



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – November 17, 2010 – 8:28 a.m.

Mayor Barnett called the meeting to order and presided.

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

Also Present:

William Moss, City Manager
Robert Pritt, City Attorney
Jessica Rosenberg, Deputy City Clerk
Roger Reinke, Assistant City Manager
Vicki Smith, Technical Writing Specialist
Robin Singer, Planning Director
Erica Goodwin, Planner
Stephen McInerney, Fire Chief
Thomas Weschler, Chief of NPF
Leroy Sullivan
Lance Horten
Arthur Neumann

Michael Harper
Willis Jones
Jean Ann Lynch
Sue Smith
Karen Stone
Luca DiFalco
John Passidomo
Armando Bisceglia
Linda Droque

Media:

Jenna Buzzacco-Foerster, Naples Daily News
Other interested citizens and visitors

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

Reverend Michael Harper, Naples Community Hospital.

ANNOUNCEMENTS..... ITEM 3

A proclamation was read by Mayor Barnett designating November 18th as Baby Basics of Collier County Day in the City was accepted by Jean Ann Lynch. In addition, Karen Stone was presented a proclamation regarding the 16th Crayton Cove 60th Anniversary.

PUBLIC COMMENT ITEM 5

(8:36 a.m.) **Willis Jones, 801 River Point Drive, #201-A**, expressed concern with the recent disbanding of the Naples Airport Authority's (NAA's) Technical Advisory Committee (TAC). Aircraft noise continues to be an issue, he stated, and in his opinion, the NAA should have some oversight, such as that which the TAC had provided. He listed several early morning and late night incidences of flights over his home. Therefore, he said he supported the proposed extension of runway 5/23 as a purported noise reduction strategy. **TECO/Peoples Gas representatives, Leroy Sullivan, Manager of External Affairs, and Lance Horten, Senior Project Manager**, provided a brief update regarding the recent natural gas line rupture involving

the main line from Sarasota, south to Fiddler's Creek in Collier County. (It is noted for the record that photographs of maps utilized during this presentation are contained in the file for this meeting in the City Clerk's Office.) In addition, they reviewed the Public Service Commission's required emergency action plan and how it had been implemented, including mandatory notifications in the event of an ignition of gas and the protocol following such an occurrence. Once repairs were underway, all meters were turned off and locked in the impacted line along US 41 prior to re-gasing the lines; critical facilities were a priority, he said. In response to Council, it was explained that no redundant system had been installed since current demand made it cost prohibitive. Service has been restored to approximately 75% of the impacted area and almost 100% of the City has been addressed, although a few customers could not be reached to allow access into their homes/businesses to restore connections. Mayor Barnett stressed the need for a TECO contact person to provide information that can be conveyed to residents.

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

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

CONSENT AGENDA

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

October 18, 2010 Workshop and October 20, 2010 Regular Meeting minutes; as submitted.

SPECIAL EVENTS..... ITEM 6-b

1) Annual Ferrari Auto Show – Ferrari Club of Naples – Fifth Avenue South from Third Street South to Ninth Street South (US 41) – 02/12/11.

2) St. Patrick's Day Parade – Naples St. Patrick Foundation, Inc. – Tenth Avenue South to Broad Avenue South to Third Street South to Fifth Avenue South, and to Crayton Cove – 03/12/11.

..... ITEM 6-c

APPROVAL OF THE 2011 COMPREHENSIVE PLAN AMENDMENT SCHEDULE.

Public Comment: (8:59 a.m.) None.

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

END CONSENT AGENDA

RESOLUTION 10-12808..... ITEM 7

A RESOLUTION DETERMINING CONDITIONAL USE PETITION 10-CU9, PURSUANT TO SECTION 56-91 OF THE CODE OF ORDINANCES, TO ALLOW FOR THREE DETACHED GUEST UNITS, IN ADDITION TO ONE PERMITTED DETACHED GUEST UNIT, ACCESSORY TO A SINGLE FAMILY RESIDENCE LOCATED AT 4355 GORDON DRIVE, OWNED BY IRL F. ENGLEHARDT AND SUZANNE C. ENGLEHARDT, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:00 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Saad/visited the site and spoke with the petitioner; Finlay and Barnett/familiar with the site but no contact; Heitmann and Sorey/visited the site but no contact; Price/visited the site and spoke with Port Royal Property Owner Association (PRPOA) representative Donna Krall; and Sulick/visited the site and spoke with the PRPOA Architectural Review Committee Chair. Planner Erica Goodwin provided a brief review of staff's recommendation of denial as

contained in her memorandum dated October 29 (Attachment 1), although noting that the Planning Advisory Board (PAB) had recommended approval.

Attorney John Passidomo, agent for the petitioner, utilized an electronic presentation to review the petitioner's intent of adding a four-bedroom wing; the tropical architecture of their home is to be maintained by the use of open-air breezeways and living pavilions, he added. He then reviewed pertinent provisions within the Code of Ordinances and introduced a model of the home as it would appear once completed. Mr. Passidomo also noted letters recommending approval from the PRPOA, as well as its Architectural Review Committee. (A printed copy of the electronic presentation, photographs of the model, and all other documentation referenced throughout this item, are contained in the file for this meeting in the City Clerk's Office.) In closing, he pointed out that the PAB had found no precedent for requiring a deed restriction allowing a single family residence only and prohibiting rental of the units and had therefore not supported this staff recommendation.

Council Member Heitmann commended the design of the home but questioned the reasoning behind the petitioner's opposition to the aforementioned deed restriction. Attorney Passidomo asserted that the deed restriction would place a cloud on the title and such a restriction is already in the Code of Ordinances. City Attorney Pritt agreed, adding that the City neither requires nor enforces deed restrictions. He then recommended language for Section 3 of the resolution as reflected in the motion below.

Council Member Price said that he agreed with the staff report, especially with regard to not having met standards 8 and 9 under the conditional use criteria. He further asserted that the proposal creates the sense of a multi-family complex as well as not being compatible with adjacent properties; therefore he said he would not support approval.

Planner Goodwin clarified that the determination that the proposal constitutes four, separate guest units is due to the fact that none can be accessed via the main house, nor do they communicate directly with one another. Only one such unit can be allowed without a conditional use permit, she also noted. Council Member Sulick however maintained that this particular design does however reflect the ambience of the neighborhood and the structure had been planned to scale with the landscaping. Furthermore, with the size of the combined lots (approximately 57,000 square feet), a home of monolithic proportions could have been built without any consideration by Council, she added. Council Member Saad said that he, too, supported the petition, questioning the Code's terminology with regard to functionally detached, pointing out that the renderings convey the appearance of the guest wing actually being attached to the main structure

Attorney Passidomo agreed to the language proposed by City Attorney Pritt, adding that it merely reiterates what is already stated in the Code.

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

MOTION by Sorey to APPROVE RESOLUTION 10-12808 amended as follows: Section 3 2: “~~A deed restriction...requiring that the~~ The use of property shall be for single family residence only and that the units are not to be rented on short or long term basis.”. This motion was seconded by Saad and carried 6-1, all members present and voting (Saad-yes, Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Finlay-yes, Barnett-yes).

It is noted for the record that Items 8-a and 8-b were read and considered concurrently.

**RESOLUTION 10-12809 (motion failed / see below) ITEM 8-a
A RESOLUTION DETERMINING VARIANCE PETITION 10-V11 FROM SECTIONS 58-1134(c)(4) AND 56-127(d)(2) OF THE CODE OF ORDINANCES, CITY OF NAPLES, IN ORDER TO ALLOW A RESTAURANT TO HAVE TABLES AND CHAIRS SEPARATED FROM THE STOREFRONT AND BE LOCATED ON PUBLIC PROPERTY; AND DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 10-RIS15 PURSUANT TO SECTIONS 56-151(7) AND 56-155 OF THE CODE OF ORDINANCES TO ALLOW THE EXPANSION OF A COMMERCIAL USE WITH AN EXTENDED HOURS WAIVER WITHIN 300 FEET OF RESIDENTIAL UNITS FOR ROSSOPOMODORO NAPLES LOCATED AT 800 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 10-12810 (Denied / see motion below)..... ITEM 8-b
A RESOLUTION DETERMINING OUTDOOR DINING PETITION 10-ODPB4 PURSUANT TO SECTION 56-127(c)(1)a. OF THE CODE OF ORDINANCES, CITY OF NAPLES, IN ORDER TO ALLOW 462 SQUARE FEET OF OUTDOOR DINING AREA FOR ROSSOPOMODORO NAPLES LOCATED AT 800 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

Titles read by City Attorney Robert Pritt (9:44 a.m.) This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Saad and Heitmann/familiar with the site but no contact; Finlay, Barnett, Sulick, and Sorey/visited the site but no contact; and Price/visited the site and met with the manager and property owner. Planning Director Robin Singer briefly reviewed her memorandum dated October 15 (Attachment 2) which provides details of the proposed project, noting that staff recommended approval subject to six conditions, although the Planning Advisory Board (PAB) did not support conditions two and three; namely, removal of the four existing outdoor dining tables adjacent to the façade (approved administratively) and the relocation of two coconut palms, one at each end of the proposed dining area (see proposed site plan II / 2.2 appended hereto as Attachment 3). The trees present a safety hazard for patrons from dropping coconuts or palm fronds, she added, and the tables would constrict pedestrian circulation at a busy intersection (Eighth Street and Fifth Avenue South) even though the five-foot clear pedestrian passage is being met. Ms. Singer reported that the petitioner agreed to all conditions except the two aforementioned also opposed by the PAB.

Landscape Architect Arthur Neumann, agent for the petitioner, utilized an electronic presentation to summarize the proposed outdoor dining area (a printed copy of which is contained in the file for this meeting in the City Clerk's Office). The two concrete links between the sidewalk and the street, and the landscaping in between, would be replaced with pavers. A nearby bench located along the sidewalk would remain and additional landscaping would be placed around the perimeter of the dining area, he added. Mr. Neumann also maintained that the tables currently adjacent to the façade of the building extend just 2.5 feet, which is less than the architectural columns. He then displayed photographs of other establishments within the same block which have similar outdoor dining configurations as that under consideration, with coconut palms remaining. He said that he had been told that the trees are routinely trimmed by the City and pointed out that the trees are a key element in the design; an additional 10 feet on either end of the outdoor dining area could have been realized with their removal. Mr. Neumann also compared the 4- to 5-feet of pedestrian clearance elsewhere with the 6-foot clearance proposed by the petitioner; an additional 3 feet, 3 inches is to be provided in the outdoor service area, he added. In conclusion, Mr. Neumann took issue with the proposed requirement for an

escrow deposit, explaining that the petitioner would be more than willing to fund the restoration of the subject right-of-way should the outdoor dining be abandoned or the permit revoked; he also said that no other outdoor dining permits had contained such a condition.

While pointing out that code enforcement issues discussed earlier in the week could have some bearing upon the subject petitions, Vice Mayor Sorey said that the deposit should be required due to the fact that the restaurant could discontinue business and the property change ownership. With regard to the coconut palms, he questioned whether the petitioner would be willing to provide a hold harmless agreement to the City with regard to liability, as well as maintain insurance coverage; Armando Bisceglia, the petitioner, agreed to do so, adding that this had been previously discussed with the property owner.

Director Singer confirmed for Council Member Sulick that other outdoor dining permits had been approved allowing improvements in rights-of-way, including those reflected in the petitioner's presentation. She nevertheless emphasized that despite improvements, one restaurant had failed to open with no funds to restore the public right-of-way. Although receiving assurance that only landscaping and no wall was planned along the dining area adjacent to the street, Mrs. Sulick said that she, like Vice Mayor Sorey, would be hesitant to support such encroachment in light of code enforcement issues recently discussed.

Council Member Finlay stated that while he fully supports outdoor dining, he continued to have concern with unintended long-range consequences from use of rights-of-way for this purpose. Ms. Singer further clarified that Planning Consultant Andres Duany had indeed supported outdoor dining in rights-of-way along Fifth Avenue South but had neither addressed nor anticipated replacing landscaping along with that use. Council discussion as to its future designs for outdoor dining should occur prior to further approvals, he said, expressing the view that the current proposal appeared too intense. Council Member Saad agreed that all facets of outdoor dining should be addressed even though he was inclined to support the current proposal which provides adequate landscaping and pedestrian clearance.

Council Member Price however pointed out that the dining appears to be exceptionally close to the roadway and noted that pedestrian traffic is quite heavy, especially due to the nearby parking facility. Council Members Heitmann and Sulick agreed, Mrs. Sulick adding a concern with regard to wait staff crossing the sidewalk between the restaurant and the outdoor dining area. Should the proposed BID (Business Improvement District) be approved, perhaps its manager will have recommendations in this regard, Mrs. Sulick also noted.

Public Comment: (10:15 a.m.) **Sue Smith, 11th Avenue South**, stated that as a Fifth Avenue South property owner, she had concerns as the area proposed for the outdoor dining is congested, causing impediment to retail patrons. In addition, Mrs. Smith took issue with the above reference to a BID and the possible imposition of another tax upon Fifth Avenue South properties, asserting that it is not the answer to the area's needs.

Mr. Neumann explained that his plan had however been developed following extensive research. It meets or exceeds all applicable federal standards, he said, pointing out that the issues cited with regard to other outdoor dining areas had been rectified in the current proposal. He also stressed that the tables are located four feet, six inches from the street which constitutes a safe and attractive setting, he concluded.

City Manager William Moss questioned the impacts of construction activities should the permit be approved, and Petitioner Bisceglia assured Council that a contractor had been retained and

the project would be completely installed by December 1. Following additional discussion, the petitioner agreed to the conditions set forth in the motion reflected below.

MOTION by Sorey to APPROVE RESOLUTION 10-12809 amending as follows: Section 3: delete #3 and renumber subsequent conditions; (#4) #3: “The tables and chairs...the sidewalk except the tables at each end not parallel to the sidewalk.”; and adding new #6: “The construction plan and schedule are subject to City Manager approval and shall not interfere with traffic flow on street.”; and #7: “The City reserves the right to revoke permit or reconfigure outdoor dining for safety and/or aesthetics purposes.” This motion was seconded by Saad and FAILED 3-4 (Price-no, Sorey-yes, Sulick-no, Saad-yes, Finlay-no, Heitmann-no, Barnett-yes).

During the above vote, those voting negatively had indicated their concern with the current significant amount of activity at the intersection of the restaurant's location.

Recess: 10:38 a.m. to 10:51 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened. It is also noted that action on Item 8-b occurred following this recess.

City Attorney Pritt noted that action was still pending on Item 8-b (see above) and the motion reflected below was proffered.

MOTION by Sorey to DENY RESOLUTION 10-12810 as submitted, based upon the lack of approval of Resolution 10-12809 (Item 8-a). This motion was seconded by Price and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

**RESOLUTION 10-12811 ITEM 9
A RESOLUTION DETERMINING OUTDOOR LIVE ENTERTAINMENT PETITION 10-LE8 AND RESIDENTIAL IMPACT STATEMENT PETITION 10-RIS17 FOR BICE RESTAURANT LOCATED AT 300 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:52 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Saad, Price, Barnett and Heitmann/familiar with the site but no contact; Finlay and Sulick/visited the site but no contact; and Sorey/visited the site and received numerous pieces of correspondence regarding the petition. Planner Erica Goodwin provided a brief overview as contained in her memorandum dated October 29 (Attachment 4), pointing out that staff recommended approval as long as the entertainment is not amplified.

Luca DiFalco, agent for the petitioner, was accompanied by Linda Drogue, M-P Realty, LLC, owner of the property. Mr. DiFalco stressed that only soft jazz would be featured and as a resident across from the establishment he, too, would not support a proposal that would introduce loud noise either. In response to Vice Mayor Sorey who had questioned the placement of the musicians, Mr. DiFalco clarified that due to lack of space along Fifth Avenue South, the Third Street area had been chosen; the recent addition of an awning on the Third Street façade had also made that location more appropriate, he added. He also confirmed for Council Member Price that he would agree to acoustic rather than amplified instruments.

Public Comment: (10:59 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 10-12811 as submitted; seconded by Saad and carried 5-2, all members present and voting (Finlay-no, Heitmann-yes, Saad-yes, Sorey-yes, Price-yes, Sulick-no, Barnett-yes).

ORDINANCE (First Reading)..... ITEM 10
AN ORDINANCE RELATING TO CONDITIONAL USES; ADDING SUBSECTION (d)(10) TO SECTION 46-34, STANDARDS FOR APPROVAL OF CONDITIONAL USES; ADDING SUBSECTION (c)(6) TO SECTION 46-35, SITE PLAN; STANDARDS FOR APPROVAL FOR THE EXPANSION OF A NON-CONFORMITY; AND ADDING SUBSECTION (c)(2)a.9. TO SECTION 46-37, VARIANCE CRITERIA, FOR THE PURPOSE OF ADDING STANDARDS AND CRITERIA RELATED TO THE PRESERVATION OF RESOURCES AND SEPARATION OF USES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:02 a.m.). Planning Director Robin Singer reviewed the amendments effected pursuant to Council's direction to clarify their consistency with variance criteria promoting the preservation of historic resources. New construction should be not only consistent in character and scale to the surrounding neighborhood, but maintain the architectural character of the original building in keeping with the period in which it was built. Any pending permits would then be reviewed for compliance with a final enactment, she said; noting that two such applications had been received the previous week. Staff and the Planning Advisory Board (PAB) recommended approval, Ms. Singer indicated.

Public Comment: (11:06 a.m.) **Sue Smith, 11th Avenue South**, questioned the impacts of the ordinance on structures like her home which lies within the historic district of Old Naples. Director Singer assured her that it addresses the entire City and further clarified that the intent is to provide an incentive for those requesting a variance wherein approval would be based on retaining historical character; the ordinance contains additional criteria to allow this approval as well as avoiding implementation of regulations on historical structures, she added.

MOTION by Saad to APPROVE THIS ORDINANCE at First Reading as submitted; seconded by Price and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

ORDINANCE 10-12812..... ITEM 11
AN ORDINANCE RELATING TO THE REORGANIZATION OF THE DEPARTMENT OF POLICE AND FIRE; AMENDING DIVISION 5, DEPARTMENT OF POLICE AND FIRE, OF ARTICLE IV, DEPARTMENTS, OF CHAPTER 2, ADMINISTRATION; AMENDING SECTIONS 2-202(b), AUTHORITY TO CREATE, CHANGE, AND ASSIGN ADDITIONAL DUTIES; GRAPHIC TABLE OF ORGANIZATION; ADDING A NEW DIVISION 11, DEPARTMENT OF FIRE-RESCUE, TO ARTICLE IV, DEPARTMENTS, OF CHAPTER 2, ADMINISTRATION; AMENDING SECTIONS 2-451, POLICE REVIEW BOARD CREATED; COMPOSITION; 2-452, JURISDICTION, POWERS AND DUTIES; 2-633, FEE FOR NONCRIMINAL FINGERPRINTS; 20-31, DEFINITIONS; 20-32, CONSENT REQUIRED PRIOR TO INSTALLATION; 20-33, LIST OF PERSONS AUTHORIZED TO DEACTIVATE SYSTEM; 20-34, FEES FOR FALSE ALARMS; SUBSECTION (a) OF SECTION 24-51, ESTABLISHED, SUPERVISION; 24-53, REPORTS; 24-54, INSPECTORS; 24-82, MODIFICATIONS OF FIRE PREVENTION CODE; 24-83, APPEALS; 24-86, FIRE WATCH FOR SPECIAL EVENTS; 24-254, DEFINITIONS; SUBSECTIONS (b) AND (c) OF SECTION 24-256, COLLECTION AND DISBURSEMENT OF FUNDS; 29-191, DEFINITIONS; 29-271, DEFINITIONS; 30-65, ENFORCEMENT; SECTION 36-1, PARADES AND PROCESSIONS; SECTION 36-66, IMPOUNDMENT; SUBSECTION (b) OF SECTION 36-101, PARKING ON CERTAIN STREETS AND PLACES BETWEEN 11:00 P.M. AND 5:00 A.M.; SUBSECTION (b) OF SECTION 36-102, CERTAIN PARTS OF GULF SHORE BOULEVARD; 56-159, ENFORCEMENT OF THE CODE OF ORDINANCES, CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:07 a.m.).

Public Comment: (11:09 a.m.) None.

MOTION by Barnett to ADOPT ORDINANCE 10-12812 as submitted; seconded by Sorey and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

CLERK'S TRACKING #10-00038 ITEM 12
AWARDING A CONTRACT FOR ACTUARIAL SERVICES TO EVALUATE THE CITY'S PENSIONS: \VENDOR: GABRIEL, ROEDER, SMITH & COMPANY, FT. LAUDERDALE, FLORIDA: \ COST: NOT TO EXCEED \$77,500 \ FUNDING: NON-DEPARTMENTAL – PROFESSIONAL SERVICES. (11:10 a.m.) Assistant City Manager Roger Reinke briefly reviewed his memorandum dated November 8 (Attachment 5) which explained the recommendation to hire an actuarial firm to review and evaluate potential alternatives to the City's current retirement benefits. This review would include projection of costs 10, 15, and 20 years into the future. While \$100,000 had been budgeted for this purpose, the subject contract is for a not-to-exceed amount of \$77,500, he said, although the final cost is dependant upon the number of alternatives to be analyzed, and could very likely be somewhat less.

Council Member Price, also Chair of the General Pension Board, pointed out that the City's current actuarial firm, Foster & Foster, had performed much of the work needed for the review and that he supported obtaining a third party's opinion. Furthermore, he said that he was confident that the scope of work to be performed would move forward from that already provided by Foster & Foster.

Mr. Reinke added that the determination of the various alternatives to be analyzed would be made once the contract is finalized. The intent is to consult with the actuary and the City's pension attorney, with input sought from knowledgeable residents as previously suggested by Council Member Price. In response to Council Member Saad, Mr. Reinke listed possible alternative types of pension plans such as defined contribution, the FRS (Florida Retirement System), or alteration of the current plan multiplier or retirement age; however, the Council could also decide to simply continue the current plan without change. The alternatives should be reviewed for reasonableness and appropriateness prior to undergoing the projection analysis, he added, and therefore should not be included within the scope of work for the subject contract.

Public Comment: (11:18 a.m.) None.

MOTION by Sorey to APPROVE THIS ITEM as submitted; seconded by Finlay and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

PUBLIC COMMENT
(11:18 a.m.) None.

CORRESPONDENCE AND COMMUNICATIONS.....

(11:18 a.m.) Vice Mayor Sorey thanked staff for providing the information regarding the City of Coral Gables BID (Business Improvement District). He also recommended that staff consider the coconut palms along Fifth Avenue South for possible removal due to safety issues created with outdoor dining (see Item 8 above). In addition, he proposed a workshop discussion on all facets of outdoor dining, referencing that week's discussion of enforcing the five-foot clear pedestrian pathway and questioning the lack of a provision for permit revocation since permits remain in force unless an establishment changes ownership. Vice Mayor Sorey also requested that the discussion include consideration of a renewal clause. Council agreed that a workshop should be scheduled with restaurateurs and retail shop owners being invited and that the City Attorney should review and offer recommendations regarding pertinent legislation.

City Council Regular Meeting – November 17, 2010 – 8:28 a.m.

Council Member Price thanked all involved in the success of the recent City Fest activities and asked that those less fortunate be remembered during the coming holiday season. In response to Council Member Finlay, Vice Mayor Sorey explained that the 2011 Doctors Pass jetty repair should proceed on time and that the Collier County Coastal Advisory Committee (CAC) was bidding this project in conjunction with the Wiggins Pass, Doctors Pass and possibly Seagate renourishment in an effort to achieve cost savings; the projects are being bid separately also, he added. The erosion of the beach south of Doctors Pass was then briefly discussed and Vice Mayor Sorey noted that the most important element of CAC future projects is an engineering study for a solution to this issue by constructing an artificial reef to absorb wave energy generated during onshore north winds. Mr. Finlay then requested a workshop discussion regarding possible inequity of stormwater fees between multi-family (condominiums and cooperatives) and commercial properties (consensus followed). Mayor Barnett then read into the record a letter from Raymond Bernier thanking various staff members for their timely location of a waste water problem impacting his property (a copy of the letter is contained in the file for this meeting in the City Clerk's Office).

Council then wished all happy holidays.

ADJOURN
11:31 a.m.

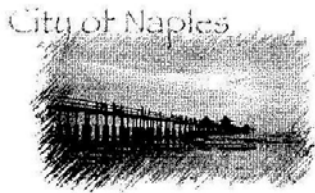
Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 12/15/10

**NAPLES CITY COUNCIL AGENDA MEMORANDUM**Regular Meeting Date: **November 17, 2010**

Agenda Section:	Regular	Prepared By: Erica J. Goodwin, Planner II
Agenda Item:	7	Date: October 29, 2010 Department: Planning
		Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
SUBJECT:		
Resolution determining conditional use approval to allow for three guest units, in addition to the one permitted guest unit, accessory to a single family residence located at 4355 Gordon Drive.		
SUMMARY:		
City Council is asked to consider a resolution determining Conditional Use Petition 10-CU9, pursuant to Section 56-91 of the Code of Ordinances, to allow for three detached guest units, in addition to one permitted detached guest unit, to be constructed as accessory units to a new single family residence in the R1-15A, Residence district, on property located at 4355 Gordon Drive. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.		
BACKGROUND:		
<p>The petitioner is seeking conditional use approval to allow for the construction of three detached guest units, in addition to one permitted detached guest unit, accessory to a proposed single family residence to be constructed at 4355 Gordon Drive. This property is located in the R1-15A, single family residence district. Section 58-113(1) of the Code of Ordinances provides for guest units in the R1-15A district as a conditional use when such dwelling units are compliant with the guest unit regulations set forth in Section 56-91 of the Code of Ordinances. Section 56-91(b)(2) provides that on lots 30,000 square feet and greater, one guest unit may be constructed as a permitted accessory structure. Additional guest units may be permitted as a conditional use and must be approved by City Council through the conditional use process provided in section 46-34.</p> <p>Section 56-91(a) of the Code defines guest unit as "an accessory dwelling unit on the same property as a permitted primary residence or any assemblage of rooms functionally detached from the primary residence." The design and lack of functional connection between the units and between the units and the main house distinguish them as four distinct detached guest units. Therefore, the petitioner is allowed one detached guest unit by right and is required to obtain conditional use approval for the additional three detached guest units.</p> <p>Staff is recommending denial of this petition, finding that it fails to meet four of the conditional use criteria outlined in the PAB report. The design of the three proposed detached guest units, in combination with the one permitted guest unit and their lack of functional connection to the main house results in a project that is characteristic of multi-family development and is inconsistent with the adjacent single family residential neighborhood. This more intense use of the property could negatively impact the surrounding properties and the single family character of the neighborhood.</p>		
File Reference: 10-CU9		
Owner: Irl F. Engelhardt and Suzanne C. Engelhardt		
Petitioner: John M. Passidomo, Cheffy Passidomo		
Location: 4355 Gordon Drive		
Zoning: R1-15A, Residence District		



NAPLES CITY COUNCIL AGENDA MEMORANDUM

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Agenda Item:

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BACKGROUND:

On October 13, 2010, the Planning Advisory Board voted 7 to 0 to recommend approval of Conditional Use Petition 10-CU9 to City Council. The PAB disagreed with Staff's recommendation, finding that the design of the house fit will within the neighborhood and was not likely to be utilized as a multi-family development.

PUBLIC NOTICE/COMMENT:

On August 26, 2010 a total of 30 letters were mailed to all property owners located within 500 feet of the subject property. As of the date of this report, staff has received a letter of support from the Port Royal Property Owners' Association, as well as a letter from David Huber, neighboring resident. Staff also received a letter from Mr. and Mrs. Engelhardt at the PAB meeting. Copies of these letters are attached.

RECOMMENDED ACTION:

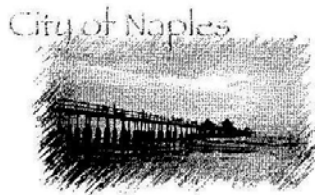
Deny a Resolution approving Conditional Use Petition 10-CU9, pursuant to Section 56-91 of the Code of Ordinances, to allow for three guest units, in addition to the one permitted guest unit, accessory to a single family residence located at 4355 Gordon Drive.

Reviewed by Department Director
Robin Singer

Reviewed by Finance
N/A

Reviewed by City Manager
A. William Moss

City Council Action:



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: November 17, 2010

Agenda Section: Regular	Prepared By: Robin D. Singer, Director Date: October 15, 2010 Department: Planning
Agenda Item: 8 (a) and (b)	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>

SUBJECT:

(a) Resolution determining Variance 10-V11 to allow a restaurant to have tables and chairs separated from the storefront and Residential Impact Statement 10-RIS15 to allow the expansion of a commercial use with an extended hours waiver; and

(b) Resolution determining Outdoor Dining Permit 10-ODPB4 to allow 462 square feet of outdoor dining area in the right-of-way for the Rossopomodoro Naples Restaurant located at 800 Fifth Avenue South.

SUMMARY:

City Council is asked to consider the following as they relate to Rossopomodoro Naples Restaurant located at 800 Fifth Avenue South:

(a) Resolution determining Variance 10-V11 from Sections 58-1134(c)(4) and 56-127(d)(2) of the Code of Ordinances, in order to allow a restaurant to have tables and chairs separated from the storefront and be located on public property and Residential Impact Statement 10-RIS15 pursuant to Sections 56-151(7) and 56-155 of the Code of Ordinances to allow the expansion of a commercial use with an extended hours waiver within 300 feet of residential units; and

(b) Resolution determining Outdoor Dining Permit 10-ODPB4 pursuant to Section 56-127(c)(1)a to allow 462 square feet of outdoor dining area in the public right-of-way.

In that these are Quasi-Judicial matters, disclosures and the swearing in of those giving testimony is required.

BACKGROUND:

The petitioner wishes to remove and relocate landscaping within the public right-of-way on the north side of the existing sidewalk in front of the restaurant along Fifth Avenue South and place outdoor dining in that area. A variance is required from Sections 58-1134(c)(4) and 56-127(d)(2) to allow dining away from the storefront and within the right-of-way. The purpose of this requirement is to prevent obstructions in the right-of-way due to the patrons or service staff crossing the sidewalk. Similarly situated outdoor dining has been permitted along Fifth Avenue South including several on both sides of the street in this same block. The petitioner was granted administrative approval to allow seating adjacent to the storefront.

There are a number of concerns expressed by staff regarding improvements in the public right-of-way. The following conditions are recommended to address these concerns:

1. The meter box must be carefully matched to the paver area and maintained properly in order to insure that it will be accessible but safe.
2. The coconut palms shall be removed and the two existing Vietchia palms shall be relocated to the boundaries of the dining area.
3. The tables on the sidewalk adjacent to the storefront shall be removed.
4. The tables and chairs shall be oriented so that the chairs pull out parallel to the sidewalk and

City of Naples

**NAPLES CITY COUNCIL AGENDA MEMORANDUM**Regular Meeting Date: November 17, 2010

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Agenda Item:

8 (a) and (b)

BACKGROUND (cont.):

not into the sidewalk.

5. No cost shall be incurred by the City for the reconstruction of the right-of-way and that any reconfiguration of the right-of-way shall be approved by the City as a right-of-way permit, to include paving treatment, landscape, irrigation, utilities, electrical components, etc.
6. The petitioner shall deposit with the City sufficient funds to restore the area should the outdoor dining be abandoned or the permit be revoked.

The petitioner's agent indicated agreement with all conditions except 2 and 3. At the October 13, 2010 meeting of the Planning Advisory Board the Board recommended by a vote of 7 to 0 to recommend approval subject to conditions 1, 4, 5 and 6. The petitioner has shown compliance with these conditions depicted in the second drawing with the rectangular tables. However, staff still recommends that conditions 2 and 3 be included if the petition is approved. The coconut palms present a safety issue and the tables next to the storefront, while still allowing for the minimum sidewalk clearance, will constrict pedestrian circulation at that corner.

City Council approval of the Outdoor Dining Permit is required when the proposed dining area is on public property and exceeds 100 square feet. This petition requires Council approval only and is not heard by the PAB. The petitioner indicates in response to criteria 'h' that they will bring the tables and chairs inside during the off season. Staff has confirmed that the petitioner meant that they intend to comply with the requirements that the tables and chairs will be brought in when closed but that they do not intend to close for any period of time. Staff has found the application consistent with the required standards and criteria as outlined in the attached memo and recommends approval.

File Reference: 10-V11, 10-RIS15 and 10-ODPB4**Owner:** Westbury Naples, Inc.**Petitioner:** Rossopomodoro Naples**Location:** 800 Fifth Avenue South**Zoning:** C-1-A and Fifth Avenue South Special Overlay District**RECOMMENDED ACTION:**

City Council approve the following resolutions as they relate to the Rossopomodoro Naples Restaurant located at 800 Fifth Avenue South:

(a) Resolution determining Variance 10-V11 from Sections 58-1134(c)(4) and 56-127(d)(2) of the Code of Ordinances, in order to allow a restaurant to have tables and chairs separated from the storefront and be located on public property and Residential Impact Statement 10-RIS15 pursuant to Sections 56-151(7) and 56-155 of the Code of Ordinances to allow the expansion of a commercial use with an extended hours waiver within 300 feet of residential units; and

(b) Resolution determining Outdoor Dining Permit 10-ODPB4 to allow 462 square feet of outdoor dining area in the right-of-way subject to the six conditions.

Reviewed by Department Director
Robin D. SingerReviewed by Finance
N/AReviewed by City Manager
A. William Moss

City Council Action:



2-8 DATE: SEPTEMBER 14, 1993 DRAWN BY: CHECKED BY: REVISION DATE:	ROSSOPOMODORO 800 5th Avenue South Naples, Florida 34102	 SCALE: 1" = 8'	Arthur J. Neumann ASLA PA LANDSCAPE ARCHITECT CONSTRUCTION MANAGEMENT 400 VICKI ROAD IN FLORIDA BLDG C-101 BOCA RATON FL 33433 LA FLORES 3056 33070	2000-10-10 2000-10-10 2000-10-10
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City of Naples

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: November 17, 2010**

Agenda Section:	Prepared By: Erica J. Goodwin, Planner II	
Regular	Date: October 29, 2010	Department: Planning
Agenda Item:	Legislative <input type="checkbox"/>	Quasi-Judicial <input checked="" type="checkbox"/>
9		
SUBJECT:		
Resolution determining Outdoor Live Entertainment Petition 10-LE8 and Residential Impact Statement Petition 10-RIS17 for BiCE Restaurant located at 300 5 th Avenue South.		
SUMMARY:		
City Council is asked to consider a resolution determining Outdoor Live Entertainment Petition 10-LE8 and Residential Impact Statement Petition 10-RIS17 for BiCE Restaurant located at 300 5 th Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.		
BACKGROUND:		
BiCE Restaurant is an Italian restaurant located at 300 5 th Avenue South, within the 5 th Avenue South Overlay District. BiCE wishes to offer amplified outdoor live entertainment with a maximum of two (2) amplified jazz musicians to perform on Mondays, Tuesdays and Thursdays from 4:00 p.m. to 6:00 p.m. during their happy hour. The performers would be located on the outdoor patio on 3 rd Street South with the performers and speakers facing the restaurant. Currently, BiCE Restaurant has a live entertainment permit which allows a maximum of 2 amplified performers located indoors performing from 5:00 pm to 11:30 pm nightly.		
Staff is recommending approval of this Live Entertainment request; however, due to the proximity to residential development, Staff recommends that the music be acoustic (non-amplified). The Police Department has reviewed the request and has expressed no opposition. The fire department has also reviewed the request and has no objections.		
File Reference: 10-LE8 and 10-RIS17		
Petitioner: BiCE Restaurant		
Agent: Luca DiFalco		
Location: 300 5 th Avenue South		
Zoning: PD, Planned Development		
PUBLIC NOTICE:		
A total of 195 public notices were mailed out October 28, 2010. As of November 10, 2010, staff has received four letters of opposition to BiCE Restaurant's request for outdoor live entertainment.		
RECOMMENDED ACTION:		
Approve Live Entertainment Petition 10-LE8 and Residential Impact Statement Petition 10-RIS17 for BiCE Restaurant located at 300 5 th Avenue South, subject to the following conditions, also listed in Section 3 of the Resolution. Allow for a maximum of 2 non-amplified performers located outdoors on the patio facing the restaurant on Mondays, Tuesdays and Thursdays from 4:00 pm to 6:00 pm.		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

City of Naples

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: November 17, 2010**

Agenda Section:	Prepared By: Roger Reinke, Assistant City Manager	
Regular	Date: November 8, 2010	Department: City Manager
Agenda Item:	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
12		

SUBJECT:
Award of Professional Services Agreement to Gabriel, Roeder, Smith & Company for actuarial services relating to the City's pension plans.

SUMMARY:
City Council is asked to consider awarding a Professional Services Agreement in an amount not to exceed \$77,500 to Gabriel, Roeder, Smith & Company for actuarial services relating to the City's pension plans.

BACKGROUND:
City Council recently requested an evaluation of the City's pension plans in an effort to reduce costs. In response to that request, staff prepared a Request for Qualifications (RFQ) for Actuarial Pension Study Services. The RFQ was publicly advertised in the Naples Daily News on August 23, 2010. Fifteen HTE vendors were mailed notices and DemandStar broadcast to 148 potential respondents and 11 plan holders.

The City received letters of interest and statements of qualifications from nine actuarial firms. A Selection Committee, appointed by the City Manager and consisting of: Roger Reinke, Assistant City Manager; Ann Marie Ricardi, Finance Director; Denise Perez, Human Resources Director; Tony Vastola, Deputy Director Police Department; and Ben Copeland, Budget Director Utilities; reviewed submittals during a publicly advertised meeting on October 5, 2010.

Foster & Foster, the current Actuary for the City of Naples Pension Boards, submitted a proposal. The RFQ requested an independent analysis of the latest actuarial reports and independent projections of the City's anticipated pension contributions for future years. The Committee did not rate Foster & Foster because they were not considered to be an independent third party.

The top three firms in order of preference were ranked by the Selection Committee as follows:

1. Gabriel, Roeder, Smith & Company
2. Bolton Partners, Inc.
3. Cheiron, Inc.

The committee requested that the references and qualifications of the top two firms be verified. On October 14, 2010, the Committee reconvened, reviewed the references and unanimously confirmed Gabriel, Roeder, Smith & Company as the top ranked firm.

FUNDING SOURCE:
On October 6, 2010, City Council approved Resolution 10-12772 appropriating \$100,000 for the Pension Study. Funds are available in Non-Departmental – Professional Services – Account 001-1480-519.3101. Gabriel, Roeder, Smith & Company has tentatively agreed to perform the required services and accept payment on a time and reimbursement cost basis, with total compensation not to exceed \$77,500.



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: November 17, 2010

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Agenda Item:

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RECOMMENDED ACTION:

Award a Professional Services Agreement in an amount not to exceed \$77,500 to Gabriel, Roeder, Smith & Company for actuarial services to evaluate alternatives to the current retirement benefits offered by the City, provide a cost/benefit analysis of these alternatives, and provide projections of the future costs of these alternatives.

Reviewed by Department Director
Roger Reinke, Assistant City Manager

Reviewed by Finance
Ann Marie Ricardi

Reviewed by City Manager
A. William Moss

City Council Action: