



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Workshop Meeting – November 15, 2010 – 8:28 a.m.**

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Mayor Barnett called the meeting to order and presided.

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

**Present:**

Bill Barnett, Mayor  
John Sorey, III, Vice Mayor

**Council Members:**

Douglas Finlay  
Teresa Heitmann  
Gary Price, II  
Samuel Saad, III  
Margaret Sulick

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**Also Present:**

William Moss, City Manager  
Robert Pritt, City Attorney  
Roger Reinke, Assistant City Manager  
Vicki Smith, Technical Writing Specialist  
Roger Jacobsen, Code & Harbor Manager  
Robert Middleton, Utilities Director  
George Archibald, Traffic Engineer  
Robin Singer, Planning Director  
Ann Marie Ricardi, Finance Director  
James Rideoutte  
Sharon Kenny  
Albert Katz  
Jenna Victor-Smith  
James Hughes  
Thomas Scangarello  
John Schantz

Lisa Swirda  
Sue Smith  
Randy Smith  
Jane Parks  
Mike Schumann  
Lucy Pulling Finch  
Charles Thomas  
Melody Bales  
Lou Vlasho  
Wafaa Assad  
Albert Muniz  
Jacques Groenteman

**Media:**

Jenna Buzzacco-Foerster, Naples Daily News

Other interested citizens and visitors.

**SET AGENDA ..... ITEM 2**

**MOTION by Price to SET THE AGENDA as submitted; seconded by Sulick and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).**

**PUBLIC COMMENT ..... ITEM 3**

(8:29 a.m.) None.

**JOINT MEETING WITH BOARD AND COMMITTEE CHAIRS..... ITEM 4**

City Council has invited the Chair of each City Board and Advisory Committee to discuss accomplishments, issues, and initiatives of their respective Board and Committee. (8:29 a.m.) The following Chairmen provided comments to Council regarding their respective board or committee: James Rideoutte, Citizens Police Review Board (CPRB); Jacques Groenteman

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Community Redevelopment Agency Advisory Board (CRAAB); Sharon Kenny, Public Art Advisory Committee (PAAC); Thomas Scangarello, Design Review Board (DRB); John Schantz, Code Enforcement Board; Albert Katz, Moorings Bay Citizens Advisory Committee; James Hughes, Planning Advisory Board (PAB); and Jenna Victor-Smith, Community Services Advisory Board (CSAB). (It is noted for the record that James Doane, East Naples Bay Citizens Advisory Committee, did not attend.)

***Discussion only.***

**Recess: 9:30 a.m. to 9:47 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

**INTEGRATED WATER SUPPLY PLAN UPDATE ..... ITEM 5**

The adopted Plan is intended to add an alternate water supply to meet current and future water demand for potable and irrigation purposes. The Plan Update will summarize: the status of construction of two Aquifer Storage and Recovery (ASR) Wells to store reclaimed water and water from the Golden Gate Canal for distribution through reclaimed water lines during the dry season; the status of engineering design for the Golden Gate Canal Intake Structure; the proposed route of the water transmission line from the Golden Gate Canal to the City's Wastewater Treatment Plant on Riverside Circle; the status of required environmental permits; construction timetables; and other matters associated with implementation of the Plan. (9:47 a.m.) (It is noted for the record that printed copies of the electronic presentation (excerpted text appended hereto as Attachment 1) and photographs of core samples are contained in the file for this meeting in the City Clerk's Office.) Utilities Director Robert Middleton provided a brief update of the City's Integrated Water Resources Plan (see Attachment 1), during which he focused on the following key elements:

- Construction of ASR Well #1 began in August 2009 and was completed in March 2010. The storage zone location was approved by the Florida Department of Environmental Protection (FDEP) at between 1,080 feet and 1,340 feet. Casing was installed to 1,080 feet and grouted in place.
- The FDEP Class V permit was received on August 23, 2010. A Class V permit is required to allow cycle testing of the new ASR well to confirm water storage and retrieval capabilities. This permit authorizes well construction and cycle testing for four ASR wells, including additional monitoring wells.
- Construction of ASR Well #2 began in August 2010. Construction included the conversion of the original exploratory well to a storage zone monitoring well at 1,080 feet and installation of an intermediate monitoring well above the 10,000 TDS level at 780 feet. Monitoring wells are a requirement by FDEP to assess water quality during the cycle testing process and operation of the ASR wells. Completion of ASR Well #2 is scheduled for the end of November 2010, with construction of ASR Well #3 scheduled to begin in June 2011.
- On September 16, 2009, City Council awarded a Professional Services Agreement to Camp, Dresser & McKee, Inc. (CDM), to begin the design of the Golden Gate Canal (GGC) intake/transmission main to pump water from the canal to the Wastewater Treatment Plant. CDM has prepared the Preliminary Design Report that provides design criteria to construct the intake system at the southeast corner of Bear's Paw, with the transmission main running west along the GGC and then turning south to the City's plant. The design of the intake structure is 60% completed and should be finished by February 2011. The project will be bid for construction in March 2011. The design of

the transmission main is scheduled to be completed by February 2011 with construction to begin in October 2011.

- On June 21, 2010, the South Florida Water Management District (SFWMD) issued the City's 20-year, consumptive use permit rather than the customary 5-year permit for the City's current allocation from the Lower Tamiami Aquifer. This was due to what had been deemed an aggressive plan to provide an alternative water supply for its reclaimed/reuse water irrigation system. SFWMD has however requested that the City submit a separate application for the 10-million gallon per day allocation from the GGC. This will allow SFWMD to track water withdrawals of canal water separately from the potable water withdrawals from the Lower Tamiami Aquifer. This permit application was submitted to the SFWMD in October 2010 and is expected to be issued by December 2010.

Engineer Albert Muniz, with Hazen & Sawyer and project manager for the City's ASR well program, reviewed core data and provided samples from numerous drilling depths. He then clarified for Council that cycle testing should be approved within two weeks. While the original water recovery goal had been 30% to 70%, it is expected to be near the high end when the system is completed and on line. As the geology is very consistent beneath the wells, the recovery ratio is also expected to be similar, especially since the wells are in close proximity. With the proper management of the injected water bubble, he said, ASR Well #4 may not be necessary. In addition, the City is the first in the state to combine reclaimed and surface water.

In further discussion of the GGC project, Vice Mayor Sorey indicated that the Big Cypress Basin Board intends to designate the recovery of Naples Bay as a priority in December, which should aid the City in obtaining the permits for withdrawal of water from the canal. Testing for water quality revealed that some treatment for bacteria will be necessary, he stated, and Director Middleton added that the chloride level had been approximately 70 mg/l, which should improve the City's water, currently containing around 200 mg/l when leaving the plant for distribution. Council Member Sulick expressed concern that the City be guaranteed its 10-million gallons per day and Vice Mayor Sorey explained that the permit would address that issue. Furthermore, a study is underway to determine the proper amount of fresh water needed by Naples Bay to maintain proper salinity, he said, noting that currently 220-million gallons per day, on average, flow over the weir and it is anticipated that this should be reduced to 60-million. Rookery Bay does not receive sufficient fresh water, therefore, 60- to 80-gallons per day would be diverted from the GGC via Henderson Creek, and with the 10-million to the City, 80- to 100-gallons per day should remain for use by Collier County thereby also reducing its use of potable water for irrigation.

Mr. Middleton then explained that a review is underway to determine the most feasible area for expansion of the City's irrigation (reclaimed, reuse or alternative) water system and City Manager William Moss added that future policy discussions would be necessary to determine the best methods of encouraging residents to connect once the service becomes available. Although Citywide service is currently not anticipated, Mr. Moss said, the next construction phase was to have been Aqualane Shores and the Old Naples area. Following the installation into the Port Royal neighborhood and due to the experience gained, this is being reevaluated for cost effectiveness; consumption citywide is now being reviewed, he added.

***Discussion only.***

It is noted for the record that discussion of Item 7 was suspended to allow Item 6 to commence at its scheduled time of 11:00 a.m. Item 7 is reflected in its entirety beginning on Page 9 below.

..... ITEM 6  
**AGREEMENT WITH NOT-FOR-PROFIT CORPORATION TO ADMINISTER THE FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT (BID).** At the request of a majority of property owners in the vicinity of Fifth Avenue South, City Council, on November 3, 2010, adopted a preliminary assessment resolution to implement a Business Improvement District to fund, through special assessments to property owners within the District, the cost to stabilize and improve the commercial district through promotion, management, marketing, and other similar activities. Proposed is an Agreement between the City and a not-for-profit corporation, formed by representatives of property owners, for the administration of the funds collected by the City for the authorized expenses of the Business Improvement District. (11:01 a.m.) (It is noted for the record that a copy of all documentation referenced throughout this item is contained in the file for this meeting in the City Clerk's Office.) City Manager William Moss provided a brief overview of the November 8 memorandum of Assistant City Manager Roger Reinke (Attachment 2), which contained the history of the proposed Fifth Avenue South business improvement district (BID) to date. The draft agreement is for discussion only, he explained, and no action would be taken at that time.

Council Member Saad referenced a draft agreement in which he had offered comments and amendments (Attachment 3), noting that a copy containing subsequent comments by the City Manager and Attorney John Passidomo, a member of the petitioners' steering committee, also existed. Additionally, he noted that he had also reviewed the draft Articles of Incorporation for the proposed not-for-profit entity (Attachment 4), providing comments to Mr. Passidomo, especially with regard to financing and the purchase of real property. These should not be included since they are not necessities in achieving the stated commitments of the not-for-profit organization, Mr. Saad added. Another issue on which he expressed concern was that the Articles indicated no members, that the entity would be board driven, therefore, the Articles scope of power should be made more narrow.

He then reviewed his revisions to the agreement as follows (see Attachment 3):

- Section 1.2: added language clarifying statement regarding the corporation being disqualified from operation;
- Section 1.3: recommended language addressing concerns regarding termination of the agreement: 1) with cause and reference to Section 9; and 2) without cause, was replaced and termination method involving petition procedures added;
- Section 2.1: received assurance that this would limit expenditures to those activities listed, thereby excluding others which may have been included in the Articles;
- Section 3.1: recommended language be added which indicates that while the City could commence accepting assessment funds, these funds would be held by the City until such time that the entity received its 501(c)(3) not-for-profit status from the Internal Revenue Service (IRS);
- Section 3.2: agreed with this section as drafted;
- Section 3.5: addresses records being publically available;
- Section 4.2: merely highlighted the limited purposes (uses) of the assessment funds, which, he added, could be modified by Council at a later date if found necessary;
- Section 4.3: new section reinforcing intent that assessment funds would benefit the entire district;



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- Section 4.4 (was 4.3 prior): recommended language clarifying statement regarding the corporation being disqualified from operation;
- Section 5.1: recommended that first sentence include the word “insurance” and that last paragraph reflect that the City shall be named as additional insured on all insurance certificates;
- Section 9.1: amended to reflect 9.3 rather than 8.3;
- Section 9.3: amended to reflect 30 rather than 90 days.

Mr. Saad then explained he recommended removal of the “without cause” termination clause because each year Council would have the opportunity to deny funding when it reviewed the assessment. City Attorney Robert Pritt however cautioned that Council must retain the right to terminate agreements without cause. He said that the longer time frame had been included to address concerns with the “without cause” clause, further recommending that language be added indicating the understanding that Council has the legal ability to alter or discontinue the assessment funding each year. Council Member Sulick agreed with Mr. Pritt on this point and further recommended a provision for 12-month written notice of termination since the not-for-profit corporation with which the City will be entering into an agreement is no longer the typical business improvement district/BID.

Vice Mayor Sorey stated that he agreed with withholding funds until the 501(c)(3) status is obtained but indicated that Section 3.2 should contain language confirming that the Board of Directors is to be elected by the property owners. In Section 3.3, he recommended that the corporation’s annual report be presented publically to Council, not to the City Manager, and in Section 3.4, an annual audit should be required. However, he further noted in Section 3.5 that the corporation should not be made to meet the requirements of Chapter 286, Florida Statutes (Sunshine Law). Vice Mayor Sorey took the position that a “without cause” clause would nevertheless prove to be problematic for the corporation and recommended instead that a list of causes for termination be developed; insolvency should be stated as a cause for termination of the agreement in Section 9, he added.

Council Member Price agreed with Mr. Pritt with regard to the inclusion of a “without cause” clause due to possible litigation. Council Members Price and Sulick took issue with provisions in the Articles, which, in some cases, may be over-reaching in scope, and in others, lack reference to City oversight. City Attorney Pritt however cautioned that Council entering into drafting of the corporation’s Articles could engender claims of the entity being an alter ego of the City, therefore requiring the entity to abide by public records and sunshine laws with regard to expenditures not funded by the assessment funds.

Mr. Pritt further clarified for Council Member Heitmann that the agreement sets forth the manner in which the corporation is to administer assessment funds, reiterating that the City should not become unduly involved in the structure of the corporation and its board. Charles Thomas, representing the steering committee, explained that the committee intended to amend the not-for-profit’s bylaws and Articles of Incorporation once Council’s concerns had been heard.

Mr. Pritt then confirmed for Council Member Heitmann that while financial reporting (see Attachment 3 / Section 3.5), for a not-for-profit corporation is somewhat specific, the agreement would deal specifically with reporting to the City. In addition, Mrs. Heitmann questioned the three-year retention of the corporation’s records and documentation, and Mr. Pritt recommended this reflect the City’s retention of similar records. City Manager Moss disagreed, noting that annual reports are to be made to the City Council and therefore become part of the

public record maintained by the City Clerk. In Section 3.3, Mrs. Heitmann recommended that administrative costs be a separate line item of the aforementioned report to Council. During discussion of Section 4.1, Mr. Moss clarified that expenses incurred by the City would be determined on a yearly basis and brought before Council for approval. Council Member Saad reiterated that the language he had added in Section 4.4 (see Attachment 3 / previously Section 4.3 prior to revisions) had been intended to further clarify the entity's possible disqualification from operation as a corporation. Mr. Pritt added that tracking of privately funded purchases should not be difficult (also Section 4.4) and discussion ensued as to allocation of remaining funds in the event of dissolution of the corporation. Mr. Saad recommended that all funds, assessment as well as private donations, and any other assets, come to the City; it could then decide whether another administrator would be selected or funds returned to the owners-(at the time of the dissolution) of the assessed properties. Mr. Pritt indicated that private money would not be returned to the City; Mr. Thomas confirmed that private donations/contributions would be sought at some time in the future. Mr. Thomas also advised that a provision could be added to the agreement requiring that audits demonstrate that public funds had in fact been spent in accordance with the assessment ordinance, with the agreement between the City and the corporation, and with Chapter 170, Florida Statutes.

**Public Comment:** (12:14 p.m.) **Sue Smith, owner of a Fifth Avenue South property,** expressed what she characterized as total disagreement with the assessment, noting that the City's original enabling ordinance and Chapter 163, Florida Statutes, should have been adhered to rather than Chapter 170. She further stated that while her property was to be assessed, she had not been allowed the same voice in the process as the steering committee. Decisions had been made to levy additional taxes without representation by all those affected which, she said, is wrong. She also spoke against the comingling of assessment funds and private funds, maintaining that two separate entities being assigned would better exercise administrative powers over the separate sources of funding. **Jane Parks, owner of property located at 865 and 869 Fifth Avenue South,** stated that she was also against the proposal and assessment, especially with regard to the actual powers of the corporation (purchase of real property), urging Council to proceed with caution during the current difficult economic times.

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**Recess: 12:21 p.m. to 12:47 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and discussion of Item 6 continued.**

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Council Member Heitmann then enumerated the following issues of concern but also said that she would confer with the City Manager at a later date for answers and/or clarifications. She first addressed the agreement (see Attachment 3):

- Section 5.1: reasoning for inclusion of automobile insurance as a requirement;
- Section 6.1: received confirmation that affected property owners would not need similar indemnification;
- Section 8.1: questioned how, with the lack of Corporation members, a response to proposals affecting those being assessed could be considered;
- Agreed with above Council Members that "without cause" clause regarding termination of agreement should remain; and
- Section 10.1: questioned the necessity of this provision in its entirety.

With regard to the Articles of Incorporation (see Attachment 4), Mrs. Heitmann raised the following points:

- Section 3: reiterated concern with no membership, especially with regard to election of the Board;
- Section 5: requested explanation of "sole incorporator";
- Section 6: confusion as to the corporation's purpose being "charitable" as stated, and references "corporations", implying multiple entities:

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- Section 6-d and 6-e: same as aforementioned by Council Member Sulick regarding lack of reference to the City's oversight ;
- Section 6-f: concerned with mention of financing and expansion of business operations;
- Section 6-h and 6-m: requested additional explanation from Mr. Thomas;
- Section 7: prior noted concern with Board selection;
- Section 9-b: concerned with reference to mortgages and purchase of real property; and
- Section 9-c: questioned legal liability of City to any of the items listed.

Council Member Finlay asked whether the agreement or the Articles, would be the prevailing document should conflict between the not-for-profit entity and the City arise. City Attorney Pritt explained that with regard to expenditure of assessment funds or other provisions contained in the agreement, the agreement would trump the Articles; however, with regard to issues contained in the Articles and not in the agreement, the reverse would be true. Mr. Finlay said that the Board should be elected by the property owners and that financial reporting should be accomplished in the format used by the Naples Players and/or the City of Coral Gables BID; reports should be submitted to Council in a public meeting which would also address retention issues as discussed above. He concluded by pointing out that current regulations within the assessment area would address many of the concerns voiced by fellow Council Members with regard to City oversight, although he expressed discomfort with Section 6-f of the Articles relating to financing and expansion of business operations. He said he would be more comfortable if these references were removed. Addressing the "without cause" termination clause of the agreement, he stated that he was as yet undecided.

**Public Comment (cont.):** (1:02 p.m.) **Mike Schumann, 870 Sixth Avenue South**, said that the board of the not-for-profit should not be self-perpetuating and should include tenants as well as property owners; a tenant from the immediately adjacent area and someone from the City at-large should be considered to ensure that the general interests of the community are taken into account. He said that the DNA (Downtown Naples Association), of which he is a member, is another concern, he added. The DNA could be disbanded and those businesses just outside the assessment would no longer have a voice; these issues must be kept in mind as other business districts may seek similar means of funding, he concluded. Council Member Finlay received confirmation from City Attorney Pritt that it is the property owners being directly assessed, not the tenants, and therefore, similar to other assessment areas, the tenants really have no right to decision-making with regard to the actual assessment process. **Lucy Pulling Finch, 451 Bayfront Place #5311**, stated that as both an affected property owner and tenant, she had concerns as to the liability of minority landowners, pointing out that she believed 51% of the properties are owned by five persons. Should these same five persons become board members, they would then be the decision-makers for the entire area. The Articles (Section 9(a)), state that the investments may actually be wasteful and not considered proper, inside or outside the country. She also questioned the entity that would assume liability for financing should the not-for-profit corporation fail or dissolve; in conclusion, she questioned the ability of the City to disburse the assessment funds within 45 days of receipt (see Attachment 3 / Section 4.1).

Council Member Sulick stated that she had supported a business improvement district in the Fifth Avenue South area, but the form that had been proposed is not this type of an entity, that promotion and marketing had been the goal, but the intent had, in her view, become questionable. Should the persons involved wish to proceed with investments and financing, then they ought to come together and form their own organization without City involvement, she added. Furthermore, Mrs. Sulick questioned whether a majority of property owners' signatures would have been gathered on the original petition submitted to Council had the Articles of

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Incorporation under discussion been available for review and whether they and the Bylaws had been discussed with all those being assessed.

Council Member Saad noted that he had had similar concerns with the Articles but reiterated that the City has the ability to control the agreement and the expenditure of the assessment funds. Therefore, submission of a detailed annual audit would allow Council the oversight needed in order to be assured of the funds being spent as intended. Council Member Sulick nevertheless maintained that the powers granted in the Articles should not be over-broad since they would also affect all property owners in the assessment area. Vice Mayor Sorey pointed out however that the not-for-profit's activities, beyond the scope of the assessment, must be funded by other means and the market would control those activities. Mr. Saad further assured Council Member Heitmann that additional language would be added to expressly prohibit assessment funding from being utilized for anything, such as acquiring real property, other than that for which it had been assessed.

Council Member Price stated that he would not support the agreement absent a "without cause" termination clause, and Council Member Saad nevertheless maintained that amended language would more clearly establish the causes for termination. City Attorney Pritt said that this being a long-term contract, it could be amended for various reasons by a future Council; causes for termination should be left broad and the "without cause" termination clause should remain, he concluded.

Mr. Thomas then provided a list of his understanding of Council's concerns as well as his recommendations:

- Property owners should be members of the not-for-profit corporation;
- Members should elect the governing board;
- If the district is terminated, the agreement is likewise terminated and the same process should be followed to terminate the district as to establish it;
- Assets of the corporation funded by the assessment monies, or such funds remaining, should the corporation dissolve, would be returned to the City, but assets from other sources would be disbursed as governed by pertinent law; and
- A detailed audit, with clear delineation of funding sources and uses should be required biannually with a financial report provided in the off year.

Council then discussed allowing public input via an annual review of the district's performance prior to enacting the following year's assessment. This would allow the "without cause" termination clause to remain and City Attorney Pritt recommended that the language reflect that either party could terminate without cause with a one-year notice. This would not terminate the assessment, he added, which would require petitioning Council to do so. Mr. Thomas agreed with the one-year notice.

Mayor Barnett stated that final action on this matter was scheduled for December 15 but recommended that a two-hour special workshop meeting be scheduled on December 1 for further discussion; Council agreed.

In preparation for the above meeting, Vice Mayor Sorey recommended that the steering committee review the documentation from the City of Coral Gables, narrow the scope of the Articles of Incorporation and bylaws to encompass only what is deemed necessary, requesting that staff provide the Coral Gables material to Council. Mr. Thomas asked that Council forward any additional comments or concerns regarding the documents via e-mail to the City Manager

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to enable decision-making by his group. Council Member Price indicated that he would not agree to a combination of biannual audits and annual financial reporting as he believed those paying the assessment deserve accountability. In addition, he said that the bylaws must clearly reflect the board membership and each member's representation.

Council Member Sulick expressed the view that the scope of the not-for-profit company is over-broad and especially took issue with private money commingled with assessment funds, reiterating that this proposal had extended beyond a business improvement district. She said she strongly disagreed with including purchase of real estate among the powers of the corporation.

In response to Council Member Heitmann, City Attorney Pritt reiterated that the agreement controls the City's relationship with the not-for-profit corporation as to the expenditure of the assessment funds only. Mr. Thomas then clarified that the steering committee had not completed its review of the Articles and bylaws but had submitted them for discussion only since Council's approval is not a necessity.

***Consensus for Special City Council Workshop to be scheduled December 1, 2010, 1:00 p.m. to 3:00 p.m., for review of revised agreement between the City and the Fifth Avenue South BID (revisions per discussion above).***

**Recess: 2:03 p.m. to 2:18 p.m.** It is noted for the record that the same Council Members were present when the meeting reconvened and discussion of Item 7 resumed; it is reflected in its entirety below.

**TROLLEY FRANCHISE FEES..... ITEM 7**

**Two trolley services have been granted non-exclusive franchises to operate within the City with specific routes. The annual fee is \$500 per year. Discussion will include whether to increase the annual fee, and whether to charge an application and review fee.** (10:53 a.m.) Council Member Finlay explained that the annual administrative renewal fee of \$500 had not been changed since established in 1988 even though the general fund budget had grown from \$9.7-million to \$34-million. In addition, along with increased City administrative costs, it should be taken into consideration that ticket prices for the Naples Trolley had risen from \$1 to \$25, he said. Referencing the memorandum dated November 1 provided by Traffic Engineer George Archibald (Attachment 5), Mr. Finlay said he did not believe employee benefits had been included in the calculations, as well as various other costs such as time spent by Council and the City Manager. He recommended a fee of between \$2,000 and \$2,500 as being fair and adequate to cover actual administrative costs.

**Public Comment:** (10:58 a.m.) **Randy Smith, representing Naples Transportation,** pointed out that in 1988, the franchise agreement had in fact been reviewed and approved annually although this now occurs every five years, lessening administrative costs accordingly. He also noted that neither horse and carriage franchisees nor taxi services pay a fee for use of the City streets and stops. He reminded Council that his trolley service brings patrons into the City where they spend on average \$210 per day. This industry is struggling in the current economy and now is not the time to increase these fees, he stated, citing an additional \$2-million in commerce annually generated by patrons of the trolley and recommending that the fee be eliminated altogether.

(2:19 p.m.) It is noted for the record that Item 7 continued following discussion of Item 6, text of which begins on Page 4 above.

Council Member Price stated that while he could support an increased fee, it should be implemented incrementally over perhaps the coming three years. Council Member Sulick agreed, recommending that taxi services also be required to obtain permits to operate within the City.

Mr. Archibald then reviewed his summary of administrative costs (see Attachment 5, Page 2), pointing out that it had reflected staff time for the annual renewal, which occurs four of the five years of an agreement and involves little work, but not the year in which the agreement is actually approved during a Council hearing. City Manager William Moss indicated that the most important factor to be considered is the value to the trolley service of use of the public rights-of-way and not merely staff time, he said. City Attorney Robert Pritt then noted that another method of calculation is to base fees upon the amount of income the provider generates in the City, but also pointed out that the fees under discussion should in fact be viewed as licensing fees rather than franchise.

Council Member Finlay stated that much of the 1988 franchise fee decision had been based upon the \$1 per ticket cost that had therefore allowed Council to factor in the trolley as a mode of affordable public transportation. Now that tickets are \$25, service providers should no longer be afforded such a low fee, he concluded.

During additional discussion, the following consensus was forthcoming as well as interest in a future workshop discussion regarding taxi services fees.

***Consensus that annual fee be increased from \$500 to \$1,000 per year beginning on contract anniversary dates in 2011.***

**PREFERENCE FOR LOCAL VENDORS / CONTRACTORS..... ITEM 8**

**Some area governments provide for local preferences in their Procurement Codes which offer advantages to local vendors for materials and services acquired by the City. The discussion will consider the merits of a policy to provide preference for local vendors / contractors and means to implement the policy.** (2:36 p.m.) (It is noted for the record that a printed copy of the electronic version of this presentation is contained in the file for this meeting in the City Clerk's Office.) Finance Director Ann Marie Ricardi summarized the practice of providing a preference for local vendors with regard to awarding of contracts, pointing out that while most surrounding agencies do have such legislation, the City does not, although during 2009, 60% of the City's awards were issued locally. During review of varying models, Ms. Ricardi stated that while staff viewed such a policy as unnecessary, it had concurred with Collier County's methodology should Council wish to proceed with such a program for the City. She explained that it provides that a local vendor within 10% of a low bidder, outside the area, has the opportunity to match the low bid, although those governed by the CCNA (Consultant's Competitive Negotiation Act) are exempt.

Director Ricardi listed the following concerns discussed by staff should the above local vendor preference be enacted:

- Competition may be driven out and costs increased;
- Competition would no longer be based solely on specifications, price and qualifications;
- Non-local vendors may be a benefit to the local economy due to purchasing and hiring practices;
- How can reciprocity be ensured between agencies;
- Local firms may not have the depth of resources offered by non-local vendors; and
- Other unintended consequences may exist.

Council Member Finlay pointed out that he viewed this popular trend as a form of protectionism, which he said he could not support, as well as the possibility of reducing bidding from firms outside the areas. He further stressed that results from a practice of local preference have not been quantified and agreed with the possibility of unintended consequences. Council Member

Saad concurred, adding that he believed it would result in a loss of a bargaining position in today's global economy.

Vice Mayor Sorey explained that the positive experience of the Collier County Coastal Advisory Committee had caused him to broach the subject, although agreeing that no local statistics regarding long-term economic impacts were yet available. Council Member Price agreed and pointed out that the County model merely allows local vendors to match the low bid should their qualifications and experience be equal to that of the low bidder. Therefore, he said he did not view the practice as protectionism but rather as a means of maintaining the local economy.

Council Members Sulick and Heitmann said that they did not support the policy, and Mrs. Sulick noted that the City's current process does offer additional points for locally based firms. Mrs. Heitmann stated that while the structure of the City's current selection process should be reviewed, she reiterated that she would not support the proposed policy. City Manager William Moss said that he believed the locale of a firm should be more of a focus during award of CCNA contracts; Council agreed.

***Consensus that no local preference policy be implemented / 5-2 (Sorey and Price dissenting).***

**COMPOSITION OF CITY COUNCIL ..... ITEM 9**  
**City Council has been asked to discuss the merits of changing the composition of City Council from a Mayor and six Council Members to a Mayor and four Council Members. Reducing the number of Council Members would require approval of an amendment to the Naples City Charter upon approval by voter referendum.** (3:00 p.m.) Referencing the submittal by Council Member Finlay (Attachment 6), Council Member Price requested an estimate of the cost savings to be realized with a reduction in the number of Council Members. He urged recognition that should two seats be deleted, the approximately 18 outside committee posts assigned to Council Member must then be redistributed among fewer individuals. Mr. Finlay however clarified that what he was asking was that this issue be brought before the voters, not whether Council agreed with the proposal. Mr. Price noted that the unintended consequences must nevertheless be investigated and predicted that much of the cost savings would not in fact be realized. Council Member Sulick took issue with Mr. Finlay's proposal of a "standing Blue Ribbon Committee or productivity committee", explaining that while she supported review of all possible cost savings, the implementation of such a committee merely adds another layer of un-elected government. Furthermore, she stated that neighborhoods were better represented with seven Council Members. Council Member Heitmann and Vice Mayor Sorey agreed, as well as Mayor Barnett who added his concern that the level of service must be maintained.

Vice Mayor Sorey urged Council Member Finlay to pursue a referendum initiated by 10% of residents, although he would not support a mail referendum and Council Member Saad indicated that he had no definitive response, whether pro or con, to the issue.

**Public Comment:** (3:13 p.m.) **Sue Smith, 11th Avenue South**, agreed that Council's composition should not be altered although more communication with the public should take place on a regular basis.

***Consensus of no support for amending composition of City Council.***

**..... ITEM 10**  
**COMPREHENSIVE PLAN'S 2012 EVALUATION & APPRAISAL REPORT (EAR) SCHEDULE. Comprehensive Plans are required to be evaluated and appraised by local governments every five years. Proposed is a schedule to undertake the next EAR.** 3:16 p.m.) Planning Director Robin Singer reviewed her memorandum dated October 28 and the

schedule for the EAR (Evaluation & Appraisal Report) process (Attachment 7), noting that the report would be due February of 2012. Vice Mayor Sorey pointed out the recent controversy regarding this process being viewed as an additional unfunded state mandate, but Ms. Singer stated that she nevertheless viewed it as fairly efficient. However, should the State DCA (Department of Community Affairs) be disbanded, she recommended combining Comprehensive Plan amendments with town hall meetings to ascertain key issues from which to develop policies and objectives. If the City is not in compliance with the EAR process it would be precluded from amending its Comprehensive Plan, she added, stressing that the scoping meeting is, in fact, time sensitive and should therefore be scheduled for January 2011. Ms. Singer then clarified that the scoping meeting would involve attendance by all state agencies that would eventually review the City's EAR, as well as the public, to allow input and ascertain any areas found lacking within the report. Referencing the schedule (see Attachment 7. Page 2), she confirmed that additional town hall meetings could be added to allow discussion of key issues once they are identified. Council Member Heitmann recommended that the town hall meetings be held throughout the City and should number at least three.

***Consensus to support proposed schedule for 2012 EAR, as submitted.***

**CODE ENFORCEMENT / DESIGN IN CRA FIFTH AVENUE SOUTH ..... ITEM 13**

**The discussion will consist of a review of City Codes pertaining to appearance and aesthetics of buildings and property within the Fifth Avenue South Overlay District (Section 58-1134, Code of Ordinances). The review will include signage, temporary lighting, awnings, outdoor display of merchandise, etc. (3:25 p.m.)** (It is noted for the record that a printed copy of the electronic presentation made by Assistant City Manager Roger Reinke is contained in the file for this meeting in the City Clerk's Office.) Mr. Reinke reviewed the various regulations which apply to the Fifth Avenue South Special Overlay District and clarified that the Overlay District regulations preempt Code of Ordinances provisions in case of conflict. In addition, enforcement is the purview of designated City employees such as code enforcement personnel; however, enforcement is not the responsibility of the various boards or committees which from time to time make recommendations for improvements in the appearance of the district or its regulations or, in some cases, grant permits.

Mr. Reinke then reviewed the following sections, providing photographic examples:

- Temporary lighting;
- Outdoor dining;
- Awnings
- Signage
- Exterior colors

In a discussion of permanent versus temporary lighting, Council Member Sulick expressed the belief that lighting should be considered temporary unless it is included on the architectural drawings of the building exterior when submitted for permitting. In conjunction with the current situation, however, Mr. Reinke posed the question whether current businesses displaying temporary lighting would be required to remove it during the processing of a permit to allow what is currently in place. City Attorney Robert Pritt indicated that he had not been previously aware of the existence of a problem with temporary lighting in the district, pointing out that lighting is a portion of the sign code revision which was then undergoing the Planning Advisory Board (PAB) review process.

Council Member Finlay said that he would be reluctant at that juncture to require that seasonal lighting be removed, although he said he preferred that no colored lights be used and that lights not flash. Council Member Price said that while he believes codes should be enforced,



regardless of the time of year, in the interest of fairness the current lighting should be allowed to remain for this holiday season due to the City's non-enforcement. Council Member Saad said that while lights should be allowed to remain in place during the holiday season, the planning staff should be requested to draft some type of emergency permitting procedure to give the City some control, including in the current season. Mayor Barnett disagreed, citing the relatively short period of time remaining in the current season. Mrs. Sulick distinguished lighting of businesses from that which had been placed in the public right-of-way; the latter, she said, should be removed immediately. Planning Director Robin Singer suggested that the Council act to approve all current temporary lighting and that regulations be drafted to apply to temporary lighting in subsequent years.

**Public Comment: Melody Bales, operator of the Lady from Haiti shop on Park Street**, said that lights had been added to her shop when the City was in the process of replacing street lighting. She also said that although there had been six streetlights on Park Street, only five had been replaced. In addition, she expressed the belief that if the City allows current lighting to remain, merchants would not take advantage of the situation to add more. **Lucy Finch, operator of the Altered Elements shop on Park Street**, said that members of the public indicate that the additional exterior shop lighting affords an extra measure of security for them. She also expressed the view that the LED lighting now favored for the parking garages has lowered the level of illumination that is needed.

Council Member Heitmann supported enforcing current codes but also expressed the hope that further lighting standards await assessment of the impact of the new street lighting just installed.

Council Member Sulick expanded on her suggestion above by recommending that any lighting on shrubbery, trees, etc., in the right-of-way be removed but not lighting that is attached to a building as long as that lighting contains small, white bulbs and is not flashing. It could then be required to be removed by January 15th since it is temporary lighting, she added; this would allow a subsequent consensus to be reached by Council on what level of temporary lighting is acceptable. In further discussion, Mrs. Sulick also pointed out that in the original overlay district, softer street lighting was used because it was anticipated that there would be light emitting from individual stores all along the street; however, this has not always proven to be the case, particularly with first generation buildings which have not been redeveloped.

**Lisa Swirda, Downtown Naples Association (DNA)**, suggested that one time period be chosen for all lighting on individual buildings to be extinguished so that the impact of the new street lighting could be accurately assessed.

Vice Mayor Sorey recommended that the City issue notices of violation under the current Code but allow an extended period of 60 days for correction; this would serve to put businesses on notice of the City's intent to enforce temporary lighting regulations, he added. City Attorney Pritt cautioned that issuance of notices of violation initiate a legal process while courtesy notification does not. Council Member Price supported the latter. In addition, Monday, January 17th, was indicated by Council as the deadline for removal of temporary lighting on private property. With regard to removal of temporary lighting on the right-of-way, the owners of some of which have already been notified, the standard notice of violation process should prevail, Council noted.

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**Recess: 4:17 p.m. to 4:25 p.m. . It is noted for the record that the same Council Members were present when the meeting reconvened and discussion of Item 13 continued except Mayor Barnett who returned at 5:01 p.m. Vice Mayor Sorey presided in the interim.**

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During a review of outdoor dining, Council Member Sulick took issue with allowing meal service to transverse the public right-of-way, citing various cities where outdoor dining is permitted, but all activity occurs adjacent to the buildings to avoid restricting public sidewalk access. Therefore, she urged that outdoor dining be limited to the area adjacent to the building and further noted that restaurants have been allowed to add outdoor dining tables without any increase in parking availability. Council Member Finlay however disagreed that outdoor dining should be required to be placed adjacent to the building. Council Member Price asserted that the City is not applying outdoor dining regulations evenly. Vice Mayor Sorey articulated what he said he believed was the consensus of Council; namely, that Code requirements of a five-foot pedestrian clearance be enforced, regardless of whether a restaurateur is required to reduce table size or make other adjustments, and that staff research possible clarifications in language. Mr. Price also commended staff's enforcement to date.

Council then discussed current allowances for table umbrellas in conjunction with outdoor dining in the right-of-way. Vice Mayor Sorey said that he had observed umbrellas extending into the five-foot pedestrian clearance, citing a need for further specificity in the Code. Council Member Sulick concurred and further cited violations, which she had observed, including the use of freestanding umbrellas, which encroach into the pedestrian area. Council Member Price also supported clarifications in requirements, stating that there should be a five-foot clearance between umbrellas that abut the public right-of-way; he also stressed that the allowance for table umbrellas does not include those which are freestanding. Violations of the requirements in the Code with regard to umbrellas, he said, cause safety hazards for passers-by.

Council Member Finlay sought clarification of whether the diameter of table umbrellas or their height poses a greater safety issue, and various Council Members responded to the effect that umbrellas must adhere to the five-foot pedestrian clearance, regardless of their height. Mr. Finlay said that he viewed the height of the umbrella to be the more critical factor from a safety standpoint. Assistant City Manager Reinke then received final clarification that umbrellas allowed in conjunction with outdoor dining are only those which are affixed to tables and not those which are freestanding; pedestrian clearance must be five feet from the edge of the umbrella.

With regard to awnings, Planning Director Robin Singer indicated that an additional review of proposed awnings is afforded since this is an element of the DRB (Design Review Board) process, although standards differ depending on whether the installation is totally on private property or whether it extends over the public right-of-way. Council Member Sulick however took issue with the variety of colors that appear on both awnings and umbrellas, particularly those which are adjacent. However, City Attorney Pritt cautioned that regulating lettering could be construed as content-based and therefore recommended that the Council defer instructing staff in this regard until after review of the sign code revision in the near future.

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**It is noted for the record that Mayor Barnett returned to the meeting at 5:01 p.m. during review of signage regulations.**

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With regard to signage that is not permitted, City Attorney Pritt indicated that regardless of whether information is affixed to a store window or placed on an easel or board inside the window so that it can be viewed from outside the business, it is illegal because it serves the same function. He further noted that sign codes reflect the desired appearance of the community even though these codes can be creatively circumvented in which case the local jurisdiction either cites the offender, revises the code or acquiesces to the individual situation. He recommended that the City proceed against a real estate office wherein listings were merely pasted onto the front window of the establishment.

**City Council Workshop Meeting – November 15, 2010 – 8:28 a.m.**

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Vice Mayor Sorey noted that the consensus of Council was to enforce the Code in instances where materials were pasted on windows. It was also recommended that the requirement for an unobstructed view of the cash register be deleted from the applicable section.

At the conclusion of a review of regulations involving exterior colors, Council Member Saad said that Council should stress the need to enforce the Code as written and, should changes be needed, this should be dealt with through the ordinance amendment process. Vice Mayor Sorey requested that staff research the history of Fifth Avenue South Special Overlay District regulations for possible definitions that relate to tables, umbrellas and chairs as it applies to outdoor dining uses.

Council Member Heitmann received clarification that sandwich board signs are permitted, but if real estate fliers are being distributed in boxes in the right-of-way, they are not permitted. City Attorney Pritt referenced the news rack ordinance in this regard, but Planning Director Singer said she believed the prohibition of outside display of merchandise applies in this instance. She also received clarification that only tables and chairs are allowed in outdoor dining areas, not maitre-d or bussing stations.

Council Member Sulick expressed appreciation to the staff for this review.

The consensus of City Council on this agenda item is summarized as follows:

***Sec. 58-1134. (16), Temporary Lighting: to be better defined in the regulations. Redevelopment area businesses are to be advised that permits are required for all temporary lighting and that citations will be issued beginning on January 17, 2011 allowing ten days for compliance.***

***Sec. 58-1134(c)(4) Outdoor Dining: Staff to review and clearly define “five-foot clear pedestrian passage.”***

***Sec. 56-127(d)(2)(p) Outdoor Dining - Umbrellas: Five-foot clear pedestrian passage to be required between table umbrellas; table umbrellas to be defined, and standards established.***

***Sec. 58-1134(e)(12) Awnings: lettering on awnings to be discussed further during upcoming review of sign code.***

***Sec. 58-1134(f)(5) Illumination; Window Signs: Current codes to be strictly enforced and “cash register or registers” deleted.***

***Sec. 58-1134(f)(2), Signage Standards, Sign Band, no limitation to content recommended by City Attorney.***

***Sec. 58-1134(e)(2), Architectural Standards, exterior colors, current regulations to be enforced. (Meeting minutes regarding discussion of “sandwich boards” to be provided to Council for review.)***

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It is noted for the record that during the latter portion of the above discussion, City Manager William Moss recommended that Item 11 be heard that day but due to time constraints, suggested that Item 12 be continued to the December 13<sup>th</sup> Workshop; Council concurred.

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**REVIEW OF LIVE ENTERTAINMENT EXTENDED HOURS..... ITEM 11**

In December 2009, City Council adopted an ordinance applicable to all establishments with a Live Entertainment Permit to allow live entertainment to midnight, Thursday through Saturday, unless otherwise prohibited. The Ordinance requires review of the policy every six months for the first year. This will be the second review since the ordinance was implemented. (5:26 p.m.) (It is noted for the record that documents referenced throughout this item are contained in the file for this meeting in the City Clerk's Office.) City Manager William Moss provided a brief overview of this item, explaining that Council must decide whether to continue with the extension of live entertainment hours as provided by Ordinance 09-12581. Referencing the Police Department memorandum dated November 2 citing no verified violations, Vice Mayor Sorey recommended that the extended hours continue for another six months. Council Member Price however recommended a permanent extension of hours based on two prior six-month reviews of the ordinance. Planning Director Robin Singer noted that the draft ordinance, containing language to facilitate this, could be amended to reflect that approval of extended hours would occur at the discretion of Council; staff would revise the draft and return in December for Council's consideration, she added.

***Consensus that proposed ordinance be considered in December revising Section 56-125(e)(3) and (4) to indicate approval at the discretion of City Council.***

**COMMUNITY SERVICES PROGRAMS (Continued to 12/13/10 / see above)..... ITEM 12**

During the review of the recently adopted City Budget (FY 2010-11), City Council agreed to additional review of parks and recreation programs, the number of participants, whether the participants reside within or outside the City limits, the fees charged to participants, and the overall impact of programs upon the City's budget during this period of economic decline and reduction of General Fund revenues. (5:30 p.m.)

***Consensus to continue this item to the December 13, 2010, Workshop (see consensus during discussion of Item 13 above).***

**REVIEW OF 11/17/10 REGULAR MEETING AGENDA ..... ITEM 14**

(5:31 p.m.) No changes.

**CORRESPONDENCE / COMMUNICATIONS .....**

(5:31 p.m.) Due to a recent natural gas line rupture, Vice Mayor Sorey requested that TECO/Peoples Gas representatives attend a future Council meeting to provide an update and respond to questions and/or concerns regarding this interruption of service. He also asked that fellow Council Members visit the 18<sup>th</sup> Avenue South beachend and then provide input as to the desired vegetation for placement at all beachends. Noting her attendance at a Veteran's Day ceremony held at Cambier Park, Council Member Heitmann requested that the alley just north of the park be closed to traffic during future similar ceremonies and thanked the Jolly Cricket for providing beverages to the ceremony's young performers in a timely manner. Various Council Members noted concern regarding the possible opening of enterprises known as pain clinics and requested discussion of preventing this through zoning regulations. Council Member Price added that the problem is being considered County-wide and that during a recent Drug Free Collier event, he had learned that amending zoning resulted in unintended consequences; more information could be shared during the aforementioned discussion when scheduled he added.

**City Council Workshop Meeting – November 15, 2010 – 8:28 a.m.**

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**ADJOURN** .....  
5:37 p.m.

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Bill Barnett, Mayor

Minutes prepared by:

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Tara A. Norman, City Clerk

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Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 01/19/11

Excerpted text of Item 5 / Integrated Water Supply Plan presentation

Presentation Outline

- Project goals and benefits
- Background
- Scope of work
- Overall project schedule
- Progress and findings to date
- Future activities
- Questions

Project goals

The City of Naples is implementing an aquifer storage and recovery (ASR) system to reduce potable water demands. The ASR system will use reclaimed water and excess surface water from the Golden Gate Canal as replacement water to meet irrigation needs

Project benefits

Implementation of the reclaimed water / surface water ASR system will afford the City of Naples the following:

- Reduce potable water demands
- Extend the useful life of the City's water treatment facility
- Maximize use of reclaimed water
- Optimize use of excess surface water
- Reduce surface discharge to Naples Bay

Background of overall program

- To develop 10 MGD of additional water sources
- To reduce consumption of potable water from 270 gallons per capita per day (GPCD) to below 200 GPCD
- To conserve existing potable water supply from the Lower Tamiami Aquifer
- To increase supply of supplemental water for irrigation
- To reduce reliance on expanded water treatment facilities
- To meet conditions of renewed water use permit, 100% reclaimed status
- To achieve the above at least cost to water customers

Supplemental water strategy

1. Expand supplemental water supply from the Golden Gate Canal (permitted to a maximum of 10 MGD)
2. Transfer Golden Gate Canal water to Riverside Circle for storage and/or distribution to irrigation system
3. Discharge reclaimed water to ASR wellfield and eliminate discharge to Gordon River
4. Recover blended effluent water and Golden Gate Canal water from wellfield during dry season
5. Secure project funding in part from the SFWMD / Big Cypress Basin

Design criteria

A graph reflecting the following: storage of water from mid-November through late February; recovery of the water from late February through the end of May; and recharge occurring from the beginning of June through mid-November, with the cycle repeating itself.

Status of Golden Gate Canal

1. CDM has completed Preliminary Design Report (PDR)
2. Design of the intake structure is 60% complete
3. Currently performing the necessary title work for properties along the proposed transmission main route

Excerpted text of Item 5 / Integrated Water Supply Plan presentation

4. CDM is performing surveying and geotechnical services for the transmission main route
5. Final design of intake structure and transmission main is estimated to be completed in February 2011
6. Bidding of the intake structure is anticipated to commence in March 2011
7. Water Use Permit application for the Golden Gate Canal was submitted and responses were provided to the SFWMD in October 2010
8. Pre-application meeting scheduled with the SFWMD to discuss the Environmental Resource Permit
9. SFWMD / Big Cypress Basin Grant
  - Under Contract to receive \$1,000,000 grant for construction of Golden Gate Canal Intake Structure

ASR wellfield strategy

- Drill four (4) ASR wells below potential underground sources of drinking water including required monitoring wells
- Preparation and submittal of a Class V Permit Application to FDEP to allow testing of well
- Obtain Cycle Testing Plan approval
- Secure project funding in part from the SFWMD / Big Cypress Basin

ASR Well Project Status

- ASR well No.1- Complete
- ASR well No.2 - 80% Complete
  - Monitoring wells complete
- Received Class V Permit From FDEP August 23, 2010
  - Submitted ASR Cycle Testing Plan to FDEP October 2010
- SFWMD / Big Cypress Basin
  - Received \$200,000 grant for ASR No.2
  - Under Contract to receive \$400,000 grant for ASR No.3

ASR Construction Status

- Work completed
  - ASR Well No. 1
  - Conversion of exploratory well to Monitor Well No. 1
  - Monitor Well No. 2
  - ASR Well No. 2 – 80% complete
    - ▶ Additional packer tests
    - ▶ Coring
- Work Pending
  - Finish ASR Well No. 2
  - Wellheads for each well
  - Temporary piping and pumping equipment for cycle testing
  - Monitoring equipment

Progress and findings to date

- Design
- Regulatory
- Underground conditions
  - Geophysical logging
  - Water quality
  - Hydraulics

Testing results...comparison of data collected

- Geophysical logging

Excerpted text of Item 5 / Integrated Water Supply Plan presentation

- Gamma ray
- Caliper

Work to be completed

- ASR Well No. 2
  - Ream pilot-hole
  - Final geophysical logs
  - Pumping test
  - Well completion report
- Wellheads for ASR-1, ASR-2, MW-1 and MW-2
- Piping and pumping equipment
- Monitoring equipment
- Facilities to convey water from Golden Gate Canal to the City's water reclamation facility

Proposed plan of action

The request for cycle testing is to be submitted prior to final completion of ASR-2;

- Submit request to FDEP for cycle testing;
- Complete ASR-@ and surface facilities; and
- Commence cycle testing (data submitted to FDEP as results are received)

Golden Gate Canal future activities

1. Acquire intake structure and transmission main easement
2. Obtain Environmental Resource Permit
3. Obtain Golden Gate Canal Water Use Permit
4. Complete design and bid Golden Gate Canal Intake Structure
5. Complete design and bid transmission main from intake structure to the WWTP

ASR Wellfield future activities

1. Completion of construction and testing of ASR well 2
2. Completion of well completion report
3. Begin Cycle Testing of ASR well 1
4. Design and construction of on-site facilities (yard piping)
5. Begin Design and bid construction of ASR Well 3

Adopted funding plan:

	Project Elements			
Fiscal Year	ASR Program	Well Canal Supply	Water System Expansion	TOTALS
2011	\$1,450,000	\$2,050,000	\$200,000	\$3,700,000
2012	\$1,100,000	\$1,650,000	\$100,000	\$2,850,000
2013			\$100,000	\$100,000
2014			\$9,857,500	\$9,857,500
TOTALS	\$2,550,000	\$3,700,000	\$10,257,500	\$16,507,500

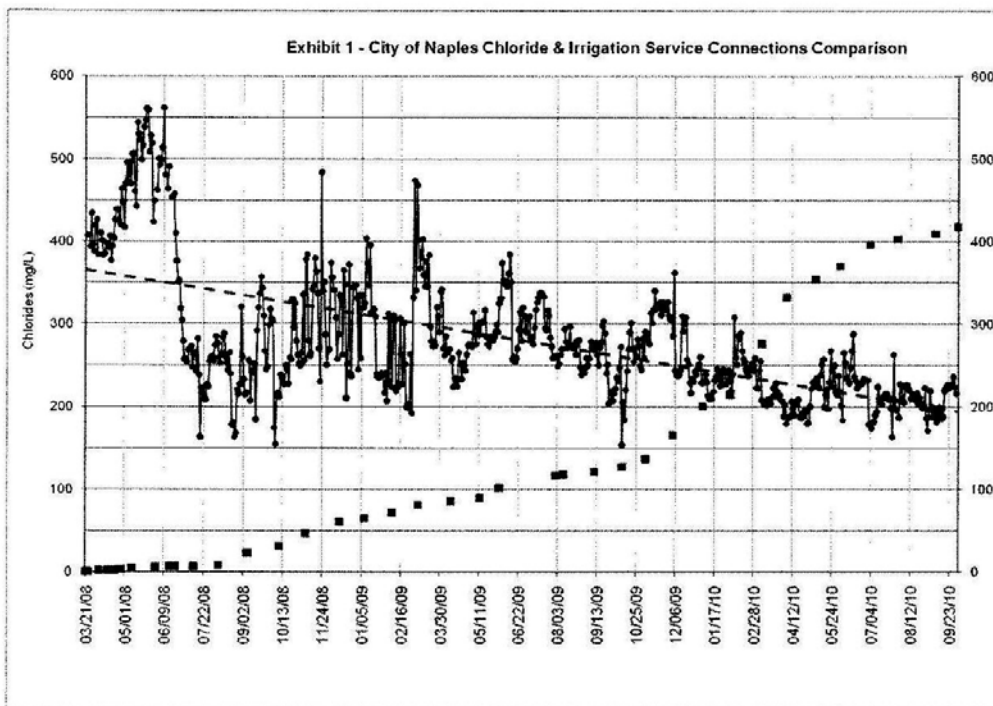


Excerpted text of Item 5 / Integrated Water Supply Plan presentation

Connection status to irrigation system

- September 2010  
(chlorides averaged 208 mg/L)
- 657 total available connections  
in Port Royal
- 508 resident inquiries to connect
- 452 applications received
- 392 residents connected
- 26 public medians, cul-de-sacs,  
and beach ends connected

Chloride & Irrigation Service Connections Comparison



**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Workshop Meeting Date: November 15, 2010**

Agenda Item:	Prepared By: Roger Reinke, Assistant City Manager	
6	Date: November 8, 2010	Department: City Manager
<b>SUBJECT:</b>		
Agreement with a proposed not-for-profit corporation to administer special assessment funds, collected by the City, to stabilize and improve commercial property through promotion, management, marketing, administrative and other similar activities, in the Fifth Avenue South Business Improvement District Assessment Area.		
<b>BACKGROUND:</b>		
<p>On November 3, 2010, City Council adopted Initial Assessment Resolution No. 10-12801 to create the Fifth Avenue South Business Improvement District Assessment Area. The creation of the proposed assessment area was initiated following receipt of a petition by a majority of property owners within the District seeking the City's assistance in the establishment of a Business Improvement District.</p> <p>Presented for discussion is a draft Agreement between the City and a proposed not-for-profit corporation, the Fifth Avenue South Business Improvement District Corporation, Inc., providing for the administration of funds collected from property owners in the proposed Fifth Avenue South Business Improvement District Assessment Area. The funds must be used to stabilize and improve commercial property through promotion, management, marketing, administrative and other similar activities, in the Fifth Avenue South Business Improvement District Assessment Area.</p> <p>The representatives of the property owners in the 5<sup>th</sup> Avenue South Overlay District, known as the Steering Committee, agree the City should have the right to terminate the Agreement for cause, but have objected to the City's ability to terminate the Agreement without cause. A memorandum from the Steering Committee explaining their position is provided.</p> <p>The section of the Agreement requiring insurance is under review and may change after assessment by insurance professionals. The purpose of the assessment is to confirm the insurance required is available.</p> <p>The Steering Committee has provided a working draft of the Articles of Incorporation and the By-Laws for the proposed non-profit corporation. These drafts are works in progress and are subject to revisions based on review and advice of their legal counsel.</p> <p>Affected property owners were notified by letter (copy attached) mailed on Friday, November 5, 2010, that the Agreement was scheduled for discussion at the November 15, 2010 Workshop. A Public Hearing and consideration of the Final Assessment Resolution is scheduled for the December 15, 2010 City Council meeting. It is anticipated that consideration of a final Agreement with the proposed not-for-profit corporation will also be scheduled for the December 15, 2010 meeting following City Council consideration of the Final Assessment Resolution.</p>		
Reviewed by Department Director Roger Reinke	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

#6 STAFF  
SARD COMMENTS

## AGREEMENT

This Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, between the City of Naples (the "City"), the address of which is 735 Eighth Street, Naples, Florida 34102, and the Fifth Avenue South Business Improvement District Corporation, Inc. (the "5<sup>th</sup> Ave BID Corporation"), a Florida not-for-profit corporation, the address of which is 821 Fifth Avenue South, Suite 201, Naples, Florida, 34102.

### WITNESS:

For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the 5<sup>th</sup> Ave BID Corporation agree as follows:

### 1. TERM

- 1.1 The term of the Agreement shall be for a period of ten (10) years, commencing at 12:01 a.m. on the 1<sup>st</sup> day of January, 2011 (the "Commencement Date") and ending on the 31<sup>st</sup> day of December, 2020 (the "Termination Date").
- 1.2 The term of the Agreement may be extended by mutual agreement for additional periods of ten (10) years, provided, however, that this Agreement shall be terminated upon termination of the Fifth Avenue South Business Improvement District (the "District") in accordance with the provisions of the Resolution by which the District was created or disqualification of the 5<sup>th</sup> Ave BID Corporation to operate as a Not For Profit Corporation under the laws of the State of Florida or the rules and regulations of the United States Internal Revenue Service.
- 1.3 At any time during the term of this Agreement the City may terminate this Agreement: 1) with cause per the terms of Section 9 below; 2) by repealing City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No. \_\_\_\_, The Final Assessment Resolution; 3) upon a petition of the majority of the assessed property owners following the same petition procedures under Chapter 170, Florida Statutes, that was used to petition for the District.

**Deleted:** , by delivering at least three (3) months written notice of termination to the 5<sup>th</sup> Ave BID Corporation

**Deleted:** without cause, by delivering at least a twelve (12) months written notice of termination to the 5<sup>th</sup> Ave BID Corporation, following a public hearing and notice to property owners within the Fifth Avenue South Business Improvement District Assessment Area

### 2. CONSIDERATION

- 2.1 In consideration of the mutual obligations and benefits set forth herein, the 5<sup>th</sup> Ave BID Corporation commits to utilize all funds provided to the 5<sup>th</sup> Ave BID Corporation by the City for business improvements as set forth in Chapter 170 Section 170.01 (3), Florida Statutes, City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No. \_\_\_\_, The Final Assessment Resolution, to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities.

**Comment [SJS1]:** Would this act to limit the expenditures to those specified purposes?

### 3. COVENANTS

- 3.1 The 5<sup>th</sup> Ave BID Corporation herein covenants that it has been established as a not-for-profit corporation validly formed under Section 501 (c)(3) of the Internal Revenue Code and that it shall maintain such status during the life of this Agreement.
- 3.2 The 5<sup>th</sup> Ave BID Corporation shall be governed by a Board of Directors consisting of seven (7) members, four (4) of whom shall be owners of property subject to special assessment within the District, or the authorized designees thereof, and three (3) of whom shall be merchants having businesses or offices within the District, and any change in this structure shall be subject to City Council approval.

**Comment [SJS2]:** How will you get the 501 status before January 1? It takes at least three months.

**Comment [SJS3]:** Shouldn't this be in the articles and this agreement subject to review upon a change to the articles?

- 3.3 The 5<sup>th</sup> Ave BID Corporation shall present an Annual Report to the City Manager of the City of Naples within ninety (90) days of the District's fiscal year end. The Annual Report shall include a review of the past year's budget and expenditures, the activities, including promotions, advertising, events and other activities conducted by the 5<sup>th</sup> Ave BID Corporation to achieve the objective of the District, the Budget for the subsequent year and the activities to be conducted in accordance therewith.
- 3.4 Upon the written request by the City Manager, the 5<sup>th</sup> Ave BID Corporation shall retain and fund an independent financial audit. Said audit shall be conducted, and the City shall receive a report from the auditor, within ninety (90) days of said request. The ninety (90) day deadline may be extended by mutual agreement of the parties.
- 3.5 The 5<sup>th</sup> Ave BID Corporation agrees to maintain adequate records and supporting documentation which concern or reflect its services hereunder for a minimum of three (3) years during the term of this Agreement, and a minimum of one (1) year from the date of termination of this Agreement. These records shall be publically available upon reasonable request and during business hours. [Alternatively, These records shall be maintained on the website of the 5<sup>th</sup> Ave Bid Corporation.] A representative of the City shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the term of this Agreement and for the one (1) year period from the date of termination of this Agreement.

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Comment [5354]: If a citizen makes a public records request will the city be obligated to ask the corporation for the records?

#### 4. SPECIAL ASSESSMENTS (Collection and Use)

- 4.1 All funds collected by the City on behalf of the District, less all expenses incurred by the City on behalf of the District regarding the collection of special assessments and the transfer of District funds to the 5<sup>th</sup> Ave BID Corporation shall be transferred to the 5<sup>th</sup> Ave BID Corporation within forty-five (45) days of the receipt thereof by the City.
- 4.2 All funds transferred to the 5<sup>th</sup> Ave BID Corporation shall be utilized for business improvements as set forth in Chapter 170 Section 170.01 (3), City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No. \_\_\_\_, The Final Assessment Resolution to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities and for no other purpose.
- 4.3 All funds will be spent on district wide projects and not for specific properties or businesses except upon a specific finding, stated in a resolution of the board, that such a project will improve the entire District.
- 4.4 Should the District be abolished, or should the 5<sup>th</sup> Ave BID Corporation be disqualified from operation as a Not For Profit Corporation under the laws of the State of Florida or the rules and regulations of the united States Internal Revenue Service, or should this agreement be terminated for any reason, all property then owned by or under control of, the 5<sup>th</sup> Ave BID Corporation shall be distributed as follows: If the property has been funded by city-assessed funds it shall become property of the City. If the property has been funded partially by both City assessed funds and private funds, the City may pay the 5<sup>th</sup> Ave Bid Corporation the portion of the funds relating to private contributions to the extent the private contributions exceed twenty percent (20%) of the funding. If it has been funded solely by private funds, it shall be offered to the City, and if refused for any reason, disposed of as private property.

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#### 5. INSURANCE

5.1 The 5<sup>th</sup> Ave BID Corporation shall maintain during the life of this Agreement, Workmen's Compensation, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, Broad Form Property Damage, to be included on an occurrence basis, and to the full extent of the Agreement to protect from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by the 5<sup>th</sup> Ave BID Corporation or by a subcontractor, or by anyone directly or indirectly employed by either of them. The 5<sup>th</sup> Ave BID Corporation shall obtain and maintain in force Director's Errors and Omissions Insurance coverage in amounts appropriate to the scope of the 5<sup>th</sup> Ave BID Corporation's budget and activities and shall also maintain automobile liability insurance including "non-owned and hired" coverage.

**Comment [S355]:** The word "insurance" needs to appear somewhere in this sentence.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence. The City of Naples shall be named as an Additional Insured on all insurance certificates.

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## 6. INDEMNIFICATION

6.1 The 5<sup>th</sup> Ave BID Corporation shall indemnify, defend, save, and hold harmless the City, the City's officers, agents and/or employees from and against any and all losses, penalties, damages, professional fees, including reasonable attorney's fees and all costs of litigation and judgments, arising out of any willful misconduct or negligent act, error or omission of the 5<sup>th</sup> Ave BID Corporation, its officers, agents and/or employees.

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## 7. ASSIGNMENT

7.1 The 5<sup>th</sup> Ave BID Corporation shall not assign this Agreement to any entity without written approval of the City Council. Any merger of the 5<sup>th</sup> Ave BID Corporation with another entity to perform the activities described herein must first be approved by the City Council before becoming valid.

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## 8. AMENDMENT

8.1 All amendments to this Agreement must be in writing, approved by both the City Council and the 5<sup>th</sup> Ave BID Corporation, prior to taking effect. Any proposal made by one party hereto and not responded to within six (6) months of its presentation to the other shall be deemed void.

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## 9. DEFAULT

9.1 A default shall occur when one of the following occurs and remains uncured in accordance with paragraph 9.3 hereof (a "Condition of Default"):

- The 5<sup>th</sup> Ave BID Corporation negligently violates any of the terms of this Agreement and fails to cure the violation within the time periods described in paragraph 9.3 below.
- The 5<sup>th</sup> Ave BID Corporation willfully or wantonly violates any of the terms of this Agreement.

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**Comment [S356]:** Invalid reference

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9.2 Written notice of the occurrence of a Condition of Default shall be provided by the City to the 5<sup>th</sup> Ave BID Corporation at 821 Fifth Avenue South, Suite 201, Naples, Florida 34102 via Certified Mail, return receipt requested.

9.3 The 5<sup>th</sup> Ave BID Corporation shall make a good faith effort to cure a Condition of Default within thirty (30) days of receipt of the notice prescribed in paragraph 9.2 hereof.

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9.4 Upon the occurrence of an uncured event of Default, the City shall have the right to cancel this Agreement.

#### 10. GENERAL PROVISIONS

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10.1 The captions and headings in this Agreement are for information only and are not substantive.

10.2 This Agreement constitutes the complete agreement between the parties and no modification shall be binding unless in writing and executed by the parties.

10.3 In the event of any dispute, question or interpretation of this Agreement which the parties cannot resolve, said dispute shall be submitted at the request of either party to informal mediation before a single mediator, and failing agreement at mediation, to binding arbitration before a single arbitrator, according to the Florida Arbitration Code. To the extent that the parties cannot agree on a mediator or arbitrator within ten (10) days of notice of a dispute, they shall apply to the Chief Judge of the 20<sup>th</sup> Judicial Circuit to make the appointment. It is intended that mediation take no more than thirty (30) days and arbitration take no more than sixty (60) days. The parties shall share equally in the costs.

10.4 In any dispute, each party shall be responsible for its own legal fees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY of NAPLES

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

The FIFTH AVENUE SOUTH BUSINESS  
IMPROVEMENT DISTRICT  
CORPORATION, Inc.

By: \_\_\_\_\_  
President

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

**ARTICLES OF INCORPORATION  
OF  
FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC.  
(A Florida Corporation Not-For-Profit)**

1. **Name.** The name of the corporation is FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC. (the "Corporation").
2. **Not-for-profit Corporation.** The Corporation has been formed for not-for-profit purposes and shall not have or issue shares of stock or make distributions.
3. **No Members.** The Corporation shall have no members.
4. **Registered Agent.** The street address of the Corporation's registered office and the name of its registered agent at that address are as follows:

Agent	Business Address
John M. Passidomo, Esq.	Cheffy Passidomo, P.A. 821 5th Avenue South Naples, Florida 34102

5. **Incorporator.** The name and address of the Corporation's sole incorporator is John M. Passidomo, Esq., Cheffy Passidomo, P.A., 821 5th Avenue South, Naples, Florida 34102.
6. **Exempt Nature of Activities and Purposes.** The Corporation is organized and shall be operated exclusively for the charitable purpose of fostering the stabilization and improvement of the retail business special assessment district known as the "FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT ASSESSMENT AREA" that is located in the City of Naples, Florida, hereinafter the "District," through promotion, management, marketing, and other similar services in the District, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time and the corresponding provisions of any future United States Internal Revenue law (the "Code") (the "Corporation's 501(c)(3) Exempt Purposes"). The various Corporations shall carry out the Corporation's 501(c)(3) Exempt Purposes through activities, which shall include:
  - (a) Organizing and operating an association of persons, business firms and/or corporations, and affiliated incorporated or unincorporated associations, residing, doing business or interested in improving the climate and conditions for economic development in the District.



- (b) Promoting and preserving the cultural, historic, tourist and civic interests of the District.
- (c) Providing a mechanism by which service firms, retail establishments, property owners, employers, citizens, and others can cooperate to promote business opportunities, employment, consumer choices, shopper's facilities, and the general civil interest in the District.
- (d) Promoting civic activities and governmental cooperation to achieve an improvement in business and commercial opportunities and the general economic welfare of the District.
- (e) Developing and implementing long-range development strategies for commercial, industrial, office, residential, and other development in the District.
- (f) Financing new and expanding business operations within the District for the purpose of expanding permanent and temporary jobs and job opportunities, in the City of Naples, and fostering investment and confidence in the City of Naples's economy.
- (g) Providing personnel and resources to educate and assist public and private entities in the administration, management and promotion of economic growth and development activities in the District.
- (h) Providing educational opportunities to individuals and businesses regarding business and management skills and procedures, including the acquisition and management of capital resources, proper methods of business accounting and reporting and personnel management methods and procedures.
- (i) Promoting and sponsoring discussion groups that shall educate and inform citizens and members on topics of common interest and concern to the District.
- (j) Maintaining information regarding revitalization in the District.
- (k) Sponsoring cultural, employment and commercial revitalization into the District and providing a forum to share knowledge, common experiences and problems.
- (l) Organizing and promoting constructive relationships between local government bodies and private business and citizens.



- (m) Supporting other charitable and educational organizations whose primary interest is to preserve and develop the beauty and economic stability of the District.
- (n) Diversifying the District by recruiting new stores to balance the retail mix; devising and writing marketing packages for interested owners and/or business people who want to recruit new business into their space, aiding potential business owners in finding retail space, and by aiding in the acquiring of adequate financing.
- (o) Providing design services for buildings and signage and promoting and assisting in City of Naples beautification project in the District.
- (p) Recommending, whenever possible, appropriate uses and design standards for downtown area development.
- (q) Publishing community information regarding its activities and other data relevant to downtown revitalization. Such publications may include the following:
  - i. Planning studies
  - ii. An organization brochure
  - iii. Tourist and visitor information brochures, maps, and guides
  - iv. Special event flyers, pamphlets, posters, or brochures  
a newsletter.

thereby lessening the burdens of Government by furthering and carrying out the economic redevelopment purposes of the City of Naples for the public benefit, relieving the poor and distressed or the underprivileged, lessening neighborhood tensions caused by lack of jobs, and promoting the social welfare by combating community deterioration within the City of Naples.

The nature of the Corporation's activities shall be to undertake or support, directly or indirectly, such projects, programs, services, and activities, at such times and in such places, as the board of directors of the Corporation (the "Board") determines are appropriate to carry out, promote, or further the Corporation's 501(c)(3) Exempt Purposes. It is intended that the Corporation shall be exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and that it shall qualify as an organization transfers to which are deductible for federal income, gift, and estate tax purposes by residents and citizens of the United States of America (a "Qualified Charitable Organization").

7. **Board of Directors.** The number of Directors constituting the initial Board of Directors (the "Board") shall be seven (7). The number of Directors constituting the Board may be changed from time to time as provided in the Bylaws, but such

number shall not be reduced to less than three (3). The names of the Directors, who shall act until the first annual meeting or until their successors are duly chosen and qualified, are: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. The manner in which successor Directors are to be elected or appointed shall be as stated in the Bylaws of the Corporation.

8. **Officers.** The officers and their manner of election shall be as provided in the Bylaws of the Corporation.
9. **Board's Authority.** Subject to the restrictions and limitations of the Article of these Articles of Incorporation entitled "Prohibitions," City of Naples Ordinance No. \_\_\_\_\_ (and any amendment or successor ordinance thereof/thereto and the condition that no power or discretion shall be exercised by the Board in any manner or for any purpose that is not consistent with the Corporation's 501(c)(3) Exempt Purposes, its qualification as a Qualified Charitable Organization, and any Valid Restrictions (as defined below) imposed on contributions to the Corporation, but without otherwise limiting the powers conferred upon the Board by law, the Board is authorized:
  - (a) To receive and accept gifts, legacies, grants, loans, and other contributions to the Corporation from any persons or entities, in cash or in other property acceptable to the Board, including restricted contributions; provided that any restrictions are consistent with the Corporation's 501(c)(3) Exempt Purposes and its qualification as a Qualified Charitable Organization and are imposed by the donor by a written instrument that is accepted by the Board by resolution ("Valid Restrictions").
  - (b) To acquire by purchase, lease or otherwise, to retain, hold, own, occupy, use, manage, improve, develop, maintain or lease, and to sell, mortgage, transfer, invest in or reinvest in, or otherwise deal with any real or personal property (tangible or intangible) of whatever kind and description and wherever situated, or with any estate or interest, legal or equitable, in the property, without regard to diversification or to whether some or all of the property so acquired or retained is unproductive or wasting or is of a kind or size which, but for this express authority, would not be considered proper.
  - (c) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds and other obligations of the Corporation and secure any such obligations by mortgage or pledge of any part of the Corporation's Funds, and extend, renew or renegotiate loans or guarantees.

- (d) To employ attorneys, accountants, investment counsel, custodians, brokers and other agents to assist in the administration of the Corporation and the Corporation's Funds and to pay reasonable compensation for such services.
  - (e) To maintain and administer the Corporation's assets, including all contributions received, all income earned on those assets and contributions, and any gains therefrom (the "Corporation's Funds") and, unless otherwise specifically required, to mingle restricted contributions with other assets of the Corporation's Funds for investment purposes.
  - (f) To use and apply the Corporation's Funds, make expenditures and payments therefrom, and make distributions, program-related loans, program-related investments, and other grants from the Corporation's Funds, in such amounts, at such times, in such manner, and for such of the Corporation's 501(c)(3) Exempt Purposes as the Board in its sole discretion determines from time to time, subject to any Valid Restrictions imposed on contributions to the Corporation's Funds.
  - (g) To initiate and participate in fundraising activities, expeditions, or other projects that may be undertaken by the Corporation in order to further or promote the Corporation's 501(c)(3) Exempt Purposes.
  - (h) To form or join in forming partnerships, limited liability companies, joint ventures, corporations or other entities to carry out or further the Corporation's 501(c)(3) Exempt Purposes or for investment purposes, to become a partner, manager, associate or member thereof, to transfer any part or all of the Corporation's Funds thereto, and to operate, manage and supervise such entities, participate in the operation, management and supervision thereof, or delegate such power to any person or persons the Board may select.
  - (i) To the extent a corporation organized under the Act may now or hereafter lawfully do so, to engage in or carry on any and every act or activity necessary, suitable, convenient, or proper for, in connection with, or incident to the promotion, furtherance, or accomplishment of any of the Corporation's 501(c)(3) Exempt Purposes, or designed, directly or indirectly, to promote the interests of the Corporation, and to engage in any lawful act or activity that is consistent with the Corporation's 501(c)(3) Exempt Purposes and its qualification as a Qualified Charitable Organization.
10. **Prohibitions.** Notwithstanding any other provision of these Articles of Incorporation, the Corporation's activities and the Board's authority shall be subject to the following restrictions and limitations:

- (a) The Corporation shall not carry on any activities not permitted to be carried on by a Qualified Charitable Organization.
  - (b) No part of the Corporation's Funds shall inure to the benefit of or be distributable to the Corporation's Directors, officers, or any other private individual or entity, except in furtherance of the Corporation's 501(c)(3) Exempt Purposes, as payment of reasonable compensation for services rendered, or as payment or reimbursement of reasonable expenses necessary to carrying out the Corporation's 501(c)(3) Exempt Purposes.
  - (c) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
  - (d) To the extent that Section 508 and the provisions of Chapter 42 of the Code are applicable to the Corporation, the Corporation shall distribute such amounts from the Corporation's Funds for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code.
  - (e) To the extent that Section 508 and the provisions of Chapter 42 of the Code are applicable to the Corporation, the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code, (b) retain any excess business holdings as defined in Section 4943(c) of the Code, (c) make any investments in such manner as to subject it to tax under Section 4944 of the Code, or (d) make any taxable expenditures as defined in Section 4945(d) of the Code.
  - (f) The Corporation shall not have and is prohibited from exercising any sovereign enforcement or regulatory powers, the power to tax, and the power of eminent domain.
11. **Liquidation or Dissolution.** The Corporation may be liquidated or dissolved at any time. Subject to any Valid Restrictions imposed on contributions to the Corporation, upon the winding up and dissolution of the Corporation, all the Corporation's assets remaining after payment or adequate provision for the lawful debts and obligations of the Corporation and the expenses of its liquidation or dissolution shall be distributed (i) for such of the Corporation's 501(c)(3) Exempt Purposes (including by distribution to or for the use of one or more Qualified Charitable Organizations) and in such manner and proportions as are provided for in the plan of distribution of assets adopted by the Corporation, or (ii) to the federal government, or (iii) to a state or local government for a public purpose, or (iv) by the Circuit Court of the Judicial Circuit in which the principal office of the

Corporation is then located (or any court of competent jurisdiction if the principal office of the Corporation is then located outside the State of Florida), exclusively for such of the Corporation's 501(c)(3) Exempt Purposes or to such one or more Qualified Charitable Organizations having similar purposes as the court shall determine.

12. **Indemnification and Immunity.** The Corporation shall indemnify each Director and officer, including former Directors and officers, to the fullest extent allowed by law, including but not limited to Section 617.0831 of the Act. It is intended that the Corporation be an organization the officers and Directors of which are immune from civil liability to the extent provided under Section 617.0834 of the Act and other applicable laws.
13. **Amendment.** These Articles of Incorporation may be amended as provided by law at any time and from time to time in a manner and for a purpose that is consistent with the Corporation's qualification as a Qualified Charitable Organization, the provisions of federal law applicable to private foundations, and any Valid Restrictions imposed on contributions to the Corporation's Funds; provided, however, that no amendment hereto may remove these restrictions on amendment.

Dated at Naples, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2010.

The undersigned hereby declares, under the penalties of false statement, that the statements made in the foregoing Articles are true.

\_\_\_\_\_

By:  
\_\_\_\_\_, President

By:  
\_\_\_\_\_, Secretary



CITY OF NAPLES

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Workshop Meeting Date: November 15, 2010**

Agenda Item: 7	Prepared By: George Archibald, Traffic Engineer Date: November 1, 2010 Department: Streets and Stormwater
<b>SUBJECT:</b> Review current trolley franchise agreement fees to include the current annual administrative fee, a potential new application fee and the potential establishment of an operations fee.	
<b>BACKGROUND:</b> On September 1, 2010, Council Member Finlay proposed and City Council agreed to schedule this subject for discussion.  Currently, buses, trolleys, vans, limousines and taxis operate on public streets in the City based upon either county and/or state licenses. These transportation providers typically operate to and from a client destination and as a result require no approvals from the City of Naples. Where sightseeing tours are provided in the City and involve stops on City streets and/or travel on City streets that are subject of commercial vehicle restrictions, a non-exclusive right may be granted by the City in the form of a franchise agreement. Currently, there have been two such franchise agreements proposed before City Council. These two franchise agreements provide for an annual administrative fee but do not involve payment of application fees nor imposition of bus operating fees. In consideration of these type fees, administrative, application and operational, the following general information is provided:  <b>ADMINISTRATIVE FEE and APPLICATION FEE:</b> Typically, permitting fees are based on an analysis to assure that the City recoups the staff cost to monitor, process and/or renew multi-year permits or agreements. For sightseeing bus agreements, the City of Naples has historically established an annual administrative renewal fee of \$500.00. This fee has been in effect for many years. A sample computation of the fee based on a man-hour analysis is attached as Exhibit A. The sample administrative fee does not include an application fee. The application fee, much like land-use application fees, is typically applicable for initial quasi-judicial actions of City Council. In man-hour costs, such a fee is estimated to be in the \$1000 to \$2000 range pending process and man-hours. Either of these fees may be established and/or adjusted by action of City Council. Currently neither an administrative fee nor an application fee for bus operations is identified in the City Code.  <b>OPERATIONAL FEE:</b> An operational fee may be established by ordinance. Such a fee may be based on a local licensing process, frequency factors, hourly rates, bus impacts on infrastructure, occupancy and/or related operational controls. Such fees typically require a substantial organization to implement, monitor and enforce.  In considering bus franchise agreements within the City, the following are outlined for discussion: <ol style="list-style-type: none"> <li>1. Consider establishing a formal application fee for initial bus franchise agreements.</li> <li>2. Consider formalizing an annual administrative fee applicable to annual renewal of bus franchise agreements.</li> <li>3. Consider merits of operational fee for bus franchise operations.</li> </ol>	
Reviewed by Department Director Ron Wallace	Reviewed by Finance N/A
Reviewed by City Manager A. William Moss	
City Council Action:	

**EXHIBIT A**  
**SAMPLE ADMINISTRATIVE COST COMPUTATION**  
**FOR**  
**BUS-TROLLEY SIGHTSEEING AGREEMENTS**

July 2010

**SUBJECT:** The administrative cost of monitoring and processing the annual renewal of the Naples Trolley Sightseeing Bus Agreement has historically involved quarterly inspections of operations, a background check of complaints, a review of licenses, review of insurance and preparation of special conditions for final approval-authorization. This process has been substantially abbreviated over the years due to the record of little or no registered complaints as defined in the multi-year agreement. A man-hour calculation of this monitoring and review process is outlined below. It should be noted that this administrative cost does not include the cost of obtaining agreement approval before City Council; the process of gaining contract approval is typically addressed thru a 'permit application' process.

It should also be noted that the sightseeing bus operations in Naples provide a 'community service' by giving visitors an overview of the City's commercial and residential areas without adding to downtown traffic or using downtown parking. Hence, the administrative cost does not include either the cost of 'application' or a 'credit' for reduced congestion.

**MAN-HOUR/COST CALCULATION:** An overview of the administrative cost is as follows:

ACTIVITY	DIRECT LABOR (man-hours)		
	Admin Support \$25/Hr*	Staff \$35/Hr*	Senior Management \$50/Hr*
Annual monitoring of contract:	0	4	0
Review preliminary complaint files:	2	0	0
Review route & stop locations:	1	2	0
License, insurance & certifications:	2	0	2
Finalize special conditions of annual approval:	2	0	1
Subtotal-Man Hours:	7	6	3
Subtotal-Cost:	\$175	\$210	\$150

Total Cost: Use range of \$500-\$750

\*Denotes approximate unit rate for staff time to include overhead.

Provided for discussion is the text of a message from Council Member Finlay:

A very unique opportunity may be coming up for the city of Naples and this opportunity may not repeat for years. The next Council/Mayoral election could have two, rather than one, vacated Council seats (plus the Mayor). The vacated Council seats will be John Sorey (term limited and a run for Mayor) and Gary Price, assuming he runs for Mayor (of course). This would offer the chance, via a voter referendum, for the city to reduce Council from 7 seats down to 5 seats yet not adversely affect sitting Council members (Teresa Heitmann and Dee Sulick) should they choose to run again in 2012. The seats that would disappear would essentially be the vacated seats, one from each election cycle. To make such a change, voter approval, via an election, is required—a change of the city Charter. If this election cannot be piggy-backed on another election, it could be consummated via mail-in ballot, at less cost, and during the peak of season. What might be the reasons for offering the voters such a referendum.

1. Reduced costs, far more significant than any 5% salary give back.
2. Reduced demands on the City Manager and senior staff which could better be utilized assisting a new, standing Blue Ribbon Committee or productivity committee made up of 4-5, appointed, qualified citizens.
3. According to preliminary research, 260 Florida cities have a 5 member Council and only about 30 cities have 7 member Council. Some, 5 member Council cities, like Sarasota, Boca Raton and Coral Gables, have larger populations.
4. Collier County, with over 10 times the population has only 5 commissioners.
5. Because Naples elects Council members at-large, not by district, representation is not adversely affected.
6. To sell an issue to Council, only 5 rather than 7 Council members would need to be contacted.
7. Council meetings would likely be shorter, further reducing staff time.
8. Since city staff has been reduced by about 64 positions (from peak), should not Council consider offering the voters a choice to reduce as well.

Remember, the choice rests with the voters. Council can only decide to place the issue on the ballot. Let me know if you think this should go to the voters or not. Frankly, I have no idea if it would pass, but with the unique opportunity ahead, it may be a good time to find out.

Doug Finlay



**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Workshop Meeting Date: November 15, 2010**

Agenda Item:	Prepared By: Robin D. Singer, Director	
10	Date: October 28, 2010	Department: Planning
<b>SUBJECT:</b>		
Discussion on the next required Evaluation and Appraisal Report (EAR) and the steps required to prepare the report.		
<b>BACKGROUND:</b>		
<p>Pursuant to Florida State Statutes Section 163.3191, the City will be required to adopt and submit the next Evaluation and Appraisal Report (EAR) by February 1, 2012. The last EAR, due in early 2005, was adopted October 18, 2006. The process was delayed due to staffing issues at the time. The City conducted a visioning study after adoption of the report and the EAR based amendments were adopted September 16, 2009. By beginning preparation of the next EAR in early 2011, the City will be back on schedule. Many of the statutory changes since the last EAR have already been addressed therefore it is expected that few changes to the Comprehensive Plan will be required.</p> <p>The intent of the Evaluation and Appraisal Report is:</p> <p><i>"...to serve as a summary audit of the actions that a local government has undertaken and identify changes that it may need to make. The report should be based on the local government's analysis of major issues to further the community's goals consistent with statewide minimum standards. The report is not intended to require a comprehensive rewrite of the elements within the local plan, unless a local government chooses to do so."</i></p> <p>The Statutes suggest a scoping meeting be held one year prior to the scheduled adoption of the EAR to which various State agencies, the County and the public are invited to review and comment on the existing Comprehensive Plan. While not required, staff recommends that the City have both a scoping meeting and a subsequent Town Hall Meeting to determine the key issues to be addressed in the EAR. The key issues addressed in the last EAR included: Housing; Transportation; Water Management and Conservation; Redevelopment; Green Space, Beach and Recreation; Neighborhood Master Plans; River Park Neighborhood; and Effects of County Population Growth on the City. Staff also recommends that the City not conduct another visioning study at this time given that the last vision was adopted June 13, 2007.</p> <p>A proposed schedule for the EAR process is attached as is the EAR Flow Chart provided by the Department of Community Affairs. Staff requests that City Council review and comment on the schedule and recommend changes as necessary.</p>		
Reviewed by Department Director Robin D. Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

**Schedule for the Preparation and Adoption of the  
City of Naples 2012 Evaluation and Appraisal Report**

November, 2010	Interdepartmental meetings to discuss key issues
January 17, 2011	Joint City Council, Planning Advisory Board Workshop to discuss key issues
January 28, 2011	Scoping Meeting
February 25, 2011	Town Hall Meeting
March 2, 2011	City Council finalizes Letter of Understanding
August 10, 2011	Planning Advisory Board review of proposed EAR
September 21, 2011	City Council review of proposed EAR
September 23, 2011	Proposed EAR submitted to review agencies
October 24, 2011	Comments from review agencies received
January 18, 2012	Adoption of EAR
May 16, 2012	Planning Advisory Board review of EAR based amendments
June 20, 2012	First Reading of EAR based amendments
September 19, 2012	Second Reading and Adoption of EAR based amendments

