



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – March 2, 2011 – 8:30 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
Tara Norman, City Clerk
Roger Reinke, Assistant City Manager
Vicki Smith, Technical Writing Specialist
Adam Benigni, Planner
Erica Goodwin, Planner
Jessica Rosenberg, Deputy City Clerk
Robin Singer, Planning Director
Thomas Weschler, Police Chief
Buddy Bonollo, Police Officer
Josh Holcomb, Police Officer
Lori Parsons, Risk Manager
Denise Perez, Human Resources Director
Brandi MacQuarrie
Michael O'Regan
Leonard Howard

Fishel Zaklos
Brett Cohan
Jim Boula
Alan Parker
Larry Schultz
Don Wingard
Peter Thomas
Barb Jones
Madonna Crane
Anne Raker
Mary Deppe
Eleanor Richardson
Steve Briggs

Media:

Jenna Buzzacco-Foerster, Naples Daily News

Other interested citizens and visitors

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

Rabbi Fishel Zaklos, Chabad Jewish Center of Naples.

ANNOUNCEMENTS..... ITEM 3

None.

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

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 5
(8:32 a.m.) **Leonard Howard, President of West Shores of Naples Cay, and Brett Cohan, Naples Cay property manager**, both expressed support of condominium stormwater fees being levied at the same rate as commercial property. Mr. Cohan further pointed out that commercial insurance is carried by condominium associations. **Alan Parker, Naples**, questioned whether aircraft using the new customs facility at the Naples Municipal Airport would be exempt from the voluntary curfew of flights, pointing out that its hours of operation should be disclosed. Council Member Price noted that the Naples airport website reflects the US Customs Office as open from 10:30 a.m. to 7:00 p.m., seven days per week; Vice Mayor Sorey recommended that an official reply should nevertheless be sought from the airport.

RESOLUTION 11-12847 ITEM 6-a
A RESOLUTION CONFIRMING THE APPOINTMENT OF ONE MEMBER OF THE ADMINISTRATIVE STAFF TO THE BOARD OF TRUSTEES OF THE CITY OF NAPLES GENERAL RETIREMENT SYSTEM FOR A FOUR-YEAR TERM COMMENCING MARCH 4, 2011, AND EXPIRING MARCH 3, 2015; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:36 a.m.).

Public Comment: (8:37 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 11-12847 APPOINTING RALPH LACIVITA; *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).*

RESOLUTION 11-12848 ITEM 6-b
A RESOLUTION CONFIRMING THE APPOINTMENT OF ONE NON-BARGAINING UNIT MEMBER TO THE BOARD OF TRUSTEES OF THE CITY OF NAPLES GENERAL RETIREMENT SYSTEM FOR A FOUR-YEAR TERM COMMENCING MARCH 4, 2011, AND EXPIRING MARCH 3, 2015; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:37 a.m.).

Public Comment: (8:37 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 11-12848 APPOINTING ROBIN VALDARIO; *seconded by Barnett and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).*

RESOLUTION 11-12849 ITEM 6-c
A RESOLUTION APPOINTING ONE CITY RESIDENT WITH PENSION EXPERIENCE TO THE BOARD OF TRUSTEES OF THE CITY OF NAPLES GENERAL RETIREMENT SYSTEM FOR A FOUR-YEAR TERM COMMENCING MARCH 4, 2011, AND EXPIRING MARCH 3, 2015; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:37 a.m.).

Public Comment: (8:37 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 11-12849 APPOINTING MURRAY HENDEL; *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).*

RESOLUTION 11-12850 ITEM 7
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 11-CU3, PURSUANT TO SECTION 56-933 OF THE CODE OF ORDINANCES, TO ALLOW FOR THE OPERATION OF A CHILD CARE FACILITY IN THE BP, BUSINESS PARK DISTRICT FOR PROPERTY LOCATED AT 3173 HORSESHOE DRIVE SOUTH, OWNED BY GGB INDUSTRIES, INC., MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:38 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, Finlay and Barnett/familiar with the site but no contact; Price, Sulick and Sorey/visited the site but no contact; and Heitmann/visited the site, reviewed the Planning Advisory Board's (PAB's) February 9 consideration of the petition but no contact. Planner Erica Goodwin briefly reviewed her memorandum dated February 3 (Attachment 1), noting that staff, as well as the PAB recommended approval. She confirmed that a hedge of Brazilian pepper exists along the rear lot line of the subject property although it appears to actually originate from an adjacent site. A brief discussion followed regarding the removal of the exotic, invasive plants, which are to be removed upon development or redevelopment of a property, and while various motions were considered, petitioner Brandi MacQuarrie pointed out that the only improvements to be made prior to her tenancy is exterior and landscape renovation. Vice Mayor Sorey stated that should the hedge in fact be on the subject property, a recommendation should be made that it be removed along with the other landscaping improvements.

Public Comment: (8:48 a.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 11-12850 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).

ORDINANCE (First Reading)..... ITEM 8
AN ORDINANCE AMENDING SECTION 56-92, HOME OCCUPATIONS IN ORDER TO PERMIT NON-COMMERCIAL OFFICE USES IN CONTRIBUTING STRUCTURES WITHIN THE HISTORIC DISTRICT THROUGH THE CONDITIONAL USE PROCESS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (8:49 a.m.). Planner Adam Benigni explained that the Naples Historical Society was proposing to purchase the property at 107 Broad Avenue South. Since this is in a residential neighborhood, in order to utilize the property for an office, four separate land use petitions would have been required, including a rezone. As an alternative, the Planning Advisory Board (PAB) had suggested an amendment to the Code of Ordinances section dealing with home occupations to allow non-commercial office uses within contributing structures in the historic district via a conditional use for the purpose of preserving the structure. This would have avoided spot zoning, he said.

Public Comment: (8:51 a.m.) The following expressed support of the item: **Don Wingard, 130 11th Avenue South; Peter Thomas, 2658 Gordon Drive; Madonna Crane, 771 29th Street SW; Anne Raker, 535 14th Avenue South; Mary Deppe, 1125 Fourth Street South; Eleanor Richardson, 225 Fifth Avenue South; Steve Briggs, 107 Broad Avenue South; and Barb Jones, 333 Fourth Avenue South.** In addition, a letter from **George Uding**, declaring his support also, was read into the record and is contained in the file for this meeting in the City Clerk's Office.

Council Member Finlay received clarification that there is no separate guest house on the property. Vice Mayor Sorey moved approval, praising this as a positive step in historic preservation and noting the expectation that at the location in question, use would not be intensive. Council Member Heitmann seconded. Council Member Sulick agreed and praised the Society for preserving the community's history.

Council Member Saad, however, said he was concerned that this legislation was a means of avoiding the process which is already in place in order to assist with acquisition of a particular property. He also said that the terms "contributing structure" and "non-commercial" office are

not defined in the Code of Ordinances. Vice Mayor Sorey, however, pointed out that the amendment would conceivably allow preservation of other historical structures, noting that each instance would be subject to the conditional use process. Mr. Saad said he also had questions regarding compliance with the State of Florida and U.S. Department of the Interior qualification process, suggesting that the matter be tabled.

Council Member Sulick however pointed out that the underlying residential zoning remains in tact which addresses many concerns, also noting the importance of taking any action that may facilitate retention of historic structures, many of which have already been lost. Council Member Price agreed that the ordinance should be approved, but also recommended that the above terms cited by Council Member Saad be addressed at a future date. Planner Benigni recommended substituting historic structure for contributing structure since the former is already defined in the Code (Section 16-145) as follows: Historic structure means any structure that is: (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district; (3) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: a. By the approved Florida program as determined by the Secretary of the Interior, or b. Directly by the Secretary of the Interior. With regard to a definition for non-commercial structure, Council directed a recess to allow staff to review the Code of Ordinances for any possible applicable section.

Recess: 9:18 a.m. to 9:22 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Item 8 continued.

City Attorney Pritt recommended that non-commercial office be replaced by “office use that does not involve commercial activity may be permitted in historic structures.”

MOTION by Sorey to APPROVE THIS ORDINANCE on First Reading amending as follows: Title: “...permit ~~non-commercial~~ office uses in contributing historic structures...”; First Whereas and Section 56-92: “...~~non-commercial~~ office use which does not involve commercial activity may be...” and ... historic contributing structures...”. This motion was seconded by Heitmann and unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

Approved (see motion below)..... **ITEM 9 APPROVING A QUICK FLIP TO ALLOW CONDITIONAL USE PETITION 11-CU4 TO BE HEARD AT THE MARCH 16, 2011 CITY COUNCIL REGULAR MEETING (FOLLOWING THE MARCH 9, 2011 PLANNING ADVISORY BOARD (PAB) MEETING) CONCERNING THE EXTENSION OF THE EXISTING PAVED RUNWAYS AND DISPLACED THRESHOLDS AT THE NAPLES MUNICIPAL AIRPORT.** (9:24 a.m.) In response to Council Member Heitmann, Planning Director Robin Singer confirmed that the Naples Municipal Airport master and utilization plans are one and the same and that no amendments to the City’s Comprehensive Plan would be necessary should the subject petition be approved.

Vice Mayor Sorey noted his objection to the practice known as a quick flip and would therefore be unable to support this particular item. He said the practice should be discontinued altogether

and indicated that he would pursue this recommendation during correspondence and communications (see below).

Public Comment: (9:27 a.m.) None.

MOTION by Saad to APPROVE THIS ITEM as submitted; seconded by Price and carried 6-1, all members present and voting (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-no, Sulick-yes, Barnett-yes).

REVIEW OF NOMINATIONS FOR THE 2011 SAM NOE AWARD..... ITEM 10

(9:28 a.m.) Deputy City Clerk Jessica Rosenberg noted that Eugene Martin, Chairman of the Design Review Board (DRB), and James Rideoutte, Chairman of the Citizens Police Review Board (CPRB) had been nominated for that year's award.

Public Comment: (9:28 a.m.) None.

MOTION by Barnett to NOMINATE JAMES RIDEOUTTE; 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).

ORDINANCE (First Reading)..... ITEM 11

AN ORDINANCE RELATING TO HOURS OF SALE OF ALCOHOLIC BEVERAGES; AMENDING SECTION 6-1, HOURS OF SALE AND CONSUMPTION; CREATING A NEW SECTION 6-6, PENALTY, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; AND PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:29 a.m.) who explained that this ordinance was directed by Council and included revisions in definitions and other aspects which had proven outdated from the standpoint of state law. He pointed out that under the definition of special uses he had added receptions to accommodate an occasional event that it might be advisable to allow. (It is noted that this draft ordinance is contained in the file for this meeting in the City Clerk's Office.) Mr. Pritt further noted that this ordinance was written so as not to conflict with other provisions dealing with restrictions and extended hours in various zoning districts; he also referred to the section which prohibits activities contrary to state law and the inclusion of a penalty section.

Council Member Saad said that he concurred with the ordinance except that receptions should be stricken from the definition clause as too broad. He moved approval and Vice Mayor Sorey seconded. Council Member Heitmann recommended that circuses, fairs and carnivals also be deleted from this section. Council indicated that the entire sentence containing the above uses should be deleted.

Council Member Sulick maintained her opposition to extend hours for Sundays for the entire City based on the request of an operator of one small establishment; people in the City are accustomed to the one evening per week when nighttime activities involving alcoholic beverage service are curtailed. Council Member Saad said that rather than alcoholic beverage service, residents with whom he had communicated had cited noise. Mrs. Sulick however pointed out that the staging of live entertainment has a direct corollary to the service of alcoholic beverages which is illustrated by the subsequent granting of live entertainment from the original 10:30 p.m. cessation to midnight. Council Member Saad disagreed, but Council Member Heitmann said that the Council had received significant input from residents around the Fifth Avenue South business district who objected to the noise created by patrons leaving establishments after closure. She said she was greatly disappointed that the boundaries of these types of activities were expanding. She requested comment from the Police Chief on enforcement requirements during the time immediately after closure of establishments; she also asked for specifics with regard to the DUI (driving under the influence) unit. Chief Thomas Weschler indicated that an available officer is dispatched to the Fifth Avenue South area while the establishments are

closing, but response to individual locations is not made on a nightly basis. He also said that DUI arrests are made, but statistics do not indicate that these arrests were generated in any particular area. He also confirmed that there is sufficient staff to respond during the additional hours being contemplated.

Council Member Price observed that concessions given to businesses, such as extended hours, have proven to be compatible with the community as evidenced by the lack of complaints received. Council Member Saad concurred and said that the City should not be fearful of what will occur with this minor change. Council Member Finlay said that he supported the request for additional Sunday hours since it is within the weekend period.

Public Comment: (9:56 a.m.) None.

MOTION by Saad to APPROVE THIS ORDINANCE at First Reading amending as follows: Section 6-1(a): “A special use includes certain festivals, circuses, fairs, carnivals, receptions and the like.” This motion was seconded by Sorey and carried 5-2, all members present and voting (Finlay-yes, Heitmann-no, Price-yes, Saad-yes, Sorey-yes, Sulick-no, Barnett-yes).

Recess: 9:57 a.m. to 10:08 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 11-12851 ITEM 12
A RESOLUTION APPROVING AN AGREEMENT FOR PROVISION OF LEGAL SERVICES WITH THE LAW FIRM OF LEWIS, LONGMAN & WALKER, P.A. FOR LEGAL ADVICE AND REPRESENTATION OF THE CITY REGARDING PENSION PLAN ISSUES AND ADVICE CONCERNING LABOR NEGOTIATIONS RELATED TO PENSION ISSUES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:08 a.m.). Assistant City Manager Roger Reinke explained that the services provided by Attorney Jim Linn’s firm had been utilized since 2008. Since the contract had now expired, staff was recommending continuation of pension planning services from this firm.

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

MOTION by Sorey to APPROVE RESOLUTION 11-12851 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).

BLUE RIBBON EFFICIENCY COMMITTEE ITEM 13
CONSIDERATION OF THE CREATION OF AN AD HOC BLUE RIBBON COMMITTEE ON EFFICIENCY. (10:11 a.m.) While Council expressed general support of a committee which would offer insight and recommendations with regard to efficiency of City government, several issues were raised as to the specificity, number of members and selection process, as well as the scope of the committee’s tasks. In addition, the question remained as to the setting of priorities and duration of the committee. In response to Vice Mayor Sorey, Council Member Finlay stated that he had no wish to chair the committee although appointing a Council liaison to the group would meet with his support.

Council Member Sulick however expressed reservations and recommended that a precise scope of work for such a committee be ascertained. She pointed out that the differences between the government and business sectors should be recognized, and that committee recommendations would be offered without accountability; she also said that the political atmosphere must be kept in mind. She therefore indicated that she would consider supporting the proposal should specific parameters be set forth.

The consensus reflected below was then forthcoming.

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

Consensus to create an ad hoc Blue Ribbon Efficiency Committee; City Manager to receive individual suggestions of Council Members as to functions, membership and scope of work; input due by March 18, 2011; final Council consideration on April 6, 2011.

**1601 SOLANA ROAD CITY-OWNED PROPERTY ITEM 14
CONSIDERATION OF A REQUEST BROUGHT FORTH BY MOORINGS PARK
REPRESENTATIVES RELATING TO THE PURCHASE OF CITY-OWNED LAND LOCATED
AT 1601 SOLANA ROAD.** (11:06 a.m.) Assistant City Manager Roger Reinke briefly reviewed his memorandum dated February 17 (Attachment 2), further explaining that Moorings Park had offered to either purchase the subject property outright, or should the City indicate another property of equal value, it would purchase that property and a land exchange could then be considered (Attachment 3 / February 9, 2011 correspondence from Moorings Park CEO Dan Lavender).

In response to Council, City Manager William Moss observed that staff would not recommend removing land from the City's inventory at any time nor would staff recommend utilizing the proceeds of such a sale for operations. Should Council decide to move forward, however, staff would recommend that another parcel be obtained. Council Member Heitmann agreed, saying that future use of the land in question had not as yet been discussed, especially with regard to stormwater retention/detention issues. Council Member Price stated that the present economic environment is not conducive for property valuation and that there appeared to be no compelling reason for selling.

Vice Mayor Sorey advised that the subject parcel could be sold and funds set aside for such purposes as infrastructure for a future park at the point where the Gordon River Greenway is to cross into the City. Mr. Moss reiterated that he would recommend that a like asset be obtained should the land be sold, and Council Member Finlay stated that although he had not supported the earlier proposal of a 35-year lease of the land, he would support a land exchange for a parcel located in an area that would generate more use by City residents. Council Member Sulick questioned potential emergency staging sites still available for City use, but City Attorney Robert Pritt explained that during an actual emergency, such as a severe storm event, the City is allowed to use whatever property is deemed necessary for recovery purposes.

Dan Lavender, representing Moorings Park, stated that as a Chapter 501(c)(3) organization, the association would derive no tax benefit from purchasing another parcel for a property exchange with the City but had offered this alternative to an outright purchase due to staff's concern with regard to the City's land inventory. The subject property would be an ideal location to centralize Moorings Park transportation activities and therefore Council's level of interest in the proposal was being sought, he concluded.

Public Comment: (11:29 a.m.) None.

Consensus not to pursue this matter / 5-2 (Finlay and Sorey dissenting).

PUBLIC COMMENT
(11:29 a.m.) **Larry Schultz, Naples**, questioned whether a FAA (Federal Aviation Administration) opinion regarding preemption of the proposed extension of runway 5/23 had been issued, and Mayor Barnett and City Attorney Robert Pritt confirmed that it had not been received. Mr. Schultz stated that he intended to raise the issue of whether the airport is currently in violation of the 5,000-foot rule during the upcoming hearing regarding the displaced

threshold extension and then read into the record a letter regarding noise impacts by aircraft travelling over the City (Attachment 4).

CORRESPONDENCE AND COMMUNICATIONS.....

(11:33 a.m.) Mayor Barnett expressed concern with regard to recent departures by Council Members from the practice of requesting information through the City Manager and, instead, contacting various City staff members and other governmental entities, including Collier County, directly. He said that these requests are appropriately handled through the City Manager, which facilitates a continuing cordial relationship with County government as well as being appropriate public policy. Council Member Price concurred with the soundness and appropriateness of this approach; however, any variations in this should be explored by the group. Vice Mayor Sorey also pointed out that to do otherwise would cause both confusion and unnecessary work for those concerned. Mr. Sorey, as did Mayor Barnett and Mr. Price, stressed the effectiveness and high level of responsiveness received by making inquiries through the City Manager or Assistant City Manager. In addition, this process also assures that inquiries are on the public record, Mayor Barnett noted.

Council Member Sulick equated Council's policy-making role to that of a board of directors with the City Manager being Council's liaison and chief executive officer. She said that to do otherwise would result in both confusion and great inefficiency. Council Member Saad said that the City Manager had indicated that it was however permissible to contact departmental staff directly since those individuals would provide the City Manager with copies of their responses. Citing a recent letter he had written to the State with regard to spoil islands, Mr. Saad said that Council Members are elected to represent their constituents and therefore conveying opinions in this regard are not, in his view, inappropriate.

Council Member Finlay reported frequent contact with both County staff and elected officials, but noted that his emails were not sent at as City Council Member but as a private individual. While he said he would continue to do so, Mr. Finlay also asked whether there was a written policy dealing with this issue. Mayor Barnett took the position that regardless of whether it is specifically noted, Council Members are continually in that role in the community; he said that the same information could be obtained by requesting it through the City Manager. Council Member Price said that, regardless of whether stated, it would be assumed that anyone on City Council would be seeking information in an official capacity. Mr. Finlay, however, asserted that election to City Council did not curtail his rights as a citizen; therefore, he would provide a statement to this effect to those in Collier County with whom he makes contact for information.

It was then clarified by City Attorney Robert Pritt that the discussion underway involves a policy matter and appears not to be related to the prohibition contained in Section 2.1 of the Charter. However, City Manager William Moss also indicated that he would use his discretion in transmitting requests for information from individual Council Members. He said that in some instances he may choose to first receive direction from the Council as a whole, particularly in light of the possible impact of a City inquiry on other governmental agencies. Council Member Finlay, however, said that neither would he seek Council approval for inquiries or be subject to the City Manager's rejection of an inquiry which he deemed legitimate as a citizen and a taxpayer.

Mayor Barnett said that it was not his intent to influence a colleague's behavior but that he had raised the issue because he believed that it should be brought out at that time due to concern that Council Members were overstepping protocol.

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Council Member Saad asked whether the 290 feet over the declared runway length of 5,000 feet at Naples Airport is a violation of the Code of Ordinances, and suggested that the City Attorney be asked for an opinion in the matter. City Attorney Pritt indicated that he had some time ago prepared a memorandum addressing this matter; he also pointed out that there is still hope that the FAA (Federal Aviation Administration) will render an opinion on the issue of pre-emption. Nevertheless, he said he would provide further clarification, specifically including the aforementioned question with regard to Code compliance. Mr. Pritt, however, pointed out that regardless of whether some type of past violation has occurred, a party is still entitled to seek relief. Council Member Saad then expressed the view that unless there was a decision in a court of law with regard to pre-emption, the City should proceed as it sees fit, pointing out that the Naples Airport Authority had indicated that it would respect the Council's decision. However, City Attorney Pritt cautioned that such determinations should be deferred until the Council had acted in its quasi-judicial capacity at the upcoming hearing (March 16).

Mr. Saad recommended that the Council hear a presentation with regard to the local economic outlook by FGCU (Florida Gulf Coast University) finance professors. He suggested that this be scheduled in April or May. Council concurred.

Referring to a prior discussion (at the workshop of February 14th), Mayor Barnett said that he would support another workshop discussion in April to further explore stormwater utility rate issues as they relates to condominiums. Vice Mayor Sorey said that the discussion should include the manner in which the Code of Ordinances should be interpreted. Council Member Sulick cautioned that the financial implication of the contemplated action/interpretation had not been assessed. Council Member Price said that he did not feel a reinterpretation of a Code provision was an effective way to deal with the issue; nevertheless, he said he would concur with conducting further discussion. It was the consensus of Council to schedule further consideration of whether the authorization for condominiums to receive a revision of stormwater rates is already contained in Section 30-339 of the Code of Ordinances.

Council Member Finlay raised the point of acquisition by Collier County of beach access easements for renourishment purposes, and Vice Mayor Sorey indicated that the TDC (Tourist Development Council) had recommended against any changes, although the final decision will rest with the Collier County Commission. Nevertheless, the implications are county-wide, he added, and also involve determination of the legal entity authorized to execute a grant of easement when there are multiple owners in a condominium complex. Council Member Heitmann also noted the implication of beach outfalls, but Mr. Sorey said that the Council had authorized a request to the DEP (Department of Environmental Protection) that replacement of the beach outfalls be removed as a requirement from the next permitting process for renourishment due to the significant financial implications involved. No response had been received, he added. In further response to Council Member Heitmann, City Manager Moss noted that the report which had been provided to Council from Humiston & Moore had concluded that the outfalls did not in fact impact the beach or turtle nesting activities.

Council Member Finlay ascertained from Mrs. Heitmann (Florida League of Cities liaison) that no initiative had been planned to address inequities in ad valorem taxation between cities and counties. City Manager Moss said that this had largely been resolved in the courts some years before.

Council Member Heitmann reported that citizens had complained about an odor believed to be emanating from the sewer system at Third Street and 18th Avenue South; Mayor Barnett said

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that prior complaints had been received and it had been found to involve a storm drain. Assistant City Manager Roger Reinke said that staff would again inspect the area. City Manager Moss also noted that in periods of little rainfall, storm sewers or catch basins can collect leaves and debris in whatever standing water present and can cause odor.

Council Member Heitmann requested clarification as to whether the Fifth Avenue South Business Improvement District (FASBID) was eligible to receive revenues collected from the recently established assessment district covering the Fifth Avenue South business district prior to establishment of the group's tax exempt status. City Attorney Pritt said that he believed that FASBID was about to apply for status under Chapter 501 of the Internal Revenue Code, at which time the funds could be distributed. Mrs. Heitmann expressed concern that should funds be distributed and the FASBID application is not approved, the City would have difficulty recouping the funds. Mr. Pritt however pointed out that the Council had decided that final approval would not be required; Council requested verification.

Mrs. Heitmann then expressed concern with regard to any responsibility which may reside with the City for proper conduct by the Naples Airport Authority (NAA) with regard to Sunshine Law (Chapter 286, F.S.) and conflict of interest issues. City Attorney Pritt offered to discuss the specifics of this matter further with Mrs. Heitmann and Council concurred. She further recommended that the Council engage an aviation attorney with regard to the pre-emption issue noted above in conjunction with the upcoming hearing by the Council on March 16 regarding runway length. Mayor Barnett indicated that the FAA (Federal Aviation Administration) had written to promise that a determination with regard to pre-emption was imminent although this had not yet been received. Mrs. Heitmann indicated that an aviation attorney would however provide an unbiased opinion; City Attorney Pritt however said that he would object to any implications that the opinion which he had already rendered was biased concerning the pre-emption issue. Council Member Finlay said that he now believed that no further opinions regarding pre-emption were necessary for him to render a decision at the aforementioned hearing. Council Member Saad pointed out that while he understood that the NAA would abide by the Council's decision, the Council must nevertheless act in the best interests of City residents. Council did not concur with seeking an additional opinion from an aviation attorney.

Council Member Heitmann asked that the Council look into the source of complaints she had received with regard to a neighborhood association which was developing in the "D" Downtown (41-10) District, now referred to as the Design District. She said that she had viewed a recent CRAAB (Community Redevelopment Agency Advisory Board) meeting wherein the discussion reflected confusion with regard to the City's role in establishing groups of this kind. Council Member Finlay said that he had attended this meeting and could see that there might be a concern with regard to compliance with the Sunshine Law (Chapter 286, F.S.) should more than one CRAAB member be involved in establishment of a neighborhood group. City Manager Moss, however, noted his belief that the Council wished the administrative staff to provide assistance to citizens who were seeking to develop business associations, and City Attorney Robert Pritt indicated a willingness to consult with board members to provide guidance in this regard. Mrs. Heitmann however asked that Council conduct a workshop session to further explore the issue; various Council Members indicated that they would review the recording of the aforementioned CRAAB meeting.

Vice Mayor Sorey expressed appreciation to staff for prompt response to an issue which had arisen with regard to construction parking at the beachfront. He reported that the emergency beach renourishment project is approximately one-third complete at Doctors Pass with plans to

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move to Seagate for the same type of work in late March. Mr. Sorey referred to the proposed markers on Clam Bay, pointing out that the Seagate neighborhood would not support canoe markers and therefore may require possible City Council support for their position. Referring to the Code amendment approved at that meeting with regard to historic properties, Mr. Sorey said that he believed the section with regard to home offices was also in need of revision such as to allow for the presence of an executive assistant at a home office. Council concurred. Vice Mayor Sorey then expressed the view that expedited processing of petitions (called “quick flips”) should not be continued, that so long as the “quick flip” process has not been codified, and the City Manager and the Mayor deem it appropriate for certain petitions to be considered in an expedited manner, they should then be forwarded to Council.

EXECUTIVE SESSION (Resolution – see below) ITEM 15

(1:11 p.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to the settlement of a third party liability claim of Sue Broomhead against the City of Naples.

Executive Session: 1:11 p.m. to 1:23 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

(1:23 p.m.) See resolution below.

RESOLUTION 11-12852 ITEM 15

A RESOLUTION CONSIDERING ACCEPTANCE OF PROPOSAL FOR SETTLEMENT IN THE CASE OF SUE BROOMHEAD VS CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:23 p.m.).

Public Comment: (1:23 p.m.) None.

MOTION by Saad to APPROVE RESOLUTION 11-12852 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).

ADJOURN

1:23 p.m.

Bill Barnett, Mayor

Minutes prepared by:

Tara A. Norman, City Clerk

and

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: _____



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: March 2, 2011

Agenda Section:	Regular	Prepared By: Erica J. Goodwin, AICP, Planner II
		Date: February 2, 2011 Department: Planning
Agenda Item:	7	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
SUBJECT:		
Resolution determining Conditional Use approval to allow the operation of a child care facility in the BP, Business Park District for property located at 3173 Horseshoe Drive South.		
SUMMARY:		
City Council is asked to consider a Resolution determining Conditional Use Petition 11-CU3 for conditional use approval, pursuant to Section 58-933 of the Code of Ordinances, to allow the operation of a child care facility in the BP, Business Park District for property located at 3173 Horseshoe Drive South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.		
BACKGROUND:		
<p>The petitioner currently operates a daycare at 2960 Horseshoe Drive South and is in need of additional space in order to accommodate her expanding business. She obtained Conditional Use approval from City Council on February 18, 2009 for the operation of the same day care on property located at 2629 Horseshoe Drive South. Following the hearing, however, the owner sold the building and the petitioner was unable to occupy the space.</p> <p>The petitioner is seeking conditional use approval to allow the operation of the same child care facility in the Business Park district, in a new location. Section 58-933 of the Code of Ordinances lists day care as a Conditional Use in the Business Park District, requiring approval from City Council through the conditional use process provided in section 46-34. The only proposed improvements to the site include a fenced outdoor play area to be located on the east of the building.</p> <p>The Planning Advisory Board (PAB) reviewed this item at their meeting on February 9, 2011 and voted 6-0 to recommend approval of Conditional Use Petition 11-CU3 to the City Council.</p>		
File Reference: 11-CU3		
Petitioner: Brandi MacQuarrie, So Big, So Bright		
Agent: Brandi MacQuarrie, So Big, So Bright		
Location: 3173 Horseshoe Drive South		
Zoning: BP, Business Park District		
PUBLIC NOTIFICATION:		
On January 24, 2011, a total of 16 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 one letter of objection from Brad Thompson VP, Advanced Software Products Group, Inc. A copy of his letter is attached.		



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: March 2, 2011

Page Two

Agenda Item:

7

RECOMMENDED ACTION:

Approve a Resolution determining Conditional Use Petition 11-CU3, pursuant to Section 56-933 of the Code of Ordinances, to allow for the operation of a child care facility in the BP, Business Park District, for property located at 3173 Horseshoe Drive South, owned by GGB Industries, Inc.

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: March 2, 2011**

Agenda Section: Regular	Prepared By: Roger Reinke, Assistant City Manager Date: February 17, 2011 Department: City Manager	
Agenda Item: 14	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
SUBJECT: Request from Moorings Park to purchase City property at 1601 Solana Road.		
SUMMARY: City Council is asked to consider a request brought forth by Moorings Park representatives relating to the purchase of City owned land at 1601 Solana Road.		
BACKGROUND: On August 18, 2010, City Council considered a request from representatives of Moorings Park to discuss the possibility of entering into a 35-year Lease Agreement whereby Moorings Park offered to construct a storage building with space for City use on City owned land at 1601 Solana Road. City Council directed staff to move forward with discussions to determine the feasibility of such a lease. Further discussions concluded that other storage alternatives were available to the City and the building space to be provided for City use was not needed at this time. Moorings Park is now asking if City Council would be interested in an outright sale of a portion of the City property at this location, or a potential land trade for property with similar value in the City. A letter from Moorings Park President/CEO Dan Lavender to the City Manager contains additional information and is provided for review, along with a document identifying the requested parcel. The property in question is the site of a water storage tank, a well, and a police physical training course. Mr. Lavender's letter indicates Moorings Park would make any necessary accommodations for the City's water storage tank, pumping station, and relocation of any necessary facilities including the well and physical training course. The site is encumbered with the following underground utilities: 16" raw water line, a 10" potable water line, a City electrical service line, a high voltage FPL line, a FPL switch station, miscellaneous internal reuse service lines, the public street and numerous interior water and electric lines. Moorings Park anticipates using the property to construct a facility to park two buses that serve to provide transportation for Moorings Park residents. It is anticipated that the proposed structure would be located south of the storage tank and accessed from the Moorings Park access road. Construction of a building on this site would be contingent upon approval of a conditional use and appropriate site plan and design review.		
RECOMMENDED ACTION: Consider request and provide further direction to staff.		
Reviewed by Department Director Roger Reinke	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		



February 9, 2011

Mr. William Moss
City Manager
735 Eighth Street South
Naples, FL 34102

Dear Mr. Moss,

There have been several discussions regarding the City property at 1601 Solana Road (Folio # 13800030005). Moorings Park continues to see this land as critical to enhancing our transportation program to serve our residents. Would the City be willing to consider an outright sale at fair market value or a land swap for the Solano Road property?

If the city would be interested in an outright sale we would pay for an appraisal to determine the fair market value by an appraisal firm the City chooses to engage. If the fair market value is acceptable to both parties, we would pay the fair market value. In addition, we would pay for the relocation of any necessary facilities, including the wells and make any necessary accommodations for the City's water tower and pumping station.

We also understand that the City has several properties it has indentified in a Land Preservation and Green Space Program. As another alternative, Moorings Park would be interested in exploring acquiring any property that had a similar value to the 1601 Solana Road property in order to trade with the City.

We understand that the City has many priorities. We appreciate the time you, your staff, and the Council spend in deliberating the potential for Moorings Park to acquire this land to help us serve our residents better.

Regards,

Dan Lavender
President/CEO

Cc: Jim Krall
Rich Yovanovich
Roger Reinke

Gmail - citizens,agains runway extension

<https://mail.google.com/mail/?ui=2&ik=61f3e1d854&view=pt&sear...>

PC Schultz



Alan L Parker <alanl.parker@gmail.com>

citizens agains runway extension

2 messages

Lssarb <lssarb@aol.com>

Tue, Mar 1, 2011 at 10:11 PM

To: lssarb@aol.com

as sent to about 100

CITIZENS AGAINST RUNWAY EXTENSION **naplesairportwatch@gmail.com**

AIRPORT UPDATE

March 1, 2011

Many of you have written letters to the mayor and council and sent copies to me. I encourage everyone to do so. Here is one letter that says it all for those subjected to regular jet noise.

To Mayor and Council:

It is virtually incomprehensible to me that you as "city fathers" may be unaware of the adverse impact of the plane traffic over Old Naples or believe it's "not so bad". The confiscation of the way of life that brought us and many visitors here in the first place continues unabated and steadily grows worse, as the screeching banshees obliterate NY peace or quiet utilization of our homes or parks when they scream off at circa 700 feet, spewing jet fuel and decibels in their wake.

I invite any and all of you to assemble around my back yard pool on virtually any afternoon in season, but particularly on Sundays (or Monday of Presidents Day Weekend, if you want an up close and personal illustration of this cacophony. Last year, I counted some 200 departures in less than 4 to 5 hours; this year's total was in line, with some planes so low and loud that my windows were rattled.

If some of you measure the severity of the problem by the dearth of complaints, let me advise you from personal experience that the so-called NAA complaint process is a sick joke. For years, I dutifully filed complaint after complaint, with no results. Most of the time, the "site" was out of service for updating or some such excuse. On several occasions, I followed up with phone calls, and when I could reach someone (a rare event), assurances of follow up were given and NEVER fulfilled. I even attended meetings of the NAA at which I left written queries that were never addressed, promises notwithstanding. I even e-mailed the Director on this last matter, whose reply was cordial and whose influence in having anyone get back to me apparently invisible.

Even a Yale-educated lawyer can figure out the runaround when he experiences it, so I no longer bother to dignify the "complaint charade".

SUPPLEMENT
#4ANDOUT

Gmail - citizens agains runway extension

<https://mail.google.com/mail/?ui=2&ik=61f3e1d854&view=pt&sear...>

The NAA juggernaut will continue to steamroller everything in its way unless YOU, apparently the only entity to whom they feel they must answer, exhibit the courage needed to reclaim Naples' quality of life.

Visitors often ask me why we put up with the air and noise pollution heaped upon us by aircraft whose ownership is almost 70% non-local. Or why we sully the skies above about the loveliest (and not inexpensive) place they've ever seen. Or why we would foul the very attributes that bring visitors here to aid our economy. Or why the 5th avenue merchants who just self-taxed themselves be enthralled with the current and proposed increased bawling just above their patrons' heads on an otherwise lovely afternoon.

I think Jeff Lytle at the Naples News recently advanced the only plausible reason: we have all lost our minds.

The writer signed his name, but here he has anonymity.

Thanks for your support,

Larry Schultz

REMEMBER. MARCH 8 AT THE LIBRARY AT 5:00 PM

MARCH 16 AT CITY HALL AT 1:00 PM

Contact us at naplesairportwatch.com

Get more information at betternaplesairport.org

Alan L Parker <alanl.parker@gmail.com>

Tue, Mar 1, 2011 at 11:29 PM

To: Lssarb <lssarb@aol.com>

Larry,

Quite a letter. Actually very touching.

Alan

[Quoted text hidden]

SUPPLEMENT
HANDOUT