



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – March 16, 2011 – 8:29 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 (arrived 8:31 a.m.)
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
Jessica Rosenberg, Deputy City Clerk
Robin Singer, Planning Director
Ralph LaCivita, Comptroller
Kathryn Hankins, Budget & Investment Manager
Ann Marie Ricardi, Finance Director
David Lykins, Community Services Director
Joe Boscaglia, Parks & Parkways Superintendent
Ron Wallace, Streets & Stormwater Director
Buddy Bonollo, Police Officer
Adam Benigni, Planner
Karen Ball, Accounting Manager
Denise Perez, Human Resources Director
Cormac Giblin
Ernest Linneman
Joseph McMackin
Judith Chirgwin
James Rideoutte
Ted Soliday
Bill Confoy
John Allen
Lynn Noe
Jim Black
Karen Tullo
Mary Lynn Stahnke
John Solakvan
Margaret Geller
George Dondanville
Jim & Dee Dee Forrest
Ted Trimmer
Bruce Jay
Ken Kelly
Forrest Nichols
William Trapani
Duane Repp
Sophie Olson
Hans Miller
Tom Trettis
David Dardi
Gus Nichols
Richard Coff

Gene Scott
Robert Young
Murray Hendel
Bruce Buchannan
Jack Metcalf
John Tobin
Larry Schultz
Alan Parker
Joe Karaganis
Judy Kaplan
Richard Gentil
Scott Cameron
James Elson
Sharon Kenny
Allen Nelson
John Wlassich
Donna Westemeyer
Susan Aldrich
Jan Miller
Peter Gough
Edward McCarthy
Scottie Yeager
Lynne Hixon-Holley
Raymond Tibbitts
Nick George
Robert Andres
Alvin McQuinn
Mike Davidian
Guy Deutermann
Tom Laughlin
Bill Cox
Brenda O'Connor
Joy Arpin Sybert
Bill Willkomm
Janet Nebus
Bill Earls
Keki Elavia
Robert Barrows
Ursula Goetz
Catherine Fry
Charlie Canali
Nancy Oakes
Todd Nelson
Gary Thomas
George Kaltenmeier
Bruce Miner
Bill May
Eve May

Media:

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

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

(8:29 a.m.) Pastor Gene Scott, Celebration Community Church.

ANNOUNCEMENTS..... ITEM 3

Mayor Barnett presented proclamations declaring April as National Financial Literacy Month and March 13th through March 17th as Sunshine Week in observation of the Government in the Sunshine Law (Chapter 286, Florida Statutes).

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

MOTION by Price to SET THE AGENDA removing Item 8-b(4) (25th Annual Fitness Challenge Triathlon), Item 8-d (Forestry grant application), and Item 8-d (pension reform) from the Consent Agenda for separate discussion. This motion was 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

(8:37 a.m.) **Robert Young, representing the City's Fraternal Order of Police (FOP Lodge 38) employees**, stated that the morale of the Police Department has been adversely affected by recent actions to address the City's budgetary issues, taking issue with figures cited during that Monday's workshop presentation by Collier County Sheriff Kevin Rambosk regarding provision of services by both City and County law enforcement. He also said that officers had expressed concern about the potential for loss of overtime during the Swamp Buggy Parade. A brief discussion followed during which it was observed that while Council opinions and ideas must be discussed in a public forum, decision-making may not take place during informal dialog. Council Member Price also took issue with Officer Young's tone, explaining that Council must find ways to balance the budget, but reiterated the praise often voiced by Council with regard to the City's Police Department. In addition, Mr. Price explained that the County had been approached to provide a police presence during the annual Swamp Buggy Parade as many City officers had reluctantly accepted the assignment during the most recent event. It was then recommended that further discussion take place prior to contract negotiations to address various employee concerns.

RESOLUTION 11-12853 ITEM 6

A RESOLUTION OF THE NAPLES CITY COUNCIL HONORING JAMES T. RIDEOUTTE AS THE 2011 RECIPIENT OF THE SAM NOE AWARD; AND PROVIDING AN EFFECTIVE DATE. Title read by Council Member Price, who then presented the Sam Noe Award to James Rideoutte. Mr. Rideoutte then briefly commented on his friendship with the late Sam Noe and thanked the City for the recognition.

Public Comment: (8:55 a.m.) None.

RESOLUTION 11-12853 APPROVED BY ACCLAMATION, 7-0, 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 8-a

February 9, 2011 Joint City/County, February 14, 2011 Workshop, February 16, 2011 Regular and March 2, 2011 Regular meeting minutes; as submitted.

SPECIAL EVENTS..... ITEM 8-b

- 1) 17th Relay for Life of Naples – American Cancer Society – Gulfview Middle School – 04/15/11 and 04/16/11.
- 2) 35th Great Dock Amateur Canoe Race – Great Dock Canoe Race, Inc. – Crayton Cove – 05/14/11.
- 3) Summer Jazz Concert Series – Naples Beach Hotel and Golf Club – Watkins Lawn – 06/25/11, 07/23/11, 08/27/11, and 09/24/11.

4) Removed for separate discussion, see below.

RESOLUTION 11-12854 ITEM 8-c
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT FISCAL YEAR 2011-2012 COLLIER COUNTY TOURIST DEVELOPMENT COUNCIL CATEGORY “A” GRANT APPLICATIONS FOR BEACH AND PIER MAINTENANCE UNDER THE 2012 BEACH RENOURISHMENT AND PASS MAINTENANCE PROGRAM; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Sorey to APPROVE CONSENT AGENDA except Items 8-b(4), 8-d and 8-e; 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).

APPROVED (see motion below) ITEM 8-b(4)
25TH ANNUAL FITNESS CHALLENGE TRIATHLON – THE FITNESS CHALLENGE TRIATHLON – NAPLES BEACH HOTEL AND GOLF CLUB – 06/05/11. Vice Mayor Sorey explained that he had requested additional information due to prior issues with parking along Gulf Shore Boulevard. George Dondanville, representing the event sponsor, noted that various sites had in fact been secured for parking, and participants are to park in designated areas and not in rights-of-way or on private property.

Public Comment: (9:03 a.m.) None.

MOTION by Sorey to APPROVE ITEM 8-b(4) 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).

RESOLUTION 11-12855 ITEM 8-d
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES UNDER THE 2011 NATIONAL URBAN AND COMMUNITY FORESTRY GRANT PROGRAM TO PURCHASE GPS EQUIPMENT AND SOFTWARE TO SUPPORT TREE INVENTORY; AND PROVIDING AN EFFECTIVE DATE. Council Member Price expressed the opinion that a GPS (global positioning system) is not necessary to perform a tree inventory. Parks & Parkways Superintendent Joe Boscaglia explained that the system, which includes specialized software, would digitize the location, species, size, health, and other pertinent information about the City’s \$36-million tree inventory. Other park and recreational assets could also be entered into the system, he said, such as gazebos and picnic tables. The City’s portion of the cost would be through the fund containing revenue from fines for unlawfully removing City-owned trees. Internet access of the inventory would also be available to property owners and contractors thereby avoiding inadvertent removal of City trees by the public. Mr. Boscaglia also noted that the five-year re-inventory would be greatly enhanced by the GIS technology which would facilitate entry into the City’s electronic infrastructure map. In addition, Community Services Director David Lykins noted that following a major storm event, a detailed inventory would be invaluable in obtaining federal reimbursements. Council Member Finlay acknowledged that grant funding should not be sought for unnecessary expenditures, although the advantage of online access to tree location and ownership outweighs such concerns in this instance. The title of the resolution was then read by City Attorney Robert Pritt (9:17 a.m.).

Public Comment: (9:17 a.m.) None.

MOTION by Price to DENY RESOLUTION 11-12855 as submitted; seconded by Saad and FAILED 2-5, all members present and voting (Saad-yes, Heitmann-no, Price-yes, Sorey-no, Sulick-no, Finlay-no, Barnett-no).

MOTION by Sorey to APPROVE RESOLUTION 11-12855 as submitted; seconded by Barnett and carried 5-2, all members present and voting (Finlay-yes, Heitmann-yes, Price-no, Saad-no, Sorey-yes, Sulick-yes, Barnett-yes).

RESOLUTION 11-12856 ITEM 8-e
A RESOLUTION DECLARING SUPPORT FOR THE ADOPTION OF POLICE OFFICER AND FIREFIGHTER PENSION PLAN REFORM LEGISLATION IN FLORIDA; URGING THE FLORIDA LEGISLATURE TO ADOPT AND THE GOVERNOR TO APPROVE POLICE OFFICER AND FIREFIGHTER PENSION REFORM LEGISLATION DURING THE 2011 LEGISLATIVE SESSION; DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO THE GOVERNOR AND THE FLORIDA LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:20 a.m.). Vice Mayor Sorey noted that he had requested separate discussion of this item due to the need for clarity with regard to allowing defined contribution plans. Section 3 of the resolution was amended as reflected in the motion below.

Public Comment: (9:21 a.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 11-12856 amending as follows: Section 3: "...; and allow the City to use insurance premium tax revenues to pay for pension benefits ~~already~~ provided to police and firefighters, including but not limited to defined contribution pension plans." 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).

ORDINANCE 11-12857 ITEM 14
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 (9:21 a.m.).

Public Comment: (9:22 a.m.) None.

MOTION by Saad to ADOPT ORDINANCE 11-12857 as submitted; seconded by Price and carried 5-2, all members present and voting (Finlay-yes, Heitmann-no, Price-yes, Saad-yes, Sorey-yes, Sulick-no, Barnett-yes).

COMPREHENSIVE ANNUAL FINANCIAL REPORT (Accepted – see below) ITEM 13
PRESENTATION BY CPA ASSOCIATES OF THE SEPTEMBER 30, 2010 COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR). (9:23 a.m.) Leanne Cross of CPA Associates utilized an electronic presentation (excerpted text appended hereto as Attachment 1) in providing an overview of the 2010 Comprehensive Annual Financial Report (CAFR). (It is noted that a printed copy of the entire presentation is contained in the file for this meeting in the City Clerk's Office.)

Following the presentation, Ms. Cross addressed questions from Council as reflected below:

- Reference to grant accounting to be addressed by separating City and grant costs for projects (Sorey);
- Once computerized system for metered parking spaces at beachends is implemented, assure that monies collected equate to receipts from system and that meters are individually numbered (Sorey);
- Received clarification that City contributed to Naples Zoo project as City would receive benefit to its stormwater drainage flow (Sulick);

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- Received clarification as to continuing staff research into impact to intangible tax reporting in conjunction with receipt or vacation of easements (due to recently enacted legislation) (Sulick);
- Received clarification that staff had corrected its error in following state law with regard to the Riverside Circle filter marsh project; as funding was derived from the FDEP (Florida Department of Environmental Protection); the grant had originated with the federal government and federal grant law should have been applied (Price);
- Received clarification as to reserved versus unreserved and designated versus undesignated funds (Finlay);
- Additional clarification to be provided at a later date regarding calculation of \$300,000 decline in ad valorem tax revenue from prior year reported in document (Finlay); and
- Received agreement for meeting with pertinent staff for discussion of noted deficiencies (Heitmann).

Council commended Ms. Cross and City staff for their efforts in the CAFR.

Public Comment: (9:59 a.m.) None.

REPORT ACCEPTED BY ACCLAMATION 7-0 (Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sorey-yes, Sulick-yes, Barnett-yes).

Recess: 9:59 a.m. to 10:07 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

ORDINANCE (First Reading)..... ITEM 9
AN ORDINANCE RELATING TO THE HOURS OF LIVE ENTERTAINMENT PERMITS; AMENDING SUBSECTIONS (e)(3), (4), AND (5) OF SECTION 56-125 AND ADDING SUBSECTION (i) TO SECTION 56-125, LIVE ENTERTAINMENT PERMIT, OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO CLARIFY LANGUAGE AND REMOVE CONFLICTS PERTAINING TO THE HOURS OF OPERATION FOR LIVE ENTERTAINMENT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION; AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:07 a.m.). Planning Director Robin Singer provided a brief overview of her memorandum dated February 23 (Attachment 2), explaining that the one-year test period for the provision regarding extended hours of live entertainment had ended in November 2010 at which time Council had directed drafting of clarifying language and removal of conflicts elsewhere in the Code. In response to Council Member Heitmann, it was noted that reviews had taken place following a six-month trial and again at the aforementioned one-year interval with no verified noise complaints; a list of establishments with live entertainment permits and their hours would be provided at second reading should this ordinance be approved that day, Ms. Singer added. Council Member Sulick explained that she had received comments from Fifth Avenue South area residents regarding excessive nightly noise. Ms. Singer noted that the police and/or code enforcement should be called to monitor sound levels, to which Mrs. Sulick observed that citizens were often reluctant to lodge a formal complaint although they do contact their elected representatives.

Public Comment: (10:12 a.m.) **Sue Smith, 11th Avenue South,** noted that she is affected by the music from Fifth Avenue South establishments in her home in Old Naples and that many residents have similar issues; few have time to constantly monitor and complain as this function should be performed by the City, she observed. She urged that this proposed ordinance not be approved.

MOTION by Price to APPROVE THIS ORDINANCE at First Reading as submitted; seconded by Saad and carried 5-2, all members present and voting (Finlay-yes, Heitmann-no, Price-yes, Saad-yes, Sorey-yes, Sulick-no, Barnett-yes).

Council Member Heitmann stated that she would have supported the ordinance should the complaint process be amended, and Council Member Sulick noted disagreement with outdoor live entertainment until 12:00 a.m.

ORDINANCE (First Reading)..... ITEM 10
AN ORDINANCE RELATING TO RESIDENTIAL IMPACT CRITERIA; ADDING SECTION 46-43, RESIDENTIAL IMPACT CRITERIA; AMENDING SUBSECTION (c) OF SECTION 50-74, DEVELOPMENT STANDARDS; AND REPEALING ARTICLE V OF CHAPTER 56, RESIDENTIAL IMPACT STATEMENT, OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO PROVIDE NEW RESIDENTIAL IMPACT CRITERIA IN PLACE OF THE EXISTING RESIDENTIAL IMPACT STATEMENT PROCESS, PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:17 a.m.). Planning Director Robin Singer provided a brief overview of her memorandum dated February 23 (Attachment 3) which detailed the intent of the ordinance to replace the current residential impact statement (RIS) process with a set of criteria to be applied upon the establishment or expansion of commercial activity in proximity to residential units or zoning. Ms. Singer clarified that the additional criteria would also apply to an expansion of outdoor dining as it is considered commercial activity. She then assured Council Member Heitmann that the amended process would in fact broaden the applicability and therefore enhance protection of residential from commercial activity.

Public Comment: (10:28 a.m.) None.

MOTION by Sorey to APPROVE THIS ORDINANCE at First Reading 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).

ORDINANCE 11-12858..... ITEM 11
AN ORDINANCE AMENDING SECTION 56-92, HOME OCCUPATIONS IN ORDER TO PERMIT OFFICE USES IN HISTORIC 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 (10:28 a.m.). Planner Adam Benigni noted amended language per Council direction to reflect current definitions in the Code of Ordinances.

Public Comment: (10:29 a.m.) **Sue Smith, 11th Avenue South**, questioned the wisdom of the ordinance, expressing concern that many of the historic homes in her area have no space for additional parking and such permissions would adversely impact traffic. Council Member Heitmann explained that she supported the office use as an additional means of preserving the older homes with no increase of commercial activity in residential areas; Council Member Saad agreed. Mrs. Smith maintained her opposition to the office use provision. Council Member Price pointed out that permission was not being granted that day for any use but that the establishment of a process, applicable to the entire City, was being considered.

MOTION by Sulick to ADOPT ORDINANCE 11-12858 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).

RESOLUTION 11-12859..... ITEM 12
A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH THE ARCHER COMPANY, LLC, TO CONDUCT A PAY AND CLASSIFICATION STUDY OF THE CITY'S JOB CLASSIFICATIONS, PAY AND BENEFITS; AMENDING THE 2010-11 BUDGET ADOPTED BY ORDINANCE 10-12761 TO APPROPRIATE FUNDS FOR A PAY AND CLASSIFICATION STUDY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:41 a.m.). City Manager William Moss provided a brief background of the proposal

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as contained in the March 3 memorandum by Human Resources Director Denise Perez (Attachment 4), citing three options with regard to the scope of the study. (It is noted for the record that excerpted text of an electronic presentation prepared by Ms. Perez and contained in the meeting materials is appended hereto as Attachment 5; a printed copy of the complete presentation is contained in the file for this meeting in the City Clerk's Office.) Mr. Moss then corrected the resolution in that \$28,469, would be derived from the General Fund with the remainder of the \$38,750 total expenditure (Option 3) derived from the Water and Sewer, Solid Waste and Permit Funds, based upon the number of employees compensated from each.

Vice Mayor Sorey indicated that he supported Option 3 expressing the view that it would render a sense of fairness and equity to staff while providing a realistic review of public versus private sector compensation. City Manager Moss agreed that although this type of review is ongoing by management, retaining a third party specialist to provide an unbiased review is recommended. In addition, staff is to be engaged in the process of reviewing their positions on a case-by-case basis. Vice Mayor Sorey recommended that the Human Resources staff pursue a process to continue such an in-depth review into the future. Assistant City Manager Roger Reinke confirmed that the wage and compensation portion of the study would be completed by June with the final product submitted by the end of the year.

Council Member Price maintained that the current executive staff should have the wherewithal to make determinations proposed in the study and therefore recommended an advisory board of qualified residents be established to aid in the evaluation process; Council Members Finlay and Heitmann agreed. Mr. Moss pointed out that a Council discussion of such a compensation committee is to be scheduled sometime in April with recommendations as to its scope brought forward by staff. In response to Council Member Heitmann, Mr. Moss disclosed that while he had worked with the recommended firm in the past, he had removed himself from the selection process for this study, nevertheless he had been pleased with the choice, he added.

Public Comment: (10:58 a.m.) **Sue Smith, 11th Avenue South**, agreed that the third party study was, in her opinion, unnecessary and should be performed by the Human Resources staff so that monies could be utilized to continue the City's afterschool programs.

MOTION by Sorey to APPROVE RESOLUTION 11-12859 (OPTION 3) as submitted; seconded by Saad and carried 4-3, all members present and voting (Saad-yes, Price-no, Finlay-no, Sorey-yes, Sulick-yes, Heitmann-no, Barnett-yes).

CORRESPONDENCE AND COMMUNICATIONS.....

(11:14 a.m.) Vice Mayor Sorey provided an update of the Seagate community's concerns regarding navigational markers and signage in Clam Bay, as well as a brief report on the Doctors Pass and Seagate area beach renourishment project. He further clarified that Collier County residents are always welcome to utilize park and recreational facilities within the City, as the current issue is the amount of City tax subsidy to the Sheriff Department. Council Member Finlay stated that his contact with Seagate residents had revealed concern with the validity of a proposed environmental assessment in Clam Bay as well as caution that informational signage to be placed within that estuary comport with other navigational marker information. Mr. Finlay then commended City Clerk Tara Norman and her staff for its historical recordkeeping. Council Member Heitmann requested clarification of the scope of work for the joint City/County staff report on potential efficiencies regarding parks and recreational services and facilities. In addition, she reiterated her request to meet with staff regarding the CAFR (Comprehensive Annual Financial Report / Item 13) and on inventory of the City's trees (Item 8-d). Council Member Price noted his intended visit to the legislative session in Tallahassee regarding pension reform (Item 8-e) and pointed out the apparent positive outlook in the local economy

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despite the continuing need for budget reductions due to trailing revenues. Council Member Saad noted the need to heed lessons learned from current economic difficulties and maintain civility during the impending airport discussion (Item 7 below).

PUBLIC COMMENT
(11:25 a.m.) None.

Recess: 11:26 a.m. to 1:01 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 11-12860 **ITEM 7-a**
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 11-CU4, PURSUANT TO SECTION 58-691 OF THE CODE OF ORDINANCES, TO ALLOW THE EXTENSION OF THE EXISTING PAVED RUNWAY AND DISPLACED THRESHOLDS AT THE NAPLES MUNICIPAL AIRPORT IN THE C4 AIRPORT COMMERCIAL DISTRICT ON PROPERTY LOCATED AT 160 AVIATION DRIVE, MORE FULLY DESCRIBED HEREIN; DIRECTING THE CITY CLERK TO SEND A COPY OF THIS RESOLUTION TO THE FEDERAL AVIATION ADMINISTRATION (FAA); AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE.

RESOLUTION 11-12861 **ITEM 7-b**
A RESOLUTION DETERMINING THE REMAINDER OF SITE PLAN PETITION 10-SP1 RELATING TO THE 2010 UTILIZATION PLAN FOR THE CITY OF NAPLES AIRPORT PURSUANT TO SECTION 58-682(b) OF THE CODE OF ORDINANCES, CITY OF NAPLES, AS IT PERTAINS TO RUNWAY 5/23 DISPLACED THRESHOLDS, LOCATED AT 160 AVIATION DRIVE NORTH, MORE FULLY DESCRIBED HEREIN; DIRECTING THE CITY CLERK TO FORWARD A COPY OF THIS RESOLUTION TO THE FEDERAL AVIATION ADMINISTRATION (FAA); AND PROVIDING AN EFFECTIVE DATE. Titles read by City Attorney Robert Pritt (1:02 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Saad/voluminous conversations and e-mails, meetings with NAA (Naples Airport Authority) Commissioners and staff as well as City staff; Finlay/numerous telephone conversations, attendance at various NAA and NCC (Noise Compatibility Committee) meetings, Part 150 Noise Study open house, NAA environmental assessment (EA) meeting, and read all EA comments, reviewed pertinent City Council meeting minutes from 2006 to present and listened to audio of NAA workshop meetings; Price/numerous e-mails, telephone calls, and various conversations, listened to audio of NAA workshop discussions, met with persons both in favor and in opposition to the current proposal, and NAA Commissioners and staff; Barnett/spoke with citizens, NAA Commissioners, received e-mails, and listened to audio of NAA workshop discussions; Sulick/received many telephone calls and e-mails, reviewed recent NAA workshop meeting audio, met with NAA Commissioners and members of public in opposition of petitions, and researched prior City Council meeting minutes; Heitmann/received e-mails, spoke to persons both for and against petitions, met with NAA Commissioners and staff and reviewed City Council meeting minutes from 1996 to present, listened to audio of NAA workshop discussions and observed televised NAA meetings; and Sorey/received telephone calls and emails, had various meetings with interested parties and attended town hall meeting.

Planning Director Robin Singer noted her area of expertise and experience as follows: Master degree in urban and regional planning, over 20 years of professional planning experience, AICP (American Institute of Certified Planners) certified as a certified planner. She briefly introduced the petitions, providing a brief overview as contained in her memorandum dated March 4 (Attachment 6). Ms. Singer explained that Council had approved the Airport Utilization Plan on June 2, 2010, with the exception of expanding runway 5/23. The City and NAA then jointly

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sought, and recently received, an opinion from the FAA (Federal Aviation Administration) addressing the issue of preemption of the City's decision-making authority regarding the runway expansion (Attachment 7). Although the FAA opined that the City was indeed preempted in this regard, the NAA decided to pursue both above reflected petitions, she said, and upon its review, staff recommends approval of the conditional use petition and requests that Council consider the runway 5/23 expansion subject to conditions recommended by the Planning Advisory Board (PAB) during its March 9 meeting.

NAA Chairman Cormac Giblin then read into the record an opening statement (Attachment 8), which included the following:

- Chairman Giblin's background and areas of expertise and experience (Page 1);
- Brief history of the NAA's requests (Pages 2 and 3);
- Pertinent Code of Ordinances citations (Pages 3 and 4);
- NAA statutory obligations (Exhibit A / enabling act for NAA) and how the proposed paving project conforms to the aforementioned statutes, City ordinances and the land lease (Exhibit B) (Pages 4 through 7) (appended hereto as Attachments 15 and 16 respectively);
- Reiteration of the NAA requests and argument for their approval (Pages 7 through 10); and
- Qualifications of those to offer expert testimony: Naples Municipal Airport Executive Director, Ted Soliday; Consultant David Bardt, Kimley-Horn & Associates (engineer specializing in airport design and planning); and Consultant Ted Baldwin, Harris, Miller, Miller & Hanson, Inc. (HMMH) (engineer and planner specialized in the field of airport noise abatement), (Pages 10 through 13).

(It is noted for the record that an electronic presentation was utilized during Mr. Giblin's opening statement, a printed copy of which is contained in the file for this meeting in the City Clerk's Office.)

At that time, City Attorney Pritt noted the revised Exhibit D, attached to both resolutions (site plan) (Attachment 9), which had been re-submitted by the NAA following the PAB's request due to the following:

1. One of the numbers for displaced thresholds had been obscured by a notation;
2. No distances were shown on the map for runway 5/23; and
3. The map was not dated.

Noise Consultant Baldwin then utilized an electronic presentation (excerpted text of which is appended hereto as Attachment 10 and complete printed copy contained in the file for this meeting in the City Clerk's Office) to provide an overview of the anticipated aircraft noise reduction during takeoffs with the extension of runway 5/23, concluding that as an individual measure, the extension would provide greater noise reduction than any other measure considered over the past two years.

In response to Council Member Price, Chairman Giblin indicated that the NAA endeavors to follow the guidance of Council in its entirety, reiterating that the NAA believed that the return of commercial service to Naples had in fact been supported by Council and the community. Mr. Giblin further advised that the NAA does own land to the southwest of the property leased from the City.

With regard to Mr. Baldwin's assertion of noise reductions on single-event departures (see Attachment 10, Page 1), Council Member Price questioned whether: 1) the study included an

increased frequency in flights due to the runway extension; and 2) with accumulation calculated, noise would in fact be generally perceived to increase. Consultant Baldwin maintained that this calculation had been included in the environmental assessment which is still pending before the FAA; a 2015 model contains an increase of four arrivals and four departures daily of RJ-type aircraft (regional jets) should commercial service be resumed. Executive Director Soliday confirmed that this amount of commercial activity is greater than any experienced to date and that the high seasonality of local flights should be kept in mind. Growth in the community and growth in the economy will however be the driving factors with regard to increased flights, not the runway extension, he concluded. Mr. Price observed that the key issue of concern in the community is that this increase in commercial flights had not been quantified by the NAA.

Consultant David Bardt further clarified for Council Member Price that runway 5/23 currently contains three varying weight characteristics and that the proposed extensions are to be limited to the 75,000-pound maximum. The lowest rated capacity at an airfield governs the maximum aircraft weight allowable, he said, adding that the maximum weight capacity of the taxiway parallel to runway 5/23 is actually 65,000 pounds and the aprons are supportive of even less weight. (It is noted for the record that the Airfield Pavement Strength Map, dated January 2011, and utilized during this portion of the discussion is appended hereto as Attachment 11.) Mr. Soliday then clarified for Mr. Price that while prior discussions had included statements that weight limit exceptions/exemptions could be granted, the NAA had received indication from its attorney, as well as at the federal level, that this was not the case; the 75,000-pound weight limit must be adhered to, he said.

Recess: 2:04 p.m. to 2:15 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 7-a and 7-b continued.

Vice Mayor Sorey recommended that at some point in the future Council be polled to ascertain its level of support regarding the re-establishment of commercial service at the airport. Mr. Sorey then continued his questioning and in response, Chairman Giblin read into the record the aforementioned three conditions recommended by the PAB and contained in the legislation; they are as follows:

- a. That the runway/displaced thresholds shall be designed and built to not exceed a 75,000-pound weight-bearing capacity for aircraft;
- b. That any increase in the weight-bearing capacity set forth above shall be submitted to and approved by the City Council; and
- c. The Airport shall consider all available technology to mitigate thrust impact at the ends of the runways.

Mr. Giblin confirmed that the NAA would officially consider the conditions during its meeting scheduled for the next day and that he fully intended to recommend their approval.

Consultant Bardt then confirmed that since an aircraft's load is distributed through its wheel configuration and pavement load-bearing capacity is determined in psi (pounds per square inch), an aircraft heavier than 75,000 pounds could in fact utilize the municipal airport should it be equipped with multiple gears and/or larger tires. Vice Mayor Sorey recommended that the conditions above reflect the language contained in the operating certificate as to the 75,000-pound maximum gross weight with dual gears (which involve multiple wheels). Mr. Bardt briefly described the process of increasing the weight-bearing capacity of an existing runway and reiterated that operations are in fact limited by taxiway weight capacity as well as their width; larger aircraft simply would be unable to safely utilize the local airport as there would not be an adequate turning radius available, he said. Should the runway's weight-bearing capacity be increased, that of the ramps and taxiways, as well as their width, must also be addressed, Mr.

Bardt summarized. He further said that the process to be undertaken to accommodate larger and heavier aircraft would be extremely expensive and disruptive to operations as most of the pavement would be entirely replaced. Executive Director Soliday added that temperatures affect the amount of payload, including fuel, an aircraft is allowed to carry; higher temperatures equate to a lower amount of payload on board.

Consultant Baldwin explained for Vice Mayor Sorey that the anticipated noise reduction of one to two decibels would be resulting along the preferred departure track of Fifth Avenue South but the reduction of noise in the residential areas to the north and south would indeed realize a more noticeable reduction.

In response to Vice Mayor Sorey, Planning Director Singer advised that while the Code of Ordinances does not contain a specific definition for “adjoining property”, adjacent concurrency service areas are those which are contiguous, and touch along one side of the outside geographic boundary of a subject property. She further cited the Merriam-Webster Dictionary as follows, “touching at some point or along a line contiguous” and therefore, properties along the west side of the Gordon River in the preferred flight path would not be considered immediately adjoining to the airport property; City Attorney Pritt agreed.

Council Member Saad cited the FAA opinion regarding preemption (see Attachment 7) which had indicated a total runway length of 6,600 feet and questioned the available distance for takeoffs should the runway extension be approved. He said that it appeared that the FAA calculation reflected 5,000 feet with thresholds extending out 800 feet on either end for a total of an additional 1,600 feet (Page 3 of Attachment 7). Mr. Soliday explained that only the end from which the flight would originate could be utilized for calculating an additional 800 feet of available takeoff distance, the other end remaining as the displaced threshold, or safety area; this equates to the declared distance of 5,800 feet maintained by the NAA. Mr. Saad and Mr. Soliday then briefly discussed a 1985 court-mandated settlement between citizen groups and a local airport regarding commercial operations which Mr. Soliday indicated would be difficult to obtain in light of the subsequent ANCA (*Airport Noise and Capacity Act*).

Referencing the NAA’s June 2, 2010, electronic presentation (contained in the file for this meeting in the City Clerk’s Office), Council Member Finlay cited existing and forecasted airport traffic levels (Attachment 12, Slide 1), and Executive Director Soliday agreed that the forecast was in fact overly optimistic for the 2015 figures. Mr. Soliday further agreed with Mr. Finlay’s analysis that the limiting factor of larger aircraft utilizing the local airport is the 75,000-pound weight limitation. However, Mr. Soliday also confirmed Mr. Finlay’s assertion that the Key West airport with a declared distance of 4,800 feet is frequented by 737’s. Following reference to another slide of the aforementioned presentation (Attachment 12, Slide 2), Consultant Baldwin pointed out that the reflected NBAA for close-in NADP (*National Business Aviation Association / Noise Abatement Departure Procedure*) had been in effect since the mid-1990’s and in fact approved by the FAA. Further, he said that the NADP had also been recommended by the technical advisory committee (TAC) of the first Part 150 Noise Study locally and re-confirmed by the most recent TAC in conjunction with the subsequent Part 150 Noise Study. Greater available takeoff distance of a runway equates to a longer time on the ground and less time in the air to reach optimum speed and therefore a pilot can power-down earlier and generate less noise, Mr. Baldwin said.

Again referencing the above noted June 2nd presentation, Council Member Finlay questioned the noise contour illustration for varying types of jets (Attachment 13), asking the percentage of

Lear 35 flights. Mr. Baldwin reported it is at 23% of current jet operations and is therefore the most common class of corporate aircraft utilizing the local airport. As reflected on the same slide, he advised that newer and larger jets are in fact five decibels quieter due to advances in technology, which represents a substantial reduction in noise, he added. In addition, the federal government has mandated NASA (National Aeronautics and Space Administration) and the FAA to endeavor to produce aircraft which are 12 to 20 decibels quieter for single events; this reduction is being sought via aerodynamic modifications, he said, and quieter aircraft are also more fuel efficient.

City Attorney Pritt then explained for Council Member Finlay that should a catastrophic event occur on the airport property, although the City owns the property, the NAA is the authority as the proprietor of the property and therefore, in his opinion, the City's liability would be very tenuous, if any could be ascertained whatsoever.

Executive Director Soliday confirmed for Council Member Sulick that the NAA was not increasing the size of the airport proper but merely paving already existing safety areas. Mr. Baldwin reiterated for her that the 75,000-pound weight limitation is the greatest, overall, restrictive factor as to the size of aircraft which can utilize the Naples facility, although takeoff length in some instances could have impacts, he added. In addition, he reviewed the reasoning of the Fifth Avenue South noise abatement flight path, explaining that upon recent additional review, this commercial corridor continues to be the path least impacting to residential development. During the review, radar data from Fort Myers was obtained that revealed aircraft utilizing runway 23 dispersing over a 1 to 2 mile wide corridor; the current SIDS (standard instrument departure) instructs pilots to make the westward turn upon departure but fails to indicate exactly when to do so, he explained. Newer aircraft have RNAV (aRea NAVigation) technology that uses satellite data; when having been applied in other similar situations, this technology reduced the departure corridor to approximately 1,500 feet in width. Consultant Baldwin also reported that in the past a departure corridor over Naples Bay had been utilized and the residents of Aqualane Shores had been the driving force behind rerouting the aircraft over the Fifth Avenue South commercial corridor. Mrs. Sulick concluded her comments by pointing out that the NAA Commissioners are also residents of the City and that she believes they continue to have the City's best interests in mind.

In response to Council Member Heitmann, Mr. Soliday referenced a diagram depicting runway 5/23 (Attachment 14) and reviewed the definition of a runway as well as explaining displaced thresholds and safety areas. The length of runway 5/23 is declared as 5,000 feet and it is this distance which must be reflected in a pilot's calculations for takeoff, he maintained. He also pointed out that the NAA had relocated runway 5/23 290 feet to the northwest; therefore the safety area remains as it has always been, which is within the original boundaries of the leased property. Mr. Soliday further clarified that a stated maximum gross weight of an aircraft does include fuel and passengers. Concurring with Mrs. Heitmann that the FAA could in fact preempt the current weight limitation, the NAA has, in accordance with federal (FAA) grant assurances, adhered to the 75,000-pound limit as developed during its Master Plan process which has received FAA approval.

Recess: 3:20 p.m. to 3:29 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 7-a and 7-b continued.

Public Comment: (3:30 p.m.) (It is noted for the record that all materials submitted by public speakers are contained in the file for this meeting in the City Clerk's Office.) **Larry Schultz, 408 16th Avenue South, and Alan Parker, 741-A Third Street South,** utilized an electronic

presentation to explain their opposition to the displaced threshold extension (a printed copy of which is appended hereto as Attachment 15; an excerpted audio of two NAA workshops had also been included within the presentation). (It is noted for the record that initially Joe Karaganis was to have participated in the aforementioned presentation; the allotted time lapsed and Mr. Karaganis spoke later having been granted the time of another speaker.) The following individuals also spoke against the NAA's proposal: **Jack Metcalf, 508 Broad Avenue South; John Tobin, 574 Broad Avenue South; Sharon Kenney*, 411 17th Avenue South; Allen Nelson, Old Naples; John Wlassich, 968 Fifth Street South; Jan Miller, 628 Broad Avenue South; Judy Kaplan*, 380 Seventh Avenue South; Gus Nichols, 829 Wyndemere Way, speaking for Bill Confoy*, Edgemere Way South; Raymond Tibbitts, 2131 Forrest Lane; Hans Muller*, 1128 12th Avenue North; Robert Andres*, 2600 Kings Lake Boulevard; Bruce Jay, 1105 Sandpaper Street & 315 Sixth Street South; Guy Deutermann, 1140 Seventh Street South; Tom Laughlin, 25 Second Avenue South, Sue Smith, 11th Avenue South.** The following supported the proposed extension of runway 5/23: **Scottie Yeager, 684 15th Avenue South; Richard Gentil, Naples Air Center; Scott Cameron, Murex Drive; Brenda O'Connor*, representing the Greater Naples Chamber of Commerce; and Susan Aldrich*, 3675 First Avenue NW.**

Recess: 4:59 p.m. to 6:29 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 7-a and 7-b continued.

Public Comment (cont.): (6:29 p.m.) Subsequent to the recess, speakers against the proposal were as follows: **Joy Arpin Syptert, 589 Fifth Avenue South & 352 Sixth Street South; Bill Willkomm, 1370 Curlew Avenue; Joe Karaganis, 890 Gulf Shore Boulevard South** (utilizing time given by **Bill May, 1525 Gordon Drive**); **Eve May*, 1525 Gordon Drive; Gary Thomas, 575 18th Avenue South; Donna Westemeyer, 504 Broad Avenue South; Robert Barrows, 1100 Eighth Avenue South; Ted Trimmer, 134 16th Avenue South; Tom Trettis, 2630 Lantern Lane; DeeDee and Jim Forrest, 1548 Fourth Street South; Forrest Nichols, 1301 Seventh Street South; Judith Chirgwin*, Naples; Lynne Hixon-Holly, 590 14th Avenue South; David Dardi, 199 Albi Road** (sworn separately); and **Janet Nebus, 3100 North Road** (sworn separately).

Following are additional speakers in favor of the extension: **Bruce Buchannan, 160 Tenth Street North** (sworn separately), **Todd Nelson*, no address given; Ken Kelly, 4260 16th Street NE; and Nick George, 411 Sixth Street South.** The persons listed hereafter did not respond when called: **James Elson, 680 Eighth Avenue South; Edward McCarthey, 94 Second Street South; Peter Gough, 365 First Avenue South; Bill Cox, 189 Edgemere Way South; Nancy Oakes, 516 Broad Avenue South; Charlie Canali, 670 13th Avenue South; Catherine Fry, 374 Citation Point; Ursula Goetz, 2980 West Crown Pointe Boulevard; Keki Elavia, 291 Shadow Ridge Court, Marco Island; Bill Earls, 221 Second Avenue North; Mary Lynn Stahnke, 759 Portside Drive; Margaret Geller, 1490 Third Street South; John Solakvan, 3581 Corona Way; Alvin McQuinn, 1551 Gulf Shore Boulevard South; Duane Repp, 300 Edgemere Way East; Richard Coff, 930 18th Avenue South; William Trapani, 6610 Huntington Lakes Circle; and George Kaltenmeier, 206 Edgemere Way South.** In addition, although not registered to speak, **Sophie Orban, 10 17th Avenue South,** presented materials to Council during the above recess. *(Asterisk (*) denotes speaker submitting written comments and/or documentation.)*

Council Member Price then commended Messrs. Parker and Schultz for their presentation and ongoing involvement in the opposition movement. Mr. Price noted that his most important consideration is to preserve the character of the City and questioned whether the purported

increase in the frequency of air traffic, resulting from the runway extension, could in fact be quantified. Mr. Parker explained that precise figures as to volume could not be developed but industry trends reflect larger planes being purchased. Mr. Parker further maintained that with the additional available runway, larger planes could utilize the local facility; it is the NAA requesting the extension, not the FAA, he said, and this must be kept in mind. Mr. Parker summarized his presentation saying that he believes that the extension will in fact add a point of growth over time to the airport, adding that should Naples merely become a fueling station, flights will increase. Mr. Schultz continued the presenters' response to Mr. Price by saying that the NAA's original proposal had been that the extension would be necessary to lure commercial regional jets to return to Naples, which are larger and heavier. Historically, he cited 8,500 jets into Naples when the 5,000-foot runway was declared; this increased to 27,000 by 2005, he said. Vice Mayor Sorey indicated that he continued to believe that the key variable is the 75,000-pound weight limit and if assurance can be given that it will remain unchanged, then the impact of the runway length with regard to the size of aircraft being able to utilize the facility would no longer be an issue.

Public comment was then closed.

Recess: 8:02 p.m. to 8:13 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 7-a and 7-b continued.

Mayor Barnett explained that the petitioner (NAA) would have the opportunity to summarize its position and rebut testimony as it deemed necessary.

NAA Chairman Giblin stated that the reoccurring theme throughout the public comment above had been that the NAA is seeking larger and heavier aircraft which would utilize the Naples Municipal Airport with greater frequency. Nothing requested in the petitions under discussion is based upon those assertions, he said, explaining that the size and weight of aircraft currently flying into the airport is to be maintained; the NAA had repeatedly assured the public and Council of this and the length of the runway is not the controlling factor. Should commercial regional jet service be resumed, an optimistic estimate of four trips per day is expected and the economy, not length of the runway, is the controlling factor. When the airport's number of flights decreased in 2005, it was due to the downturn in the economy; the runway had not been altered, he added. Furthermore, questions had been raised as to what entity benefits from the runway extension. He said he personally neither owns nor operates an aircraft, and resides in one of the areas most affected by aircraft noise. As a NAA Commissioner, he said that he endeavors to undertake extensive research and make decisions in the best interest of both the airport and the community. In return for the \$1.00 per year rental fee for the airport property, according to the FDOT (Florida Department of Transportation), the community receives over \$120-million in direct economic impact from having a local airport; approximately \$3,000 per aircraft, he added. Every NAA meeting convened for discussion of the proposal has been in the public pursuant to Chapter 286, Florida Statutes, Mr. Giblin advised. He also clarified that, with regard to the excerpted audio of two NAA workshops (played during the initial presentation by Messrs. Parker and Schultz), comments made by the airport's Executive Director regarding weight limitations were not endorsed by the NAA and in fact were questioned and/or corrected during the course of the discussions. The TAC (the NAA's Noise Compatibility Committee's Technical Advisory Committee), he reiterated, had been disbanded as the NAA had decided to halt its Part 150 Noise Study because a lower volume of operations could in fact erode noise protection measures currently in place. In conclusion, Mr. Giblin maintained that he viewed the NAA and Council as partners seeking a common solution, not as adversaries, and restated his commitment to the PAB conditions cited above, again noting his intent to recommend their

approval by the NAA the following day. He observed that the runway extension will in fact increase safety and reduce aircraft noise in the residential areas of the community. He therefore urged approval of the petitions.

Executive Director Soliday confirmed for Council Member Saad that some of the largest aircraft in general aviation utilize the local airport, offering the example of the Global Express and G5, both with a manufacturer's maximum gross weight rating in the low 90,000-pound range. These planes must however still adhere to the Naples airport's maximum of 75,000 pounds and at that weight, use roughly one-half of the runway for takeoff. While the mid-size RJ-type with lower maximum gross weight ratings use the entire runway and with high temperatures, are restricted and must decrease their payload for safe departures, he explained (*due to power ratio of the engines over the body weight*).

Noise Consultant Baldwin verified for Council Member Finlay that airports located in Scottsdale, Arizona, and Boca Raton, Florida, had both lengthened runways for noise abatement alone; as he had provided noise consultation for these endeavors, he said he could also attest to the fact that no pursuit of commercial service had also been involved.

At the request of Council Member Price, NAA Attorney Joseph McMackin made a brief statement during which he noted that during quasi-judicial proceedings, persons offering testimony are under oath. Noting that rules of evidence are somewhat relaxed in these types of public proceedings, Mr. McMackin nevertheless took issue with the audio presented by Messrs. Parker and Schultz, stating that he believed its content to be non-contiguous and misleading, and therefore exceeded the bounds even of relaxed rules of evidence.

Attorney McMackin then quoted the audio as follows: "I only have one question, the anticipated non-extension, extension..." and stated that rather than an example of the NAA Commissioners attempting something sub-rosa through euphemism, the true intent of this statement by NAA Commissioner Linda Flewelling had been quite different. Reading from a transcript of that meeting: "Commissioner Flewelling: I have only one question. The anticipated non-extension extension is not with the idea of larger, heavier planes. The board sort of made the commitment, this is about flight safety, reduce noise, and it is not anticipated that they would entertain the idea of larger jet airplanes.", Mr. McMackin maintained this to be one example of statements contained on the audio recording that had been taken out of context.

City Attorney Pritt requested an opinion from Attorney McMackin as to the NAA's power and authority to purchase land; Mr. McMackin cited Chapter 69-1326, Florida Statutes (aka "The Enabling Act of the NAA/ appended hereto as Attachment 16 and entered into the record of this hearing as Exhibit B), Section 2(d) which describes improvements at the airport facility: "The word 'improvements' shall mean such repairs, replacements, additions, extensions and betterments of and to the airport facilities as are deemed necessary to place or to maintain such facilities in proper condition for the safe, efficient and economic operation thereof.". Under the powers clause, he continued his citation as follows: Section 4(e): "...to improve, extend, enlarge, equip, repair, maintain and operate the airport facilities..."; 4(k): "To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act..." and 4(m): "To do all acts and things necessary or convenient to carry out the powers granted by this act.". From Section 16: "The provisions of this act shall be liberally construed to effect the purposes thereof." was also cited. Clearly, he said, the purchase of the parcels to the southwest of the City-owned land is within the definition of the powers conferred upon the NAA by the State. He further confirmed for Mr. Pritt that this

interpretation had never been legally challenged. Responding to Council Member Heitmann, who challenged the NAA's right to purchase real property, Attorney McMackin pointed out that a reference to personal property is contained within the Act and cited as follows: Section 4(j): "To acquire in the name of the authority by gift or purchase such personal property as it may deem necessary in connection with the improvement, extension, enlargement or operation of the airport facilities." He again indicated that the NAA's authority and empowerment had been sanctioned by the State. Referencing parcels purchased by the NAA, Mr. Soliday also indicated that the transaction had occurred in 1992 or 1993 and Mr. McMackin added that this had not been challenged either.

City Attorney Pritt then cited Section 2(a) of the Act: "The term 'airport facilities' shall mean the airport facilities at the Naples municipal airport...including, but not limited to, landing fields, hangars, shops, terminals, buildings and all other facilities necessary or ..." and questioned Attorney McMackin as to the provision's applicability to the purchase of land. Mr. McMackin explained that he agreed with it also supporting his opinion above but indicated that he had cited what he believed to be more specific sections in that regard.

Council Member Sulick observed that the NAA had in fact contributed \$642,000 to the City for 2011, \$611,000 for fire safety service and \$31,000 for police coverage, both of which are under the City's General Fund, in addition to acquiring a new fire truck for Fire Station #3 located on airport property. She further cited prior Council meeting minutes which had noted the airport's involvement with the City's stormwater project along North Road and the airport's sustainability program, which mandates that one-half of the \$3-million budget for the expansion of the general aviation terminal be earmarked for increasing the level of environmental safeguards. Following Hurricane Wilma, Mrs. Sulick continued, the airport had utilized its FEMA (Federal Emergency Management Agency) reimbursement funding in part to repair sidewalks and bicycle paths, in addition to providing an easement for the Gordon River Greenway Project. Therefore, she observed, the airport does in fact contribute to the City in many ways, noting that sites within the property have been used to mitigate various City stormwater and irrigation (reclaimed, reuse or alternative) water issues.

Council Member Heitmann stated that in her opinion, the lease between the City and the NAA (appended hereto as Attachment 17 / entered into the record of this hearing as Exhibit A), and the Act (see Attachment 16) both limit the operations of the airport to the original 640 acres of property and took issue with the relocation of North Road as a means of what she termed expansion of the airport. Referencing Attachment 9 (Exhibit "D" to the resolutions), Executive Director Soliday pointed out that the project had been planned for many years following the shift of the runway to the northeast to obtain the necessary 1000-foot safety area at each end of the runway, not as an expansion of operations. The FAA mandated minimum safety area for a runway had been increased from 700 feet in effect in the 1990's, he explained, and the shift lowered mitigation from 30 to 50 acres, down to 1.2 acres. He stressed the latter point as the parcels were wetlands and/or filled with mangroves. The aforementioned shift of runway 5/23 to the northeast had been approved by all concerned parties, including the City, he said, and also resulted in a lessening of aircraft noise over the City.

Council Member Heitmann however maintained that objections similar to those initially raised in the 1990's were the subject of the current public outcry, again questioning the runway expansion in light of the airport's apparent successful operation. Mr. Soliday advised that the NAA was in fact an entity of the community, meeting its responsibilities of the lease and enabling legislation (the Act) to reduce noise impacts, increase service and convenience for

residents, as well as being mindful of safety with regard to the airport operations. In addition, he reiterated Chairman Giblin's statement that re-establishing commercial regional jet service to Naples should also be considered a benefit to the community. Mrs. Heitmann then stated that she in fact supports the airport and had initially believed that the community desired commercial air service, although it appears that this is no longer the case with the residents of the City, due especially to anticipated increases in the frequency of flights, she added. Mr. Giblin reiterated that his reasoning for support of the runway extension had been the resulting noise reduction to residential areas, following which Mrs. Heitmann maintained that no numerical value had been assigned to this factor. Noise Consultant Baldwin also reiterated that with the combined results of the factors discussed above, at least a three to five decibel reduction is to be realized in the residential area immediately north and south of the Fifth Avenue South commercial corridor; this would follow the City's land use compatibility criteria, he added. Mrs. Heitmann nevertheless maintained that the community's level of support for commercial service should be decided via referendum; this would remove the decision from Council and allow the public a direct voice.

Council Member Heitmann then addressed the 75,000-pound weight limitation, questioning whether its continuation in fact fell under the jurisdiction of the NAA. Mr. Soliday explained that, similar to the runway length, the City is preempted in this, a fact about which the NAA, as well as the City, has been aware since 1999; however, the NAA continues to come to Council seeking its support of amendments to the airport Master Plan and Utilization Plan. At that point, NAA Chairman Giblin reiterated that the NAA is seeking to extend runway 5/23 due to the fact that safety and noise attenuation can always be enhanced, and that the chance exists that commercial service may be enticed to return to the local facility. He continued his response to Mrs. Heitmann by saying that he believes that much of the public's concerns are based upon misinformation, pointing out again that he lives in the Old Naples area and a notice had been placed on his front door on two separate occasions indicating, "airport permanently extending runways to allow larger, heavier jets." He stressed that as stated on the record, this is not the case. Mrs. Heitmann then commented that larger and heavier aircraft were not the issue, but the frequency of flights, and Mr. Giblin reiterated that it would be the economy, not runway length, determining frequency.

City Attorney Pritt then reviewed the resolution for Item 7-a (determining Conditional Use Petition 11-CU4) explaining that Council action on this item would affect action on Item 7-b (consideration of the site development plan continued from June 2010); both resolutions have the above referenced "Exhibit D" (see Attachment 9) appended thereto. With regard to the resolution under Item 7-a, he noted the following:

- Section 1 – reference to the revised Exhibit D,
- Section 2 (if denied) - should the petition be denied, reason for denial must be stated;
- Section 2 (if approved) – the above discussed three conditions recommended by the PAB had been included;
- Section 3 – this section had been included due to the fact of the currently pending Environmental Assessment (EA) submitted by the NAA to the FAA concerning the same matter. Prior communication from the City to the FAA indicated that no position regarding the EA could be taken by the City until the current hearing had taken place. He noted the March 8, 2011, correspondence from the FAA indicating that the public comment period for its consideration of the EA would remain open until March 31, 2011, (Attachment 18) thereby providing time for the City's comments to be submitted; Mr. Pritt recommended that the City's position in fact be forwarded by that deadline. (It is noted for the record that Mr. Pritt directed that the record of this hearing be forwarded to the FAA in its entirety.); and

- Section 4 – indicates that a copy of the resolution be forwarded to the FAA following decision-making, regardless of the outcome;

Mr. Pritt then provided a brief overview and cited supporting case law regarding his opinion that the City is preempted with regard to jurisdiction over the extension of runway 5/23, referencing the lease (Attachment 17 / Exhibit A) and the Act (Attachment 16 / Exhibit B), as well as citing *Pirola v City of Clearwater* (720 F.2d 688) and *City of San Diego Unified Port District v Gianturco, et al* (651 F.2d 1306). Should Council agree that preemption exists, the matter could be dismissed or Council could decide the matter based upon the City's criteria for each petition, he concluded. In response to Vice Mayor Sorey, he further clarified that all courts of law differentiate between regulatory, or police power, and proprietary power. He reiterated that with regard to the City's zoning power, it is preempted by the federal government of its use in this matter. The NAA's petitions have been submitted, they have not been withdrawn, and jurisdiction can never be waived, he said; a decision should therefore be made based upon that day's hearing.

Should the petitions be approved, Vice Mayor Sorey then recommended amended language in Section 2(a) of the resolution: "...for aircraft, which shall be defined CSLD to all ACFT exceeding 75,000 pounds maximum gross weight dual gear as indicated on ACFT operating certificate issued by the manufacturer". (*CSLD – Closed; and ACFT – Aircraft*) This would further define the existing weight limitation, he said. Referencing a draft interlocal agreement between the City and the NAA (Attachment 19) which he said he authored, Mr. Sorey recommended the following with regard to Section 2(b) of the resolution: "...approved by City Council as per the interlocal agreement attached hereto;", should the NAA be willing to support such an agreement. City Attorney Pritt pointed out that the NAA's attorney had indicated in his March 15, 2011, correspondence that the NAA would in fact be prohibited from entering into such an agreement due to both state and federal law prohibitions (Attachment 20). Mr. Pritt then referenced his memorandum dated May 25, 2010 (Attachment 21), stating further that should the NAA and the City jointly approach the FAA with the agreement under discussion which bases the weight limitation upon runway capacity issues, there existed, in his opinion, a slight chance of it being considered by the FAA. He further stated that he did not however believe that the agreement should be a condition of the resolution. Vice Mayor Sorey concluded that while he supported the runway extension, he would not vote for approval of the petition without documented assurance that the current weight limitation would be maintained by the NAA.

Referencing Section 2(c) of the resolution, Vice Mayor Sorey also recommended the following: "The Airport shall mitigate thrust impact at the end of the runways to preclude noise level above 60 DNL at the nearest residence consider all ...the runways.". Noise Consultant Baldwin responded that the 60 DNL is based on the City's land use criteria and that residential properties exist currently within the 60 DNL contour. This contour would be decreased in size with the extension thereby impacting fewer residents, he said, and new development would either be required to provide an avigation easement acknowledging the sound levels to be encountered, or incorporate sound insulation measures. NAA Chairman Giblin added that during the PAB discussion, the subject condition had been recommended due to concerns of debris such as rocks or sand, however, Vice Mayor Sorey explained that residents' chief concern appears to be noise.

In response to Council Member Heitmann, Mr. Baldwin stated that he did not believe that a noise berm would aid in reducing noise levels to residential areas on the west side of the

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Gordon River, due to the manner in which sound waves travel from their source; the existing mangroves offer better sound buffering than any berm that could be constructed, Executive Director Soliday added. Mr. Soliday further explained that avigation easements had been purchased on affected properties by the NAA when the parcels to the southwest end of runway 5/23 had been obtained. Mr. Baldwin then interjected that a buffering wall could in fact increase noise levels to some areas.

Mr. Soliday confirmed for Council Member Heitmann that aircraft weights are documented and tracked by the local facility; should a pilot not conform to rules, their license can be revoked, he stated.

Council Member Saad reiterated that should an agreement be sought as referenced by Vice Mayor Sorey, then time should be allotted for research into the City of Newport Beach case he had noted above. Council Member Sulick cautioned that the parties involved in that case had however been forced into the agreement, which Mr. Saad acknowledged. Mrs. Sulick continued that the NAA had held its September 8, 2010, meeting to gather public input with regard to the pending EA and the City had been unable to respond due to the continuance of the current hearing. She stated that she believed the City was indeed preempted and recommended that a decision be made, following which a dialog could then be opened via the EA involving residents, the FAA, NAA and City. NAA Chairman Giblin added that the NAA has never claimed preemption and was seeking the conditional use as a member of the community, that it had been the City who had initiated the seeking of an FAA opinion in that regard (see Attachment 7). He reiterated that his approbation of the three conditions recommended by the PAB would be proffered during the next day's NAA meeting. In response to Mayor Barnett, Mr. Giblin acknowledged that should a vote for denial be the outcome of that day's hearing, statutorily the NAA cannot delegate the decision to Council and that no legal manner of reaching an agreement otherwise is available; the NAA is seeking to abide by the City's zoning and land use codes by agreeing to the three conditions above referenced.

Vice Mayor Sorey said that he questioned whether Section 1 and 2 of the draft interlocal agreement (see Attachment 19), addressing the existing weight limit and the utilization plan, respectively, could be listed under Section 2(b) of the resolutions. City Attorney Pritt pointed out that much of the language in these sections states facts and is not needed, although Section 1 could include reference to the prohibition since the early 1990's of aircraft exceeding the 75,000-pound maximum gross weight. Vice Mayor Sorey concurred. Council Member Price further noted that Section 2 of the agreement in fact addresses the subject of the current hearing and agreed that it was not necessary in the resolution. Chairman Giblin then reiterated that should the petitions be denied, the NAA could reach an opposing decision and move forward with the extension of runway 5/23, although he indicated that this was not likely. Council Member Saad interjected his reiteration that an agreement similar to that resulting from the Newport Beach case should be considered; the agreement has been in effect for 25 years and had apparently been successful in limiting the effects of an airport's operations upon the community. Council has three options, he opined, either approve or deny the petition, or delay decision-making to allow time to seek another solution to which the FAA is a party. Council Member Sulick reiterated that no additional time is available should the City wish to submit comment regarding the pending EA, and Council Member Heitmann questioned how the current petitions could be considered without the environmental assessment and without a survey of the property.

City Council Regular Meeting – March 16, 2011 – 8:29 a.m.

Council Member Heitmann then sought confirmation that the lease of the airport property by the NAA (Exhibit A / see Attachment 17) and the Act (Exhibit B / see Attachment 16) had been entered into the record; City Attorney Pritt advised that this in fact had occurred. Mr. Pritt then addressed questions by Mrs. Heitmann regarding the Act as follows:

- The NAA is in fact the City of Naples Airport Authority and references throughout the Act to “the authority” denote the NAA;
- The City Council has the power to appoint, and remove for cause, NAA board members, this is the authority retained within the Act by the City Council;
- Section 2(c) provides a definition for the term “cost”, the word survey is referenced but indicates that a survey, as well as the other items listed, are in fact considered a defined cost; this does not mandate that a survey be undertaken. Executive Director Soliday further clarified that Exhibit D to the resolution (see Attachment 9) had been provided by the NAA and while it denotes that it is not a survey, the information contained therein was in fact garnered from legal descriptions obtained in the public records of Collier County. Mr. Pritt added that he did not consider a formal survey necessary for that day’s considerations and that due to Homeland Security issues, it is not necessary to denote where all facilities of the property are located; City Manager Moss agreed with these comments. Planning Director Singer added that what had been submitted is considered adequate for the record unless the boundaries are being modified, which is not the case. She further advised that the modifications under discussion do not lie outside the boundaries. Mrs. Heitmann maintained that she had requested a survey of the airport property in the past, however, Ms. Singer reiterated that the boundaries are not being amended and all modifications are within those boundaries as reflected on the subject diagram (see Attachment 9). Mrs. Heitmann said that she was unable to read the document.

Mr. Pritt then addressed Mrs. Heitmann’s comments regarding the lease as follows:

- Section 5, regarding compliance with laws, ordinances, rules and regulations - should a City ordinance be preempted by Federal law, it is a nullity and does not apply; therefore the NAA would not be in violation of the lease should it move forward with the extension without the approval of Council. Mrs. Heitmann maintained that in her opinion a court of law would have to make that determination. She also received clarification from various sources that preemption had not been an issue during the Stage 2 jet ban litigation, but a proprietor issue.

Council Member Finlay expressed concern that should untoward attention be brought upon the current 75,000-pound weight limitation, the possibility of it being rescinded by the FAA increased. Executive Director Soliday agreed, pointing out that to reference the limitation being based upon any factor other than maintaining the structural integrity of the pavement is also unwise. Mr. Soliday further stated that the FAA has in fact questioned whether the limitation should remain, although he offered assurances that the NAA would continue to defend it. In response to Council Member Price, Mr. Soliday observed that while the weight limitation is referenced in the PAB-recommended conditions, so long as the NAA approves them, no preemption exists so far as the FAA is concerned.

Council Member Heitmann recommended that the hearing be continued to allow time for research into an interlocal agreement as discussed above. NAA Attorney McMackin confirmed for Council Member Saad that an agreement similar to the City of Newport Beach would in fact be prohibited due to ANCA which had been enacted by Congress due to its disapproval of the Newport Beach agreement.

MOTION by Heitmann to DENY RESOLUTION 11-12860 based upon failure to meet the following standards for approval of a conditional use: (5), (7), (8), (9), and (10). This motion was seconded by Saad and FAILED 3-4, all members present and voting (Sulick-no, Sorey-yes, Finlay-no, Heitmann-yes, Saad-yes, Price-no, Barnett-no). (It is noted for the record that a copy of the standards is appended hereto as Attachment 22.)

Following the failure of the motion to deny, City Attorney Pritt confirmed that the matter could be continued but reiterated that should Council wish to submit comments to the FAA regarding the pending EA, the deadline is March 31st. The current meeting could be continued to a date certain, prior to the deadline, and consideration would resume, he said. Mr. Pritt confirmed for Council Member Heitmann that a process did exist for a referendum initiative; she requested that this be reviewed at a later date.

MOTION by Price to APPROVE RESOLUTION 11-12860 as submitted; seconded by Finlay and carried 4-3, all members present and voting (Sorey-no, Finlay-yes, Price-yes, Saad-no, Sulick-yes, Heitmann-no, Barnett-yes).

MOTION by Price to APPROVE RESOLUTION 11-12861 as submitted; seconded by Finlay and carried 4-3, all members present and voting (Finlay-yes, Sulick-yes, Heitmann-no, Price-yes, Sorey-no, Saad-no, Barnett-yes).

ADJOURN
10:56 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 04/20/11

Excerpted text of Item 13 / Comprehensive Annual financial Report by CPA Associates:

September 30, 2010

Financial Highlights

Government-wide (Pages 16-19 of CAFR)

The assets of the City exceeded liabilities by \$195.8 million (net assets); of which \$74.3 million (unrestricted net assets) may be used to meet the City's ongoing obligations to citizens and creditors.

- Governmental activities total net assets were \$93.8 million and unrestricted net assets were \$45.7 million or 49%.
- Business-type activities total net assets were \$102 million and unrestricted net assets were \$28.6 million or 28%.

Total net assets increased by \$6.5 million in 09/10 compared to \$7.3 million in the prior year.

- Governmental activities net assets decreased \$1.6 million.
- Business-type activities net assets increased \$8.1 million.

☐ Governmental Activities

■ Revenue decreased \$2.25 million

- Capital grants and contributions decreased approximately \$770K—in the prior year \$633K was reported for the special assessment for West Naples Bay.
- Property taxes decreased approximately \$300,000 due to lower property values.
- Franchise fees decreased approximately \$470,000 due to lower fuel costs reported by FP&L.
- Investment earnings decreased approximately \$800,000 due to lower interest rates.

■ Expenses decreased approximately \$380,000

All governmental functions had a decrease in expenses except for:

- Physical and economic environment increased \$280,000 due to refunds provided by the 41-10 Open Space Fund and Parking Trust Fund in the amounts of \$441K and \$78K.
- Transportation increased \$195,000. This is due to an increased expenses in the overlay program (\$50k), salaries and related benefits (60K), and professional services (\$20K).

☐ Business-type activities

■ Revenues increased approx \$400,000

- Charges for services decreased approximately \$217,000. All activities (solid waste, stormwater, beach, dock and tennis) reported decreased in charges for services, except for water and sewer which reported an increase due to the increase in the water utility rates.
- Capital grants and contributions increased approximately \$935,000
 - Water and sewer increased approximately \$775K for SFWMD grants mainly for aquifer storage and recovery.

- Stormwater increased approximately \$311K for SFWMD grants for Basin III and Riverside Circle Filter Marsh.
- Investment earnings decreased approximately \$308,000 due to lower interest rates.

■ Expenses decreased approx \$659,000

- All activities (water and sewer, solid waste, beach, dock and tennis) reported decreases in expenses except for stormwater which reported an increase of \$369K of which \$250K was depreciation, \$50K was a payment to the Naples Zoo for connecting to City sewer system, \$37K is related to repairs to transportation equipment.

□ **Governmental Funds** (pages 20-25 in the CAFR)

■ Reported an increase in fund balances of \$1.4 million.

- Revenues decreased \$2.158 million
 - Taxes decreased \$489K
 - Permits, fees, and assessments decreased \$783K
 - Charges to other funds decreased \$372K
 - Investment earnings decreased \$720K
- Expenditures decreased \$7.107 million
 - General Fund expenditures decreased \$1.9 million—all functions reported decreases.
 - Capital Projects Fund expenditures decreased \$700K (prior year higher due to Fleischmann Park improvements and other).
 - Community Redevelopment expenditures decreased \$3.57 million (prior year higher due to parking garage construction).
 - Streets and Traffic Fund expenditures decreased \$600K (prior year higher due to sidewalk master plan implementation).

□ **General Fund** (page 20 and 24 in CAFR)

■ Reported an increase in fund balance of \$879,000.

■ Total fund balance at September 30, 2010, is \$17.474 million.

■ Unreserved fund balance at September 30, 2010, is \$17.053 million or 48% of expenditures.

□ **Proprietary Funds** (pages 30-39 in CAFR)

■ All funds (Water and Sewer, Solid Waste, Stormwater, Beach and Tennis) reported increases in net assets, except for the City Dock Fund which reported a decrease of \$43K.

■ All funds are reporting positive unrestricted net assets.

Financial Highlights (continued)

□ **Fiduciary Funds** (pages 40-41 CAFR)

■ All of the pension funds reported increases in net assets—total increase was \$10.017 million in the current year compared to \$5.4 million in the previous year.

- This increase from the prior year is related to the appreciation in the FMV of the pension assets—\$5.5 million.

■ All required contributions were made by the City.

Auditor's Reports

□ **Independent Auditor's Report** (page 1)

Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* (page 183)

- Independent Auditor's Report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance in accordance with OMB Circular A-133 (page 185)
- Independent Auditor's Management Letter (page 191)
- Issuing an opinion on governmental activities, business-type activities, each major fund, and aggregate remaining fund information.
- Major funds for 2009/10 were the General Fund, Debt Service Fund, Capital Projects Fund, Community Redevelopment Fund, Streets and Traffic Fund, Water and Sewer Fund, Solid Waste Fund, and Stormwater Fund.
- Audit was performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*.
- Issued an unqualified opinion—the financial statements are fairly presented, in all material respects, and report the financial position and changes in financial position and cash flows for the year then ended.

Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* (page 183)

■ **Internal Control Over Financial Reporting**

- Not issuing an opinion on the effectiveness of the City's internal control over financial reporting.
- No material weaknesses reported.
- Significant deficiencies were reported in the Management Letter for management's consideration.
- Management's responses to these reported findings are also included on page 195.

■ **Compliance and Other Matters**

- Not issuing an opinion on compliance with the provisions of laws, regulations, contracts, and grant agreements.
- No instances of noncompliance reported.

Independent Auditor's Report on Compliance With Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133 (page 185)

■ **Additional report not included in prior year.**

■ **Single Audit is required when the City has expenditures/expenses in excess of \$500,000 in Federal grant awards.**

■ **Schedule of Expenditures of Federal Programs is reported on page 187.**

■ **Total Federal grant expenditures were \$524,912.**

Independent Auditor's Report on Compliance With Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133 (continued)

Compliance

- Issued an unqualified opinion—the City complied, in all material respects, with the compliance requirements that could have a direct and material effect on each of its major Federal programs for the year ended September 30, 2010.

- Major Federal programs tested are listed in the Schedule of Findings and Questioned Costs on page 188.

Internal Control Over Compliance

- Not issuing an opinion on the effectiveness of the City's internal control over compliance.

- No material weaknesses reported.

- A significant deficiency was reported in the Management Letter for management's consideration.

- Management's response to this reported finding is also included on page 195.

Independent Auditor's Management Letter (page 191)

■ Audit was also conducted in accordance with Chapter 10.550, Rules of the Auditor General.

- Reports on the Status of Prior Audit Findings (page 190).

- City complied with Florida Statutes regarding the investment of public funds.

- City did not meet any of the conditions described in the Florida Statutes regarding financial emergencies.

- Financial condition assessment was performed.

SAS 114 Letter (Separate letter—not in CAFR)

In accordance with generally accepted auditing standards, we are required to report certain matters to the governing authority regarding the conduct of the audit.

- No significant changes in accounting policies or financial statement disclosures.

- City implemented GASB 51—Accounting and Financial Reporting for Intangible Assets—no impact to the current year's financial statements.

- Provides a list of the audit adjustments that were made, as well as audit adjustments that were passed on.

- No difficulties encountered during the audit.



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: March 16, 2011

Agenda Section:	Regular	Prepared By: Robin Singer, Director
Agenda Item:	9	Date: February 23, 2011 Department: Planning
		Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT:		
Ordinance relating to the hours of Live Entertainment Permits to extend the hours of operation for live entertainment on Thursdays, Fridays and Saturdays.		
SUMMARY:		
City Council is asked to consider an Ordinance relating to the hours of Live Entertainment Permits; amending Subsections (e) (3), (4), and (5) of Section 56-125 and adding Subsection (i) to Section 56-125, Live Entertainment Permit, of the Code of Ordinances, to clarify language and remove conflicts pertaining to the hours of operation for live entertainment.		
BACKGROUND:		
<p>On December 16, 2009, City Council approved an extension of the hours of operation for existing indoor and outdoor Live Entertainment Permits until 12:00 midnight, Thursday through Saturday. The ordinance required a review of the time extension by City Council six months and 12 months following adoption. Prior to the amendment, the Code allowed indoor live entertainment up to 11:30 p.m. and outdoor entertainment until 10:00 p.m. Sunday through Thursday and until 11:00 p.m. Friday and Saturday.</p> <p>During the one year review period, City Council considered eight Live Entertainment Permits. Of those permits City Council chose to restrict three of the establishments to hours that did not extend to the maximum allowed (midnight on Thursday – Saturday) due to the proximity to residential uses. This suggests that the time extension may be acceptable in commercial areas but that City Council may prefer to maintain options to limit hours where establishments are near residential areas.</p> <p>At its November 15, 2010 meeting, City Council found that there had not been any negative issues relative to the time extension and directed staff to pursue a text amendment that would allow for the extension of hours at the discretion of City Council.</p> <p>While drafting the Code revisions, it was recognized that (1) Establishments with Live Entertainment Permits with fixed times on Thursday through Saturday were automatically granted extensions until midnight in December 2009; (2) An amendment to the Code should acknowledge the continued right to have Live Entertainment until midnight on Thursday through Saturday; (3) Some establishments receiving Live Entertainment Permits since December 2009 must cease entertainment earlier than midnight, and (4) Some establishments receiving new Live Entertainment permits may be required to cease entertainment earlier than midnight, Thursday through Saturday.</p> <p>The proposed ordinance is intended to allow new permits for indoor and outdoor live entertainment until midnight Thursday through Saturday at the discretion of City Council. The ordinance will no longer allow additional hours at the discretion of City Council. Should City Council wish to have the</p>		

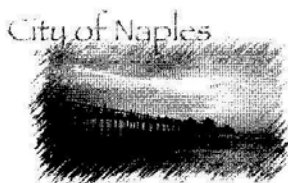


NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: March 16, 2011

Page Two

Agenda Item: 9		
<p>BACKGROUND (cont.): discretion to extend the permitted time for outdoor live entertainment past 10:00 p.m. on Sunday through Wednesday, indoor live entertainment past 11:30 p.m. on Sunday through Wednesday, and past midnight on Thursday through Saturday (to coincide with allowed times to sell alcoholic beverages), then the language in the attached ordinance requires further amendment.</p> <p>Section 2 of the ordinance provides that establishments with Live Entertainment Permits as of December 1, 2009 are automatically allowed to have live entertainment on Thursday, Friday or Saturdays until midnight.</p> <p>The Planning Advisory Board reviewed the ordinance at their February 9, 2011 meeting and recommended approval by a vote of 6-0. Since the PAB hearing, staff made changes to the ordinance to clarify the intent expressed by City Council.</p> <p>RECOMMENDED ACTION: Consider an Ordinance on First Reading relating to the hours of Live Entertainment Permits; amending Subsections (e) (3), (4), and (5) of Section 56-125 and adding Subsection (i) to Section 56-125, Live Entertainment Permit, of the Code of Ordinances, to clarify language and remove conflicts pertaining to the hours of operation for live entertainment.</p>		
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 16, 2011**

Agenda Section:	Regular	Prepared By: Robin D. Singer, Director
Agenda Item:	10	Date: February 23, 2011 Department: Planning
		Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT:		
Ordinance relating to Residential Impact criteria to provide new residential impact criteria in place of the existing Residential Impact Statement process.		
SUMMARY:		
City Council is asked to consider an Ordinance relating to Residential Impact Criteria; adding Section 46-43, Residential Impact Criteria; amending Subsection (c) of Section 50-74, Development Standards; and repealing Article V of Chapter 56, Residential Impact Statement, of the Code of Ordinances, to provide new residential impact criteria in place of the existing Residential Impact Statement process.		
BACKGROUND:		
Staff has been working on revisions to the Residential Impact Statement procedure to streamline the review process while still providing protection for residential properties. The process was established in 1998 out of concern for the impact of commercial development on residential neighborhoods. While the intent of the process is still valid, the Residential Impact Statement Petition process can be problematic as it is difficult to determine when a Petition is required and, if recognized after the fact, the process may result in delays for the petitioner. The requirements for physical improvements to the property to buffer neighboring residential properties are difficult to apply with existing buildings in place and often are not. Many of the criteria are redundant of the conditional use criteria and are somewhat vague.		
The proposed changes provide the following:		
<ul style="list-style-type: none"> • Replace the Residential Impact Statement petition with a set of criteria that will be applied whenever new commercial development or the expansion of commercial activity is proposed under a Conditional Use, Live Entertainment, Distance Waiver or Variance Petition; • Move the criteria to Chapter 46, Administration, Procedures and Enforcement where it can be more easily found by petitioners; • Simplify the applicability criteria to make it easier to determine which petitions require the additional criteria. This may actually broaden the applicability of the criteria; • Move the landscaping requirements to Chapter 50 with the other landscaping provisions to apply to new construction. 		
RECOMMENDED ACTION:		
City Council approve an Ordinance relating to Residential Impact Criteria on First Reading; adding Section 46-43, Residential Impact Criteria; amending Subsection (c) of Section 50-74, Development Standards; and repealing Article V of Chapter 56, Residential Impact State, of the Code of Ordinances, to provide new Residential Impact Criteria in place of the existing Residential Impact Statement process.		
Reviewed by Department Director Robin D. 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 16, 2011**

Agenda Section:	Regular	Prepared By: Denise Perez, Director
Agenda Item:	12	Date: March 3, 2011 Department: Human Resources
		Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT:		
Award of Contract for Professional Services to The Archer Company to conduct a pay and classification study of the City's job classifications, pay and benefits and; appropriate \$38,750 for this project from the General Fund Contingency to the Non-Departmental/Professional Services Account 001-1480-519.3101.		
SUMMARY:		
At the direction of City Council, Request for Proposals was solicited for professional services to conduct a compensation study of employee salaries and benefits. City Council is asked to consider award of contract for Professional Services to The Archer Company to conduct a pay and classification study of the City's job classifications, pay and benefits and; appropriate \$38,750 for this project from the General Fund Contingency to the Non-Departmental/Professional Services Account 001-1480-519.3101.		
BACKGROUND:		
During the City Council Workshop meeting of January 18, 2011, while discussing the General Fund's Five-Year Sustainability Analysis, City Council agreed to conduct a professional evaluation of employee compensation. Staff proceeded to develop a Request for Proposals (RFP) for Pay & Classification Study services. The RFP was publicly advertised in the Naples Daily News on February 2, 2011. Twenty-seven vendors were mailed notices and DemandStar broadcast to 284 potential respondents.		
The goal of a pay and classification study is to provide an equitable compensation system which allows the City to recruit and retain a qualified workforce, provide equity among employees, place the City in a competitive position with other public and private employers in the market, and ensure that employees performing similar work are compensated comparably. The objective is to insure that total compensation is fair and reasonable, from both the perspective of the employee and the citizens who are required to fund the compensation system. In a unionized environment, such as the City of Naples, wages are a mandatory subject of collective bargaining. Wages are only one component of total compensation however.		
The City of Naples has not had a comprehensive pay and classification study conducted since 1997. In 1997, the City retained David M. Griffith & Associates to conduct a comprehensive salary and benefit analysis. This study involved the completion of a Job Task Analysis by all employees; interviews with employees, managers, and directors; rewrite of all position descriptions; market salary and benefit survey; and the development of a pay and classification plan. Since 1997, many positions have been eliminated, consolidated, or transferred through reorganization. The economy and labor market has changed significantly—first due to a rapid economic expansion with a restricted labor market, and then an equally rapid contraction of the national and local economy.		
The Scope of Work provided in the RFP included three options to cover limited services up to a more comprehensive analysis. The first (low level) option provides for a comprehensive survey of public and private labor market comparables designed to include salary ranges, actual salaries, benefits (retirement, health, and dental insurance) to ensure that compensation is equitable and competitive in relation to internal factors and the external market; an analysis of internal equity, which insures that comparable positions receive comparable compensation throughout the organization; and adjustments to account for regional cost of living variations.		
The second (mid-level) includes the above and expands the benefit comparison to include leave programs,		

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date:** March 16, 2011**Page Two**

Agenda Item: 12		
BACKGROUND (cont.): disability, life insurance, and other benefits. The third (high level) option includes one and two above and expands the service to include a job-task analysis and job audit of all positions to verify and validate information from existing job descriptions, the conduct of personal interviews with employees, determine if classifications are correctly placed in the organization, and determine whether the individual positions are correctly classified. The City received proposals from fourteen human resources consulting firms that specialize in compensation and classifications systems. A Selection Committee, appointed by the City Manager and consisting of: Denise Perez, Human Resources Director; Roger Reinke, Assistant City Manager; Ann Marie Ricardi, Finance Director; Stephen McInerney, Fire Chief; and Ben Copeland, Budget and Capital Project Manager/Utilities; reviewed submittals during a publicly advertised meeting on March 1, 2011. The Selection Committee ranked The Archer Company as the top consultant, considering qualifications, experience, and cost for services. Option 3, at a cost of \$38,750, provides the most comprehensive service and will require involvement by all employees to determine whether positions are appropriately classified within the organization. This option has merit, recognizing that assignments and responsibilities have changed over the past fourteen years. However, this option likely exceeds the expectations of City Council, and it will take longer to complete the study. The salary and benefit data should be available by June 1 st , and the more detailed analysis of positions and classifications will be provided at a later date. Option 2, at a cost of \$21,230, will provide the comprehensive survey for salaries and benefits as originally requested by City Council. The results should be available by June 1 st . Option 1, at a cost of \$18,660, is not sufficiently comprehensive and therefore is not recommended. In addition to providing the information City Council desires, a comprehensive, professional, independent salary and benefit survey would aid in the labor negotiation process that will be initiated in 2011. FUNDING SOURCE: The adopted General Fund budget did not include this project and therefore should to be amended. City Council is asked to appropriate \$38,750 for Option 3 or \$21,230 for Option 2 from the General Fund Contingency to the Non-Departmental/Professional Services Account 001-1480-519.3101 to fund the pay and classification study. RECOMMENDED ACTION: Award a Professional Services Agreement in an amount not to exceed \$38,750 for Option 3, or \$21, 230 for Option 2 to The Archer Company, for a Pay and Classification Study; authorize the City Manager to execute the agreement; and appropriate \$38,750 (or \$21,230) from the General Fund Contingency to the Non-Departmental/Professional Services Account to fund the Pay and Classification Study.		
Reviewed by Department Director Denise Perez	Reviewed by Finance Ann Marie Ricardi	Reviewed by City Manager A. William Moss
City Council Action:		

Excerpted text of Item 12 regarding a pay and classification study of City job classifications.

City of Naples
Pay and Classification System
City Council Meeting
March 16, 2011

Pay and Classification Systems

- Provide for an equitable compensation system which allows the City to recruit & retain qualified employees
- Provides equity among employees
- To place the City in a competitive position with other public and private employers in the labor market
- Ensure that employees performing similar work are compensated comparably
- Wages and benefits are mandatory subjects of collective bargaining

Types of Compensation Plans

- Salary Ranges
 - Minimum & Maximum
 - General increases that may or may not expand pay ranges
 - Performance based pay increases
 - City's ranges have not been adjusted since October 2008
- Step Plans
 - Provides set pay adjustments each year on anniversary date
 - General increases can be applied to Steps annually
 - Number of steps vary
 - Currently only IAFF on Step Plan; Steps are currently frozen

History

- 2007
 - Staff conducted a comparison of the City's pay and classification system to Collier County Government
 - Difficulty in recruiting
 - Competition with Collier County Government
 - Housing/cost of living in Collier County
 - Implemented new pay plan effective May 1, 2007
- 2006
 - Cody & Associates conducted salary survey in preparation for collective bargaining with AFSCME & GSAF/OPEIU
 - City and Unions agreed to labor contracts that provided for increases in salary ranges over three year period.
- History
 - 1997
 - Comprehensive pay, classification, and benefit study conducted by David M. Griffith & Associates
 - Completion of job task analysis by all employees
 - Interviews with employees, supervisors, and directors
 - Re-write of all position descriptions to ensure compliant with Federal and State Labor & Employment Laws

- Market salary and benefit survey
- Development of a structured pay and classification plan
- A comprehensive analysis of pay and classifications should be conducted every ten years due to changes in:
 - Legislation
 - Organizational structure
 - Workforce demographics
 - Economic conditions
 - Programs/Community needs

Challenges

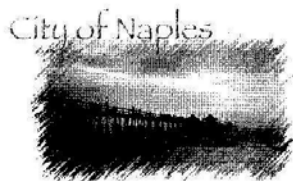
- Wages are only one component of total compensation
- Total compensation is an important tool in recruitment and retention of a qualified workforce
- Changes to the Pay Plan that effects only one group in the organization may result in wage compression
- Changes to the Pay Plan effecting one group in the organization may be viewed as inequitable
- Changes that effect only non-union employees present challenges in the labor relations process
- 80% of the City's workforce is unionized
- The City's workforce has been reduced by 12% since 2007
- Many employees have accepted additional duties and responsibilities
- Entire departments have been reorganized or eliminated

Request for Proposal

- A Request for Proposal (RFP) was distributed to consultants to conduct a Pay and Classification Study and the Scope of Services included three options:
 - Option 1 – Conduct a comprehensive survey of public and private labor market comparables; Conduct analysis that addresses the issue of internal equity; Provide appropriate adjustments to account for regional cost of living variations; and conduct a comparison of existing employee benefits with market data.
 - Option 2 – Same as Option 1 with expanded benefit comparison
 - Option 3 – Comprehensive analysis of the City's pay and classification system
- Fourteen proposals received and the Selection Committee reviewed proposals and recommends The Archer Company to conduct the City's Pay and Classification Study

Options

- Option 3 provides most comprehensive service and will require involvement by all employees to determine whether positions are appropriately classified within the organization.
 - Cost of \$38,750
 - Results of salary & benefit data by June 1st
 - More detailed analysis of positions and classifications provided at a later date
- Option 2 will provide the comprehensive survey for salaries and benefits as originally requested by City Council
 - Cost of \$21,230
 - Results of salary & benefit data by June 1st



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: March 16, 2011

Agenda Section:	Scheduled – 1:00 p.m.	Prepared By: Robin Singer, Director
Agenda Item:	7	Date: March 4, 2011
		Department: Planning
		Legislative <input type="checkbox"/>
		Quasi-Judicial <input checked="" type="checkbox"/>

SUBJECT:
Two Resolutions: (1) Determining Conditional Use Petition 11-CU4 to allow the extension of the existing paved runway and displaced thresholds and (2) Determining the remainder of Site Plan Petition 10-SP1 to approve the extension of Runway 5/23 displaced thresholds on the 2010 Utilization Plan on property located at the Naples Municipal Airport located at 160 Aviation Drive.

SUMMARY:
City Council is asked to consider the following two Resolutions as they relate to the Naples Municipal Airport located at 160 Aviation Drive:

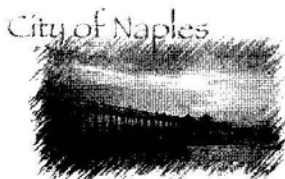
1. Resolution determining Conditional Use Petition 11-CU4, pursuant to Section 58-691 of the Code of Ordinances, to allow the extension of the existing paved runway and displaced thresholds in the C4 Airport Commercial District.
2. Resolution determining the remainder of Site Plan Petition 10-SP1 relating to the 2010 Utilization Plan for the City of Naples Airport pursuant to Section 59-682 (b) of the Code of Ordinances as it pertains to Runway 5/23 displaced thresholds.

In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.

BACKGROUND:
The Naples Airport Authority is seeking conditional use approval to allow for the expansion of the 5/23 runway beyond the allowable 5000 foot limit. Currently the runway is 5000 feet in length with an additional 290 foot displaced threshold at the southwest end. The expansion will include another 510 feet at the southwest end and an additional 800 feet at the northeast end. The desired result of this expansion is to allow for additional runway at take-off. Conditional use approval is required pursuant to Section 58-691, as follows:

“Sec. 58-691. - Maximum declared distance of runway.

The maximum declared distance of each runway shall be 5,000 feet. For purposes of this provision, "declared distance" shall mean the distance the Naples Airport Authority declares for an aircraft's (1) take-off run (the runway length declared available and suitable for the ground run of an airplane taking off), and (2) landing distance available (the runway length declared available and suitable for a landing airplane). Any increase to declared distance shall require city council approval. Extension of the existing stop way or additional stop ways, or the additional paving of runways or safety zones, shall require conditional use approval.”

**NAPLES CITY COUNCIL AGENDA MEMORANDUM****Regular Meeting Date: March 16, 2011****Page Two**

Agenda Item:

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BACKGROUND (cont.):

The petitioner obtained partial approval of Site Plan Petition 10-SP1 approving the Airport Utilization Plan on June 2, 2010. The approval included all aspects of the plan except the runway expansion. The attorneys for the City and the Airport Authority contacted the Federal Aviation Administration for a determination whether or not the City was pre-empted from determining the runway expansion. The City received a response from the FAA dated March 2, 2011 stating that the City is pre-empted from determining the runway expansion. However, the NAA has decided to proceed with the public hearing regarding the final approval of the site plan and this conditional use petition.

The NAA has indicated a willingness to comply with a 75,000 lb weight limit on aircraft and has submitted documentation that the runway design capacity will not allow them to exceed this weight limit. Because previous public input has indicated that the size of the aircraft is a concern, a limitation on the weight of aircraft may be appropriate.

On May 12, 2010, the Planning Advisory Board voted 3-3 to recommend approval on Site Plan Petition 10-SP1 which became a recommendation for denial due to the tie vote. The PAB voted 6-0 to approve Conditional Use Petition 11-CU04 at the March 9, 2011 meeting, with changes to the conditions recommended by staff.

File Reference: 10-SP1 and 11-CU04**Petitioner:** Naples Airport Authority**Agent:** Ervin Dehn, Director of Airport Development**Location:** 160 Aviation Drive**Zoning:** C-4 Airport Commercial**RECOMMENDED ACTION:**

Consider the following two Resolutions relative to the Naples Municipal Airport located at 160 Aviation Drive:

(1) Resolution determining Conditional Use Petition 11-CU4, pursuant to Section 58-691 of the Code of Ordinances to allow the extension of the existing paved runway and displaced thresholds in the C4 Airport Commercial District subject to conditions.

(2) Resolution determining the remainder of Site Plan Petition 10-SP1 approving the 2010 Utilization Plan pursuant to Section 58-682 (b) of the Code of Ordinances as it pertains to Runway 5/23 displaced thresholds subject to conditions.

Reviewed by Department Director
Robin Singer

Reviewed by Finance
N/A

Reviewed by City Manager
A. William Moss

City Council Action:



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

F. Joseph McMackin III, Esq.
City of Naples Airport Authority General Counsel
BOND, SCHOENECK & KING, PLLC
Northern Trust Building
4001 Tamiami Trail North, Suite 250
Naples, FL 34103-3555

March 2, 2011

Robert D. Pritt, Esq.
Naples City Attorney
ROETZEL & ANDRESS
850 Park Shore Drive
Trianon Centre, Third Floor
Naples, FL 34103-3587

Re: Request for Legal Opinion Concerning Preemption of City of Naples Code
Provision

Dear Messrs. McMackin and Pritt:

This letter is in response to your June 10, 2010 joint letter in which you request a legal opinion addressing whether the City of Naples is preempted under federal law from requiring the City of Naples Airport Authority (NAA) to seek approval to expand Runway 5/23 at the Naples Municipal Airport (Airport).

The Federal Aviation Administration (FAA) appreciates the opportunity to provide our views concerning this issue. Based upon the information available, including your letter and attachments, we find that federal law preempts the City of Naples, a nonproprietor, from requiring the NAA, the airport proprietor, to obtain conditional use approval under section 58-691 of the Naples City Code, "Maximum declared distance of runway," for expanding Runway 5/23. The basis for this conclusion is explained in detail below.

Background

The Naples Municipal Airport, located on 732 acres in Naples, Florida, is a two-runway, public-use airport. It is located on land that is owned by the City but leased and operated by an independent body, the City of Naples Airport Authority. In early 1942, the City of Naples and Collier County, which had purchased property jointly for use as an airport, leased the property to the U.S. Government for improvements and use as a training facility for the U.S. Army Air Corps. This took place under the auspices of an AP-4 Agreement, under the Development of Landing Areas National Defense (DLAND) Program. This was an

agreement between the U.S. Government and the airport sponsor under which the sponsor provided the land and the U.S. Government planned and constructed the airport improvements. In 1948, the Air Force declared the facility to be surplus, cancelled the lease and quitclaim, and the facility was returned to civilian use.

Collier County and the City of Naples jointly operated the airport until the County sold its interests to the City in 1958. In 1969, the Naples City Council asked the Florida Legislature to create an independent authority whose members would be appointed by the City Council. Chapter 69-1326, Laws of Florida, as amended, created the NAA as an independent body for the purpose of operating and maintaining the Airport.

On December 3, 1969, the management and operation of the Airport was transferred from the City to the NAA under lease for 99 years. The Airport facility, classified as a primary airport, serves as the base of operations for 143 aircraft and accounts for approximately 112,903 operations each year, more than 73,449 of which are itinerant. Because the FAA has identified the Airport as part of the National Plan of Integrated Airport Systems (NPIAS), it is eligible to receive federal grants under the Airport Improvement Program (AIP). FAA records indicate that the planning and development of the Airport has been financed, in part, with funds provided by the FAA under the AIP, authorized by 49 U.S.C. 47101, et seq., (Chapter 471), the former the Airport and Airway Improvement Act of 1982, (AAIA), as amended. Since 1982, the Airport has received a total of \$32,636,781.00 in federal airport development assistance.

The present length of the Airport's primary runway 5/23 is 5,290 feet. This length includes a 5,000 foot runway and a 290 foot displaced threshold (i.e., aircraft can use this 290 feet for takeoff and landing roll-out, but not for the touchdown portion of landing).

In about April 2010, the NAA requested FAA approval to amend its airport layout plan (ALP) to extend the pavement of Runway 5/23 to 6,600 feet runway within the bounds of existing airport property.¹ The purpose of the extension is to restore air carrier service;² noise reduction and enhancing safety are further potential benefits of the proposed extension. Specifically, NAA is proposing to:

1. Recognize the already existing 290' on the southwest end of the runway;

¹ The FAA is currently reviewing an updated ALP dated April 2010 that depicts the proposed improvements to Runway 5/23.

² See, NAA's Airport Layout Plan Update 2010: "The primary focus of the Airport Authority has been the restoration of dependable commercial airline service for our community. Consequently, the single most important improvement that we can make is the construction of displaced thresholds on our primary Runway 5-23 (510' on 5 and 800' on 23). This would allow the regional jets that once served Naples intermittently to leave here during hot summer months without restricting passengers or canceling flights." ALP Update at p.1. See also, Draft Environmental Assessment for the Naples Municipal Airport Runway 5-23 Threshold Improvements and Related Work (August 2010) prepared by City of Naples Airport Authority, Naples, FL and Kimley-Horn and Associates. As discussed in the EA, "commercial air carriers require more than the existing 5,290 feet to operate efficiently from [Naples Airport]."

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2. Add an additional 510' to the southwest end of the runway for a total extension of 800'; and
3. Add 800' to the northeast end of the runway.

The distance between thresholds would remain at 5,000 feet but the runway pavement would extend out 800 feet on either side (for a total of 1,600 feet). The additional runway pavement on either end of the runway could be used for takeoff and landing roll-out, but not for the touchdown portion of landing.

The FAA's approval to amend the ALP to depict the extension of Runway 5/23 is a federal action subject to the National Environmental Policy Act of 1969 (NEPA). The FAA is currently reviewing a draft Environmental Assessment (EA),³ which assesses the environmental impacts of the proposed action. Based upon the EA, the FAA will determine whether the proposed federal action is consistent with existing national environmental policies and objectives of section 101(a) of NEPA. The FAA will integrate compliance with other applicable federal environmental laws with NEPA as part of the EA. The FAA will then determine whether to adopt the EA and issue a Finding of No Significant Impact or prepare an environmental impact statement.

The NAA realized that the requirement for a conditional use approval under section 58-691 created a potential obstacle if it applied to NAA as part of the City's approval to update the airport master plan. Section 58-691 provides:

Sec. 58-691. Maximum declared distance of runway.

The maximum declared distance of each runway shall be 5,000 feet. For purposes of this provision, "declared distance" shall mean the distance the Naples Airport Authority declares for an aircraft's (1) take-off run (the runway length declared available and suitable for the ground run of an airplane taking off), and (2) landing distance available (the runway length declared available and suitable for a landing airplane). **Any increase to declared distance shall require city council approval. Extension of the existing stop way or additional stop ways, or the additional paving of runways or safety zones, shall require conditional use approval.** (Emphasis added).

Thus, if the NAA wants to increase the declared runway distance (i.e., runway length), the NAA is required to obtain "conditional use approval" from the City Council. The NAA proceeded with its planned runway extension by submitting to the City a Utilization Plan Update (Site Plan Petition 10-SP1) pursuant to section 58-682(b) of the City of Naples Code of Ordinances. The City treated NAA's petition as a Site Plan Amendment, specifically an amendment to the Airport's Master Plan as contemplated by the City's Airport Zoning Regulations. However, according to your letter, the NAA declined to apply for conditional

³ NAA issued a Draft EA for public and agency review in August 2010. A public hearing was held on September 8, 2010. The FAA is currently reviewing a Preliminary Final EA, which includes public and agency comments and responses prepared by NAA.

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use approval under section 58-691 on the ground that the code provision is federally preempted.

The initial public hearing on the Utilization Plan Update was held on June 2, 2010, when the City Council voted in a regular meeting to adopt NAA's Site Plan Petition 10-SP1 relating to the 2010 Utilization Plan for the City of Naples Airport pursuant to section 58-682(b) of the Code of Ordinances. At that time, the City Council adopted Resolution No. 10-12689, which had the effect of approving portions of the 2010 Utilization Plan Update, but continuing the runway extension/displaced threshold portion of the Plan pending receipt of a legal opinion from the FAA on the preemption issue. The City's vote was intended to enforce its ordinance requiring City approval for any extension of a runway beyond 5,000 feet. The City Council deferred action on and "excepted" that portion of the resolution pertaining to runway thresholds, stating,

[t]hat as to #2, Runway 5/23 (displaced thresholds), this portion of the Petition is continued in order to allow the city attorney and airport legal counsel to seek an opinion from the Federal Aviation Administration (FAA) as to whether it is preempted to Congress/FAA by federal law.

Resolution 10-12689, City of Naples, June 2, 2010, p. 1.

Thereafter, the City and the NAA submitted their joint request for a legal opinion on whether section 58-691 is preempted.

The FAA appreciates the opportunity to provide its views concerning this issue. Based upon the information available, including your letter and attachments, we find that federal law preempts the City of Naples, a nonproprietor, from requiring the NAA, the airport proprietor, to obtain conditional use approval under section 58-691 of the Naples City Code for expanding Runway 5/23.

Legal Framework

Federal law preempts the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and the regulation of aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, 44715, and 44721. This federal regulatory scheme is deemed to be pervasive, intensive and exclusive and vested solely in the FAA. City of Burbank v. Lockheed Air Terminal, 411 U.S. 624 (1973). In Burbank, the court struck down a curfew imposed by the City in the exercise of its police power at an airport not owned by it. The court stated that, "... the pervasive nature of the scheme of Federal regulation of aircraft noise leads us to conclude that there is Federal preemption." 411 U.S. at 633. The national character of the subject matter also supported preemption. 411 U.S. at 625. "If we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of the FAA in controlling air traffic flow. The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded." 411 U.S. at 639. Although control of noise is deep-seated in the police power of the states

(411 U.S. at 638), the Court found that Congress unequivocally intended that the Federal Government have "... full control over aircraft noise, preempting state and local control." 411 U.S. 625, 627-28, 639.

The Court, however, left the door open to noise regulations imposed by municipalities acting as "airport proprietors" based on such municipalities' legitimate interest in avoiding liability for excessive noise generated by the airports they own. Thus, the task of protecting the local population from airport noise has fallen to the agency, usually the local government, that owns and operates the airport.

Traditionally, airport proprietors own and operate the airport; promote the airport; and have the power and authority to control airport noise, including the power to acquire airport land, assure compatible land use, and control airport design, scheduling, and operations. However, these powers are subject to Constitutional prohibitions against creation of an undue burden on interstate and foreign commerce, and unreasonable, arbitrary, and unjust discriminatory rules that advance the local interest, other statutory requirements, and interference with exclusive federal regulatory responsibilities over safety and airspace management.

Because nonproprietors have no proprietary interest in an airport, they may not rely upon the proprietor exception. Nonproprietors may only mitigate the effects of airport noise independently of source noise control. Nonproprietors may protect their citizens through land use controls and other police power measures not affecting airspace management or aircraft operations. For example, nonproprietors may use their zoning and land use control authority in areas surrounding airports to adopt zoning and land use measures to assure land uses are compatible with airport noise.

In 1981, the Ninth Circuit Court of Appeals addressed a measure that the state required an airport proprietor to implement in order to comply with certain airport noise standards. In San Diego Unified Port District v. Gianturco, 651 F.2d 1306 (9th Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982), the State of California sought to require the Port District, as owner of Lindbergh Field, to extend a curfew. The State made extension of the curfew a condition of the variance needed to continue to operate the airport, which was not in compliance with California noise standards. Like the curfew in Burbank, the court found that the State's curfew impinged on airspace management by directing when planes may fly in the San Diego area, and on federal control of aircraft noise at its source by restricting the permissible flight times of aircraft solely on the basis of noise. The court explained that the Federal Government has only preempted local regulation of the source of noise, not the entire field of aviation noise. The effects of noise may be mitigated by state and local government independently of source noise control. "Local governments may adopt local noise abatement plans that do not impinge upon aircraft operations." 651 F.2d at 1314. The court also found that the State of California was not a proprietor of Lindbergh Field, and thus could not rely upon Burbank's proprietor exception permitting airports utilizing their proprietary powers (rather than police powers) to enact reasonable, nonarbitrary, and nondiscriminatory rules defining the permissible level of noise which can be created by aircraft using the airport.

Lower federal court decisions are consistent after Burbank in concluding that local noise control regulations are preempted. See, e.g., Blue Sky Entertainment, Inc. v. Town of Gardiner, 711 F. Supp. 678 (N.D.N.Y. 1989), aff'd, 621 F.2d 227 (local ordinance regulating noise levels and flight paths is preempted); Piolo v. City of Clearwater, 711 F.2d 1006 (11th Cir. 1983) (nonproprietor imposed curfew preempted); United States v. City of Blue Ash, 487 F. Supp. 135 (S.D. Ohio 1978) (local ordinance prescribing aircraft flight patterns preempted); Price v. Charter Township of Fenton, 909 F. Supp. 498, 505 (E.D. Mich. 1995)(plaintiffs challenged township's regulation of frequency of certain noisy flights at plaintiff's airport; court held township ordinance to be federally preempted because it attempted to regulate the horsepower of aircraft and frequency of warbird flights); Burbank-Glendale Pasadena Airport Authority v. City of Los Angeles, 979 F.2d 1339 (9th Cir. 1992)(nonproprietor jurisdictions may not abuse their land use powers by delaying a safety project and withholding a building permit); and Command Helicopters, Inc. v. City of Chicago, 691 F. Supp. 1148 (N.D. Ill. 1988)(helicopter flight restrictions). See also, Country Aviation, Inc. v. Tinicum Township, 1992 WL 396782 (E.D. Pa. 1992). The cases continue to confirm that state and local police power regulation of aircraft noise and safety is federally preempted when it impinges on airspace management, aircraft flight, and operations.

In City of Cleveland v. City of Brook Park, 893 F. Supp. 742 (N.D. Ohio 1995), the court addressed nonproprietor ordinances designed to impede airport development. To meet projected traffic increases and to continue operating safely, Cleveland Hopkins International Airport proposed construction of a new runway, much of which would be located on land within neighboring Brook Park. Soon thereafter, Brook Park enacted ordinances that required Cleveland to obtain a conditional use permit for any new runway construction within Brook Park. Cleveland challenged the ordinances seeking a declaratory judgment that the ordinances violated the Supremacy Clause, arguing that the Federal Aviation Act of 1958, as amended, and the Airport and Airway Improvement Act of 1982, as amended, preempted Brook Park's land use and zoning laws. The district court held that there was no conflict preemption, no field preemption, and that compliance with the ordinances would not frustrate any federal purpose. The City of Cleveland appealed to the Sixth Circuit Court of Appeals.

The United States disagreed with the court's holding and filed an amicus curiae brief, a reply brief, and a supplemental brief in the Sixth Circuit Court of Appeals in support of Cleveland's attempt to overturn the lower court decision. The United States argued that contrary to the district court's belief, the Federal Government has a comprehensive role in both airspace regulation and public airport development, and that the court erred in its analysis of federal noise control law and Brook Park's noise ordinance. However, the case was settled and no appeals court decision was issued.

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In its amicus brief, the United States took the position that the expansion of an airport is a matter within the FAA's jurisdiction and interest.⁴ This was based upon the statutory scheme in the former Airport and Airway Improvement Act of 1982, now recodified at 49 U.S.C. 47101, *et seq.* (Chapter 471). Chapter 471 provides the federal government substantial oversight responsibilities in all aspects of airport planning and development, even where federal funding is not provided. For example, the highest priority among Chapter 471's enumerated policies is "the safe operation of the airport and airway system." 49 U.S.C. 47101(a)(1). Congress has also directed Chapter 471 to "be carried out consistently with a comprehensive airspace system plan ... to maximize the use of safety facilities, including numerous runway enhancements. 49 U.S.C. 47101(f). Proposed airport development under Chapter 471 must comply with numerous FAA standards, set forth in FAA regulations and policies governing, among other things, runway placement and design. See, e.g., FAA Order 5100.38C, Airport Improvement Program (AIP) Handbook. In addition, Congress intended the extensive FAA review process to be the forum in which state and local communities are to express their views on airport development projects. See, e.g., 49 U.S.C. 47106(c). If a grant is approved under Chapter 471, the sponsor must provide numerous assurances to the FAA requiring, among other things, that the sponsor maintain an ALP and will not make any alteration of the airport without FAA's prior approval. 49 U.S.C. 47107(a)(16).

Thus, the expansion of a federally-obligated airport is a matter within the FAA's jurisdiction and interest. See e.g., Burbank Glendale Pasadena Airport Authority, (local regulation of placement of taxiways and runways at Burbank Airport federally preempted); Tweed-New Haven Airport Authority v. Town of East Haven, 582 F. Supp. 2d 261, 270-271 (D. Conn. 2008) (construction of runway safety areas at Tweed New Haven Airport federally preempted); United States v. City of Berkeley, 735 F.Supp. 937, 938, 941 (E.D.Mo.1990) (comprehensive federal regulation of air navigation facilities and air safety, and a specific statutory grant of authority permitted court to conclude that local regulation of the construction of air navigation facilities on land located within the confines of Berkeley was preempted (implied and conflict preemption discussed)).

Aviation safety is similarly preempted. The Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, *et seq.*, was enacted to create a "uniform and exclusive system of federal regulation" in the field of air safety. Burbank, 411 U.S. at 639. The Federal Aviation Act was "passed by Congress for the purpose of centralizing in a single authority – indeed, in one administrator – the power to frame rules for the safe and efficient use of the nation's airspace." Air Transport Association of America, Inc. v. Cuomo, 520 F.3d 218, 224 -225 (2d Cir. 2008), citing Air Line Pilots Ass'n, Int'l v. Quesada, 276 F.2d 892, 894 (2d Cir. 1960); see also, British Airways Bd. v. Port Auth. of N.Y. & N.J., 558 F.2d 75, 83 (2d Cir. 1977) ("[The FAA] requires that exclusive control of airspace management be concentrated at the national level."). Congress and the FAA have used this authority to enact rules addressing virtually all areas of air safety. These regulations include a general standard of care for operating requirements, see, e.g., 14 CFR § 91.13(a) ("No

⁴ See, e.g., Dallas-Fort Worth Int'l Airport Board v. City of Irving, 854 S.W.2d 161, 168 (Tex. Ct. App.) ("[n]o one disputes that federal laws preempt local regulation within the boundaries of an airport"), vacated as moot, 868 S.W.2d 750 (Tex. 1993).

person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”) and extend to grounded planes and airport runways. See id., § 91.123 (requiring pilots to comply with all orders and instructions of air traffic control); id., § 139.329 (requiring airports to restrict movement of pedestrians and ground vehicles on runways). The intent to centralize air safety authority and the comprehensiveness of these regulations pursuant to that authority have led federal courts to conclude that Congress intended to occupy the entire field and thereby preempt state regulation of air safety. See, e.g., Montalvo v. Spirit Airlines, 508 F.3d 464, 468 (9th Cir. 2007) (“[T]he FAA preempts the entire field of aviation safety through implied field preemption. The FAA and regulations promulgated pursuant to it establish complete and thorough safety standards for air travel, which are not subject to supplementation by ... state laws.”); Greene v. B.F. Goodrich Avionics Sys., Inc., 409 F.3d 784, 795 (6th Cir.2005), cert. denied, 547 U.S. 1003 (2006); Abdullah v. American Airlines, Inc., 181 F.3d 363, 367-68 (3d Cir. 1999).

Analysis

At issue is whether section 58-691 of Naples City Code, “Maximum declared distance of runway,” is federally preempted. On June 2, 2010, the City Council found that the criteria for granting NAA’s site plan petition 10-SP1 (relating to the 2010 Utilization Plan and proposed runway extension) “have been met as to all portions of the application except for #2, Runway 5/23 displaced thresholds...” Resolution 10-12689 (June 2, 2010), p. 1. As to #2, this portion of NAA’s petition was continued in order to allow for the City and NAA to seek an opinion from the FAA on whether section 58-691 is federally preempted.

Section 58-691 provides that

[t]he maximum declared distance of each runway shall be 5,000 feet[,] [that] [a]ny increase to declared distance shall require city council approval [, and that] the additional paving of runways or safety zones, shall require conditional use approval.

Due to its concerns that section 58-691 is preempted, the NAA declined to apply for conditional use approval as contemplated in the provision.

Simply stated, the code provision provides that the nonproprietor City, as opposed to the proprietor NAA, has the authority to decide whether runway 5/23 may be expanded (and, apparently, any taxiway, displaced threshold, stop ways, or Runway Safety Area as well) beyond 5,000 feet, even though such actions would occur within the boundary of the existing airport property.

A direct effect of the City’s enforcement of the provision is to restrict the type and level of flight operations that can be conducted at the Airport. It is axiomatic that shorter runways restrict larger and/or faster aircraft. Therefore, a limitation on the length of a runway is also a limitation on the types of operations and the types of aircraft that can be operated at the Airport. The record indicates that through its ordinance, as approved, the City is attempting to regulate aircraft noise, safety, and flight operations with its police powers. For example, the stated policy of the City is to “protect the quality of life in the community by implementing and enforcing appropriate and legal noise abatement procedures” City of

Naples Policy 7-3. In addition, the City proposed a policy in 1997 to “[m]anage the airport to maintain the “status quo” with respect to numbers of based aircraft and the number and type of aircraft operations.” November 10, 1997 Memo from Kenneth B. Cuyler, City Attorney, to Mayor Bill Barnett and the City Council, p. 9. Such regulation, however, is federally preempted.

Under federal law, the City, as a nonproprietor, has no legal authority to use its police powers to regulate the conditions, including prescribing runway length, that limit the type of aeronautical activity at the Airport, nor may the City regulate the types of flight operations that can be conducted at the Airport, directly or indirectly. Under federal law, only the airport proprietor may regulate the airport in this manner and it must do so consistent with federal law.

The Supreme Court in Burbank held that Congressional intent of the Federal Aviation Act of 1958 left “no room for local curfews or other local controls.” 411 U.S. at 638. As in Burbank, the nonproprietor City of Naples is attempting to enforce a police power measure that requires NAA, the airport proprietor, to obtain conditional use approval for the runway expansion. As pointed out in Gianturco, “[t]he proposition that the federal government has preempted the area of flight control regulation to eliminate or reduce noise has been accepted without contrary authority by numerous courts which have addressed the subject.” 651 F.2d at 1315 (citing 13 federal and state cases). Under the law, only the airport sponsor, in this case the NAA, may determine the types of aeronautical activities that will be conducted at the airport, the runway configuration and length, and so forth.⁵

As stated in Gianturco, “[l]ocal governments may adopt local noise abatement plans that do not impinge upon aircraft operations.” 651 F.2d at 1314. The problem here, of course, is that the City’s ordinance does just that – it reaches inside the Airport boundaries and would prevent the expansion of the existing primary runway, which would better accommodate scheduled service by regional jet aircraft.⁶

According to the NAA’s EA, on warm days, predominant in the Naples area, the current limiting runway length at the Airport caused air carriers in the past to reduce their payload (i.e., passengers) in order to meet the operational safety standards of the newer regional jet aircraft. Consequently, the new regional jets were reassigned to serve airports which could provide adequate runway length and the Naples Municipal Airport lost its air carrier service. The proposed extension – allowing additional takeoff length – would allow larger aircraft, including commercial regional jet aircraft and business jets, to increase their payloads and thus avoid weight penalties during the hot summer months. By preventing the lengthening

⁵ See April 25, 2010 Memo from Robert D. Pritt, City Attorney, to A. William Moss, City Manager, discussing whether the City may regulate NAA’s runway with its zoning powers. “As to runway length and configuration, the final decision would be that of the Federal Aviation Administration ... [t]he City is not the decision-maker.” See also May 11, 2010 Memo from Robert D. Pritt, City Attorney, to Hon. Bill Barnett, Mayor: “... it would appear that the conditional use ordinance is preempted by federal law and regulations.”

⁶ According to the NAA’s Draft EA, commercial air carriers require more than the existing 5,290 feet to operate efficiently from the Naples Municipal Airport.

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of the primary Airport runway, the City Council appears to be attempting to ensure that scheduled air carrier service, and its associated noise, not return to the Airport. The City Council is essentially dictating the types of aircraft that may serve the Naples Municipal Airport. This, however, it cannot do. Burbank, Gianturco, Burbank Glendale Pasadena Airport Authority v. City of Los Angeles, 979 F.2d 1338 (9th Cir. 1992), Tweed-New Haven Airport Authority, 582 F. Supp. 2d 261, 270-271 (D. Conn. 2008), and United States v. City of Berkeley, 735 F.Supp. 937, 938, 941 (E.D.Mo.1990).

In short, in the words of the court in Price v. Charter Township of Fenton, “[n]obody denies that [the City of Naples] has the ability to create zoning laws so that airports are not placed snugly between hospitals, churches, schools, cemeteries, and the like ... Faced with the ongoing operations of [the Naples Airport], however, [the City of Naples] may not, under the pretense of its zoning power, attempt to regulate those flight operations to quell airplane noise. The power to create such restrictions, regardless of whether they are called zoning laws, is relegated exclusively to the federal government under Burbank.” Price, 909 F.Supp. at 503-504.

The attachments to your letter include a submission by Mr. William May, who argues in favor of the City’s powers to regulate aeronautical activities. Mr. May cites City of Cleveland for the proposition that nonproprietary local governments may “regulate the land use within their borders, even where the land use regulation may have some tangential impact on the use of the airspace.”

To the extent that City of Cleveland stands for the proposition that nonproprietary local governments may regulate land use even where the regulation may restrict flights or control operations, then the FAA respectfully disagrees. As noted above, particularly within the boundaries of federally-obligated and regulated airports, pervasive federal regulation of aircraft noise and air safety leaves no room for local land use regulation that has the effect of limiting flights.

Finally, the attachments also include a June 9, 2010 legal opinion from Joseph Karaganis, Esq. It appears that the City of Naples requested Mr. Karaganis to provide comments on its proposed draft letter to FAA counsel concerning the authority of the City and the FAA in relation to the proposed runway expansion. Mr. Karaganis questions whether there is any evidence – express or implied – that Congress intended to preempt state law authority and control over the decision whether to build a runway extension. Mr. Karaganis opines that “there is no such evidence of a Congressional intent to preempt the sovereign authority of the State of Florida (and its political subdivisions ...) to make the decision whether or not to build the runway extension.” Mr. Karaganis then cites National Helicopter Corp. v. City of New York, 137 F.3d 81 (2d Cir. 1998), as holding that the city as proprietor of a heliport was not preempted from imposing noise and curfew restrictions on operations of a lessee helicopter operator. However, National Helicopter has no relevance here since the entity attempting to regulate airport development is not the proprietor, NAA, but the nonproprietary City of Naples. This case is actually consistent with FAA’s views.

In addition, based upon the case law discussed and cited above, the FAA respectfully disagrees with Mr. Karaganis’ opinion that “[t]he decision as to whether to allow (or not

11

allow) the expansion of the runway at Naples airport is strictly a matter of state law and is clearly within the authority of the Naples City Council.”

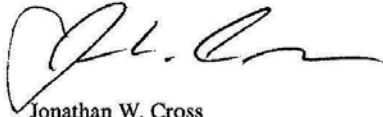
Conclusion

Based upon the information available, including your letter and attachments, the City of Naples is preempted from enforcing section 58-691 to prevent NAA from expanding runway 5/23.

This is not a final appealable order of the Administrator within the meaning of 49 U.S.C. § 46110.

I hope that this response will be helpful to you. If you have any questions, please do not hesitate to contact me at 202-267-3199.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. W. Cross', with a stylized flourish at the end.

Jonathan W. Cross
Manager, Airport Law Branch
Airport and Environmental Law Division

Wed, 3/16/11
10:11 a.m.

**OPENING REMARKS BY COMMISSIONER GIBLIN
TO MAYOR AND CITY COUNCIL**

Wednesday, March 16, 2011 -- 1:00 p.m.

Good Afternoon, Mr. Mayor and Members of the City Council.

My name is Cormac Giblin. I am Chairman of the City of Naples Airport Authority. This is only my seventh week as Chairman, but I have served on the Board for over two and a half years.

My address is 1100 8th Avenue S., in Olde Naples.

- I am the Executive Director of The Boys & Girls Club of Collier County.
- I am a Nationally Certified land use planner, holding the title of AICP, specializing in long range, growth management issues.
- I grew up in Naples, went to school here and intend to stay here.
- I was fortunate enough to be appointed to the Airport Authority by you on October 15, 2008.
- I've had the pleasure to serve this City on multiple community, civic, religious, and property owner boards and committees, including the Park Shore Association Board of Directors, Moorings Presbyterian Church, The City of Naples' Police Chief Selection Committee, as well as the City's Housing Commission, and Airport Authority.
- I volunteered for this position at the Airport Authority because I wanted to continue give something back to the community that has been so kind to me over my lifetime.

13 pgs. 1
SUPPLEMENT
#7 # Cormac Giblin
①

283460.2 3/16/2011

When you appointed me and the other Commissioners to the Airport Authority Board, your charge was that we "maintain and operate the airport facilities at the Naples Municipal Airport".

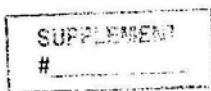
- I hope that each of you understand that the Airport Commissioners always strive to discharge our duties thoughtfully, responsibly and judiciously.

Brief History of Request:

On June 2nd of last year, Bobby Sullivan, the then Chairman of the City of Naples Airport Authority, appeared before you and presented the Authority's 2010 Airport Utilization Plan for review, with our recommendation of its adoption by City Council. This matter was undertaken as Resolution 10-12689, and at that meeting the Council approved the Airport Utilization Plan, but reserved the issue of paving the displaced thresholds.

One topic at that meeting was the question as to whether or not the City's Code Section 58-691, is preempted by the United States Constitution, and the Federal Aviation Act. To answer that question, the City Attorney and the Authority's Counsel were directed to jointly request an opinion from the FAA on the preemption of the City's ability to control the declared runway distance and the paving of the displaced thresholds.

The letter was prepared by the City Attorney. That letter was mailed on June 12th, and as you now know, the City Attorney received a response on March 2, 2011, clearly stating that the City's Ordinance is preempted by Federal law on this subject.



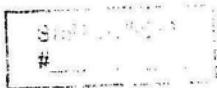
The Authority has a long tradition of working closely with Council; however, the Commissioners are also acutely aware of our obligation to protect the City from inadvertently being classified as the Airport proprietor and exposing itself to the significant liability such a designation might confer.

Taking that into consideration, I am here this afternoon, at your request, on behalf of the Airport Authority's proposal to add 510 feet of pavement to the southwest end of Runway 5/23 (toward the Gordon River), 800 feet of pavement to the northeast end (toward Airport Road), and to amend the declared distance for takeoff only to 5,800 feet.

City Code:

Let me summarize the City Code provisions which I understand to be applicable to the Airport on this subject. The zoning district for the Naples Airport is:

1. C-4 Airport Commercial District
 - Code Section 58-681 reads "The C-4 District is a limited commercial zone district intended to accommodate only the Naples Municipal Airport."
 - Code Section 58-691 reads "Extension of the existing stop way or additional stop ways, or the additional paving of runways or safety zones shall require conditional use approval."
2. I also looked at the City's Airport Overlay District:
 - Code Section 58-1071 "District Purpose" states that:



“(a) The purpose of the Airport Overlay District (AOD) is to provide both protection and land use compatibility in relation to the normal or public-use airports located within the city. This division shall attempt to promote:

... (2) The maximum safety of aircraft arriving at and departing from the Naples Municipal Airport . . .

(3) The full utility of the public-use airport; . . .

(6) an for Proper enforcement of these regulations in compliance with state and federal laws in a manner which provides the greatest degree of safety, comfort and well-being to both the users of the airport facility and the property owners within the vicinity of the airport.” . . .

The Authority's Statutory Obligation

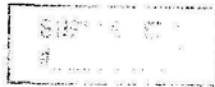
Please remember that we as your Commissioners have statutory obligations under the City of Naples Airport Authority Act (Laws of Florida, ch. 69-1326).

- Specifically at

Sec. 4(e): "...to improve, extend, enlarge, equip, repair, maintain and operate the airport facilities.",

- As well as a contractual obligation under our 99-year Land Lease with the City, which reads in part:

"3. Lessee [the Authority] agrees to maintain said property and to make such repairs, replacements, additions, extensions and betterments of and to the airport facilities as are deemed necessary to place or to maintain such facilities in proper condition for the safe, efficient and economic operation thereof."



How does our proposed paving project conform to these statutes, ordinances and the Land Lease?

We believe it does in at least three ways:

1. **To reduce noise** over the City of Naples when aircraft take off from the Airport by getting them higher sooner.
 - **No one has argued** that this extension would not reduce sound. Some have said that the noise reduction would be minimal, but our noise consultants have told us (and will tell you again this afternoon) that extending the runway is the single most important opportunity the Board has to reduce airport noise in our community. An opportunity that will only be complimented by all other noise mitigation efforts.
2. **To enhance the safety of aircraft** taking off from the runway by keeping over-shooting or under-shooting aircraft on the pavement, rather than forcing them off onto sand and grass.
 - **No one argues** that paving the safety areas will not enhance safety to aviators and their passengers using the Airport. Some say our existing margin of safety is already sufficient. We think it can be improved.
3. **To make the Airport more functional** to existing users, and to make it more competitive for commercial air carriers, by providing departing aircraft with another 800 feet for take-off – which is important in hot weather.
 - **No one argues** that additional pavement will not enhance the competitive position of the Airport to regain viable commercial service. Some have said that



Naples does not need airline service but that view is not shared by the Commissioners, or most importantly, by direct guidance from City Council.

We are following Council's clear direction in proposing this project

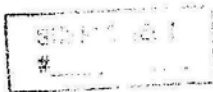
1. At the City Council meeting in September of 2006, while you were interviewing candidates for appointment to the Airport Authority, two of the three candidates voiced the benefits of longer runways, citing the same benefits we are discussing this afternoon – noise, safety and commercial service.

The two candidates who favored a longer runway were appointed by Council to the Board.

- Members of City Council, at that September, 2006 meeting, reminded the Commissioners that the Delta 70 seat RJ service would be very positive for the community.

2. The following year, in September of 2007, City Council again expressed enthusiasm for obtaining commercial air service. It was observed that the runway is too short for some of the older RJ's, and it was stated, by the Board representative, that the Authority intended to revisit the issue of runway length. The Authority committed to Council to revisit runway length if it believed extending the runway would make sense.

3. In August of 2008, during the Authority's annual review, City Council expressed its consensus that the lack of commercial air service was a concern, and the Authority should continue its efforts to bring back air carrier service.



4. In September of 2009 the City Council reminded us again that commercial air service was a high priority. The Chairman advised the Council at that time that the Authority was pursuing commercial service vigorously, perhaps air service including 3 to 5 flights a day was a possibility. Council was reminded that runway extension needs to be looked at to make regional jets more efficient in the afternoons during the hot summer months.

Our Request:

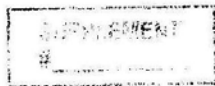
We are only addressing Runway 5-23, the primary runway at Naples Municipal Airport. It runs along an axis roughly northeast to southwest. In order to meet our statutory obligations, to fulfill our commitment to City Council, and to:

1. reduce Airport noise;
2. enhance flight safety; and
3. become more competitive for air carrier service,

the Authority seeks your endorsement of our project to pave the existing runway safety areas – the displaced thresholds – and to increase the declared distance of Runway 5/23 to 5,800 feet for takeoff.

Your Board of Commissioners have studied this project, our Noise Compatibility Committee has endorsed this project. I believe it would be appropriate for Council to confirm our collective efforts this afternoon.

Last week when I presented our paving project to the PAB, the PAB properly considered the ten (10) standards for approval of a Conditional Use Application – they are:



1. Ingress and egress to the property – the requirement is that access be adequate and not detrimental to existing uses at the Airport. There will be no change in the existing condition.
2. That off-street parking is adequate. There will be no change in the existing condition.
3. That refuse and service areas are adequately screened so as to not be visible from adjacent property. They are.
4. That utilities are adequate. They are.
5. That screening, buffering or separation of any nuisance is clearly represented on the Airport Utilization Plan.

Note: the new acoustical wall already approved by City Council in the Plan will better shield the project from adjacent properties.

6. That signs and exterior lighting shall be considered with reference to glare and traffic safety. There will be no additional street signage or lighting.
7. That the proposed paving does not hinder the development of nearby vacant properties. It does not.
8. That the land and buildings which are involved are adequate to ensure compatibility with the proposed conditional use. This is only a paving project on existing safety areas which already exist, and are not being extended.
9. That proposed development shall be compatible and appropriate with respect to adjacent properties. The closest residential site has already sold the Authority aviation easements mitigating all Airport activity and development. The new paving will not be visible to other off-Airport properties. In fact the land past the



end of runway 23 is all already owned by the airport, and the land to the north-east of Runway 5 is some of the most intensely Industrial Use Zoned property in the entire county.

10. That the collective impact of similar non-residential conditional uses shall not result in a single service district. The Airport is a single purpose district, C-4, Airport Commercial District.

We were pleased to receive a unanimous 6 to nothing vote from the PAB IN FAVOR of approving our application for a conditional use with certain stipulations, which I as the Chairman would be inclined to recommend to the Board as a whole, to approve at tomorrow's meeting.

Those Conditions are that:

1. That the runway/displaced thresholds shall be designed and built to not exceed a 75,000 pound weight-bearing capacity for aircraft; and
2. That any increase in the weight-bearing capacity set forth above shall be submitted to and approved by the City Council.
3. The Airport shall consider all available technology to mitigate thrust impact at the ends of the runways.

I, as chairman, have reviewed these conditions with our Executive Director and the Authority's Legal Council. We feel that these stipulations, as written, and codified as conditions to City's approval of the Conditional Use Application, are appropriate; would not jeopardize our FAA grant assurances; are in compliance with local, state, and federal law; and are in line with everything the Naples Airport Authority has already agreed to do on the record.

This request comes before you today with unanimous support of our Citizen's Noise Compatibility Committee 3 ___/0. It comes before you today with the unanimous support of your



Airport Authority 5/0. And it comes before you today with the unanimous support of your Planning Advisory Board 6/0.

If you want to reduce airplane noise over the City of Naples, you **must** approve this project. As our nationally recognized airport sound consultant will tell you, this project will unequivocally result in a **noticeable** reduction in noise from ALL aircraft leaving the airport, realized everywhere from the edge of our pavement to the Gulf of Mexico.

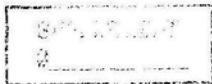
If you want to improve safety at the airport, you **must** approve this project. A safety officer from the Federal Aviation Administration testified under oath at the PAB meeting last week, that the paving of the safety areas would provide a real increase in the aircraft safety.

And if you want to improve quality of life in Naples, by increasing our community's chance of once again re-gaining quality, affordable, and reliable commercial service to and from Naples that we once enjoyed, you **must** approve this project.

In the end, I ask you to look at this request based on the facts, and acknowledge this project is good for the City of Naples, that it is right and appropriate, and that it be approved by City Council.

Conclusion:

I have brought with me today three gentlemen, whom I believe you will agree, are experts in their field. All of them are known to you. Our Executive Director, Theodore, Ted, Soliday; our paving consultant, Dave Bardt of Kimley-Horn; and our outside noise consultant, Ted Baldwin of HMMH. Before I turn the floor over to Mr. Baldwin, I would like to review with you their qualifications to address your questions.



Theodore D. Soliday
Executive Director, City of Naples Airport Authority:

- Ted Soliday's background in aviation spans more than forty (40) years. His experience ranges in nearly all aspects of aviation as a Pilot, Air Traffic Controller, Educator, Planner and Manager. Ted holds a Bachelor of Science degree in Aviation Management from Auburn University.
- He is the Chairman of the Florida Airports Council (FAC).
- In 2007, Ted was chosen to Chair the Transportation Research Board Panel of National Academy of Sciences reviewing "Potential Impacts of Very Light Jets on U.S. Airports."
- Under Ted's leadership the Naples Municipal Airport was the recipient of the 1998 Southern Region Air Carrier Safety Award, the highest award an air carrier airport can receive and was a recipient of the 2000 Project of the Year Award. The FDOT Tallahassee Aviation Office awarded the "Florida Aviation Professional of the Year" to Ted in 2002. The City of Naples Airport Authority was recognized by the Airports Council International (ACI-NA) with its Environmental Achievement Award for the year 2003.
- Ted was a captain, pilot and air traffic controller in the United States Marine Corps and is a disabled veteran from the Vietnam conflict. Ted flew over 700 combat missions in Vietnam.

David E. Bardt, P.E.
Senior Vice President, Kimley-Horn and Associates, Inc.

- With over 35 years of professional experience, Dave is a registered professional engineer in six states.



- Dave specializes in airport design and planning, and serves as the general consultant at both air carrier and general aviation airports.
- Since joining Kimley-Horn in 1980, Dave has managed or contributed to aviation projects across the country, including Fort Lauderdale Executive Airport (FXE), Sarasota-Bradenton International Airport (SRQ), Tallahassee Regional Airport (TLH), Palm Beach International Airport (PBI), McCarran International Airport (LAS), Dallas Fort Worth International Airport (DFW), Phoenix-Mesa Gateway Airport (WGA), Grand Canyon Airpark (KGCN) and numerous others.
- Dave's experience includes numerous runway rehabilitations, extensions and safety area improvements, taxiways, aprons, access roads, security projects and planning projects.
- Dave currently serves as Kimley-Horn's project manager for the FDOT Statewide Pavement Management Program. He understands airport operations, and is experienced in designing airfield improvement projects that can be constructed while minimizing operational impacts.

Ted Baldwin

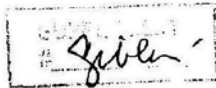
Senior Vice President, Harris Miller Miller & Hanson Inc.:

- Mr. Baldwin is an internationally recognized leader in the field of airport noise. He has provided a comprehensive range of noise consulting assistance to over 80 airports, including more than 20 in Florida.



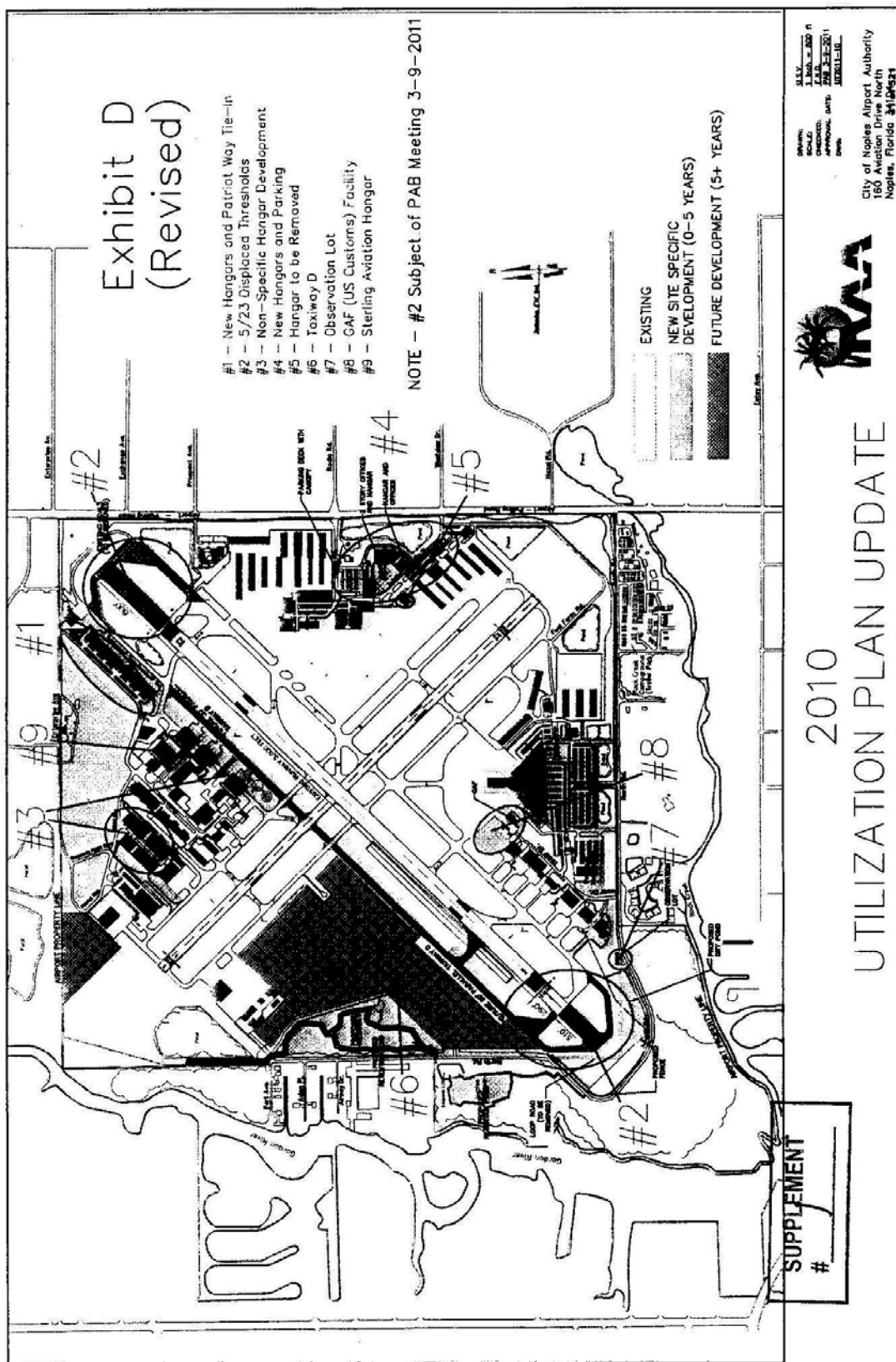
- His Part 150 experience may be unequalled in the industry, including Part 150 projects at over 35 airports – more than one eighth of the airports involved in the program nationally.
- Prior to entering consulting, Mr. Baldwin was Aviation Planner and Assistant Manager of Noise Abatement at Massport, operator of Boston-Logan and Hanscom Field (Boston's primary reliever).
- Mr. Baldwin has a Bachelor of Science in Engineering degree from Cornell University and a Master of City and Regional Planning degree from Harvard University.
- He is a member of the Institute of Noise Control Engineering, the Acoustical Society of America, the American Association of Airport Executives, the Airport Consultants Council, and the Florida Airports Council.
- He has won awards for his professional accomplishments from the FAA, the Florida DOT, and the Florida Airports Council.
- He has consulted to the City of Naples Airport Authority since 1995.
- Ted Baldwin is a man upon whom we can rely to be informed, accurate and truthful in what he tells us on this subject.

And with that, I'd like to introduce Mr. Ted Baldwin to make a brief presentation...



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283460.2 3/15/2011



Excerpted text of Item 7:

Noise Benefits of Proposed Runway 5/23 Modifications
Presentation to Naples City Council
March 16, 2011
Ted Baldwin

Will the Runway 5/23 modifications reduce noise?

Yes. *The takeoff length extensions will provide more noise reduction than any other measure considered over the past two years of study.*

What kinds of noise reduction?

▪ **Overall annual noise exposure reduction**

▪ In terms of the City's 60 DNL compatibility standard
▪ Produces the largest reduction in residents of all options identified in the Part 150 study
– about 65 to 100 fewer people in 2015

▪ **Single event departure noise reduction**

▪ Using the single event analysis approaches requested by the TAC
▪ For any departure procedure, the extra takeoff length will make a plane higher and quieter
▪ For the NBAA close-in procedure, the extra takeoff length will reduce the number of residents within the 85 dB SEL contour to the lowest number of any procedure on the 5th Avenue track
▪ 400 fewer residents than the existing runway layout
▪ 3,400 fewer than the worst track and procedure evaluated by the TAC

What provides the benefits?

The takeoff extensions will complement existing and proposed noise abatement procedures.

▪ **Jet departures will be on the order of 30' to 90' higher over Old Naples on average**

▪ Aircraft will be higher and quieter from the airport to the Gulf
▪ Pilots will have additional time to initiate the noise abatement turn, improving adherence
▪ Standard instrument departure procedures will increase this benefit
▪ Pilots will have additional time to execute the NBAA close-in noise abatement departure procedure
▪ Overall will reduce overflight levels in residential areas north and south of 5th Avenue by a noticeable amount

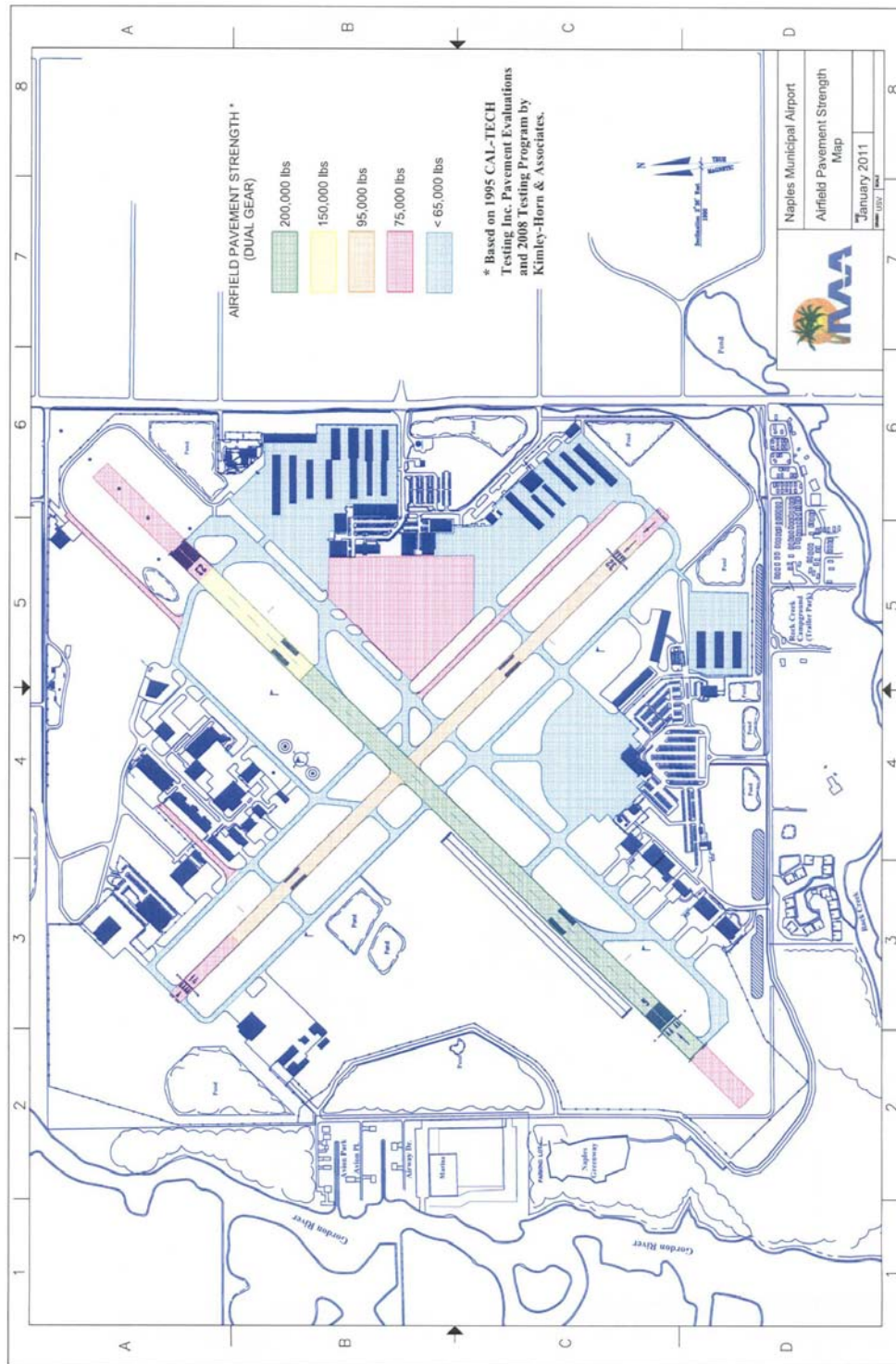
Will the benefits be affected by future technology?

Technological advances will add to the benefits of the extension.

▪ Continuing evolution of the jet fleet to more modern, quieter, faster climbing aircraft will lead to even higher altitudes.
▪ Modern 75,000 pound takeoff weight aircraft, such as the 70 passenger Canadair CRJ9 regional jet are noticeably quieter than the 18,000 pound Stage 3 Lear 35.
▪ Improvements in air traffic control technology will improve adherence to the noise abatement flight path, further reducing noise over residential areas.

In conclusion: *As an individual measure, the takeoff length extensions will provide more noise reduction than any other measure considered over the past two years of study.*

- **Moreover, noise abatement benefits are additive**
- The takeoff extensions will *complement* the benefits of:
- Existing noise abatement measures
- Proposed noise abatement measures
- Air traffic control advances
- Jet aircraft advances



SUPPLEMENT
#7 from NAA

rec via email 04/01/11
v8

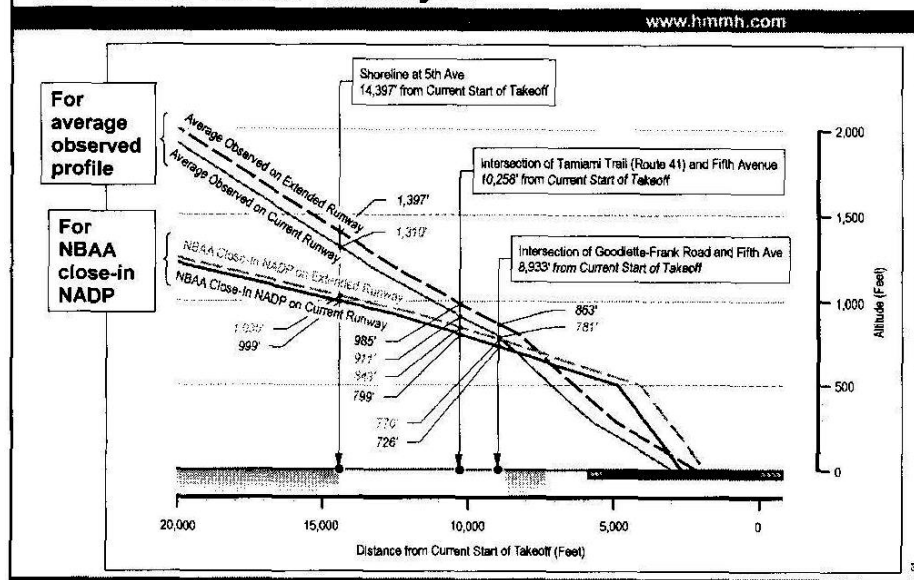
Slide 1

Existing and Forecast Traffic Levels at Naples Airport

- **2005 Actual levels**
 - **160,670 Annual Operations**
 - **440 Daily Operations**
 - **73 Daily Jet Operations**
- **2010 levels**
 - **115, 396 Annual Operations**
 - **316 Daily Operations**
 - **47 Daily Jet Operations**
- **2015 forecast levels**
 - **129,226 Annual Operations**
 - **354 Daily Operations**
 - **64 Daily Jet Operations**

Slide 2

Lear 35 climb profiles with and without 800' in crease in takeoff roll on Runway 23

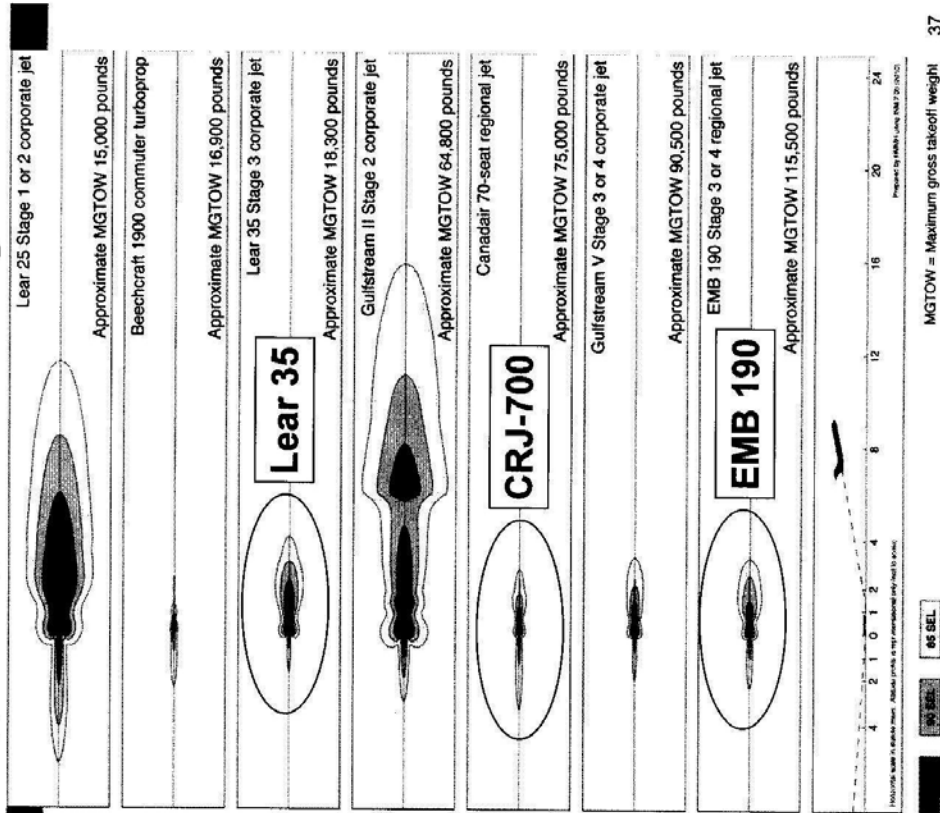


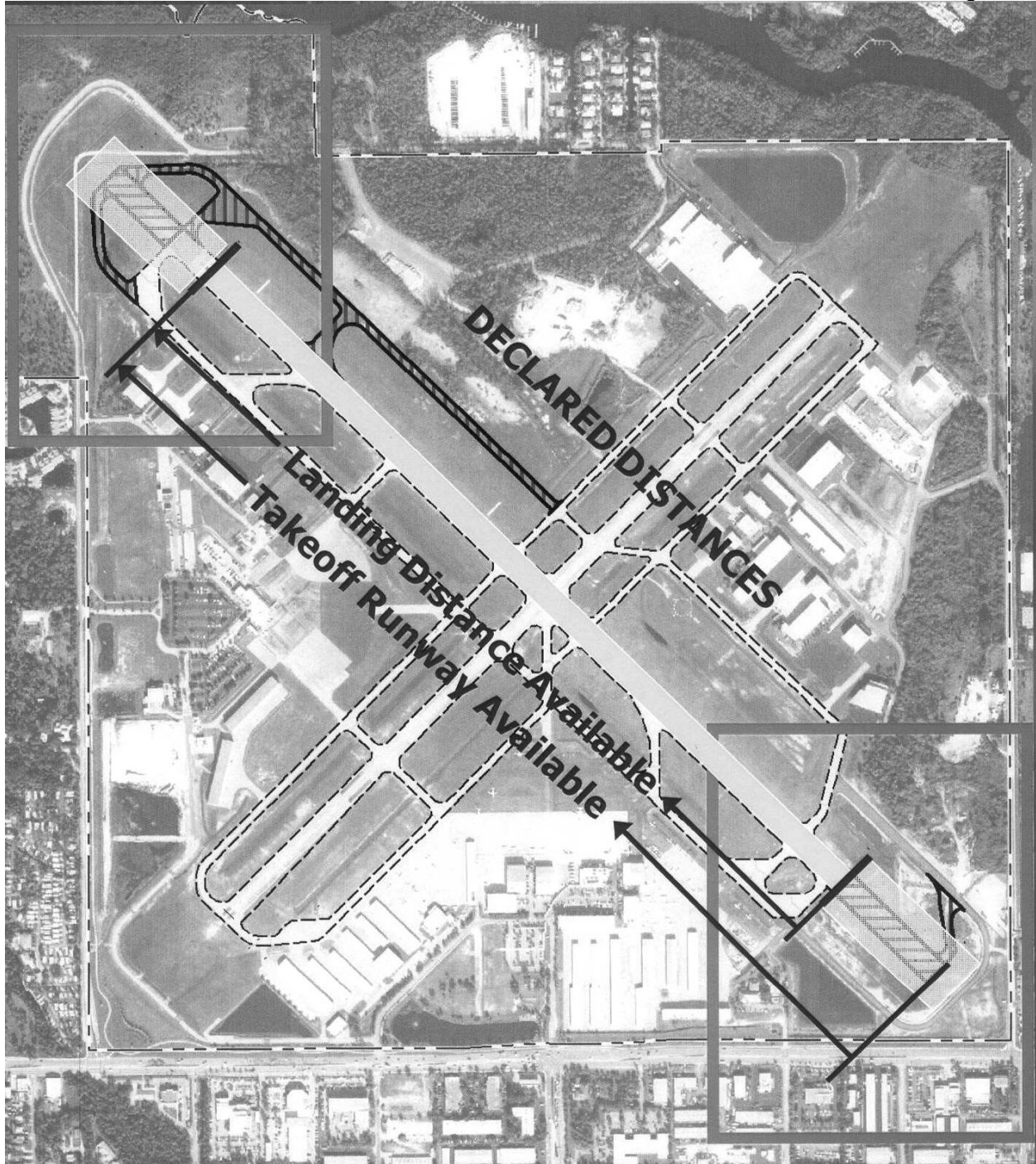
Comparison of potential regional jets to other jets

Contours show combined SELs (85, 90 and 95 dB) for both a landing and takeoff (from left to right)

70 seat CRJ-700 and 98 seat EMB-190 produce noise levels similar to or less than the Lear 35, which is typical of approximately 23% of current jet operations.

Aircraft to the right are presented from lightest (top) to heaviest (bottom)





Naples City Council Meeting

March 16, 2011

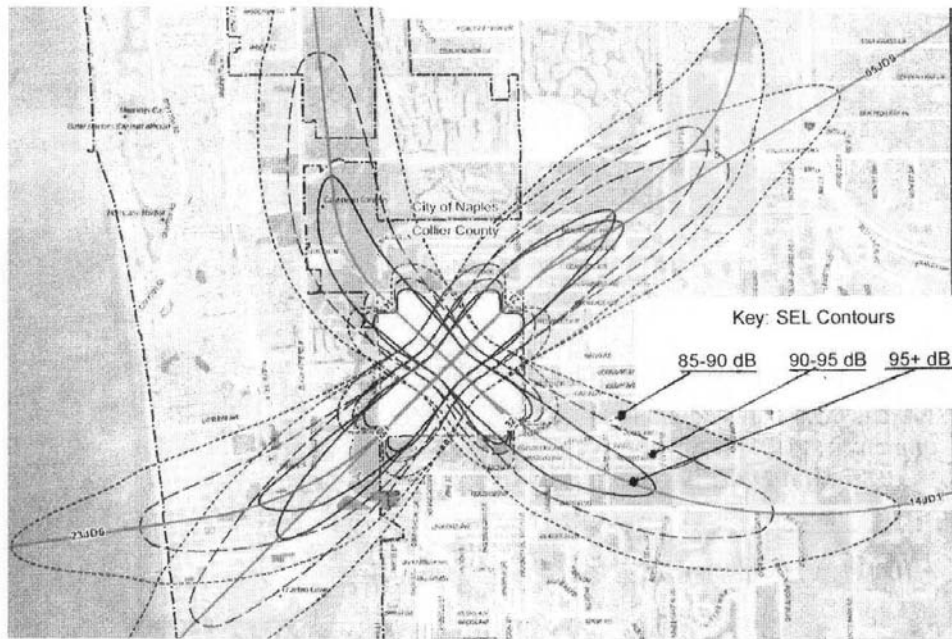
“A Deal’s a Deal”

RUNWAY 5/23

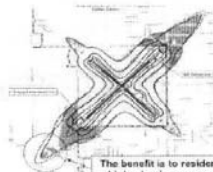
70 YEARS AT 5,000 FEET

HIGH INTENSITY SOUND MEASURES DECIBELS AND EQUIVALENTS

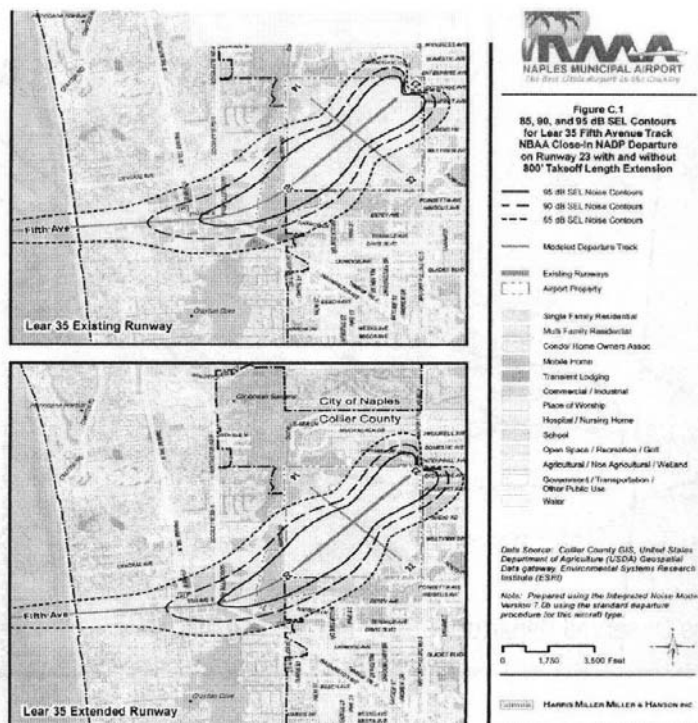
- × 95+ dB Gas power lawnmower at 3”
- × 90 – 95 dB Heavy motorcycle at 30’
- × 85-90 dB Heavy diesel truck at 50’



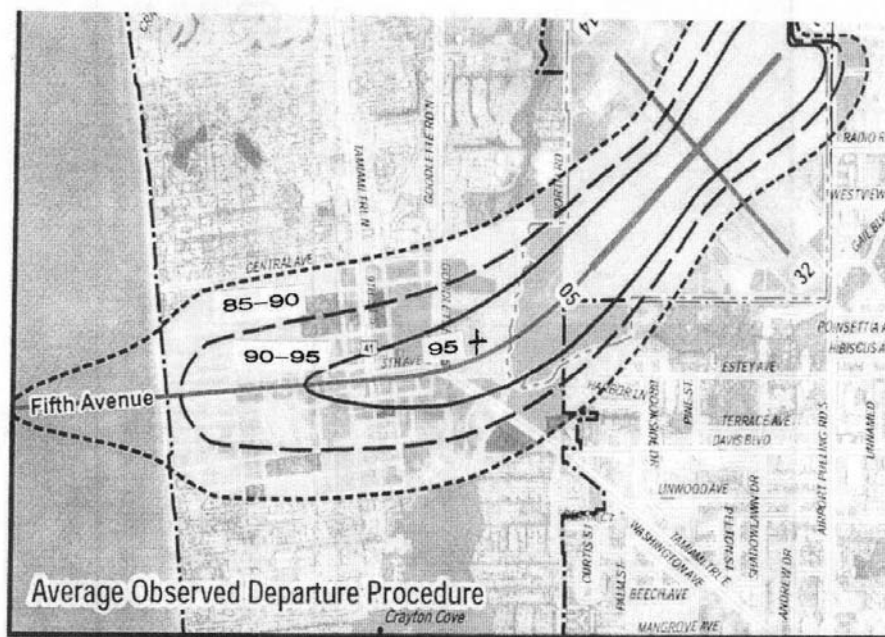
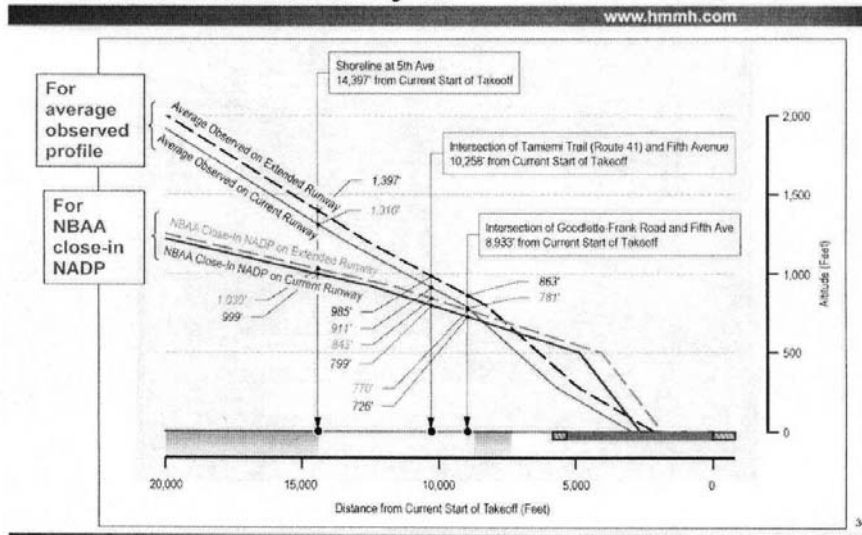
EXTENDING THE RUNWAY IS SINGLE GREATEST NOISE REDUCTION ACTION



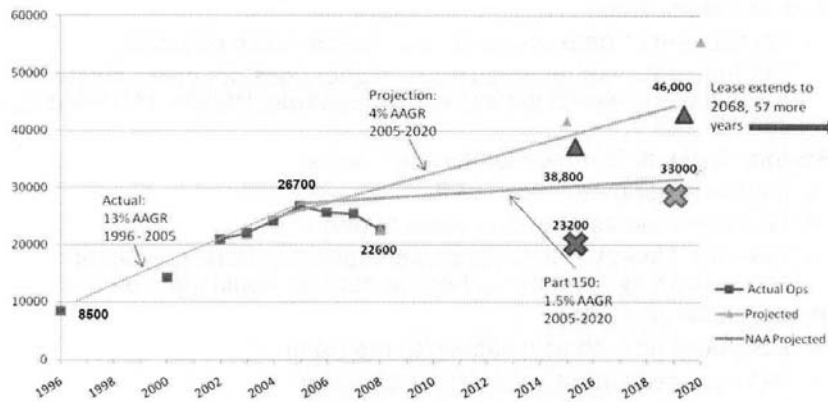
PLANNED 5TH AVENUE STANDARD INSTRUMENT DEPARTURE TRACK



Lear 35 climb profiles with and without 800' increase in takeoff roll on Runway 23



Jet Operations at Naples Airport 1996 to 2020 – Existing Runways – 75,000 lb



- 2005 actual operations were 30% higher than projected in 2001
- 2008 operations declined only 15% from 2005 high
- 2020 projection is 75% increase over 2005

MONTHLY JET OPERATIONS JANUARY 2005 – MARCH 2009

Exhibit 8: Approach Used to Forecast 2010 Jet Operations at APF

	Actual Monthly Operations				Ratio of 2009/2008 Operations		Forecast	
	2005	2006	2007	2008	2009	Actual Forecast	2009	2010
Jan	3,426	3,276	3,124	2,996	2,184	0.73		2,184
Feb	3,588	3,460	3,590	3,370	2,268	0.67		2,268
Mar	3,850	3,430	3,592	3,768	2,272	0.60		2,272
Apr	2,932	2,974	2,920	2,568		0.65	1,662	1,662
May	1,914	1,848	1,746	1,672		0.69	1,156	1,156
Jun	1,278	1,180	1,118	1,032		0.74	759	759
Jul	924	882	912	722		0.78	563	574
Aug	1,012	968	930	748		0.82	616	628
Sep	1,102	914	962	692		0.87	600	612
Oct	1,776	1,644	1,514	1,184		0.91	1,080	1,101
Nov	2,696	2,646	2,604	1,878		0.96	1,795	1,831
Dec	2,256	2,408	2,390	1,976		1.00	1,976	2,016
Total	26,754	25,620	25,402	22,606		0.75	16,930	17,063

NAA'S REASONS FOR EXTENSION ARE BASELESS

- × Reduce Noise - False
 - + "Consultant's" data shows no discernable noise reduction
 - + "Altitude does not mean quieter – higher does not mean quieter" – "it takes more power to get higher" Ted Baldwin, HMMH, TAC Meeting, June 8, 2010
- × Restore Regional Commercial Service – None
 - + Market is not there
 - + No commitments after four years of effort
 - + Trust the Market – no sustainable, profitable market; claim of "overwhelming demand" is false or carriers would jump on it
- × Increased Safety - False
 - + Absolutely no technical backup to the claim
 - + FAA declared airport safe for last 15 years
 - + Larger, heavier & more jets would offset any runway increase
 - + Current runway lengths have never contributed to incidents

PREEMPTION

- × FAA makes broad claims of preemption which often fail
 - + March 2003 – FAA Director issued Determination finding that Naples Stage 2 ban was preempted and unenforceable
 - + FAA preemption claim opposed by NAA
 - + June 2003 - US DOT reversed FAA preemption Determination, FAA does not appeal
- × FAA preemption opinion has no legal significance

PREEMPTION (CONTINUED)

- × Preemption must be decided by court
 - + Case 1 – Court rules against preemption – 5,000 foot runway limit in code enforceable
 - + Case 2 – Court rules in favor of preemption – \$1/year lease with NAA could be terminated due to failure of material provision
 - × FAA runway extension opinion flawed
 - + City of Naples may be deemed proprietor (Griggs v Allegheny)
 - + Opinion ignores 10th Amendment of U.S. Constitution
-

AIRPORT ZONING ORDINANCES

- × **1942 – 1996** Runways limited to 5,000 feet or less
- × **1996** City zoning ordinance limits runway to maximum 5,000 feet, NAA consents
- × **2000** Zoning ordinance amended to 5,000 feet declared distance, at request of NAA
- × **April 2010** NAA declares that City code does not apply and plans to extend takeoff runways to 5,800 feet for regional jet service in conflict with zoning ordinance

FLORIDA STATUTE AND CITY'S LEASE

- × **1969** NAA created by Florida statute with powers to operate the airport
- × **1969** NAA and City enter into 99 year lease for \$1/year:
 - + NAA agrees to comply with all laws, ordinances, rules and regulations
 - + No severability clause
- × **1979** Florida statute Section 2(a) amended
 - + Nothing contained herein shall be deemed to give the airport authority the right to control zoning at the airport facilities, said right being specifically reserved to the City of Naples

NAA HAS MISLED THE CITY COUNCIL AND THE PUBLIC

- × Not a single one of the claimed benefits is real
- × Council been misled about
 - + demand for commercial service
 - + the weight limit
 - + noise reduction
 - + safety
 - + the purpose of the Customs Facility
- × NAA Workshop recordings confirm the intent to mislead
- × Candor, transparency and trust
- × Objective: World Class International Airport

NO COMMUNITY BENEFITS – UNLIMITED RISKS

- × Increased jet traffic
- × Loss of 75,000 lb weight limit
- × Increased noise
- × Increased pollution
- × City's permanent and absolute loss of control of airport
- × FAA control of operations with no limit on traffic
- × Unknowns

RECOMMENDED CITY COUNCIL ACTION

**Reject the NAA's request for
approval of the runway
extension**

ENROLLED

69-1326
HB 2582

CHAPT 69-1326

A bill to be entitled

2582 An act creating an airport authority in the city of Naples, Collier county, Florida, fixing and describing its boundaries, pro-
viding for the appointment of its commis-
sioners, prescribing the duties, functions, responsibilities and powers of its governing body and providing for the liberal construc-
tion of said act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act shall be known and may be cited as the "city of Naples airport authority act".

Section 2. As used in this act the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent.

(a) The term "airport facilities" shall mean the airport facilities at the Naples municipal airport, located on the following described premises:

North one-half of Section 2, Township 50 South, Range 25 East and the South one-half of Section 35, Township 49 South, Range 25 East, less right-of-way;
including, but not limited to, landing fields, hangars, shops, terminals, buildings and all other facilities necessary or desirable for the landing, taking off, operating, servicing, repairing and parking of

1

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SUPPLEMENT
#EXH-A

1 aircraft, and the unloading and handling of pass-
2 engers, mail, express and freight, together with all
3 necessary appurtenances and equipment and all prop-
4 erties, rights, easements and franchises relating
5 thereto, including all lands and buildings located
6 at the Naples airport which may be used for any
7 industrial, commercial or business purposes or other
8 uses which the authority may determine.

9 (b) The word "authority" shall mean the
10 authority created by this act, or, if such authority
11 shall be abolished, the board, body or commission
12 succeeding to the principal functions thereof or to
13 whom the powers given by this act to the authority
14 shall be given by law.

15 (c) The word "cost" shall mean and include
16 the cost of acquiring or constructing airport facil-
17 ities, the cost of improvements, the cost of all
18 rights, easements and franchises acquired, the cost
19 of all machinery and equipment, financing charges,
20 interest prior to and during construction and after
21 completion of construction, cost of engineering and
22 legal services, plans, specifications, surveys,
23 estimates of cost and of revenues, other expenses
24 necessary or incident to the determining of the
25 feasibility or practicability of any such acquisition,
26 construction or improvement, administrative expenses,
27 and such other expenses, including reasonable pro-
28 vision for working capital, as may be necessary or
29 incident to the financing herein authorized, to the
30 construction and improvement of airport facilities
31 and the placing of the same in operation by the

1 authority. Any obligation or expense incurred by
2 the authority prior to the issuance of bonds under
3 the provisions of this act in connection with the
4 acquisition or construction of the airport facilities
5 or any improvement thereof may be regarded as a part
6 of such cost.

7 (d) The word "improvements" shall mean such
8 repairs, replacements, additions, extensions and
9 betterments of and to the airport facilities as are
10 deemed necessary to place or to maintain such facil-
11 ities in proper condition for the safe, efficient
12 and economic operation thereof.

13 Section 3. There is hereby created a body
14 politic and corporate to be known as the city of
15 Naples airport authority for the purpose of operating
16 and maintaining the airport facilities at the city of
17 Naples municipal airport, located in Collier county,
18 Florida. The authority is hereby constituted a
19 public instrumentality and the exercise by the
20 authority of the powers conferred by this act shall
21 be deemed and held to be the performance of essential
22 governmental functions.

23 Said authority shall not transact any busi-
24 ness or exercise its powers hereunder until or unless
25 the city council of the city of Naples by proper
26 resolution, shall declare that there is need for the
27 authority to function. The determination as to
28 whether there is such need for the authority to
29 function may be made by the city council on its own
30 motion. In any suit, action or proceeding involving
31 the validity or enforcement of or relating to any

1 contract of the authority, the authority shall be
2 conclusively deemed to have become established and
3 authorized to transact business and exercise its
4 powers hereunder upon proof of the adoption of a
5 resolution by the city council declaring the need
6 for the authority. A copy of such resolution duly
7 certified by the clerk shall be admissible in evidence
8 in any suit, action or proceeding.

9 The mayor, with the approval of two thirds
10 (2/3) of the city council, shall appoint five (5)
11 persons as commissioners of the authority created
12 for the city. Three (3) of the commissioners who
13 are first appointed shall be designated to serve for
14 terms of one (1), two (2) and three (3) years, re-
15 spectively; and the remaining two (2) of such commis-
16 sioners shall be designated to serve for terms of
17 four (4) years each, from the date of their appoint-
18 ment. Thereafter commissioners shall be appointed
19 as aforesaid for a term of office of four (4) years
20 except that all vacancies shall be filled for the
21 unexpired term. No commissioner of the authority
22 may be an officer or employee of the city. A commis-
23 sioner shall hold office until his successor has been
24 appointed and has qualified. A certificate of the
25 appointment or re-appointment of any commissioner
26 shall be filed with the clerk and such certificate
27 shall be conclusive evidence of the due and proper
28 appointment of such commissioner. A commissioner
29 shall receive no compensation for his services, but
30 he shall be entitled to the necessary expenses, in-
31 cluding traveling expenses, incurred in the discharge

of his duties.

All meetings of the authority shall be public meetings and the powers of the authority shall be vested in the commissioners thereof in office from time to time. Three (3) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The mayor with the concurrence of the city council shall designate which of the commissioners appointed shall be the first chairman, but when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. The authority shall select from among its commissioners a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require and shall determine their qualifications, duties and compensation. For such legal services as it may require, the authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. The authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

For inefficiency or neglect of duty or misconduct in office, a commissioner of the authority may be removed by the mayor with the concurrence of

1 two thirds (2/3) of the city council but a commis-
 2 sioner shall be removed only after he shall have been
 3 given a copy of the charges at least ten (10) days
 4 prior to the hearing thereon and had an opportunity
 5 to be heard in person or by counsel. In the event of
 6 the removal of any commissioner, a record of the
 7 proceedings, together with the charges and findings
 8 thereon, shall be filed in the office of the clerk.

9 Section 4. The operation of the airport by
 10 the authority shall be subject to existing leases,
 11 rights and privileges heretofore granted by the city
 12 of Naples. The authority is hereby authorized and
 13 empowered:

14 (a) To adopt bylaws for the regulations of
 15 its affairs and the conduct of its business;

16 (b) To adopt an official seal and alter the
 17 same at pleasure;

18 (c) To maintain an office at such place or
 19 places as it may designate;

20 (d) To sue and be sued in its own name, plead
 21 and be impleaded;

22 (e) To lease the entire municipal airport
 23 and all airport facilities from the city of Naples,
 24 and to improve, extend, enlarge, equip, repair,
 25 maintain and operate the airport facilities. Such
 26 lease from the city of Naples to the authority shall
 27 be for any number of years the city council of the
 28 city of Naples may in its own discretion deem to be
 29 necessary.

30 (f) To issue bonds of the authority as herein-
 31 after provided to pay the cost of such improvement,

1 extension, enlargement or equipment;

2 (g) To issue refunding bonds of the authority
3 as hereinafter provided;

4 (h) To combine any airport facilities for
5 the purpose of operation and financing;

6 (i) To fix and revise from time to time and
7 to collect rates, fees and other charges for the
8 use of or for the services and facilities furnished
9 by the airport facilities;

10 (j) To acquire in the name of the authority
11 by gift or purchase such personal property as it may
12 deem necessary in connection with the improvement,
13 extension, enlargement or operation of the airport
14 facilities;

15 (k) To make and enter into all contracts
16 and agreements necessary or incidental to the
17 performance of its duties and the execution of its
18 powers under this act, including a trust agreement
19 or trust agreements securing any bonds issued here-
20 under, and to employ such consulting and other engi-
21 neers, superintendents, managers, construction and
22 financial experts, accountants and attorneys, and
23 such employees and agents as may, in the judgment of
24 the authority be deemed necessary and to fix their
25 compensation; provided, however, that all such ex-
26 penses shall be payable solely from funds made avail-
27 able under the provisions of this act;

28 (l) To accept grants of money or materials
29 or property of any kind for the airport facilities
30 from any federal or state agency, political subdivi-
31 sion or other public body or from any private

1 agency or individual, upon such terms and conditions
2 as may be imposed;

3 (m) To do all acts and things necessary or
4 convenient to carry out the powers granted by this
5 act.

6 (n) To borrow money from time to time, pro-
7 vided that the outstanding indebtedness on loans
8 secured under the provisions of this subsection does
9 not exceed five hundred thousand dollars (\$500,000.00)
10 at any one (1) time, from any state and federal
11 agency or agencies, or private party or parties, both
12 individual and corporate, for the purpose of pro-
13 viding funds to be used in the improving, extending,
14 enlarging, equipping or repairing of the airport
15 facilities; to secure such loan or loans by executing
16 a promissory note or notes therefor in the name of
17 said airport authority, which said notes shall be
18 binding obligations of said airport authority; to
19 further secure such promissory notes, the airport
20 authority is authorized to mortgage the project or
21 facilities for the construction, repair or improve-
22 ment of which such note or notes may be executed.

23 (o) To exercise and perform all of the powers
24 and prerogatives conferred upon "political subdivi-
25 sions" by chapter 333, Florida Statutes, with
26 respect to the adoption, promulgation and enforcement
27 of airport zoning regulations under the provisions
28 of said chapter 333, Florida Statutes.

29 Section 5. The authority is hereby authorized
30 to issue bonds of the authority for the purpose of
31 paying the cost of improving, extending, enlarging

1 or equipping the airport facilities. The bonds of
2 each issue shall be dated, shall mature at such time
3 or times not exceeding forty (40) years from their
4 date or dates and shall bear interest at such rate
5 or rates as may be determined by the authority, and
6 may be made redeemable before maturity, at the option
7 of the authority, at such price or prices and under
8 such terms and conditions as may be fixed by the
9 authority prior to the issuance of the bonds. The
10 authority shall determine the form and the manner of
11 the execution of the bonds, including any interest
12 coupons to be attached thereto, and shall fix the
13 denomination or denominations of the bonds and the
14 place or places of payment of principal and interest,
15 which may be at any bank or trust company within or
16 without the state. In case any officer whose signa-
17 ture or a facsimile of whose signature shall appear
18 on any bonds or coupons shall cease to be such
19 officer before the delivery of such bonds, such
20 signature or such facsimile shall nevertheless be
21 valid and sufficient for all purposes, the same as
22 if he had remained in office until such delivery.
23 Notwithstanding any of the other provisions of this
24 act or any recitals in any bonds issued under the
25 provisions of this act, all such bonds shall be
26 deemed to be negotiable instruments under the laws
27 of this state. The bonds may be issued in coupon
28 or registered form or both, as the authority may
29 determine, and provision may be made for the regis-
30 tration of any coupon bonds as to principal alone
31 and also as to both principal and interest, and for

1 the reconversion into coupon bonds of any bonds
2 registered as to both principal and interest. The
3 authority may sell such bonds in such manner, either
4 at public or private sale, and for such price, as it
5 may determine to be for the best interests of the
6 authority, but no such sale shall be made at a price
7 so low as to require the payment of interest on the
8 money received more than at an acceptable rate to
9 the airport authority, computed with relation to the
10 absolute maturity or maturities of the bonds in
11 accordance with standard tables of bond values, ex-
12 cluding, however, from such computation the amount
13 of any premium to be paid on redemption of any bonds
14 prior to maturity.

15 The proceeds of the bonds of each issue shall
16 be used solely for the purpose for which such bonds
17 shall have been authorized and shall be disbursed in
18 such manner and under such restrictions, if any, as
19 the authority may provide in the resolution author-
20 izing the issuance of such bonds or in the trust
21 agreement hereinafter mentioned securing the same.
22 Unless otherwise provided in the authorizing reso-
23 lution or in the trust agreement securing such bonds,
24 if the proceeds of such bonds, by error of estimates
25 or otherwise, shall be less than such cost, additional
26 bonds may in like manner be issued to provide the
27 amount of such deficit and shall be deemed to be of
28 the same issue and shall be entitled to payment from
29 the same fund without preference or priority of the
30 bonds first issued for the same purpose.

31 The resolution providing for the issuance of

1 bonds, and any trust agreement securing such bonds,
2 may also contain such limitations upon the issuance
3 of additional bonds as the authority may deem proper,
4 and such additional bonds shall be issued under such
5 restrictions and limitations as may be prescribed by
6 such resolution or trust agreement.

7 Prior to the preparation of definitive bonds,
8 the authority may, under like restrictions, issue
9 interim receipts or temporary bonds, with or without
10 coupons, exchangeable for definitive bonds when such
11 bonds shall have been executed and are available for
12 delivery. The authority may also provide for the
13 replacement of any bonds which shall become mutilated
14 or be destroyed or lost.

15 Bonds may be issued under the provisions of
16 this act without obtaining the consent of any
17 political subdivision and without any other pro-
18 ceeding or the happening of other conditions or things
19 than those proceedings, conditions or things which are
20 specifically required by this act.

21 Section 6. The authority is hereby authorized
22 to fix and revise from time to time rates, fees and
23 other charges for the use of and for the services
24 furnished or to be furnished by any airport facil-
25 ities operated by the authority. Such rates, fees
26 and charges shall be fixed and revised so that the
27 revenues of the authority, together with any other
28 available funds, will be sufficient at all times (a)
29 to pay the cost of maintaining, repairing and
30 operating the airport facilities operated by the

31

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1 authority, including reserves for such purposes, and
 2 (b) to pay the principal of and the interest on all
 3 bonds issued by the authority under the provisions
 4 of this act as the same shall become due and
 5 payable and to provide reserves therefor. Not-
 6 withstanding any of the foregoing provisions of
 7 this section, the authority may enter into contracts
 8 relating to the use of or for the services furnished
 9 or to be furnished by the airport facilities.

10 Section 7. In the discretion of the
 11 authority, each or any issue of bonds may be
 12 secured by a trust agreement by and between the
 13 authority and a corporate trustee, which may be
 14 any trust company or bank having the powers of
 15 a trust company within or without the state. The
 16 resolution authorizing the issuance of the bonds
 17 or such trust agreement may pledge the revenues to
 18 be received from any airport facilities of the
 19 authority but shall not convey or mortgage any of
 20 such facilities, and may contain such provisions
 21 for protecting and enforcing the rights and reme-
 22 dies of the bondholders as may be reasonable and
 23 proper and not in violation of law, including
 24 covenants setting forth the duties of the authority
 25 in relation to the maintenance, repair, operation,
 26 insurance and improvement of such facilities, the
 27 fixing and revising of rates, fees and charges
 28 and the custody, safeguarding and application of all
 29 moneys, and for the employment of consulting engi-
 30 neers in connection with such improvement or

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1 operation. It shall be lawful for any bank or
2 trust company incorporated under the laws of the
3 state which may act as depository of the proceeds of
4 bonds or of revenues to furnish such indemnifying
5 bonds or to pledge such securities as may be
6 required by the authority. Such resolution or
7 trust agreement may set forth the rights and
8 remedies of the bondholders and of the trustee,
9 if any, and may restrict the individual right of
10 action by bondholders. Such resolution or trust
11 agreement may contain such other provisions in
12 addition to the foregoing as the authority may
13 deem reasonable and proper for the security of the
14 bondholders. The authority may provide for the
15 payment of the proceeds of the sale of the bonds
16 and the revenues of any airport facilities to such
17 officer, board or depository as it may designate
18 for the custody thereof, and for the method of
19 disbursement thereof, with such safeguards and
20 restrictions as it may determine. All expenses
21 incurred in carrying out the provisions of such
22 resolution or trust agreement may be treated as a
23 part of the cost of operation.

24 All pledges of revenues under the provisions
25 of this act shall be valid and binding from the
26 time when such pledges are made. All such revenues
27 so pledged and thereafter received by the authority
28 shall immediately be subject to the lien of such
29 pledges without any physical delivery thereof
30 or further action, and the lien of such pledges shall

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1 be valid and binding as against all parties having
2 claims of any kind in tort, contract or otherwise,
3 against the authority, irrespective of whether such
4 parties have notice thereof.

5 Section 8. Any holder of bonds issued
6 under the provisions of this act or of any of the
7 coupons appertaining thereto, and the trustee
8 under any trust agreement, except to the extent the
9 rights herein given may be restricted by the resolu-
10 tion authorizing the issuance of such bonds or such
11 trust agreement, may, either at law or in equity, by
12 suit, action, mandamus or other proceeding, protect
13 and enforce any and all rights under the laws of the
14 state or granted hereunder or under such resolution
15 or trust agreement, and may enforce and compel the
16 performance of all duties required by this act or by
17 such resolution or trust agreement to be performed by
18 the authority or by any officer thereof, including
19 the fixing, charging and collecting of rates, fees
20 and charges for the use of or for the services and
21 facilities furnished by the airport facilities.

22 Section 9. The authority is hereby authorized
23 to issue from time to time refunding bonds for the
24 purpose of refunding any bonds of the authority then
25 outstanding, including the payment of any redemption
26 premium thereon and any interest accrued or to accrue
27 to the date of redemption of such bonds. The author-
28 ity is further authorized to issue from time to time
29 bonds of the authority for the combined purpose of
30 (a) refunding any bonds of the authority then out-
31 standing, including the payment of any redemption

1 premium thereon and any interest accrued or to accrue
2 to the date of redemption of such bonds, and (b)
3 paying all or any part of the cost of acquiring or
4 constructing any additional airport facilities or of
5 any improvements. The issuance of such bonds, the
6 maturities and other details thereof, the rights and
7 remedies of the holders thereof, and the rights,
8 powers, privileges, duties and obligations of the
9 authority with respect to the same, shall be governed
10 by the foregoing provisions of this act in so far as
11 the same may be applicable.

12 Section 10. This act shall be deemed to pro-
13 vide an additional and alternative method for the
14 doing of the things authorized hereby and shall be
15 regarded as supplemental and additional to powers
16 conferred by other laws, and shall not be regarded
17 as in derogation of or as repealing any powers now
18 existing under any other law, whether general, special
19 or local; provided, however, that the issuance of
20 bonds or refunding bonds under the provisions of this
21 act need not comply with the requirements of any
22 other laws applicable to the issuance of bonds.

23 Section 11. All other general, special or
24 local laws or parts thereof inconsistent herewith
25 are hereby declared to be inapplicable to the pro-
26 visions of this act.

27 Section 12. The provisions of this act are
28 severable and if any of its provisions shall be held
29 unconstitutional by any court of competent juris-
30 diction, the decision of such court shall not affect
31 or impair any of the remaining provisions.

1 Section 13. As airport facilities are essen-
2 tial to the economic welfare of the inhabitants of
3 the city of Naples and Collier county and will pro-
4 mote the economic, commercial, industrial and resi-
5 dential development of said city and county, and as
6 the exercise of the powers conferred by this act to
7 effect such purposes constitutes the performance of
8 essential public functions and as such airport
9 facilities acquired or constructed under the pro-
10 visions of this act will constitute public property
11 used for public purposes, no taxes or assessments
12 shall be levied upon such airport facilities or upon
13 the income therefrom, and any bonds issued under the
14 provisions of this act, their transfer and the income
15 therefrom, including any profit made on the sale
16 thereof, shall at all times be free from taxation
17 within the state.

18 Section 14. The city of Naples and Collier
19 county shall have full police powers throughout the
20 territory comprising the lands of the airport and
21 the airspace thereover, and each may appoint guards or
22 police to assist in the enforcement of such rules,
23 regulations and ordinances as it may adopt pursuant
24 to the authority of this act.

25 Section 15. Rules and regulations enacted
26 and adopted by the city of Naples airport authority
27 shall be enforced as are city ordinances. Violation
28 thereof shall be a misdemeanor and shall be punish-
29 able as set out in section 1.4 of the charter of the
30 city of Naples, Florida. The municipal court of the
31 city of Naples, Florida, is hereby vested with and

granted jurisdiction for the trial of all offenders against any ordinance, rule or regulation which the said city shall adopt and enact pursuant to the authority of this act, and the process of said court shall be effective throughout the territory comprising the lands of the airport and the airspace there-over.

Section 16. The provisions of this act shall be liberally construed to effect the purposes thereof.

Section 17. This act shall take effect immediately upon becoming a law. 2582

Enacted a law without the Governor's approval.

Filed in Office Secretary of State JUL 3 1969

State of Florida

Secretary of State



I, Tom Adams, Secretary of State of the State of Florida,
Do Hereby Certify That the above and foregoing is a true and correct copy of

Chapter 69-1326 (House Bill No. 2582), Laws of Florida,
Regular Session 1969, as shown by the records of this
office.

Given under my hand and the Great Seal of the
State of Florida at Tallahassee, the Capital,
this the 7th day of August,
A.D. 19 70.



Tom Adams
Secretary of State

Cert. 1

L E A S E

THIS LEASE, made and entered into this 3rd day of December, 1969, by and between the CITY OF NAPLES, a municipal corporation under the laws of the State of Florida, hereinafter referred to as the Lessor, and the CITY OF NAPLES AIRPORT AUTHORITY, hereinafter referred to as the Lessee.

WITNESSETH: That for and in consideration of the covenants herein contained, the Lessor does hereby lease to the said Lessee the following described property, situated in Collier County, Florida, to-wit:

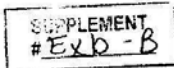
The North one-half of Section 2, Township 50 South, Range 25 East and the South one-half of Section 35, Township 49 South, Range 25 East, less right-of-way;

including, but not limited to, landing fields, hangars, shops, terminals, buildings and all other facilities necessary or desirable for the landing, taking off, operating, servicing, repairing and parking of aircraft, and the unloading and handling of passengers, mail, express and freight, together with all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto, including all lands and buildings located at the Naples Airport which may be used for any industrial, commercial or business purposes or other uses which the Lessee may determine.

TO HAVE AND TO HOLD the same for a term of Ninety-Nine (99) years from date hereof.

IT IS FURTHER PROVIDED by and between the parties hereto as follows:

1. Lessee covenants and agrees to pay as rent for said property the sum of One Dollar (\$1.00) per year.
2. Lessee shall have the right to sublet any of the above described property or equipment in its sole discretion without the consent of Lessor and shall have exclusive control thereof during the term of this lease.
3. Lessee agrees to maintain said property and to make such repairs, replacements, additions, extensions and betterments of and to the airport facilities as are deemed necessary to place or to maintain such facilities in proper condition for the safe, efficient and economic operation thereof.



4. Lessor agrees to continue the present liability and extended coverage on the leased premises until the expiration date of the existing policy on November 3, 1971. Upon the expiration of the existing policy on November 3, 1971, Lessee shall save lessor harmless from any loss, cost or damage that may arise out of or in connection with this lease or the use of the demised premises by Lessee, or its agents, or employees, or any other person using said premises; and Lessee agrees to deliver to Lessor upon the expiration of said existing policy two executed copies of a continuing public liability and property damage insurance policy satisfactory to Lessor, indemnifying and holding Lessor harmless against any and all claims, in the minimum amount of \$250,000.00 for injury to any one person, \$1,000,000 per accident and \$100,000.00 for property damage, and shall keep the same in force during the term of this lease or any extension hereof.

5. Lessee agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the demised premises and the use thereof.

6. Lessor hereby assigns and transfers to the Lessee all leases now in effect covering the above described property, together with all rental now due or to become due under such leases.

IN WITNESS WHEREOF, the parties hereto have executed this lease this 3rd day of December, 1969.

ATTEST:

Elsie Lehman
Elsie Lehman, City Clerk

CITY OF NAPLES

By Wesley J. Downing
Mayor

CITY OF NAPLES AIRPORT AUTHORITY

By Lee D. Patton
Chairman

WITNESSES:

Barbara R. Harris
[Signature]



U.S. Department
of Transportation
**Federal Aviation
Administration**

Orlando Airports District Office
5950 Hazeltine National Dr., Suite 400
Orlando, FL 32822-5003
Phone: (407) 812-6331
Fax: (407) 812-6978

March 8, 2011

Honorable Bill Barnett
Mayor, City of Naples
735 Eighth Street South
Naples, Florida 34102-6796

Dear Mayor Barnett:

This letter responds to your January 24, 2011, letter requesting the Federal Aviation Administration (FAA) delay a decision on the environmental assessment (EA) submitted by the Naples Airport Authority.

You stated in your letter "that the Council, acting in its quasi-judicial capacity, had a petition pending before it and cannot comment on the merits of the application until it hears the petition."

The FAA recently opined on the preemption issue regarding 10-SP1 and concluded that the City is preempted in dictating the length of the runway within the airport property boundary.

The FAA Orlando Airports District Office is continuing its review of the environmental assessment (EA) and anticipates issuing a decision next month. If the City has additional comments on the EA for the agency to consider, please forward them to us by March 31, 2011.

Sincerely,

Original Signed By

Bart Vernace, P.E.
Assistant Manager

cc:
Ted Soliday, NAA
Robert Pritt, Naples City Attorney

INTERLOCAL AGREEMENT
BETWEEN
CITY OF NAPLES AND
CITY OF NAPLES AIRPORT AUTHORITY

RUNWAY WEIGHT CAPACITY

THIS AGREEMENT, is made and entered into this ____ day of _____ 2011, by the CITY OF NAPLES, hereinafter referred to as "City", and the CITY OF NAPLES AIRPORT AUTHORITY, hereinafter referred to as "NAA" (the "Parties") hereby acknowledge and agree as follows:

1. Existing Weight Limit. Since the early 1990s, NAA has prohibited operations by aircraft weighing more than 75,000 pounds at the Naples Municipal Airport ("APF"), in order to protect the pavement at the Airport, which has been designed and maintained to accommodate aircraft weighing no more than 75,000 pounds, from overstressing and premature deterioration. That limitation has been part of the airport's Operations Rules (City of Naples Airport Authority Master Plan and Airpot Layout Plan Update (1997) and is shown in APF Airport Master Record as follows:

"CSLD TO ALL ACFT EXCEEDING 75,000 MAXIMUM GROSS
WEIGHT DUAL GEAR AS INDICATED ON ACFT OPERATING CERT
ISSUED BY THE MANUFACTURER"

This restriction has been included in written procedures in 1999 and codified in the Airport Rules and Regulations in 2001 (see Section 5.01 (h)). It has been part of the NAA's narrative report and approved by the Federal Aviation Administration ("FAA") in 2004. In 2010 the NAA Board has imposed a Super-Majority vote of the Board membership prior to making any change to the foregoing weight limit.

2. Utilization Plan. NAA has requested City approval of the 2010 Airport Utilization Plan that includes extension of Runway 5/23 to provide for pavement of displaced thresholds and related improvements in accordance with the Attached Exhibit. The Plan has created concern among the public over the nature of the changes and size and type of

aircraft that may utilize the airport. It has also raised legal questions as to jurisdiction over this aspect of the Plan approval under the City's land use regulations.

3. Assurances. In order to provide assurances to the City and its constituency that the purpose of the improvements is not to change the longstanding nature of APF, NAA agrees that it will not make any change to the weight limit described above without prior review and approval by the Naples City Council after a duly noticed public hearing.

4. Term. The term of this Agreement is 25 years.

5. Amendment and Termination of Agreement. This Agreement may be amended from time to time to the extent required by law.

6. Conflict Resolution. If that hearing results in a dispute between the position of the City and NAA, the parties agree that the dispute must be and will be submitted to the Intergovernmental Dispute Conflict Resolution process contain in Chapter 164, Florida Statutes.

7. Proprietor Exemption. This Agreement is deemed to be entered into by NAA in its capacity as a proprietor, and the consideration, among other things, is forbearance of the prospect of ongoing disputes between the City and NAA over runway and weight issues.

8. Recording and Filing. This Agreement (and all future amendments hereto, if any) shall be recorded in the Public Records of Collier County, Florida and filed with the Florida Department of Transportation (Aviation Office MS-46) ("FDOT") pursuant to F.S. 333.03(5).

DATED: The ____ day of _____, 2011.

ATTEST:

CITY OF NAPLES

Tara A. Norman,
City Clerk

By _____
Bill Barnett, Mayor

Approved as to form and
Legality:

Robert D. Pritt, City Attorney

ATTEST:

CITY OF NAPLES AIRPORT
AUTHORITY

By: _____
Cormac Giblin, Chairman

Approved as to form and
Legality:

F. Joseph MacMackin



BOND, SCHOENECK & KING, PLLC
ATTORNEYS AT LAW • NEW YORK FLORIDA KANSAS

VIA E-MAIL:

attorney@naplesgov.com

RPritt@ralaw.com

March 15, 2011

Robert D. Pritt, Esq.
City Attorney
City of Naples
735 Eighth Street South
Naples, FL 34102

Re: *Interlocal Agreement between City of Naples and City of Naples Airport Authority
Runway Weight Capacity*

Dear Bob:

Thank you for sending to me the proposed Interlocal Agreement, which I understand you have also circulated to the Mayor and Council.

I, on my part have circulated it to the Airport Authority, and by copy of this letter will advise them of my legal opinion. In short, I recommend that the Airport Authority decline to agree (indeed must decline to agree) to the Interlocal Agreement for both state and federal law prohibitions.

STATE LAW

The Florida Legislature defined the duties, functions, responsibilities and powers of the City of Naples Airport Authority (the "Authority") in the Authority's creation document, Chapter 69-1326 Laws of Florida (the "Enabling Act") which was enacted pursuant to the Legislature's authority under Chapter 332 Florida Statutes. Neither the Enabling Act nor Chapter 332 provide statutory authority permitting the Authority to delegate its discretionary governmental powers. See AGO 77-16.

In AGO 80-15, the Florida Attorney General stated that a special district (North Broward Hospital District) could not delegate its investment authority, because there was no statutory authority to make such a delegation. The special district's enabling legislation, Chapter 27438, 1951, Laws of Florida did not authorize the district's governing board to delegate its authority to invest district funds. The Attorney General was not aware of any other provision in general law which authorized such a delegation of authority by a special district.

In AGO 79-78, the Florida Attorney General stated that the Board of County Commissioners, in the absence of statutory authority, cannot delegate by contract its authority to approve, compromise and pay claims against the county or authorize settlement agreements on behalf of and binding on the county.

4001 Tamiami Trail North, Suite 250, Naples, FL 34103-3555 • Phone: 239-659-3800 • Fax: 239-659-3812 • www.bsk.com

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When there is doubt as to the existence of authority, it should not be assumed. White v. Crandon, 156 So 303 (Fla 1934).

The Florida Legislature has provided for the delegation of power between political subdivisions only in limited circumstances through interlocal agreements under Section 163.01 Florida Statutes. An interlocal agreement allows public agencies to jointly exercise a particular power, privilege or authority, so long as the power, privilege or authority is common to all members to the interlocal agreement, i.e. each party can exercise the power separately.

FEDERAL LAW

The City of Naples Airport Authority is governed by federal law as expressed by the Federal Aviation Administration (the "FAA") and that federal law preempts both state law and local ordinances.

Section 2 of the proposed Interlocal Agreement states that there are legal questions regarding the City's land use jurisdiction over the planned airfield project. Any such questions have been conclusively resolved by the March 2nd FAA opinion, stating unequivocally that the City's land use regulations is preempted. As a result the City has no approval authority for which this commitment from the Airport Authority might serve as consideration. To my knowledge the City has not advanced any other legitimate basis for objecting to the planned project. Thus the notion expressed in section 7 that the City would agree to forbear from contesting the project appears an empty threat and no basis upon which to cede control over the weight limit.

Further, the Interlocal Agreement jeopardizes the Authority's compliance with its Grant Assurances. Assurance 5 requires the Authority to retain the rights and powers necessary to carry out its commitment under all its Grant Assurances. The Airport weight limit is one mechanism by which the Airport Authority satisfies its obligations to operate the Airport safely and to maintain the pavement constructed and improved with federal assistance. The FAA might well consider an agreement ceding control over the weight limit to the City to violate Assurance 5.

The key principle that we have emphasized is that the City of Naples Airport Authority, as the Airport proprietor and sponsor, has the authority to impose and enforce a weight limit solely predicated on pavement strength. That power does not extend to the City of Naples, which would be exercising police and not proprietary power. As explained in the FAA's opinion the City is preempted entirely from attempting to control the movement of aircraft. This would extend to a weight limit. The City cannot do indirectly what it cannot do directly, by coercing the Airport Authority to cede control over the weight limit to the City. An instructive case is San Diego Unified Port District v. Gianturco, 651 F 2d 1306 (9th Circuit 1981) in which the United States Court of Appeals found that the State of California was preempted from conditioning its approval for an airport operating permit on the imposition of an airport access restriction. The Interlocal Agreement suggested by the City of Naples is similar and would also be deemed preempted.

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CONCLUSION

The Airport Authority has already made a commitment, memorialized in its Bylaws, that it will not amend the Airport weight limit without considerable public and Council participation and only after careful consideration. I see no basis upon which it can cede control over this process to the City. Again the abdication of control might threaten the Authority's eligibility for federal financial assistance.

In light of this I respectfully request that discussion of the Interlocal Agreement not be had at the City Council meeting as it would only raise a matter which is prohibited under both state and federal law and void ab initio.

Thank you for your consideration of this letter, I am

Sincerely yours,

BOND SCHOENECK & KING, PLLC


F. Joseph McMackin III
Direct: 239.659.3881
jcmcmackin@bsk.com

FJM:gdg

cc: Theodore D. Soliday
Board of Commissioners, City of Naples Airport Authority
Daniel S. Reimer, Esq.

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Memo

Office of the City Attorney

TO: Hon. Bill Barnett, Mayor, and Members of City Council
FROM: Robert D. Pritt, City Attorney
DATE: May 25, 2010
SUBJECT: Potential for 75,000 Pound Restriction Agreement

Pursuant to Council's direction at the May 19 Workshop, I have consulted with the legal counsel for Naples Airport Authority and with the Program Administrator for the Federal Aviation Administration on issues related to the runway extension. Included in discussions was the possibility of the City and NAA entering into an agreement to require a deviation of the 75,000 pound weight limit, which would only apply to RJ-Type aircraft with scheduled commercial service, not applying to general commercial or private aircraft.

I also discussed any other combination of limits that would have the desired effect of ensuring that the large jets would not be operating without the deviation.

The attorneys for the NAA can speak for themselves, but it is fair to say that there is a concern that the proposal would be inconsistent with law and with the Grant Assurances provided to FAA.

After the Council Workshop, the NAA board adopted a resolution providing:

The Board of Commissioners of the City of Naples Airport Authority intends to maintain its commitment to the 75,000 lb weight restriction in order to:

- A. Protect the integrity of runway pavement, and
- B. Accommodate the concerns of the community.

The Authority further intends to continue to seek quality commercial regional jet service to Naples. Should aircraft proposed by an airline exceed 75,000 lbs, the Board will:

- 1. Notify City Council of viable opportunities to obtain such commercial service;
- 2. Provide Council with relevant information on the prospective airline;
- 3. Advise Council of the Board's analysis as to whether the proposed jet service would be a benefit to the community or not; and
- 4. Solicit Council's observations and assessments of the opportunity.

I spoke with Krystal Ritchey, Program Administrator (and engineer) for the FAA (Orlando Office), whose jurisdiction includes the Naples Airport. She was very knowledgeable and helpful. She confirmed that there is an existing 75,000 pound limit but that the limit would have to be related to condition of the runway, not the type of aircraft (commercial vs. private,

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etc.) as the latter (emphatically) would be viewed as discriminatory by FAA. She seriously doubts that FAA would allow a rule or agreement of that nature. She referred me to the Grant Conditions, at first thinking that the City itself provides Grant Assurances, but then apparently finding that they come from NAA. She also said the history of the Airport under the Surplus Property Act is relevant. (It is to some extent as the Airport was granted to the City as part of the Act, for airport purposes.)

She was not that familiar with the Stage 2 ban case (*City of Naples Airport Authority v. FAA*) but thought that the noise factor will be improved by the runway "extension" proposed since the planes will be higher (thus further away) with the extra take-off area.

She referred me to Virginia Lane, Environmental Specialist at FAA, who confirmed that NAA had filed a Preliminary Environmental Assessment document for changes to the Airport Layout Plan (ALP). FAA suggested some changes. Airport planners have it now. It should be put out for public comment, then back to FAA for review.

I asked if there is an attorney assigned to this matter and Ms. Lane gave me a contact, Eric Elmore, in the FAA legal department in Washington, D.C. I have a call in to him at this time and will advise Council when I hear back.

As to the ability to limit classes of aircraft from airports, the law has always disfavored local limitations. The typical Grant Assurance, which is required in order to qualify for federal funds, provides that:

1. The sponsor will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical uses,
 2. The sponsor may prohibit or limit any class of use if necessary for safe operation of the airport or necessary to serve the aviation needs of the public.
- (Note: Need to refer to actual GAs).

The FAA recently ruled against the City of Santa Monica in the administrative case of *In the Matter of the City of Santa Monica FAA Order No. 2009-1* (Dkt. No. 16-02-08) (July 8, 2009). In that case, the City, which operates the airport, adopted a ban on operation of Categories C and D aircraft (speeds of 121-166 knots), for alleged safety reasons (not surrounded by runway safety area-RSA).

The FAA determined that the RSA safety issue was preempted to the federal government. It also said the "sole-and very limited- exception to federal preemption is when airport owners or operators are exercising their proprietary rights" and that "[l]ocal proprietors have the power only to promulgate reasonable, non-arbitrary, and non-discriminatory regulations.. [which] avoid even the appearance of irrational or arbitrary action." Citing *National Helicopter Corp. of America v. City of N.Y.* 137 F. 3d 81, 89 (2d Cir. 1998).

Without rehashing the rationale behind the earlier memos, it would seem that the connection of a weight or class limit to an RSA proposal would likely not get off the ground even if the City and NAA agreed.

I will provide further information as it becomes available.

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The NAA has indicated a willingness to comply with a 75,000 lbs weight limit on aircraft and has submitted documentation that the runway design capacity will not allow them to exceed this weight limit. Because previous public input has indicated that the size of the aircraft is a concern, a limitation on the weight of aircraft may be a more appropriate way to limit noise from the airport than limiting the length of the runway.

- **DEPARTMENTAL REVIEW:**

The Fire-Rescue Department provided the following comment:

The Fire-Rescue Department has reviewed the application related to the proposed Naples Municipal Airport runway extension and subsequently approves of the project. However, it is very important that the record reflect that we do not currently provide any sort of interior structural firefighting protection capabilities to the airport and/or surrounding residential and commercial properties.

Fire Station No. 3 located on the airport grounds only provides Aircraft Rescue and Fire Fighting (ARFF) services. The airport and surrounding areas lack the appropriate and time-sensitive structural fire protection and emergency medical services that the rest of the City enjoys.

All other departments indicated approval or no comment.

- **GUIDELINES AND STANDARDS/ANALYSIS**

Conditional Use

Section 46-34(d) of the Land Development Code provides the standards for approval of a conditional use. The standards and staff analysis are as follows:

- (1) ***Ingress and egress to the subject property and the proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic generation flow and control, and access in case of fire or catastrophe, shall be adequate and not potentially detrimental to existing or anticipated uses in the vicinity and particularly not detrimental to property immediately adjacent to the subject site.***
 - The runway expansion will take place within the existing boundary of the airport and will not require any adjustments to North Road or any other public road. On interior perimeter drive will be altered.
- (2) ***Off-street parking and loading areas, where required or requested by the property owner, shall be adequate and well-designed, and relate well, in terms of proximity, access and the like, to the uses intended to be serviced, with particular attention to the items listed in subsection (d)(1) of this section and the smoke, noise, glare, dust, vibrations, fumes, pollution or odor effects related to the vehicular use area or the conditional use, and such shall not be detrimental to the adjoining properties in the general area.***
 - Parking and loading areas within the airport are subject to an overall parking plan which consolidates parking for the main terminal and other hangars. No additional parking will be required as a result of this runway expansion.
- (3) ***Refuse and service areas, with particular reference to the items listed in subsections (d)(1) and (2) of this section, shall be adequately screened so as not to be visible from adjacent properties or a public right-of-way and shall be located in such a way as not to be a nuisance, by virtue of smoke, noise, glare and the like, to adjacent properties.***
 - Refuse and service areas are appropriately located and screened.

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- (4) ***Utilities, whether public or private, shall be adequate and not detrimental with reference to location, availability, adequacy and compatibility.***
 - The City of Naples Utility Department has reviewed this request and confirmed that adequate utilities are provided to the site.
- (5) ***Screening, buffering or separation of any nuisance or hazardous feature, with reference to type, dimensions and character, shall be fully and clearly represented on the submitted plans and shall be adequate to protect adjacent properties.***
 - The Airport has provided berming and landscape improvements along the south and east sides of the airport to screen neighboring properties from the noise at the airport. Additional screening cannot be provided in the area of the runway expansion due to potential interference with the flight path of planes.
- (6) ***Proposed signs and exterior lighting shall be considered with reference to glare, traffic safety and compatibility and harmony with surrounding properties and shall be determined to be adequate, safe and not detrimental or a nuisance to adjacent properties.***
 - No additional signage is proposed. Lighting will be limited to that required for FAA safety requirements.
- (7) ***A determination shall be made that the proposed development will not hinder development of the nearby vacant properties with a permitted use in the subject zone district.***
 - The land uses at either end of the runway are already consistent with the requirements for development within the flight path. The additional runway length at take-off will allow the planes to achieve a greater clearance and have a reduced impact on properties within the flight path.
- (8) ***The land and buildings which are involved shall be adequate, in terms of size, shape, type of building and the like, to ensure compatibility with the proposed conditional use.***
 - The runway expansion will not result in greater impacts on the existing structures on the airport property.
- (9) ***The proposed development shall be compatible and appropriate with respect to adjacent properties and other property in the district and geographic area.***
 - This involves the expansion of an existing facility. The airport is and shall remain compatible other properties in the area.
- **FINDINGS:** Staff has reviewed the application against the applicable Conditional Use criteria and recommends approval of Conditional Use petition 11-CU4 subject to the following condition:
 - 1. The runway shall be designed and built to not exceed a 75,000 lb weight limit for aircraft.
- **PUBLIC NOTIFICATION:** On February 22, 2011 a total of 236 letters were mailed to all property owners located within 500 feet of the subject property. Letters were also sent to homeowners associations and individuals who have previously spoken on the record. A number of letters and emails have been received on this petition and copies are attached.