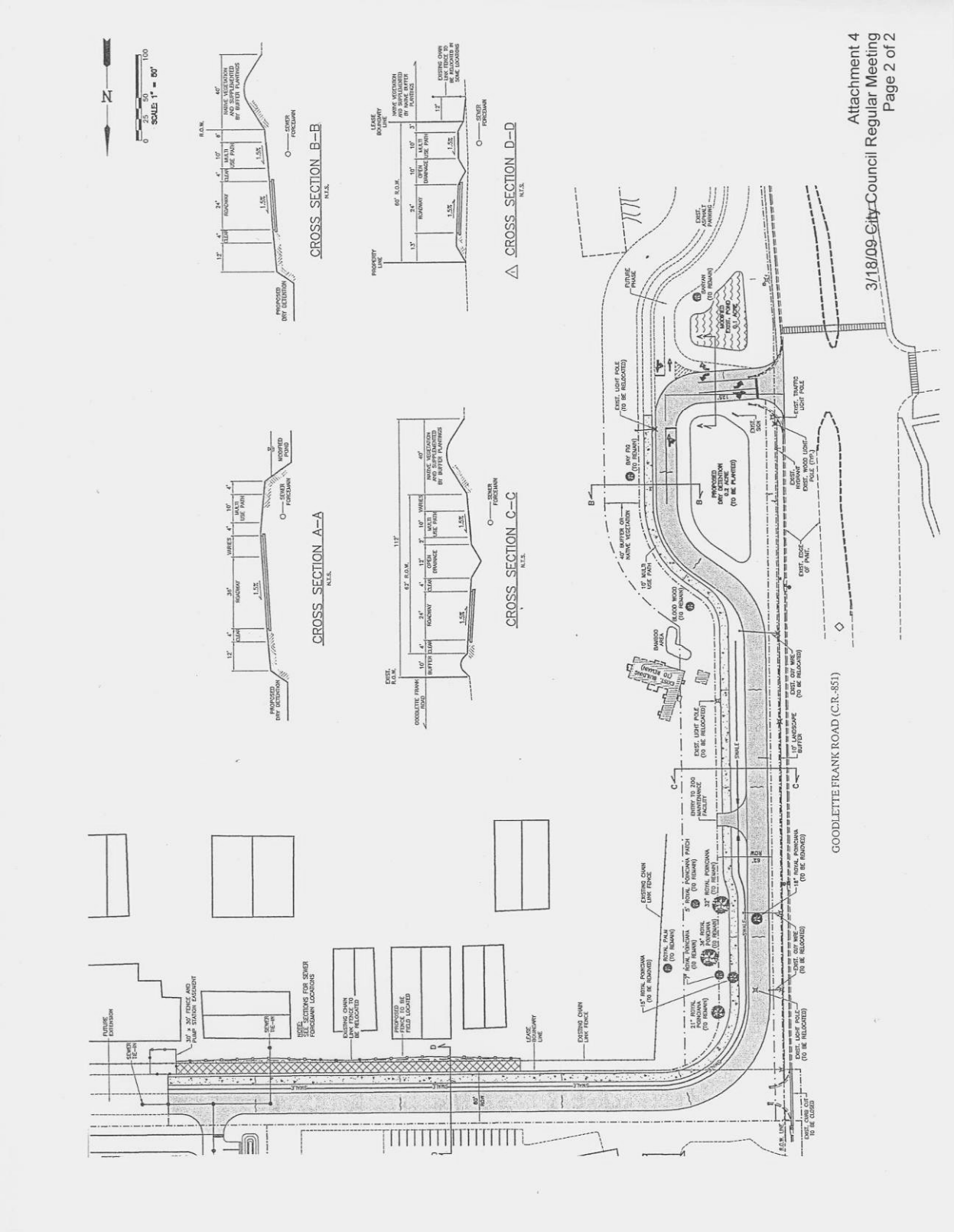
LAND OWNER COVENANTS

The Land Owner covenants that the Land Owner, its successors or assigns shall:

1. Install the landscaping along Golden Gate Parkway shown on the Site Plan prior to the earlier to occur of (i) the issuance of a Certificate of Occupancy for improvements contemplated in phase one of the project or (ii) the issuance of a building permit for improvements contemplated in phase two of the project;
2. Contribute the fixed sum of $10,716 to the City of Naples prior to the earlier to occur of (i) the issuance of a Certificate of Occupancy for improvements contemplated in phase one of the project or (ii) the issuance of a building permit for improvements contemplated in phase two of the project to help defray the first two fiscal year's estimated net fiscal operating deficit resulting from annexation of the property into the City of Naples as projected by the city's consultant Fishkind & Associates' Urban Services Report for the Voluntary Annexation of the Bridges at Gordon River as updated December 5, 2008;
3. Donate excess water quality storage to the City of Naples for use as credits in the city program; and
4. Tie into the City of Naples reclaimed water line if and when the city extends the water line to the property line of the subject property.
5. Pay a pro-rata share of ~~the~~ expense of designing, permitting, and constructing a public access road between the Southwest corner of the subject property and the Goodlette Road/Fleischmann Boulevard intersection (as indicated by shading on the Q. Grady Minor Site Plan dated June 2008, updated September 3, 2008, and attached hereto and incorporated herein by reference as Exhibit "B") – including (2) actuated and signalized pedestrian crossings at the public access road intersection with Goodlette Road, traffic control signage, curbing, a multi-use pathway, and a single-pitch open drainage swale system – based on the relative vehicular traffic anticipated to be generated at build-out over the public access road by the Bridges at Gordon River, the proposed Collier County kayak park on the Gordon River, and the Naples Zoo.

Page 20-

Roll call votes by Council Members are recorded in random order, pursuant to City Council policy.


Attachment 4
3/18/09 City Council Regular Meeting
Page 2 of 2
CROSS SECTION A–A
CROSS SECTION B–B
CROSS SECTION C–C
CROSS SECTION D–D
GOODLETTE FRANK ROAD (C.R.-851)

	To encourage mixed use, a portion of the building(s) at least equivalent to the square footage of the fourth floor must be used for residential purposes.[1]
Waterfront Mixed Use	Marinas or marine research, development and testing 50%; other 40% building coverage
Public, Semi-Public and Private Recreation	N/A
Public, Semi-Public Institutional	45% building coverage
Conservation	1 unit per 5 net acres (as determined through the DSEI)

Section 3. That the Comprehensive Plan is further amended under Generalized Future Land Use, Section 1 Residential to read as follows:

f. "Senior Living Residential" areas designated on the Future Land Use Map are intended to accommodate continuing care retirement communities and similar adult living facilities with residential units and complementary accessory healthcare and amenity uses that will allow the residents a full range of activities and progressive levels of care as they age. They may be comprised of independent living units, assisted living units, and skilled nursing units, or a combination of the foregoing, as well as accessory amenities. Independent living units qualify as dwelling units and include full kitchen facilities. Assisted living units are smaller hotel or suite sized units within a facility where medical care and basic living assistance is

available 24 hours a day. Skilled nursing units and supporting facilities provide a high level of around-the-clock specialized care for infirm persons suffering from acute illnesses and who require medical, skilled nursing or rehabilitative service including, without limitation, intravenous injections and physical therapy. The maximum permitted density is 18 dwelling units per acre for independent living, assisted living or skilled nursing units. Additional assisted living units and skilled nursing units are permitted at a ratio of one for every four independent living units as accessory to the independent living units. Non residential uses within the community shall exist primarily to serve the residents of the community and shall be considered accessory to the residential development.

Section 4. The effective date of this plan amendment shall be the earliest date permitted under Sections 163.3189 and 163.3191, Florida Statutes.

APPROVED AT FIRST READING THIS 18th DAY OF MARCH, 2009.

PASSED AND ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THIS ____DAY OF _____, 2009.

_____
Bill Barnett, Mayor

Attest:

_____
Tara A. Norman

Approved as to form and legality:

_____
Robert D. Pritt, City Attorney

SUPPLEMENT
7

EXHIBIT "B"

PAYMENT AND DELIVERABLES SCHEDULE

This is a cost-share project with funding coming from the District and the City of Naples. Total payment by the District shall not exceed the amount of $1,500,000 for this cooperative agreement. All invoices shall be accompanied by adequate documentation to demonstrate completion of each task in accordance with the Statement of Work requirements. All deliverables submitted hereunder are subject to review and acceptance by the District. Acceptability of all work will be based on the judgment of the District that the work is technically complete and accurate.

If the total consideration for this AGREEMENT is subject to multi-year funding allocations, funding for each applicable fiscal year of this AGREEMENT will be subject to Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this AGREEMENT shall terminate upon expenditure of the current funding, notwithstanding other provisions in this AGREEMENT to the contrary.

Tasks	Deliverables	Due Date* (From contract execution)	Estimated Total Cost	District Not-to-Exceed Payment**
Task #1 Upper Gordon River Water Quality Project	Certification of 10% Construction Completion	8 Months	$3,500,000	$750,000
Task #2 Citywide Lake System Improvements	Certification of 10% Construction Completion	6 Months	$1,300,000	$250,000
Task #3 Restoring and upgrading the City's stormwater conveyance system	Certification of 10% Construction Completion	4 Months	$4,000,000	$500,000
Total SFWMD/BCB Share				$1,500,000

*All dates are referenced from the date of execution of this agreement and are estimated.
**The District shall only be obligated to pay for documented actual expenditures within the not-to-exceed amounts specified above. In the event actual expenditures by the City are less than the not-to-exceed for a particular task, the City shall have the right to apply the unexpended balance towards a subsequent task. The City shall provide written notice of its decision to exercise this right. In no event shall the District's total obligation exceed $1,500,000 as specified above for this cooperative agreement. The City is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.

City of Naples

NAPLES CITY COUNCIL AGENDA MEMORANDUM

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

Agenda Section: Regular	Prepared By: A. William Moss, City Manager Date: March 5, 2009	Department: City Manager
Agenda Item: 26-	Legislative ☒	Quasi-Judicial ☐

SUBJECT:
Proposed Agreement with the Naples Concert Band for use of Cambier Park and Bandshell

SUMMARY:
City Council is asked to consider whether to enter into a five-year Agreement with the Naples Concert Band for the use of Cambier Park and Bandshell, and the terms and conditions of an agreement.

BACKGROUND:
The Naples Concert Band (Band) has a long history of providing free concerts for the enjoyment of residents and visitors. City Council approved a five-year Agreement with the Naples Concert Band for the use of Cambier Park and the Bandshell in 2004. The Agreement expires on March 17, 2009. The Agreement provides for the terms and conditions regarding the use of the park facilities, the obligations of the Band, and the obligations of the City. Included is the Band's "right of first refusal" for selection of concert dates.

Staff met with representatives of the Band to discuss renewal of the Agreement, including amendments to the terms and conditions. Staff sought to advance perceived City Council objectives of limiting the number of large events conducted on the same dates, which, therefore, stretched the "carrying capacity" of the area to provide parking for event participants.

Staff expressed concern with the "right of first refusal" and asked the Band to accept an amendment that preferred dates would be accommodated to the extent possible, but concerts would not be held on the same dates as street closures or other events. Consistent with City Council's revised policy on funding of special events, staff advised that a $500 funding contribution should not be included in the Agreement.

Staff provided the draft Agreement to the Band and sought comments. The Band responded with amendments to the draft and suggested the differences should be resolved by City Council. The more significant issue is an expectation that the Band should continue to have the "right of first refusal" for the use of Cambier Park and the Bandshell. They prefer that other park events and 5th Avenue South Street closures work around the concert dates selected by the Band.

Attached is a draft Agreement. Staff's amendments to the existing agreement are shown in red print. Language sought by the Band is shown in blue print.

Several policy matters are offered for consideration:

1. Should there even be a five-year Agreement for eight or so events? There are no other long-term Agreements for the use of the Cambier Bandshell facility, other than with the Celebration Church which uses the facility throughout the year, subject to preemption by other park events.

City of Naples

NAPLES CITY COUNCIL AGENDA MEMORANDUM

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

Page Two

Agenda Item:
26

BACKGROUND (cont.):

2. Is City Council certain that there will be no other events at Cambier Park that may have equal or greater importance? "Right of first refusal" means what it says. If the Band selects the same weekend as the Naples National Art Show or events that may not be foreseen at this time, shall the Band's desired dates prevail? Or, if it is later determined that one or more 5th Avenue South street closures should move to 8th Street South and Cambier Park, is Council willing to forego such option?

3. Should the Naples Concert Band be required to complete special events applications, including off-site parking, as required by other special event sponsors?

4. Is "carrying capacity" an issue? If not, then perhaps an agreement can be reached that will allow concerts simultaneous with 5th Avenue South street closures without going so far as to grant "right of first refusal" and thereby allowing other future options for the use of Cambier Park.

5. Under the new Special Events Permit Policy, all fundraising efforts must be reported to the City after each event. This is not addressed in the Naples Concert Band Use Agreement but will be required of any concert that raises funds on City property. Should passing the hat during scheduled performances be defined as fundraising? Should the Naples Concert Band, and for that matter all other bands that pass the hat during scheduled performances, be held to this standard?

Attached are concert dates for the Naples Concert Band and other concerts for additional information.

Reviewed by Department Director	Reviewed by Finance	Reviewed by City Manager
A. William Moss	N/A	A. William Moss

City Council Action: