

The information attached hereto is used only as a working paper preliminary to preparation of meeting minutes and should not be relied upon as the official record of this meeting.

Directives

Naples City Council

Notice of Meeting and Agenda

City Council Chamber, 735 Eighth Street South, Naples, Florida

Mayor: Bill Barnett

Vice Mayor: John F. Sorey, III

Council Members:

Doug Finlay, Teresa Lee Heitmann, Gary B. Price II, Sam J. Saad III, Margaret Sulick

City Attorney: Robert D. Pritt · City Clerk: Tara A. Norman · City Manager: A. William Moss

Welcome to today's City Council Workshop. If you wish to address City Council regarding an item listed on this agenda, please complete a registration form at the rear of the room and place it in the Speaker Request Box located on the Council dais prior to discussion of that item. We ask that speakers limit their comments to 3 minutes and that large groups name a spokesperson whenever possible. Thank you for your interest and participation in City government.

Special Workshop

Wednesday, December 1, 2010

Convened 1:00 p.m. / Adjourned 2:57 p.m.

Any information which is provided in advance of this meeting on items listed below may be inspected in the office of the City Clerk or on the City of Naples home page, www.naplesgov.com. All written, audio-visual and other materials presented to the City Council during this meeting will become the property of the City of Naples and will be retained by the City Clerk.

1. Roll call – *All Present*
2. Set agenda – *As submitted / Price / Saad / 7-0*
3. Agreement with Not-for-Profit Corporation to Administer the Fifth Avenue South Business Improvement District (BID) – *(Continued from 11/15/10 Workshop) – Consensus that the corporation's by-laws and articles of incorporation not be attached to the agreement. Consensus that Section 3.4 reflect Option 2, bi-annual financial audit with financial review provided to Council in "off-years". (Recommendation by City Attorney that "Business Improvement District" be removed from proposed corporation name and be replaced with "Retail Business District").*

Public Comment – *S. Smith; Val Prince; S. Quillen; W. Assaad; and B. Ressler.*

Adjourn – *2:57 p.m.*

NOTICE

Any person with a disability requiring auxiliary aids and services for this meeting may call the City Clerk's Office at 213-1015 with requests at least two business days before the meeting date.



City of Naples

Please complete this form so that you may be called by name to speak. Place the completed form in the box at the staff table. See Agenda for speaker time limits and other information.

This is a televised meeting.

Board Meeting: Council Regular

Name (print please all lines)

Just B. Smith

Address 11th Avenue South

Agenda Item Title: B10

Agenda Item Number: _____ Date: 12-1-10



City of Naples

Please complete this form so that you may be called by name to speak. Place the completed form in the box at the staff table. See Agenda for speaker time limits and other information.

This is a televised meeting.

Board Meeting: _____

Name (print please all lines)

Vic Prince

Address 1985 Ogden Ave

Agenda Item Title: _____

Agenda Item Number: _____ Date: _____



City of Naples

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This is a televised meeting.

Board Meeting: City Council 12/1/10

Name (print please all lines)

Skip Diller

Address 837 5th Ave S.

Agenda Item Title: N.D.

Agenda Item Number: _____ Date: Dec 1, 2010



City of Naples

This is a televised meeting.

Please complete this form so that you may be called by name to speak. Place the completed form in the box at the staff table.

See Agenda for speaker time limits and other information.

Board Meeting: 12-1-2010 / city council

Name (print please all lines)

WAFAA ASSAAD

Address 649 ST. AVE. SO

Agenda Item Title: B.I.D.

Agenda Item Number: 3 Date: 12-1-10



City of Naples

This is a televised meeting.

Please complete this form so that you may be called by name to speak. Place the completed form in the box at the staff table.

See Agenda for speaker time limits and other information.

Board Meeting: BID

Name (print please all lines)

Beth Russell

Address 793 Fifth Ave So

Agenda Item Title: _____

Agenda Item Number: _____ Date: 12-1-10



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Special Workshop – Wednesday, December 1, 2010 – 1:00 p.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:

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

Also Present:

William Moss, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Roger Reinke, Assistant City Manager
Vicki Smith, Technical Writing Specialist

John Passidomo
Lou Vlasho
Charles Thomas
James Smith
Skip Quillen
Sue Smith
Val Prince
Wafaa Assaad
Beth Ressler

Other interested citizens and visitors.

SET AGENDA ITEM 2

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

..... ITEM 3

AGREEMENT WITH NON-FOR-PROFIT CORPORATION TO ADMINISTER THE FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT (BID). (1:01 p.m.) Council Member Heitmann asked whether the bylaws and articles of incorporation, of the third party entity with which the City is proposing to contract for business improvement activities, should be included in the resolution approving an agreement with that entity. Council Member Saad however said that he did not believe that this would be productive as the operative document is the agreement between the City and the entity, not the manner in which the entity itself operates. In response to Council Member Finlay, City Attorney Robert Pritt asserted that a determination of whether this entity is to be a public agency would be a policy decision on the part of Council. He said that the Supreme Court has established a totality of factors which would apply in this regard, not individual elements.

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Mr. Pritt listed the aforementioned factors as follows:

- level of public funding;
- comingling of funds;
- whether activity was conducted on publicly-owned property;
- whether services contracted for were integral part of authority's chosen decision-making process;
- whether the corporation was performing a governmental function or a function which the authority would otherwise perform;
- the extent of the authority's involvement with regulation of, or control over, the corporation;
- whether the corporation was created by the authority;
- whether the authority had substantial financial interest in the corporation; and
- for whose benefit does the corporation function.

Should Council wish to fund an independent organization, however, it should not delve into the structure of that organization, which is one of the aforementioned factors, Mr. Pritt indicated. Council Member Finlay said that, due to competitive issues, the City would not wish to have the activities of the third-party entity subject to open meeting and public records requirements.

Council Member Sulick then called for consideration of the likelihood that the third-party entity would qualify as non-profit under the provisions of IRS Code Chapter 501(c)3. She noted that such organizations must be charitable or governmental in nature, particularly with regard to comingling of funds and promotion of private property. She also asked whether procedures were in place to enlarge the universe of properties as well as to identify impacts of a BID on the Downtown Naples Association (DNA). In addition, she requested a definition of criteria for evaluation of performance of the new third party entity absent base line figures. Mrs. Sulick also maintained that definitions are called for in regard to termination of the organization, i.e., termination with cause (immediate for flagrant violations such as fraud or embezzlement), termination with cause and cure (not flagrant and can be corrected), termination without cause (12 month termination period).

Council Member Sulick further said she believed the name should be changed since it was not organized under the applicable business improvement district (BID) statute. She equated the proposed relationship more closely to the arrangements the City has with the Naples Art Association and Naples Players. Although this is an important step for Fifth Avenue, she pointed out, other business groups, such as those surrounding Crayton Cove, are proceeding with a marketing plan without a formal organization such as that proposed.

Steering Committee Member Jim Smith said that the model proposed is the same as a Coral Gables organization which is also under Chapter 170, although the local group would be organized as a 501(c)3 corporation so that charitable donations can be acquired and the organization can achieve governmental grant eligibility. Attorney John Passidomo, representing the Steering Committee, said that an attorney with expertise in the area of IRS Chapter 501(c)3 had been engaged by the group, although no funds would be expended until the tax status is assured. Council Member Sulick sought clarification as to whether this would be a provisional or a permanent approval. Sixty to 120 days would be needed, Mr. Passidomo said, reiterating that specialized legal advice would be sought. Mrs. Sulick then asked whether City funds would be released based on a provisional approval status. Council Member Heitmann further ascertained that the City would hold funds during the aforementioned provisional status; therefore she questioned the legality of expending funds to engage the services of an attorney with regard to 501(c)3 filing. Lou Vlasho, Steering Committee Member, said that private

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donations had been collected for this purpose and donors had been informed that they would not be refunded for these legal services from the proceeds of the district.

Council Member Heitmann then echoed Council Member Sulick's concerns regarding growth of the boundaries of the district. Mr. Passidomo characterized the public/private nature of the organization however as a seminal issue at that time, stating that it is anticipated that the Fifth Avenue South Special Overlay District would be the initial area although certain fluidity should be anticipated. Steering Committee volunteer manager Charles Thomas said that an Attorney General's Opinion had indicated that the district could be expanded through the same process undertaken for the organization of the original district. Nevertheless, Mrs. Sulick maintained that boundary expansion must be in accordance with special assessment district criteria. City Attorney Pritt said that there must be the same findings, i.e. that the additional properties would also be specially benefitted.

Council Member Saad said he shared many of Council Member Sulick's issues, also noting a need for immediate termination of the arrangement with the third party entity in the case of fraud or embezzlement. Attorney Passidomo said that due process would however be required in this regard. Mr. Saad then asked what criteria would be employed to measure the success of the effort, suggesting that statistics from individual businesses be submitted anonymously. Mr. Vlasho said that the primary way to measure success would be the reaction of the district property owners; however, he also suggested that the performance measures applied to the district manager be utilized. Mr. Saad asked that a matrix with such measures be added to the agreement, and City Attorney Pritt cited Section 3.4 of the agreement which requires measurable objectives which are consistent with the purpose of the district.

Council Member Heitmann pointed out that just 45 notices had been dispatched by the City to property owners announcing that day's workshop, although there were over 400 folio numbers identified by the property appraiser as being within the special assessment district. Mr. Thomas indicated that numerous folio numbers are contained within a single commercial property, offering as an example the 780 Building which has several hundred, 10 X 10 foot commercial condominium units, owned by a single entity. Nevertheless, he said, regardless of whether measured by individual folio numbers or level of assessment, over 70% approval had been established via the petition presented to Council during a prior discussion.

Council Member Heitmann continued by saying that the City could not approve an agreement with a corporate entity that was not yet in place. Mr. Pritt also said that while the corporation could have business improvement district/BID in its name, to alleviate confusion, another name should be utilized to differentiate it from Chapter 163.511, the statute under which business improvement districts are organized. Mr. Thomas also assured Mrs. Heitmann that all notifications to property owners had been couched in terms of it being a special assessment district, including within the initial brochure. (It is noted for the record that a copy of the aforementioned brochure is contained in the file for this meeting in the City Clerk's Office.)

Council then discussed whether the third party entity should be regulated by open meeting and public records laws. Council Members Saad and Price said the entity should not be created so as to be regulated. Mr. Price also confirmed that, as a Fifth Avenue South tenant, he had always been aware in the various meetings held that this would be an activity to which property owners would contribute financially. Mr. Vlasho said that while some minor questions regarding the execution of petitions were being addressed, no one had requested withdrawal of a petition which, he said, was evidence that no one was unclear as to how the assessment district would operate. Council Member Heitmann however pointed out that the petition submitted did not state that the entity would be managed under a 501(c)3 organization. Council Member Sulick

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stated that she believed the third-party entity should be private; Mrs. Heitmann said it should be public only if property owners did not agree. Vice Mayor Sorey indicated that it should be a private entity, as did Mayor Barnett

In further discussion, Council Member Heitmann said that her primary concern was that no referendum had been held as would have been required by organization under Chapter 163, Florida Statutes, as a business improvement district/BID, and questioned the benefits of not using 163. Jim Smith said that the millage rate is limited under Chapter 163, and under a BID the board of directors can be made up of no more than three individuals; local merchants wanted more members on the board so as to achieve greater due process. City Manager William Moss stressed that registered voters are required under Chapter 163 and there are few, if any, registered voters in the Fifth Avenue South Special Overlay District. Mrs. Heitmann then said that should this be the case, residential properties should in fact be included if it is to be an assessment district. Vice Mayor Sorey observed that including residences would however bring the organization closer to a public entity which he did not favor. Mr. Pritt reiterated that the City should avoid dealing with the structure of the entity and focus on the circumstances under which the City provides funding.

Charles Thomas displayed the initial brochure distributed with the petition, explaining that it described the variety of activities which might be undertaken by the corporation. Council Member Heitmann maintained that the petition did not indicate consideration of a special assessment district and that it would be governed by a 501(c)3 corporation. In response to Vice Mayor Sorey, City Attorney Pritt said he believed that the initial petition process was sufficient to identify a majority of those in favor.

Council Member Price said that his concern continued to be that approvals were being based on approximately seven actual signatures rather than the possessors of folio numbers. Therefore, a very few number of people would be in control, affording little representation to the many tenants, he said. Attorney Passidomo said that the composition of the board of directors could include one member who owns a very small property. Mr. Price further asserted that individual tenants would not have a voice in this process and it is unlikely that complaints would be received until the first special assessment bills are dispatched. Taxation without representation is therefore a concern, Mr. Price said, and questioned the charitable purposes that could be identified in order to qualify as a 501(c)3. Steering Committee Member Skip Quillen equated this structure to a shopping center where individual tenants do not have a say. Mr. Price nevertheless said that the proposal is using the City's taxing authority to collect the funds, but Mr. Quillen said that the only means to achieve their goal is through the assessment district as proposed.

Council Member Price received additional clarification from Mr. Thomas that charitable status of the organization could allow receipt of federal grants and allow cooperation with charitable organizations in fundraising activities. Mr. Price said that in 501(c)3 requires assets to be dedicated to charitable purposes which does not comport with the proposed organization; Council Member Sulick pointed out that the funds must be for marketing, promotion, etc., and not for charitable giving. Council Member Saad said that this would be known by the IRS and that following review, it would rule accordingly. Mr. Thomas also noted that the IRS application would state that special assessment funds will not be utilized for charitable purposes.

Council then discussed the advisability of allowing a semi-annual rather than annual audit of the third-party entity and Mr. Thomas said that, to be cost effective, a bi-annual audit should be required and merely a financial report in the off year. Council Member Saad said that he could accept this in light of inclusion of the clause in the agreement providing for immediate

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termination in case of fraud. Council Member Finlay nevertheless questioned the manner in which due process would be provided when immediate termination may occur as a result of embezzlement even of a minor nature.

Citing the extent of support and the efforts of the members of the Steering Committee, Council Member Finlay said he had confidence in the potential for success of this effort and continues to fully support the proposal. It was the consensus that a bi-annual audit be required (6-1 Sulick dissenting). However Vice Mayor Sorey nevertheless recommended that the audit be required to cover compiled data from the prior year.

PUBLIC COMMENT.....

(2:46 p.m.) **Sue Smith, 11th Avenue South**, a Fifth Avenue South property owner, asked for the name of the entity which had empowered the steering committee. Mayor Barnett said that the Steering Committee did not need such an authorization. She also received clarification that City Attorney Pritt's involvement stemmed from the City being his client. She said that as a 55 year resident of the City she was distressed that there had not been more complete scrutiny of the documents and the powers that will be conveyed to the proposed third party entity. She said that although pertinent, the questions posed by Val Prince (Fifth Avenue South property owner) had not been addressed. She expressed the view that the Council had not allowed public scrutiny and had also given the rights of property owners to an entity that would not afford access to its workings. **Val Prince, 1485 Osprey Avenue**, a property owner to be assessed, said that he had identified many concerns, including that benefits will accrue to property owners not included in the special assessment district boundary. He further criticized the sufficiency of the bylaws and articles of incorporation, pointing that there is no opportunity for property owners to opt out of an organization which he said was not property constituted. In addition, an MSTU (municipal services taxing unit) procedure could be more beneficial to the taxpayers because there is no overhead for the administration of an organization as proposed. **Skip Quillen, 837 Fifth Avenue South**, a restaurateur, urged Council to provide the vehicle which will achieve improvement in the district. **Wafaa Assaad, 649 Fifth Avenue South**, Steering Committee member and Fifth Avenue South property owner, said that the goals cannot be achieved without the combined efforts described. He said that the proposers should be allowed an opportunity to prove themselves. **Beth Ressler, 857 Fifth Avenue South**, owner of Wind in the Willows Shop and member of the Steering Committee, commended the group for its effort and urged Council's support.

ADJOURN.....

2:57 p.m.

Bill Barnett, Mayor

Minutes prepared by:

Tara A. Norman, City Clerk

Minutes Approved: 12/15/10

Time	Speaker	Note
11:49:54 AM	test	
1:00:42 PM	in	
1:00:47 PM	roll	
1:01:03 PM	set agenda	
1:01:13 PM	price/saad 7-0	
1:01:20 PM	#3	mayor intros cont from 11/15 ws, two hours only
1:01:58 PM	moss	intros
1:03:49 PM	lou	explains first draft of bylaws and articles should not have been submitted but aided in understanding what council is seeking from the group
1:06:01 PM	heit	re including bylaws and art in agmt?? // <i>consensus</i>
1:07:05 PM	may	specifics??
1:07:13 PM	heit	rec input from landowners, make sure these are answered
1:07:31 PM	may	which ones
1:07:39 PM	hiet	prince??
1:07:47 PM	moss	no
1:08:36 PM	gen discuss	
1:09:02 PM	heit	
1:09:12 PM	saad	should review these docs but the agmt should be the focus, it controls the relationship bet the two entities
1:10:50 PM	lou	71 and 77
1:11:00 PM	sadd	conts /
1:11:47 PM	fin	hsould the bylaw and art be a
1:12:07 PM	pritt	responds *****
1:14:31 PM	fon	if incorp in the agmt,
1:15:23 PM	pritt	read factors *****
1:17:14 PM	sul	req legal opinon ***** lists her concerns ***** definition of criteria ***** made IMPORTANT points
1:20:30 PM	sul	define with cause ****; with cause and cure ***; w/o cause ***
1:21:45 PM	sul	using wrong term, not a BID / similar to naples players /
1:23:49 PM	jim smith	re coral gables model / *****
1:24:49 PM	sul	responds re events /
1:25:32 PM	pass	501(c)(3) must be in place prior to disbursement
1:26:44 PM	sul	provisional status??
1:27:11 PM	pass	w/in 60 to 120 d /
1:27:35 PM	sul	when does city release funds?
1:27:50 PM	pass	will lok at
1:27:57 PM	heit	comingling of funds, who will manage during transition period /
1:28:51 PM	lou	po have provided funds, add'l for the atty w/o reimbursement

Time	Speaker	Note
1:29:28 PM	heti	boundaries?? if beyond fifth ave spec overlay dis / east
1:29:55 PM	pass	responds to heit / current dist is merely a starting point /
1:31:51 PM	heit	public or private should be decided /
1:32:26 PM	lou	***
1:33:07 PM	thomas	
1:34:09 PM	sul	special assessment, not bid //
1:34:39 PM	moss	yes if follow same process
1:34:47 PM	pritt	must have the same findings
1:35:42 PM	saad	re addresses sul comments //
1:36:20 PM	pass	baselines should be est to measure progress
1:36:56 PM	saad	criteria for success?? // what and how to track for reporting
1:37:59 PM	lou	yes, and explains //
1:38:56 PM	saad	add general clause, corp will produce metrics and include in annual report?
1:39:16 PM	lou	should be in job description
1:39:36 PM	saad	part of annual report
1:39:45 PM	lou	agrees*****
1:40:03 PM	saad	add to PRITT here *****
1:41:16 PM	sul	sec 3.4
1:41:43 PM	pritt	giving public money to other charitable groups
1:42:15 PM	may	give direction /
1:42:24 PM	saad	no
1:42:48 PM	fin	no
1:42:51 PM	price	hear heit
1:42:57 PM	heit	bid under 163 or special assessment /
1:43:24 PM	moss	responds
1:43:33 PM	heit	prop owners and how notified / sent out 45 letters to po?? how was this determined // re assessemtn but how to manage?? were po asked this?? /
1:45:11 PM	moss	should be no discrepancy
1:45:26 PM	charlie	
1:46:21 PM	heit	owners?? partnerships??
1:46:36 PM	charie	responds
1:48:04 PM	heit	45 letters get one vote?? /
1:48:38 PM	moss	
1:49:01 PM	char	
1:50:31 PM	lou	
1:50:47 PM	heit	approve w/o corp in place??
1:51:06 PM	pritt	reso for spec assess // RBD retail business district
1:52:54 PM	pritt	*****
1:53:38 PM	heit	
1:54:47 PM	price	bid should not be subject to sunshine law //

Time	Speaker	Note
1:55:17 PM	heit	
1:55:20 PM	pass	
1:55:42 PM	heit	
1:56:21 PM	price	re bid ord
1:57:26 PM	gen discuss	re two years ago
1:58:04 PM	price	concerns w/ what transformed into //
1:58:23 PM	heit	
1:59:40 PM	lou	
2:01:31 PM	gen discuss	
2:02:03 PM	heit	flawed / managed by a private entity, not public
2:02:42 PM	sul	private
2:02:49 PM	heit	private if landowners agree
2:03:01 PM	sor	admin costs high so private
2:03:34 PM	may	private, not in sunshine
2:03:45 PM	heit	referendum?? why not do one?? / benefit??
2:05:23 PM	jim smith	responds re 163 v 170
2:07:10 PM	heit	
2:07:13 PM	moss	ref required re registered voters, hard to find on fifth
2:07:54 PM	heit	renames v folios / residential being precluded
2:08:17 PM	pass	legal standard
2:09:40 PM	pritt	hearing on final assessment
2:10:02 PM	heit	appt of boards ***** st armand included bylaws in its reso /
2:10:45 PM	lou	not included
2:11:00 PM	sor	
2:11:18 PM	heit	
2:11:45 PM	pritt	responds *****
2:12:45 PM	heit	
2:14:46 PM	charlie	put on overhead the brochure from 10/20 or 11/3
2:16:20 PM	conts	re the brochure
2:17:35 PM	heit	
2:18:08 PM	charlie	responds
2:18:34 PM	sor	to pritt?? / % met?? /
2:19:12 PM	price	how many signed, // *****
2:24:37 PM	price	what are the dedicated charitable contributions
2:24:53 PM	skip	
2:25:24 PM	price	city is taxing the people on the street / \
2:26:00 PM	skip	
2:26:22 PM	price	
2:27:28 PM	lou	
2:27:43 PM	gives numbers	
2:28:15 PM	heit	re petitions

Time	Speaker	Note
2:29:30 PM	price	dedicated charitable contributions
2:30:01 PM	charlie	responds
2:30:26 PM	pass	reserve one seat for small prop owner?? /
2:31:34 PM	price	charitable contributions
2:31:47 PM	price	its in th eagmt *****
2:32:35 PM	saad	docs have to go to irs
2:32:48 PM	sul	*****
2:35:03 PM	pass	will ask for opinion
2:35:13 PM	pritt	has partner who can /
2:35:36 PM	saad	3.4 /
2:36:02 PM	thomas	responds
2:37:14 PM	saad	re audit, biannual ok /
2:37:51 PM	fin	re fraud //
2:39:48 PM	pritt	language here *****
2:41:33 PM	gen discuss	
2:41:36 PM	pritt	inability to perform
2:41:41 PM	charlie	
2:42:59 PM	fin	
2:43:00 PM	sor	
2:43:20 PM	fin	lists *****
2:44:26 PM	saad	re annual v bi annal
2:45:07 PM	re audit	biannual / consensus sul no
2:45:24 PM	saad	fiscal year??
2:45:53 PM	moss	doesn't matter
2:46:16 PM	public comment	
2:46:19 PM	sue smith	who empowered the steering committee / jpritt involvement?? / may responds//
2:50:25 PM	heit	repeat question
2:50:36 PM	sue	re who asked pritt / hours spent by cm
2:51:12 PM	may	pritt is city atty rep city council
2:51:41 PM	val prince	many concerns re email / took issue w/ all three docs // mstu mstbu also works //
2:54:43 PM	skip quillen	commends all for being here /
2:55:40 PM	wafaa assaad	member of committee and property owner on fifth /
2:56:42 PM	may	
2:57:03 PM	beth restler	member of committee / thanks to them /
2:57:42 PM	out	

Naples City Council

Notice of Meeting and Agenda

City Council Chamber, 735 Eighth Street South, Naples, Florida

Mayor: Bill Barnett

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Doug Finlay, Teresa Lee Heitmann, Gary B. Price II, Sam J. Saad III, Margaret Sulick

City Attorney: Robert D. Pritt · City Clerk: Tara A. Norman · City Manager: A. William Moss

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Special Workshop

Wednesday, December 1, 2010

1:00 p.m. to 3:00 p.m.

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1. Roll call
2. Set agenda
3. Agreement with Not-for-Profit Corporation to Administer the Fifth Avenue South Business Improvement District (BID) – *(Continued from 11/15/10 Workshop)*

Public Comment
Adjourn

NOTICE

Any person with a disability requiring auxiliary aids and services for this meeting may call the City Clerk's Office at 213-1015 with requests at least two business days before the meeting date.



Memo

Office of the City Manager

TO: Honorable Mayor and City Council
FROM: A. William Moss, City Manager *AWM*
DATE: November 29, 2010
SUBJECT: Supplemental Information for the December 1st Council Meeting and Special Workshop

Regular Council Meeting

Item 7 – Amador's Live Entertainment Petition and Residential Impact Statement

Attached is a letter in opposition to this petition.

Item 11(b) – Contract between City of Naples and Fraternal Order of Police Collier County Lodge 38

The Police Officers Bargaining Unit has ratified the tentative agreement, as per the attached email from Robert Young.

Special Workshop

Item 3 – Business Improvement District Agreement with Not-for-Profit Corporation

Attached are the latest drafts of the By-Laws and Articles of Incorporation for the Fifth Avenue South Business Improvement District.

Ethics above all else... Service to others before self... Quality in all that we do.



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Special Workshop Meeting Date: December 1, 2010

Agenda Item:

3

Prepared By: A. William Moss, City Manager

Date: November 22, 2010

Department: City Manager

SUBJECT:

Agreement with a proposed not-for-profit corporation to administer special assessment funds, collected by the City, to stabilize and improve commercial property through promotion, management, marketing, administrative and other similar activities, in the Fifth Avenue South Business Improvement District Assessment Area.

BACKGROUND:

On November 15, 2010, City Council reviewed a draft agreement with a proposed not-for-profit corporation to administer special assessment funds, collected by the City, to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities in the Fifth Avenue South Business Improvement District. City Council also reviewed a draft of proposed Articles of Incorporation as prepared by the property owners' Steering Committee.

The City Manager, City Attorney, and staff have reviewed comments expressed by City Council and have modified the proposed agreement. Substantive changes include:

- 1.2. Clarification that the agreement may be terminated upon disqualification of the Corporation to operate as a not-for-profit.
- 3.2. Provides that the Board of Directors shall be elected by the property owners within the District.
- 3.3. Requires annual report to include filings made to the IRS.
- 3.4. Two options are presented. The first option requires an annual independent audit by a certified public accountant to be presented to City Council. The second option requires a bi-annual audit. In the year when an audit is not required, a financial review by an independent certified public accountant shall be provided. The audit and financial review shall provide a source and use of funds to confirm that the use of funds provided through the Assessment Area is consistent with the Agreement.
- 4.2. Provides that the Corporation shall propose City Council shall determine by the annual assessment resolution the appropriate assessment to be imposed upon property owners.

Minor modifications were made to sections 4.4, 5.1, and 9.1.

Following comments regarding the Not-For-Profit Corporation's draft Articles of Incorporation and By-Laws, the Steering Committee has revised the proposed documents. While not requiring approval by City Council, they are provided to City Council for review and discussion. They will be provided to City Council through an Agenda Supplement on Monday, November 29th.



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Special Workshop Meeting Date: December 1, 2010

Page Two

Agenda Item:


3

BACKGROUND (cont.):

On November 3, 2010, City Council adopted Initial Assessment Resolution No. 10-12801 to create the Fifth Avenue South Business Improvement District Assessment Area. The creation of the proposed assessment area was initiated following receipt of a petition by a majority of property owners within the District seeking the City's assistance in the establishment of a Business Improvement District. The Final Assessment Resolution and required public hearing are scheduled for December 15, 2010. City Council seeks to consider the Final Assessment Resolution and the BID agreement with a not-for-profit corporation on the same date.

Reviewed by Department Director
A. William Moss

Reviewed by Finance
N/A

Reviewed by City Manager
A. William Moss 

City Council Action:

AGREEMENT

This Agreement (the "Agreement") is entered into this ____ day of _____, 2010, between the City of Naples (the "City"), the address of which is 735 Eighth Street South, Naples, Florida 34102, and the Fifth Avenue South Business Improvement District Corporation, Inc. (the "5th Ave BID Corporation"), a Florida Not-For-Profit Corporation, the address of which is 821 Fifth Avenue South, Suite 201, Naples, Florida 34102.

WITNESS:

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

1. TERM

- 1.1 The term of the Agreement shall be for a period of ten (10) years, commencing at 12:01 a.m. on the 1st day of January, 2011 (the "Commencement Date") and ending on the 31st day of December, 2020 (the "Termination Date").
- 1.2 The term of the Agreement may be extended by mutual agreement for additional periods of ten (10) years, provided, however, that this Agreement shall be terminated upon termination of the Fifth Avenue South Business Improvement District (the "District") in accordance with the provisions of the Resolution by which the District was created or disqualification of the 5th Ave BID Corporation to operate as a Not-For-Profit Corporation under the laws of the State of Florida or the rules and regulations of the United States Internal Revenue Service.
- 1.3 At any time during the term of this Agreement the City may terminate this Agreement: 1) with cause, by delivering at least three (3) months written notice of termination to the 5th Ave BID Corporation; 2) without cause, by delivering at least a twelve (12) months written notice of termination to the 5th Ave BID Corporation, following a public hearing and notice to property owners within the Fifth Avenue South Business Improvement District Assessment Area.

2. CONSIDERATION

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

3. COVENANTS

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

of Directors shall be elected by the property owners within the District. Changes to this structure shall be subject to City Council approval.

- 3.3 The 5th Ave BID Corporation shall present an Annual Report to the City Council of the City of Naples within ninety (90) days of the District's fiscal year end. The Annual Report shall include those annual filing documents required by the United States Internal Revenue Service, a review of the past year's budget and expenditures, the activities, including promotions, advertising, events and other activities conducted by the 5th Ave BID Corporation to achieve the objective of the District, the Budget for the subsequent year and the activities to be conducted in accordance therewith.

OPTION 1

- 3.4 The 5th Ave BID Corporation shall annually retain and fund an independent financial audit conducted by a certified public accountant. Said audit shall be conducted, and the City Council shall receive a report from the independent certified public accountant within one-hundred and twenty (120) days following the end of the fiscal year of the 5th Ave BID Corporation. The independent audit shall provide a source and use of funds to confirm that the use of funds provided through the Fifth Avenue South Business Improvement District Assessment Area is consistent with the terms of this Agreement, the City's Resolution No. 10-12801, the Initial Assessment Resolution, and the City's Resolution No. _____, the Final Assessment Resolution. The one-hundred and twenty (120) day deadline may be extended by mutual agreement of the parties.

OPTION 2

The 5th Ave BID Corporation shall bi-annually retain and fund an independent financial audit conducted by a certified public accountant. In the year in which the audit is not conducted, the 5th Ave BID Corporation shall provide a financial review by an independent certified public accountant. The audit or financial review shall be conducted, and the City Council shall receive the reports from the independent certified public accountant within one-hundred and twenty (120) days following the end of the fiscal year of the 5th Ave BID Corporation. The audit and financial review shall provide a source and use of funds to confirm that the use of funds provided through the Fifth Avenue South Business Improvement District Assessment Area is consistent with the terms of this Agreement, the City's Resolution No. 10-12801, the Initial Assessment Resolution, and the City's Resolution No. _____, the Final Assessment Resolution. The one-hundred and twenty (120) day deadline may be extended by mutual agreement of the parties.

- 3.5 The 5th Ave BID Corporation agrees to maintain adequate records and supporting documentation which concern or reflect its services hereunder for a minimum of three (3) years during the term of this Agreement, and a minimum of one (1) year from the date of termination of this Agreement. A representative of the City shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the term of this Agreement and for the one (1) year period from the date of termination of this Agreement.

4. SPECIAL ASSESSMENTS (Collection and Use)

- 4.1 All funds collected by the City on behalf of the District, less all expenses incurred by the City on behalf of the District regarding the collection of special assessments and the transfer of District funds to the 5th Ave BID Corporation shall be transferred to the 5th Ave BID Corporation within forty-five (45) days of the receipt thereof by the City.
- 4.2 Pursuant to Article II of Resolution #10-12801, the Initial Assessment Resolution, and Resolution No. _____, the Final Assessment Resolution, the amount to be assessed shall be proposed each year by the 5th Ave BID Corporation. The City Council shall determine, by an annual assessment resolution, the appropriate assessment amount to be imposed upon the property owners within the District, the assessment roll, and the amount of funds to be transferred to the 5th Ave BID Corporation.
- 4.3 All funds transferred to the 5th Ave BID Corporation shall be utilized for business improvements as set forth in Chapter 170 Section 170.01 (3), City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No. _____, the Final Assessment Resolution to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities and for no other purpose.
- 4.4 Should the District be abolished, or should the 5th Ave BID Corporation be disqualified from operation as a Not-For-Profit Corporation under the laws of the State of Florida or the rules and regulations of the United States Internal Revenue Service, or should this agreement be terminated for any reason, all property then owned by or under control of, the 5th Ave BID Corporation shall be distributed as follows: If the property has been funded by City-assessed funds, it shall become property of the City. If the property has been funded partially by both City-assessed funds and private funds, the City may pay the 5th Ave BID Corporation the portion of the funds relating to private contributions to the extent the private contributions exceed twenty percent (20%) of the funding. If it has been funded solely by private funds, it shall be offered to the City, and if refused for any reason, disposed of as private property.

5. INSURANCE

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

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

6. INDEMNIFICATION

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

7. ASSIGNMENT

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

8. AMENDMENT

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

9. DEFAULT

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

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

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

9.3 The 5th Ave BID Corporation shall make a good faith effort to cure a Condition of Default within ninety (90) days of receipt of the notice prescribed in paragraph 9.2 hereof.

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

10. GENERAL PROVISIONS

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

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

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

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

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

CITY of NAPLES

By: _____
Mayor

Attest:

City Clerk

The FIFTH AVENUE SOUTH BUSINESS
IMPROVEMENT DISTRICT
CORPORATION, Inc.

By: _____
President

Witnesses:

BYLAWS

OF

FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC.
A Florida Corporation Not for Profit

Section 1. Definitions, Purposes and Powers.

- 1.1 Name. The name of this Corporation shall be FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC. It is a not for profit corporation, organized and existing under the laws of the State of Florida.
- 1.2 Definitions. The terms set forth below will have the following meanings unless otherwise required by the context in which they may be used:
- (a) Affected Property: "Affected Property" means any parcel of real property that is located in the District and subject to special assessment in accordance with City of Naples Resolution # .
 - (b) Articles of Incorporation. The term "Articles of Incorporation" means the Articles of Incorporation filed with the Department of State of Florida on the _____, and any amendments thereto.
 - (c) Assessment Roll: "Assessment Roll" means the most recent assessment roll adopted by the City of Naples for the Fifth Avenue South Assessment District.
 - (d) Board: The term "Board" means the Board of Directors of the Corporation.
 - (e) Bylaws: The term "Bylaws" means the Bylaws of the Corporation, except where reference is specifically made to the bylaws of another entity or unit.
 - (f) City Council: The term "City Council" shall mean the City Council of the City of Naples, Florida.
 - (g) Corporation: The term "Corporation" means Fifth Avenue South Business Improvement District, Inc. , a Florida Corporation not for profit.
 - (h) Director: The term "Director" means an individual who is a member of the Board of Directors of the Corporation as described in Section 4 hereof.
 - (i) District: The term "District" means the Fifth Avenue South Business Improvement District (as specified in the City of Naples Fifth Avenue South Special Assessment Roll).

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- (j) Incapacitated. An individual shall be considered to be “incapacitated” if the individual (i) is under a legal disability or (ii) is unable to give prompt and intelligent consideration to financial matters by reason of illness, mental or physical disability, disappearance, unaccountable absence or detention under duress. The determination as to whether an individual is incapacitated shall be made by the members of the Board other than the individual. In making the determination, the Board may rely conclusively upon (i) the written opinion of the individual’s primary physician or any two other physicians stating that the individual is under a legal disability or is unable to give prompt and intelligent consideration to financial matters by reason of illness or mental or physical disability, (ii) the written notice of a majority of such individual’s spouse and adult children stating that they have received credible evidence that such individual has disappeared, is unaccountably absent or is being detained under duress, or (iii) the written order of a court.
- (k) Majority: The term “majority” means in excess of 50 percent of the applicable total number.
- (l) Member/Members: The terms “Member” or “Members,” when not used with reference to the Board of Directors, means an Owner of an Affected Property or the Owners of Affected Property, as the case may be.
- (m) Merchant: The term “Merchant” means an owner or operator of a retail, restaurant, food, service or professional business in the District who/that (a) has a business or office in the District and (b) is not also an Owner of an Affected Property.
- (n) Merchant/Director: The term “Merchant/Director” means Merchant (or such Merchant’s designate) who is serving a Director.
- (o) Officer: The term “Officer” means one or more of the positions described in Section 6 hereof.
- (p) Owner of an Affected Property: An “Owner of an Affected Property” means either (a) an individual, partnership, corporation, limited liability company, association or other legal entity shown in the records of the Property Appraiser of Collier County, Florida, as provided to the City of Naples, Florida from time to time, as the owner of Affected Property ; or (b) if the owner of Affected Property has authorized an agent to act on behalf of such owner in writing, the designated agent.
- (q) Owner/Director: The term “Owner/Director” means an Owner of an Affected Property (or such Owner’s designate) who is serving a Director.

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- (r) President: The term "President" means the President of the Corporation as set forth in Section 6.5.1 hereof.
- (s) State: The term "State" means the State of Florida.
- (t) Task force: Task forces are defined as members appointed by the Board to research and analyze specific issue(s) that are well defined and within the purview of the task force.

1.3 Statement of Purpose. The Corporation is organized and shall be operated exclusively for the charitable purpose of fostering the stabilization and improvement of the retail business special assessment district known as the "Fifth Avenue South Business Improvement District Assessment Area" that is located in the City of Naples, Florida, hereinafter the "District," through promotion, management, marketing, and other similar services in the District, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time and the corresponding provisions of any future United States Internal Revenue law (the "Code") (the "Corporation's 501(c)(3) Exempt Purposes"). The nature of the Corporation's activities shall be to undertake or support, directly or indirectly, such projects, programs, services, and activities, at such times and in such places, as Board determines are appropriate to carry out, promote, or further the Corporation's 501(c)(3) Exempt Purposes. It is intended that the Corporation shall be exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and that it shall qualify as an organization transfers to which are deductible for federal income, gift, and estate tax purposes by residents and citizens of the United States of America (a "Qualified Charitable Organization"). The following Bylaws shall govern the administration and operation of the Corporation.

Section 2. Agreement between the Corporation and the City of Naples. The Corporation acknowledges that it entered into an Agreement with the City of Naples on _____, 2010 regarding the operation of the Corporation and the disbursement of funds received from the City. The Corporation agrees to abide by the terms of this Agreement.

Section 3. Membership.

- 3.1 Admission. Members shall consist of the Owners of any Affected Property. Membership in the Corporation shall be automatic, vesting with ownership of an Affected Property.
- 3.2 Termination. Membership in the Corporation is not transferable. Membership shall continue until, and thereupon automatically shall terminate at, such time as such Member is no longer the Owner of an Affected Property.

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- 3.3 Voting Rights. Each Member shall be entitled to the number of votes determined by the following formula: The Assessment amount assigned to the Member's Affected Property as shown on the most recent Assessment Roll adopted by the City Council pursuant to Resolution #10-12801 ("Member's Assessment Amount") divided by the total amount assigned to all Affected Properties as shown on said Assessment Roll ("Total Assessment"), multiplied by 100 and carried to two (2) decimal places ("weighted votes"). This formula may be expressed as follows: (Member's Assessment Amount/Total Assessment) X 100 = Member's Votes carried to two (2) decimal places. Unless provided otherwise in the Articles of Incorporation, these Bylaws or by law, all actions to be approved by the Members shall be approved by a majority of weighted votes cast. Weighted votes must be voted by a Member as a block and shall not be split. In the case of a Member that is an entity, such Member shall designate the person who shall exercise such Member's right to vote as a Member of the Corporation. Voting by proxy shall be permissible in any election for Directors of the Corporation.
- 3.4 Meetings of Members. The annual meeting of the Members shall be held at a time and place to be determined by the Board within thirty (30) days of the end of the fiscal year. Only Members shall be entitled to notice of the annual meeting. The Secretary/Treasurer of the Corporation shall mail written notice of the time and place of each annual meeting of the Corporation to each Member of the Corporation at least thirty (30) days prior to the date set for the meeting. At the annual meeting, the Members shall: (i) hear reports from the Board, the President or other Officers or staff of the Corporation and (ii) transact such other business as may lawfully come before the meeting. In addition, special meetings of the Members for any purpose may be called at any time upon written notice mailed at least ten (10) days in advance of such meeting. Such special meetings may be called at the instance of the majority of the Board or upon written request of twenty percent (20%) of the Members of the Corporation determined by weighted vote. A quorum for the conduct of business at any meeting of the Members of the Corporation shall consist of twenty percent (20%) of the Members of the Corporation determined by weighted vote to which notice of such meeting was given. Proxies may be counted in calculating a quorum.

Section 4 Board of Directors.

- 4.1 General Powers. All of the business and affairs of the Corporation shall be managed by the Board in a manner consistent by these Bylaws and other applicable laws and regulations. The Board shall make appropriate delegation of authority to the Officers. The Board

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by resolution passed by a majority of the whole Board, may designate from among its members an Executive Committee and one or more committees, which committees, to the extent provided in these Bylaws and such resolution, shall have and exercise any or all of the authority of the Board, except that no such committee shall have the authority to take actions prohibited to such committee by the Florida Statutes. Each Board committee shall have two or more members of the Board who serve at the pleasure of the Board.

- 4.2 Qualifications of Directors. Directors need not be residents of the State of Florida or Members of the Corporation, provided, that each Director shall be an individual who is at least eighteen (18) years of age at the time of election. Unless waived by the Board no person shall serve as a Director for more than six (6) consecutive years.
- 4.3 Number, Composition and Classification of Directors. The Board shall consist of seven (7) Directors. The Directors shall be classified with respect to the time for which they may hold office by dividing them into three (3) classes, with two classes consisting of two (2) Directors and one (1) class consisting of three (3) Directors. Each Director of the Corporation shall hold office until his successor shall have been elected and qualified or until his earlier resignation, removal from office, or death. At the first annual meeting of the Members, the Directors of the first class, who shall consist of one (1) Owner of an Affected Property and one (1) Merchant, shall be elected for a term of one (1) year; the Directors of the second class, who shall consist of one (1) Owner of an Affected Property and one (1) Merchant, shall be elected for a term of two (2) years; the Directors of the third class, who shall consist of two (2) Owners of Affected Properties and one (1) Merchant, shall be elected for a term of three (3) years. At each annual election thereafter the successors to the class of Directors whose terms shall expire that year shall be elected to hold office for a term of three (3) years, so that the term of one class of Directors shall expire in each year.
- 4.4 Composition of the Board. The Board shall be representative of various business interests in the District and the Board shall at all times be composed of the following groups: (a) Four (4) Owners of Affected Properties (or individuals designated in writing by Owners of Affected Properties) (each an "Owner/Director") and (b) Three (3) Merchants (or individuals designated in writing by Merchants)(each a "Merchant/Director"). The initial Board shall appointed by the Incorporator of the Corporation, upon advice and counsel from the Fifth Avenue South Business Improvement District Steering

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Committee. The composition of all subsequent Boards shall be as set forth above.

4.5 Election of Directors.

4.5.1. Nominating Committee. There shall be Nominating Committee consisting of three (3) members of the Board chosen by the President and approved by the Board plus two (2) members who are not members of the Board. The Nominating Committee shall nominate individuals to serve on the Board .

4.5.2. Election Committee. There shall be an Election Committee consisting of five (5) members of the Board chosen by the President and approved by the Board. The same persons who serve on the Nominating Committee may serve on the Election Committee.

4.5.3. Procedure. No later than forty-five (45) days prior to the annual meeting of Members, the Nominating Committee shall meet and consider nominations for the position of member of the Board. No person shall be nominated by the Nominating Committee unless the Nominating Committee shall have first obtained that person's consent to run if nominated and to serve if elected.

(a) Nominations for the Board may also be made by the Members delivered to the Secretary/Treasurer of the Corporation not later than thirty (30) days prior to the annual meeting and endorsed by twenty percent (20%) of the Members of the Corporation determined by weighted vote. Such petition shall bear the acceptance of the person so nominated. The nominations so filed shall be incorporated n to the ballot.

(b) No later than twenty (20) days prior to the annual meeting, the Secretary/Treasurer of the Corporation shall cause to be prepared for mailing to all Members o the Corporation, ballots listing the number of Director positions to be filled at the election, with the names of all candidates. The ballots shall also allow for a member to write in additional candidates for Director on the ballot and to cast a vote for the additional candidate or candidates so written in.

(c) In addition to the ballots, the Secretary/Treasurer shall also mail to each Member a blank envelope in which said Member's marked ballot shall be enclosed and a return addressed envelope that the Member shall sign and put said Member's name and return address so that each envelope can be checked to determine that the ballot has

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been returned by a Member who is eligible to vote. All such envelopes which shall be received by the Corporation not later than the date of the annual meeting, including those delivered by hand, shall be turned over to the Election Committee. The Election Committee shall verify the eligibility of the senders, open the mailing envelopes and cause the ballots contained therein to be tabulated. In addition, any Member may receive a ballot and vote in person at the annual meeting. The Election Committee shall maintain a list of those Members who shall have voted as evidence by the receipt of their ballot envelopes. The Election Committee shall tabulate the ballots at the annual meeting and the candidates receiving the greatest number of votes, up to the number of Directors to be elected, shall be the Directors and declared duly elected effective at the time that the ballots are tabulated. The results of the balloting shall be formally announced by the President at the annual meeting of Members.

- 4.6 Term of Office for Directors. Each Director shall serve for a term of three (3) years except as provided in Section 4.3. Directors may serve a maximum of two (2) successive terms (for an aggregate term of six (6) years) unless such limitation is waived by the Board.
- 4.7 Regular Meeting. Regular meetings of the Board shall be held not less than four (4) times a year (with at least one (1) meeting in each quarter-annual period), at such times and places in Naples, Florida as the Board may determine. The first regular meeting(s) of the Board shall be held within sixty (60) days after the election of Directors.
- 4.8 Special Meetings. Special meetings of the Board may be called by or at the direction of the President, Vice-President, or upon the written request of four (4) Directors, such meeting to be held
- 4.9 Notice. Except as otherwise provided herein, notice of the time and place of any regular or special meeting of the Board shall be provided to each Director at least ten (10) days prior to such meeting. .
- 4.10 Quorum. At least a majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, unless otherwise specifically provided by law, the Articles of Incorporation or these Bylaws. Attendance shall be either in person or by conference connection equipment whereby the distant member(s) and those present in person all hear and may speak to and be heard by one another on the matters raised therein. If less than a majority of the members of the Board are present at such meeting,

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one-third (1/3) of the members of the Board actually present may adjourn the meeting from time to time without further notice, until a quorum is present.

4.11 Manner of Acting.

4.11.1. Formal Action by Board. The act of the majority of the members of the Board present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by statute, the Articles of Incorporation or these Bylaws.

4.11.2. Action by Board without a Meeting. No action of the Board shall be valid unless taken at a meeting at which a quorum is present, except that any action which may be taken at a meeting of the Board may be taken without a meeting if consent in writing (setting forth the action so taken) is signed by all members of the Board.

4.12 Resignations and Removal. Any member of the Board may resign from the Board at any time by giving written notice to the President or Secretary/Treasurer and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. Any member of the Board may be removed from office at any time with or without cause by a vote of two-thirds (2/3) of the entire Board at a meeting called for that specific purpose. If a Director is absent without adequate excuse from three (3) consecutive meetings of the Board of Directors or if a Director is for any reason absent from over fifty percent (50%) of the meetings of the Board during any twelve (12) month period, then such Director may be removed from office by a majority vote of the Directors. For purposes of these Bylaws, a member of the Board shall be deemed to have resigned from the Board upon the determination that such Board member is incapacitated.

4.13 Proxies Prohibited. A Director may not vote by proxy.

4.14 Vacancies. Any vacancy occurring in the membership of the Board will be filled by appointment by a majority vote of the Board, and such appointee shall serve as Director until the next annual meeting at which time the Members shall elect a new Director to fill the remaining unexpired term of such member's predecessor in office.

4.15 Director Succession. When a Director ceases to act as a director (a "former Director"), whether through natural expiration of his or her term, removal, death or resignation, such Director's successor shall be: (a) an Owner/Director, if the former Director was an

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Owner/Director or (b) a Merchant/Director, if the former Director was an Merchant/Director.

- 4.16 Compensation. Members of the Board, as such, will not receive any stated salaries for their services, but by resolution of the Board may (a) receive reasonable compensation indirectly in the form of payment of liability insurance premiums and (b) receive a reasonable amount for attending to their authorized duties; provided, however, that subject to the provisions herein concerning self dealing, nothing herein will be construed to preclude any member of the Board from serving the Corporation in any other capacity and receiving compensation therefore subject to the requirements set forth in Section 7.1 hereof.

Section 5 Committees and Task Forces.

The Board may appoint from time to time such other committees as may be deemed desirable in forwarding the program of the Corporation, and each of such committees shall exercise and perform such duties as may be prescribed by the Board. Members of such committees may not be members of the Board if the committee in question is not vested with the power or duty normally considered a primary duty of the Board of Directors, but must be Members of the Corporation. In addition to standing committees set forth herein, the Board may appoint from time to time such other committees or task forces as the Board deems necessary and will appoint the chairpersons of such committees and task forces, and determine the method of appointment of members, who must be Members of the Corporation.

A task force will disband when its task is completed or at the end of the year, whichever comes first. If the work of the task force is not complete by the end of the year, it will be at the discretion of the Board to decide whether to re-appoint the task force, its chairperson, and members to complete its task.

Section 6 Officers.

- 6.1 Officers. The Officers of the Corporation shall be a President, a Vice President and a Secretary/Treasurer. The Corporation may, at the discretion of the Board, provide for different categories of Officers, and may have additional Officers to those enumerated above. No person shall simultaneously hold more than one office of the Corporation. The duties of certain offices are set forth herein. When the incumbent of an office is unable to perform the duties thereof or when there is no incumbent of an office (both such situations referred to thereafter as the "absence" of the Officer), the duties of the office will, unless otherwise provided by the Board or these Bylaws, be

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performed by the next Officer set forth in the following sequence:
President, Vice President and Secretary/Treasurer.

6.2 Appointment and Tenure. All Officers shall be elected for a term of one (1) year each year by the Board at a meeting held immediately following the annual meeting of the Members. Each such Office shall hold his office beginning with the adjournment of such meeting of the Board and until his successor has been duly elected and qualified, or until his/her earlier death, resignation or removal from office. Officers may be elected to serve one or more consecutive terms by the Board ; provided, however, that no person shall serve as President for more than two (2) terms.

6.3 Resignations and Removal. Any Officer may resign at any time by giving written notice to the President, and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. Any Officer may be removed by the Board whenever, in its judgment, the best interests of the Corporation would be served thereby.

6.4 Vacancies. A vacancy in any office may be filled by the Board for the unexpired portion of the term.

6.5 Duties of Officers.

6.5.1. President. The President shall be the chief executive officer of the Corporation and a member of the Board . Subject to the directions of the Board , the President shall, in general, supervise and control all the business affairs of the Corporation. The President shall have the power to preside at, and shall be responsible for chairing, all meetings of the . The President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

6.5.2. Vice President. In the absence of the President, or in the event of the President's death, resignation or refusal or inability to act, the Vice President, successively, shall perform the duties of the President and, when so acting, shall have all the powers and be subject to all the restrictions upon the President. The Vice President shall be a member of the Board . It shall be the duty of the Vice President to render every assistance and cooperation to the President and provide him/her with counsel and advise. The Vice President shall familiarize him or herself with all activities and affairs of the Corporation as well as the duties and responsibilities of the position of President in advance of assuming the office of President. The Vice President shall perform

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such other duties and such other powers as the Board shall prescribe or as the President may from time to time delegate.

6.5.3. Secretary/Treasurer. The Secretary/Treasurer shall have custody of and maintain all of the corporate funds, corporate records (including the financial records), shall record the minutes of all meetings of the Members and the Board, shall send all notices of meetings out and shall perform such other duties as may be prescribed by the Board or the President. The Secretary/Treasurer shall be a member of the Board.

6.6 Compensation. Except for an Officer whom the Board shall determine from time to time to provide with compensation, the balance of the Officers shall serve without compensation.

6.7 Delegation. The President may delegate temporarily the powers and duties of any Officer, in case of such Officer's absence or for other reason, to any other Officer. In addition, the Board may authorize the delegation by any Officer of any of such Officer's powers and duties to any agent or employee, subject to the general supervision of such Officer.

Section 7 Miscellaneous.

7.1 Interest of Directors and Officers in Contracts. Any contract or transaction between the Corporation and (a) any Director, (b) any Officer, or (c) and corporation, unincorporated association, business trust, estate, partnership, trust, joint venture, individual or other legal entity ("Legal Entity") (i) in which any Director or Officer has a material financial interest or is a general partner or (ii) of which any Director or Officer is a director, officer or trustee (collectively a "Conflict Transaction") shall be valid for all purposes, if the material facts of the Conflict Transaction in the Director's or Officer's interest were disclosed or known to the Board, a committee with authority to act thereon, or the Members entitled to vote thereon, and the Board, such committee, or such Members authorized, approved, or ratified the Conflict Transaction, provided that such Director or Officer shall not participate in the discussion, vote or be counted in a quorum regarding the matter. Moreover, any such Director or Officer is precluded from exercising any function of office with respect to a mater in which such individual has a financial interest.

7.2 Annual Disclosure Requirements. Each Director, Officer, employee or agent with purchasing responsibility on behalf of the Corporation shall file in the Corporation's records a financial disclosure on an

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- annual basis setting forth such person's business affiliations and disclose any relationship that such person has with any entity or individual doing business with the Corporation.
- 7.3 Contracts. The Board may authorize any Officer or agent of the Corporation, in addition to the Officers authorized by these Bylaws, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.
- 7.4 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such Officer or Officers, agent or agents of the Corporation and in such manner as, from time to time, may be determined by resolution of the Board.
- 7.5 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in one or more such banks, trust companies, securities firms, or other depositories as the Board from time to time **shall** designate, upon the terms and conditions determined by the Board. The Board may, from time to time, authorize the opening and keeping, with any depository as it designates, of general and special bank accounts or other forms of account and may make such special rules and regulations with respect thereto, not inconsistent with the provisions of these Bylaws, as it deems necessary.
- 7.6 Grants and Gifts. Subject to the conditions set forth in the Corporation's Articles of Incorporation, the Board is authorized (a) to accept restricted contributions, provided that any restrictions are consistent with the Corporation's Exempt Purposes and its qualification as a Qualified Charitable Organization and are imposed by the donor by a written instrument that is accepted by the Board by resolution ("Valid Restrictions"), and (b) to cause the execution and delivery of any agreement which shall be necessary or desirable in connection with any such restricted contribution. Unless otherwise specifically required, the Board may administer restricted contributions as it shall deem expedient, and utilize and expend both the principal and income thereof.
- 7.7 Books and Records. The Corporation shall keep correct and complete books and records of account and shall also keep records of the actions of the Corporation, which records shall be open to inspection by members of the Board at any reasonable time.

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- 7.8 Custody of Corporate Funds; Financial Records. The Board shall periodically adopt formal policies and procedures regarding the custody, use, disbursement and accounting of corporate funds.
- 7.9 Fiscal Year; Accounting Election. The fiscal year of the Corporation shall end on December 31st, and methods of accounting for the Corporation will be as the Board determines from time to time by resolution of the Board.
- 7.10 Seal. The corporate seal of the Corporation shall be circular in form with the words "Fifth Avenue South Business Improvement District, Inc. a corporation not for profit" in the outer edge thereof and the year of incorporation is 2010.
- 7.11 Notice.
- 7.11.1. When Effective. Notice shall be in writing. Notice by electronic transmission constitutes written notice. Written notice, if in a comprehensible form, is effective at the earliest of: (a) its receipt, (b) if mailed postage prepaid and correctly addressed, five (5) days after its deposit in the United States mail, (c) if electronically transmitted in a manner authorized by the recipient, five (5) days after its transmission, or (d) if sent by registered or certified mail or a commercial delivery service, return receipt requested, and the receipt is signed by or on behalf of the addressee, the date shown on the return receipt. All notices of a meeting shall include the date, time and place of the meeting, and the means of remote communication, if any, by which an attendee may be deemed to be present in person and vote at such meeting. Notice of any meeting need not specify the business to be transacted at nor the purpose of the meeting; provided, however, that, unless stated in a written notice of the meeting, no Bylaw may be brought up for adoption, amendment or repeal and no Director may be removed. Electronic notice may include facsimile and electronic mail, but may not be accomplished through ephemeral communications such as SMS ("text messages") or instant messaging.
- 7.11.2. Waiver of Notice. A written waiver of notice signed by a person entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of notice. The attendance of a person entitled to notice at or the participation of a person entitled to notice in a meeting constitutes waiver by such person of notice of the meeting unless such person, at the beginning of the meeting or promptly upon arriving, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

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- 7.12 Loans to Members of the Board and Officers Prohibited. No loans shall be made by the Corporation to Officers or members of the Board.
- 7.13 Attendance by Conference Communication Equipment. Members of the Board, committees, task forces and Members of the Corporation may participate in any meeting through the use of conference communications equipment by means of which all persons participating in the meeting can simultaneously communicate with each other, and such participation shall constitute presence at the meeting. Such participation shall be at the discretion of the President, with respect to meetings of the Board or the Members, or the respective chairpersons of the committees or task forces.
- 7.14 Revocability of Authorizations. No authorization, assignment, referral or delegation of authority by the Board, or the President to any committee, Officer, agent, or other official of the Corporation, or any other organization which is associated or affiliated with, or conducted under the auspices of the Corporation shall preclude the Board from exercising the authority required to meet its responsibility. The Board shall retain the right to rescind any such authorization, assignment, referral, or delegation in its sole discretion.
- 7.15 Employees and Agents of the Corporation. The Board may employ such personnel and/or enter into agreements with such independent contractors as it deems necessary or desirable for the efficient operation of the Corporation.
- 7.16 Rules. The Board may adopt, amend, or repeal rules (not inconsistent with these Bylaws) for the management of the internal affairs of the Corporation and governance of its Board, Officers, agents, committees, task forces and employees. Unless the Board adopts rules of procedure which shall not be inconsistent with the Articles of Incorporation, these Bylaws or applicable law, the conduct of all meetings of the Members, Directors and members of Committees shall be in accordance with the provisions of Roberts Rules of Order.
- 7.17 Voting of Equity Interests Owned by the Corporation. The Board may authorize the President, the Vice President, the Secretary/Treasurer, or any one of them to attend, to vote and to grant proxies to be used at any meeting of shareholders of any corporation or otherwise exercise rights of any entity in which the Corporation may hold stock, equity interest or otherwise be a member. The Board may confer like powers upon any other person or persons.
- 7.18 Vote by Presiding Officer. The person acting as presiding officer at any meeting held pursuant to these Bylaws, if a voting member

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thereof, shall be entitled to vote on the same basis as if not acting as the presiding officer.

- 7.19 Gender and Number. Whenever the context requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words will include the singular and plural thereof.
- 7.20 Bonds of Directors, Officers and Others; Insurance, Etc. The Board may secure the fidelity of any or all of its Directors, Officers, employees and/or agents by bond or otherwise, in such terms and with such surety or sureties, conditions, penalties or securities as are required by the Board. The Corporation is authorized to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Corporation against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would be authorized to indemnify such person against such liability, when consistent with the law of Florida. The premium or premiums for such bond or bonds or insurance shall be paid out of the corporate funds of the Corporation.
- 7.21 Executive Director. The Board may hire an Executive Director (with such duties as specified by the Board), who will serve at the pleasure of the Board.
- 7.22 Section and Other Headings. The Section and other headings contained in these Bylaws are for reference purposes only and shall not affect the meaning or interpretation of these Bylaws.
- 7.23 Severability. Should any of the conditions, terms or covenants herein imposed or contained be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

Section 8 Amendments to Articles and Bylaws.

The Articles of Incorporation and the Bylaws may be altered, amended or repealed by a vote of two-thirds (2/3) of the entire Board; provided, however, that: (a) two-thirds (2/3) of the Members, determined by weighted votes as provided in Section 3, must approve any exercise of power under this Section that affects the rights of the Members and (b) the City Council must approve any exercise of power under this Section that seeks to alter, amend or repeal any provisions of the Articles of Incorporation or Bylaws that relate to the composition of the Board.

Both the Articles of Incorporation and Bylaws may only be altered, amended or repealed in a manner and for a purpose that is consistent with the Corporation's

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qualification as a Qualified Charitable Organization, the Agreement between the Corporation and the City dated _____, 2010, and with any Valid Restrictions imposed on contributions to the Corporation's Funds, and no amendment to or restatement of the Articles of Incorporation or these Bylaws may remove these restrictions

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CERTIFICATE

The undersigned hereby certifies that such person is the duly elected and acting Secretary/Treasurer of the Corporation named herein and that the foregoing is a true copy of the Bylaws of said Corporation duly adopted by Written Consent of the Directors dated as of _____, 2010, and hereby certifies that such Bylaws have not been amended or rescinded and remain in full force and effect at the date hereof.

DATED this _____ of _____, 2010.

Secretary/Treasurer

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

1. **Name.** The name of the corporation is FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC. (the "Corporation").
2. **Principal Address.** The street address of the Corporation's principal office is as follows:

c/o John M. Passidomo, Esq.	Cheffy Passidomo, P.A. 821 5th Avenue South Naples, Florida 34102

3. **Not-for-profit Corporation.** The Corporation has been formed for not-for-profit purposes and shall not have or issue shares of stock or make distributions.
4. **Exempt Nature of Activities and Purposes.** The Corporation is organized and shall be operated exclusively for the charitable purpose of fostering the stabilization and improvement of the retail business special assessment district known as the "Fifth Avenue South Business Improvement District Assessment Area" that is located in the City of Naples, Florida, hereinafter the "District," through promotion, management, marketing, and other similar services in the District, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time and the corresponding provisions of any future United States Internal Revenue law (the "Code") (the "Corporation's 501(c)(3) Exempt Purposes").

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

5. **Members.** The Corporation shall have one class of members (the "Members"). A Member of the Corporation shall be an individual, partnership, corporation, limited

liability company, association or other legal entity shown in the records of the Property Appraiser of Collier County, Florida, as provided to the City of Naples, Florida (the “City”) from time to time, as the owner of a parcel of real property that is located in the District and subject to special assessment in accordance with City of Naples, Florida Resolution # . The Members shall have those rights and privileges conferred upon the Members by these Articles of Incorporation or the Bylaws of the Corporation from time to time in effect.

6. **Membership Rights.** The Members shall have those rights and privileges required by law to be accorded to members, and those rights and privileges conferred upon the Members by these Articles of Incorporation or the Bylaws of the Corporation from time to time in effect. The rights of the Members shall include, after the initial Board of Directors is elected by the incorporator, the exclusive right to vote for the election of directors.
7. **Registered Agent.** The street address of the Corporation’s registered office and the name of its registered agent at that address are as follows:

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

8. **Incorporator.** The name and address of the Corporation’s sole incorporator is John M. Passidomo, Esq., Cheffy Passidomo, P.A., 821 5th Avenue South, Naples, Florida 34102.
9. **Board of Directors.** All corporate powers shall be exercised by or under the authority of, and the activities, property, and affairs of the Corporation shall be managed by or under the direction of, the Board, subject to the limitations set forth in these Articles of Incorporation and in accordance with the Bylaws of the Corporation from time to time in effect. The initial Board shall consist of seven (7) individuals to be elected by the incorporator, each to serve as a director until the first annual meeting of the Members and until his or her successor is elected and qualifies or until his or her sooner death, resignation or removal. Thereafter, the Members shall elect the directors, as provided in the Article of these Articles of Incorporation entitled “Membership Rights.” .
10. **Officers.** The officers and their manner of election shall be as provided in the Bylaws of the Corporation.
11. **Board’s Authority.** Subject to the restrictions and limitations of the Article of these Articles of Incorporation entitled “Prohibitions” and the condition that no power or discretion shall be exercised by the Board in any manner or for any

purpose that is not consistent with the Corporation's 501(c)(3) Exempt Purposes, its qualification as a Qualified Charitable Organization, and any Valid Restrictions (as defined below) imposed on contributions to the Corporation, but without otherwise limiting the powers conferred upon the Board by law, the Board is authorized:

- (a) To pursue any lawful activity permitted or not prohibited by Chapter 170 of the Florida Statutes, as amended from time to time, or other applicable Florida law. In furtherance of this purpose, the Corporation will work toward creating a favorable environment which will increase commercial and cultural activity within the District. The Corporation will encourage a spirit of cooperation and maintenance of high standards among its constituents. The Board shall utilize all funds transferred by the City to the Corporation as set forth in Section 170.01 (3), Florida Statutes, City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No. ___, The Final Assessment Resolution, to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities and for no other purpose.
- (b) To receive and accept gifts, legacies, grants, loans, and other contributions to the Corporation from any persons or entities, in cash or in other property acceptable to the Board, including restricted contributions made by the City, private persons or others; provided that any restrictions are consistent with the Corporation's 501(c)(3) Exempt Purposes and its qualification as a Qualified Charitable Organization and are imposed by the donor by a written instrument that is accepted by the Board by resolution or other agreement ("Valid Restrictions").
- (c) To make contracts and guarantees, incur liabilities, borrow money, and enter into, extend, renew or renegotiate leases.
- (d) To employ attorneys, accountants, investment counsel, custodians, brokers and other agents to assist in the administration of the Corporation and the Corporation's Funds and to pay reasonable compensation for such services.
- (e) To maintain and administer the Corporation's assets, including all contributions received, all income earned on those assets and contributions, and any gains therefrom (the "Corporation's Funds") and, unless otherwise specifically required, to mingle restricted contributions with other assets of the Corporation's Funds for investment purposes; provided, however, that the Corporation shall maintain sufficient records and procedures to identify and track any funds received by the Corporation from the City.
- (f) To use and apply the Corporation's Funds, make expenditures and payments therefrom, for such of the Corporation's 501(c)(3) Exempt

Purposes as the Board in its sole discretion determines from time to time, subject to any Valid Restrictions imposed on contributions to the Corporation's Funds, in particular, the restrictions placed on funds received from the City, as further described in the preceding provisions of this Article and the next Article of these Articles of Incorporation entitled "Prohibitions."

- (g) To initiate and participate in fundraising activities or other projects that may be undertaken by the Corporation in order to further or promote the Corporation's 501(c)(3) Exempt Purposes.
- (h) To the extent a corporation organized under the Act may now or hereafter lawfully do so, to engage in or carry on any and every act or activity necessary, suitable, convenient, or proper for, in connection with, or incident to the promotion, furtherance, or accomplishment of any of the Corporation's 501(c)(3) Exempt Purposes, or designed, directly or indirectly, to promote the interests of the Corporation, and to engage in any lawful act or activity that is consistent with the Corporation's 501(c)(3) Exempt Purposes and its qualification as a Qualified Charitable Organization.

The provisions of the Agreement between the Corporation and the City dated _____, 2010, regarding the disbursement of funds from the City to the Corporation, and the Corporation's undertakings regarding its disbursements of such funds (the "Agreement"), are hereby declared to be Valid Restrictions.

12. **Prohibitions.** Notwithstanding any other provision of these Articles of Incorporation, the Corporation's activities and the Board's authority shall be subject to the following restrictions and limitations:

- (a) The Corporation shall not carry on any activities not permitted to be carried on by a Qualified Charitable Organization or by Section 170.01(3), Florida Statutes.
- (b) The Corporation shall not carry on any activities not described in Section 170.01(3), Florida Statutes with any funds transferred by the City to the Corporation, as set forth in Section 170.01 (3), Florida Statutes, City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No.____, The Final Assessment Resolution.
- (c) No part of the Corporation's Funds shall inure to the benefit of or be distributable to the Corporation's Directors, officers, or any other private individual or entity, except in furtherance of the Corporation's 501(c)(3) Exempt Purposes, as payment of reasonable compensation for services

rendered, or as payment or reimbursement of reasonable expenses necessary to carrying out the Corporation's 501(c)(3) Exempt Purposes.

- (d) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
- (e) To the extent that Section 508 and the provisions of Chapter 42 of the Code are applicable to the Corporation, the Corporation shall distribute such amounts from the Corporation's Funds for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code.
- (f) To the extent that Section 508 and the provisions of Chapter 42 of the Code are applicable to the Corporation, the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code, (b) retain any excess business holdings as defined in Section 4943(c) of the Code, (c) make any investments in such manner as to subject it to tax under Section 4944 of the Code, or (d) make any taxable expenditures as defined in Section 4945(d) of the Code.
- (g) The Corporation shall not have and is prohibited from exercising any sovereign enforcement or regulatory powers, the power to tax, and the power of eminent domain.

13. **Distribution of Corporate Assets if the District is Abolished, Corporation Ceases to be a Qualified Charitable Organization or the Agreement is Terminated.** If (a) the District is abolished, (b) the Corporation ceases to be a not-for-profit corporation under Chapter 617, Florida Statutes, including a liquidation or dissolution pursuant to the Article of these Articles of Incorporation entitled "Liquidation or Dissolution," or a Qualified Charitable Organization, or (c) the Agreement is terminated for any reason, the Corporation's assets shall be disposed as follows: (i) the Corporation shall distribute to the City its assets that were acquired solely with funds transferred by the City to the Corporation and (ii) the City shall have the right to purchase all other assets of the Corporation for each asset's cost of acquisition. Any assets of the Corporation not distributed or sold to the City shall remain the property of the Corporation.
14. **Liquidation or Dissolution.** The Corporation may be liquidated or dissolved at any time. Subject to the immediately preceding Article and any Valid Restrictions imposed on contributions to the Corporation, upon the winding up and dissolution of the Corporation, all the Corporation's assets remaining after payment or adequate provision for the lawful debts and obligations of the Corporation and the

expenses of its liquidation or dissolution shall be distributed (i) for such of the Corporation's 501(c)(3) Exempt Purposes (including by distribution to or for the use of one or more Qualified Charitable Organizations) and in such manner and proportions as are provided for in the plan of distribution of assets adopted by the Corporation, or (ii) to the federal government, or (iii) to a state or local government for a public purpose, or (iv) by the Circuit Court of the Judicial Circuit in which the principal office of the Corporation is then located (or any court of competent jurisdiction if the principal office of the Corporation is then located outside the State of Florida), exclusively for such of the Corporation's 501(c)(3) Exempt Purposes or to such one or more Qualified Charitable Organizations having similar purposes as the court shall determine.

15. **Indemnification and Immunity.** The Corporation shall indemnify each Director and officer, including former Directors and officers, to the fullest extent allowed by law, including but not limited to Section 617.0831 of the Act. It is intended that the Corporation be an organization the officers and Directors of which are immune from civil liability to the extent provided under Section 617.0834 of the Act and other applicable laws.
16. **Amendment.** These Articles of Incorporation may be amended at any time and from time to time as provided in the Bylaws of the Corporation in a manner and for a purpose that is consistent with the Corporation's qualification as a Qualified Charitable Organization, the Agreement and any Valid Restrictions imposed on contributions to the Corporation's Funds; provided, however, that no amendment hereto may remove these restrictions on amendment. Pursuant to the Agreement, the provisions of these Articles of Incorporation and the Bylaws regarding the election or appointment of Directors shall not be amended without the approval of the City Council of the City.

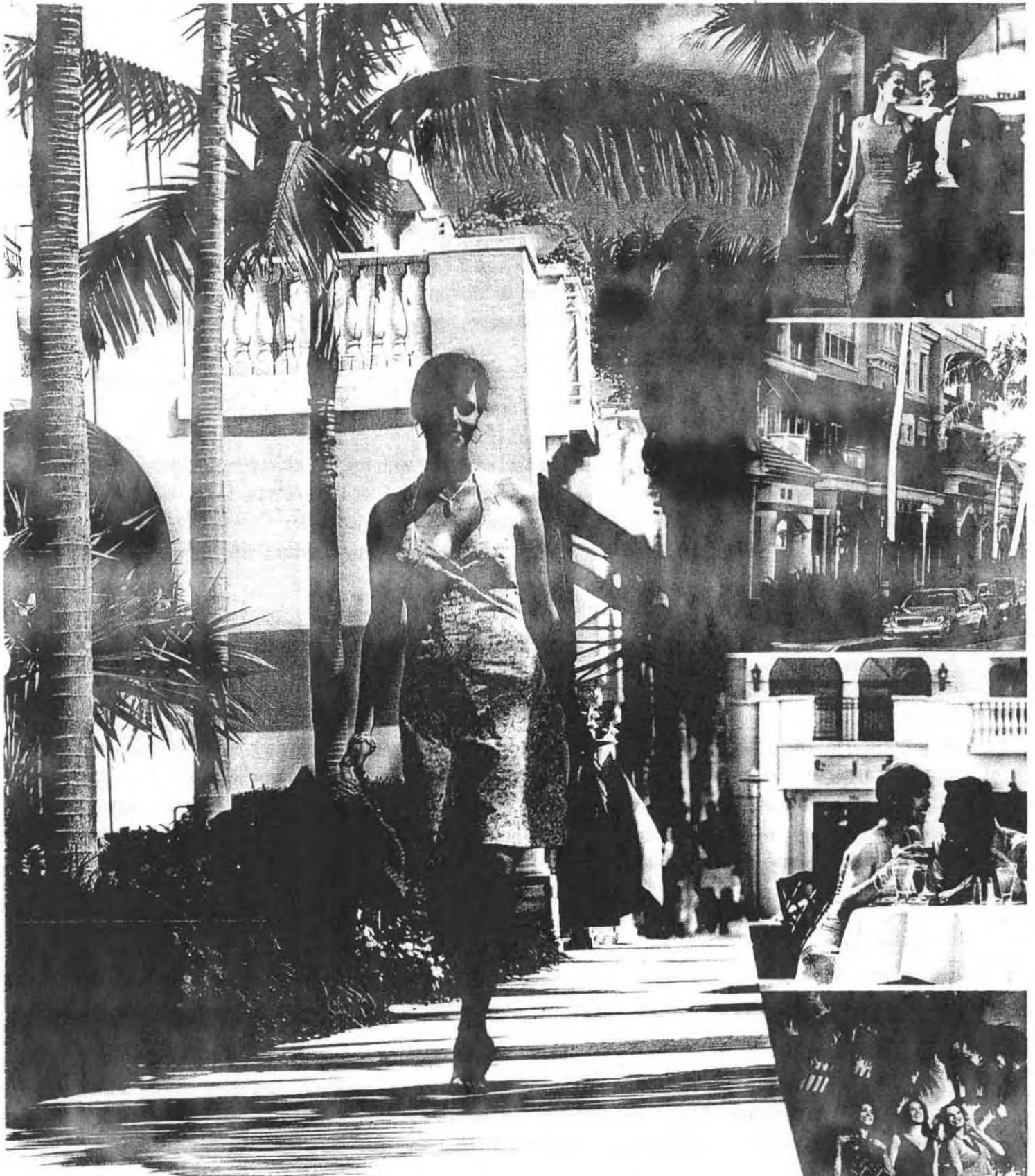
Dated at Naples, Florida, this _____ day of _____, 2010.

Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity

By: _____
John M. Passidomo, Registered Agent

I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in Section 817.155, Florida Statutes.

By: _____
John M. Passidomo, Incorporator



Our Avenue Forward

5th Avenue South Business Improvement District

SUPPLEMENT
#BID GROUP



Our Avenue Forward

Why we need to refocus and take action now.

We are excited to share with you an opportunity that will help the Fifth Avenue South district prosper like never before. This plan of action has been carefully thought out and we are confident it will be a tremendous asset to all. To start, we'd like to take a brief look at our past and current situation, and what has led us to this solution.

Fifth Avenue South has long been identified as Naples main street. Once the financial and legal center of Naples, and indeed of all of Collier County, Fifth Avenue South has undergone many evolutions.

In 1993, a group of Fifth Avenue South property owners partnered with the City of Naples and engaged renowned urban planner Andres Duany to develop a plan for the improvement for Fifth Avenue South. Following Duany's recommendations, Fifth Avenue South emerged as the premier "place to go" in the Naples/Fort Myers area. At that time, the focus was on Fifth Avenue South, represented by the Fifth Avenue Overlay District, the Fifth Avenue Staff Action Committee, and the Fifth Avenue Association.

In 2004, when Duany revisited Fifth Avenue South, he remarked: "Fifth Avenue South is a different place than ten years ago". Six years later, Fifth Avenue South is once again a "different place" and must continue to evolve if it is to continue to thrive as Naples' main street.

Recently, the focus on Fifth Avenue South has diminished. The governing Boards of the Community Redevelopment Authority (the CRA), which encompasses both Fifth Avenue South and the "Heart of Naples", has shifted their attention to a more widespread, "Downtown" image. The Staff Action Committee (the SAC) which managed the development of Fifth Avenue South has been terminated. And, the activities of the Fifth Avenue Association have been integrated into the Naples Downtown Association (the DNA), which relies on dues and volunteers to promote all of Naples' "Downtown".

At the same time, competition has increased from new malls, re-imaged malls, and a number of other developments, with millions of square feet of commercial space throughout Collier County, Bonita and Estero. The new competition, together with a weak economy, have led to decreased sales, increased vacancies, declining rents and a deterioration of the tenant mix.

A group of property owners and merchants convened in 2009 to address concerns regarding the condition and future of Fifth Avenue South. Robert Gibbs, a marketing consultant who participated in the initial Duany effort, was engaged to evaluate current conditions on Fifth Avenue South and to formulate recommendations for its improvement.

Gibb's First Priority recommendation was that Fifth Avenue South form a Business Improvement District (BID).



Our Avenue Forward

Unite and conquer: the unique advantages of a Business Improvement District.

The purpose of the BID would be to focus on Fifth Avenue South; to create and promote an image or brand for Fifth Avenue South and to establish a marketing/management mechanism that would enable Fifth Avenue South to compete with shopping centers and malls. The BID would represent the interests of both property owners and merchants, and would have an ongoing, dedicated source of revenue to support professional management of its activities. A BID may accomplish this purpose by undertaking a variety of activities, including:

- Marketing initiatives
- Holding events
- Making physical improvements
- Providing enhanced services (such as landscape maintenance and public safety)
- Encouraging retention of existing tenants
- Identifying and recruiting potential tenants
- Compiling and providing economic information
- Maintaining databases of available space, interested tenants, and other economic factors for use by owners, merchants and in supporting ongoing promotional and marketing initiatives
- Representing the interests of the BID before public bodies, such as the City Council
- Create and promote a brand

The benefits of BID are that it provides an ongoing mechanism for performing these activities, district based management, and an ongoing source of revenue dedicated to BID activities. The activities of the BID would supplement, and would not replace, any activities currently undertaken or funded by the City, the CRA, the DNA or otherwise.

Florida Statutes provide for the establishment of Business Improvement Districts in a variety of forms. Common elements include:

- The delineation of District Boundaries: In this instance, the boundaries of the Fifth Avenue South Overlay District
- Assessment of properties within the BID to provide an ongoing, dedicated source of revenue
- Management by a Board of Directors representative of the BID



Our Avenue Forward

Assessment

A BID is a special assessment district. The BID assessment is collected as part of the property tax bill. Assessments may be based upon assessed value, floor area or other factors. The Fifth Avenue South BID would use the Assessed Value basis and would assess only commercial properties.

Budget

The level of BID assessment can vary depending upon the Florida Statute under which it is established. The initial level of assessment for the Fifth Avenue South Business Improvement District will be 2 mills. This represents \$0.002 per \$1 of assessment, or \$2,000.00 per \$1,000,000.00 of assessment. For the Fifth Avenue South BID a 2 mill assessment would generate approximately \$281,500 per year.

For each Individual business, the assessment will be a modest amount. Yet, collectively, this amount can achieve great things for the Fifth Avenue South district, from effectively winning business from competitors to ensuring its tenant mix will outshine all others. This proven plan for success can be seen in such BID districts as Coral Gables (www.shopcoralgables.com) and Coconut Grove (www.coconutgrove.com).

Proposed first year budget for the Fifth Avenue South BID:

Staff	\$93,500
Office/Overhead	\$22,500
Marketing	\$108,000
Events	\$50,000
Reserve	\$7,500
<hr/>	
TOTAL	\$281,500

Management

A not-for-profit corporation will be established to administer the BID. The BID Corporation will be governed by a seven (7) member Board of Directors, four (4) of whom shall be owners of property subject to assessment within the District and three (3) of whom shall be merchants.



Our Avenue Forward

Program

The goal of the BID is to establish Fifth Avenue South as the region's premier shopping and dining destination. Actions to be undertaken to achieve this goal include:

- Establishment of a "brand" and graphic identification for Fifth Avenue South.
- Promotion of Fifth Avenue South retailers, restaurants and businesses.
- Sponsor and coordinate promotional activities and events that encourage pedestrian activities and support shopping and dining.
- Improve the appearance and increase awareness of events, parking facilities, parks, civic resources in and near Fifth Avenue South through the use of signage and banners.
- Identify and encourage tenants that will diversify the tenant mix.
- Assist property owners and merchants in maintaining a healthy mix of retail and restaurant tenants.
- Identify, support and attract business professionals and other non-retail businesses that complement the tenant mix.
- Assemble and maintain information databases for use by merchants and property owners.
- Coordinate BID activities with the activities of other groups and organizations, including the City of Naples, the CRA, the DNA and other shopping areas within Downtown Naples.



Our Avenue Forward

Benefits

- Renewed focus on Fifth Avenue South.
- Permanent and predictable funding source dedicated to the support of Fifth Avenue South.
- Property owners and business people from within the Fifth Avenue South BID will have direct input into decisions regarding marketing, promotions and events.
- Provision of professional, district based management dedicated to the interests of the BID, and an ongoing mechanism for performing the following activities:
 - Marketing initiatives
 - Holding events
 - Making physical improvements
 - Providing enhanced services (such as landscape maintenance and public safety)
 - Encouraging retention of existing tenants
 - Identifying and recruiting potential tenants
 - Compiling and providing economic information
 - Maintain databases regarding sales and marketing, tenancies, spaces available for lease and/or sale and similar information for use by property owners and existing or prospective businesses.
- Provision of a formal organization to represent the interests of Fifth Avenue South before other groups, organizations and governmental bodies, including the CRA and City Council.
- The activities of the BID would supplement, and would not replace, any activities currently undertaken or funded by the City, the CRA, the DNA or otherwise.



Our Avenue Forward

The way forward, together.

Creation of a BID will require several actions by the Naples City Council. The City Council took the first step toward establishment of a BID in January, 2009 by adopting Ordinance #09-1332 authorizing the creation of such districts.

These actions will include:

Petition

A petition seeking establishment of the BID is presented to City Council. The petition must contain signatures of twenty percent (20%) of the property owners within the proposed District boundaries.

Approval:

Approval of the District will require approval by owners representing more than fifty percent (50%) of the affected assessed value within the District.

The District shall be deemed to have been created if it receives the positive vote representing more than 50% of the assessed value of property within the district.

Establishment of District

Within thirty (30) days following receipt of documentation demonstrating approval by owners representing more than fifty percent (50%) of the affected assessed value within the District, the District will be established by the City Council.



Our Avenue Forward

Our avenue forward starts here: sign the petition.

A petition may be submitted as soon as the signatures of twenty percent (20%) of the property owners are obtained. However, the goal is to obtain the signatures of more than fifty percent (50%) of the property owners prior to consideration of the petition by City Council.

Additional Information

You may wish to visit the following web sites to obtain additional information regarding BIDs, and see examples of their marketing, promotional and other activities:

www.shopcoralgables.com

www.coconutgrove.com

You may also contact:

Charles J. Thomas, Project Manager, BID Establishment
phone: 239-450-4544
email: ctnaplesflorida@msn.com

Lou Vlasho

phone: 239-404-7876
email: louvlasho@comcast.net

Jim Smith

phone: 239-290-9230 or 239-262-7215
email: investorsrequest@aol.com

Ann Lynch

From: Val Prince [shields@no-digllc.com]
Sent: Wednesday, December 01, 2010 4:16 AM
To: City Council; citymanager; Mayor Bill Barnett
Cc: dianeeamaral@comcast.net
Subject: FW: 5th Ave. BID Corporation ByLaws, Agreement & Articles of Incorporation Issues

City Council Members,

A point of further clarification as to the various projects which I was involved with which were completed and/or still ongoing having been improved under the MSTU and MSTBU methods in Collier County is below.

Road Improvement Projects:

- Greenway and Fritchey Roads – From dirt to hard pavement including drainage, street signage and striping; R/W acquisition required
- Lake Park Blvd. – From dirt to hard pavement including roadside drainage, street signage and striping; R/W acquisition required
- Trinity Blvd. – From dirt to hard pavement including roadside drainage, street signage and striping; R/W acquisition required
- Auto Ranch Road – From dirt to hard pavement including roadside drainage, street signage and striping; R/W acquisition required
- San Marcus and St. Claire Roads – From dirt to hard pavement including roadside drainage, street signage and striping; R/W acquisition required

Landscape Beautification Projects and Now in Annual Maintenance Mode:

- Marco Island – Median Improvements – Curbing, landscaping including irrigation systems and signage
- Immokalee – Median Improvements – Curbing, roadway paving and striping, landscaping including irrigation systems, sidewalks, and signage
- Lely St. Andrews Blvd. Area – Median Improvements – Curbing, landscaping including irrigation systems, sidewalks, street lighting, and signage
- Golden Gate Parkway, includes Tropicana Blvd., Sunshine Blvd., Santa Barbara, Green Blvd, C.R. 951 – Median Improvements – Curbing, landscaping including irrigation systems, street lighting, Pedestrian Bus Shelters, and signage
- Radio Road – Median Improvements – Curbing, landscaping, and irrigation systems
- Westlake – Landscaping, irrigation systems, and signage
- Bayshore Drive – Median and Other R/W Improvements – Curbing, landscaping including irrigation systems, street lighting, sidewalks, and signage

Storm Drainage:

- Naples Park – Drainage

<p>SUPPLEMENT # EMAILS PROVIDED BY STAFF</p>

12/01/2010

Commercial Area Total Reconstruction Projects:

- Production Park – From dirt to hard pavement including drainage, water and sewer, r/w acquisition, street signage and striping: Bonding required
- Pine Ridge Industrial Park – From dirt to hard pavement including drainage, water and sewer, r/w acquisition, street signage and striping and bonding required

Please understand that these numerous multi-million dollar projects were all done using –

- Tax/assessment dollars from the property owners at no additional cost to the general tax payer or the County
- In house utilizing County Staff for management
- Some also utilized outside consultants due to size and complexity
- All in accordance with FL. State Statues
- Completed in a timely manner
- Our customers were pleased with the end product deliverable
- All were done without establishment of a not-for-profit corporation or any other outside corporate involvement (bonding excluded)

As with the Collier County, if properly planned out, done correctly and not in any formation rush, the city too can easily accomplish any improvements for 5th Ave. So. efficiently and effectively at low costs to the benefited property owners by using either of the two tax/assessment methods with the end result being total customer satisfaction.

Val Prince Manager
Grace's Places of Naples LLC

From: Val Prince [mailto:shields@no-digllc.com]
Sent: Tuesday, November 30, 2010 7:27 PM
To: 'council@naplesgov.com'; 'citymanager@naplesgov.com'; 'mayor@naplesgov.com'
Cc: 'dianeamaral@comcast.net'
Subject: 5th Ave. BID Corporation ByLaws, Agreement & Articles of Incorporation Issues

City Council Members,

I haven't had time to fully review the documents below as we received them yesterday late off of the city's wed site.

It is a lot to go through on short notice so my apologies for this not being thoroughly written.

First quick review comments and questions -

ByLaws of the Fifth Avenue South Business Improvement District, Inc.:

- Yes bigger government and much higher costs to the property owner are on its way, if this is implemented.
- Very hard to follow!
- Major overkill to just promote, manage, market, administer, & do other similar activities for 5th.
- Why not just hire an advertisement company to achieve the objectives?
- Why not go with a 5th Ave. So. Improvement District (MSTU) to accomplish objectives? Why pay more with a Not-for-Profit Corp. and get less, with a much higher assessment to the property owner?
- There should be schematic chart of the corporate makeup to make it clear for all to follow.
- Does the Council fully understand the ByLaws and their impact to the property owners?

- Grammatical/punctuation/spelling problems.
- Who is representing the corporation before formation? How did they get approved and chosen?
- Membership shall be automatic. Why and who says?
- Explain voting rights regarding folio numbers and the same property owner?
- Qualifications of Directors description problems.
- Did the City Council ever sanction/formally approve and invest with legal authority to the Fifth Ave. So. Business Improvement District Steering Committee rights to represent and speak for the 5th Ave. property owners? When? Provide Council agenda documentation.
- Secretary/Treasurer – maintains corporate records - How? Record the minutes – By what method? Should provide verbatim minutes.
- Compensation – Why should anyone get compensated? They will be compensated thru their business. What and who determines reasonable compensation? What Officer gets compensated?
- No reporting of Annual Report (90) Days mentioned to the city in Miscellaneous Section.
- No Sunshine Law requirement regarding spending public tax/assessment dollars.
- Member/Members definition – If you are a property owner you are automatically a member. Where are our rights as being a non-member? Why are we forced to be a member of something we do not want to be a part of or represent us as an owner?
- To protect the property owner's interest and the city, ByLaws final draft should be reviewed and approved by an outside attorney with no interest in the not-for-profit corp. and who specializes and has a history in the setting up of a not-for-profit corporations.

Agreement:

- Problems with term of Agreement.
- Additional language added not consistent with resolution.
- Language omitted not as per ByLaws.
- Why is the BID Corporation owning vehicles?
- The Assessment Area pays for legal/attorney fees and all cost for litigation and judgments. Why?
- Lifetime insurance coverage for Director, Officer & employee or agent? Too costly for the property owner's assessment.

Articles of Incorporation:

- Why is Cheffy Passidimo P.A. the Corporations principal office? Who chose John Passidomo to be the Legal Rep. for the Corp? How much does/will the firm get paid per year? Why has that firm been selected as Registered Agent? It should not be anyone with interest.
- The Incorporator should include the City of Naples.
- The Incorporator elects the initial Board. Why?
- Why accept loans?
- Why borrow money? There is a annual budget and if it has been committed, there is no funding to do the project wait till next years new money comes in.
- When the district is terminated, assets go to the corporation. The corporation is the 5th Ave. So. Business Improvement District and that doesn't exist anymore. Who gets the assets?
- There should be no debt. All promotion, management, marketing, and other similar activities must be on a cash available – cash purchase basis.

These ByLaws of the Fifth Avenue South Business Improvement District, Inc., Agreement, and Articles of Incorporation are all completely unnecessary. It raises the assessment costs to the property owners and can be achieved at lower costs by creating a simple uncomplicated 5th Ave. So. Improvement Assessment District (MSTU). It would be managed through a City liaison and Advisory Committee with the city holding the funds and overseeing all expenditures. The City Liaison would be paid by the MSTU District at no costs to the city. This concept is very efficient and has worked exceeding well in Collier County for 25 years or more. I know that to be a fact, as I was the one who drafted the Ordinance to create the Improvement District, presented to the BCC for

their consideration and approval. I also acted as a Liaison for the County preparing annual budgets, monthly report budget updates for the Advisory Committee to complete the requested improvements.

Further, not to be rude but since this issue could become a binding and very costly issue to the property owners and their tenants, it would be very nice to receive written responses to e-mails sent to the City Council, City Manager, and Mayor.

It seems that the e-mails sent are being ignored and we are not getting anywhere. Maybe it is a "done deal" as originally believed.

Val Prince Manager
Grace's Places of Naples LLC

Ann Lynch

From: Val Prince [shields@no-digllc.com]
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Cc: dianeeamaral@comcast.net
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Val Prince Manager
Grace's Places of Naples LLC

Ann Lynch

From: Denyse Mesnik [denyse.mesnik@gmail.com]
Sent: Tuesday, November 30, 2010 3:34 PM
To: citymanager; City Council; Mayor Bill Barnett; Elizabeth Rogers
Subject: BID Matter, In Response to City Manager's Request for Written Objections
 December 30, 2010

In response to Mr. Moss' November 10, 2010 correspondence calling for comments on the Fifth Avenue South Business Improvement District within (20) days, I offer the following written objection. For the record, my family owns the 850 Fifth Avenue South property.

Your time is as valuable, as is mine, so I'll keep my comments brief. As the vice president of corporate communications for a publicly traded company, I thoroughly comprehend collaborative marketing and I see the value of pooling resources to successfully brand Fifth Avenue South.

However, I have concerns with the legal instruments ("Agreement" and "5th Avenue BID Corporation Articles of Incorporation/ Bylaws") through which the City of Naples intends to promote and market 5th Avenue South.

Until important issues have been addressed, I object to the City Council casting a final vote on the implementation of a Business Improvement District for 5th Avenue South, as planned on December 15th, 2010.

Intent per the City's Agreement:

Page One, 2.1 - "To stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities."

Summary of Why I Object:

- By signing the Agreement, The City of Naples is colluding with the proposed not-for-profit "5th Avenue BID Corporation" to levy a tax on 5th Avenue South property owners and subject the owners to a governing body which they cannot join ("The Corporation shall have no members", Articles of Incorporation Number 3) and in which they will have a limited voice, if any voice at all.
- A self-perpetuating board of as little as 3 persons and no more than 7 persons will wield power beyond the scope of promoting, marketing, stabilizing and improving 5th Avenue South. [Articles of Incorporation, 9 (b) and (c).] These powers include "purchase, lease, develop, sell, mortgage, transfer, invest in or reinvest in real or personal property" and "to make contracts, incur liabilities, borrow money, issue notes, and other obligations of the Corporation and secure any such obligations by mortgage or pledge any part of the Corporation's funds."

Does the City of Naples consider these activities to be “similar activities?” [Agreement 2.1] They are far off course from the intent of Florida State Statue 170.

- There is no guarantee that the meetings or complete financial records will be open and available to those upon whom the tax is levied.

“Agreement” v. “Corporation’s Articles of Incorporation/Bylaws”:

The City of Naples is keeping an arm’s length from the Corporation’s Articles of Incorporation and Bylaws, yet these are the documents that cause concern. **You cannot separate the Agreement from the Articles of Incorporation.** If the City links property owners to the 5th Avenue BID Corporation through this Agreement, then the City of Naples is complicit in granting powers beyond the scope of “promoting, marketing, stabilizing, improving” 5th Avenue South to a Board of Directors who will manage taxed/assessed dollars imposed upon 5th Avenue South property owners (taxes levied by the City of Naples.)

Other Concerns - Compensation / Distributions / Fundraising / Investments/Financing Businesses:

- Board members - who need not be a resident of Florida (By-Law 8) - can be **compensated** for simply attending meetings and also for carrying out services they render (By-Law 11).
- Article 10 (d) Taxable Income “...the Corporation shall **distribute** such amounts from the Corporation’s Funds for each taxable year...” Distribute to whom?
- The Board “shall adopt grantmaking, program expenditure and **fundraising** procedures as necessary and can be made to organizations created outside of the United States” (Bylaw 32). Levied tax dollars can be used to fundraise and offer grants - this is an affront to those property owners and tenants who find paying the levied tax a hardship.
- Bylaw 33. “The Corporation’s Funds may be retained...or be **invested**...in such property, real, personal or otherwise, but not limited to mutual funds, stocks, bonds, or other securities within or **without the United States**...” Who benefits from appreciated values and/or who suffers from investment losses? Are these offshore accounts?
- Article 6 (f). “**Financing** new and expanding business operations within the district...” Under the express leadership of 3 – 7 board members, the Corporation can finance deals with levied tax money, yet those taxed cannot join the Corporation.
- Article 9 (h). Board is authorized to “form or join in forming partnerships, limited liability companies, joint ventures, corporations or other entities...to **transfer any part of all of the Corporation’s Funds thereto**...” Would property owners whose taxed dollars make up the “Corporation’s Funds” have membership interest in said new entities?
- Number 6 (e). “Developing long range development strategies for commercial, **industrial**, office, residential and other development in the district.” Do you really want “industrial” development on 5th Avenue South?

The current Agreement is structurally incomplete. It is incumbent upon the City of Naples – and specifically City Council members as elected officials - to specify terms in the Agreement that will **protect property owners** from misuse of their levied tax dollars in activities beyond promoting and marketing 5th Avenue South and/or financial obligations incurred from the 5th Avenue BID Corporation's business activities.

It is also incumbent upon the City of Naples to exhaust alternative methods with which to achieve collaborative marketing/branding of 5th Avenue South before imposing taxes on property owners, and before connecting a BID to this particular non-profit "5th Avenue BID Corporation."

Respectfully submitted,
Denyse Smith Mesnik
239-250-9833
Denyse.mesnik@gmail.com



Memo

Office of the City Clerk

To: Mayor Barnett
Vice Mayor Sorey
Council Member Sulick
Council Member Price
Council Member Finlay
Council Member Saad

From: Jessica R. Rosenberg, Deputy City Clerk

Subject: Documents from the Florida League of Cities

Date: November 30, 2010

Council Member Heitmann asked that we provide the attached documents for you. They are from Kraig Conn, Deputy General Counsel for the Florida League of Cities.

Thank you.

SUPPLEMENT

CITY CLERK FOR

HEITMAN



www.flcities.com

Kraig A. Conn

Deputy General Counsel

kconn@flcities.com

850.222.9684

Fax: 850.222.3806 x3632

P.O. Box 1757

Tallahassee, Florida 32302



Primer on Home Rule & Local Government Revenue Sources

June, 2008

**Nabors
Giblin &
Nickerson** P.A.
ATTORNEYS AT LAW

TAMPA 2502 Rocky Point Drive, Suite 1060 • Tampa, Florida 32607 • (813) 281-2222 Tel
TALLAHASSEE 1500 Mahan Drive, Suite 200 • Tallahassee, Florida 32308 • (850) 224-4070 Tel
FT. LAUDERDALE 208 Southeast 6th Street • Fort Lauderdale, Florida 33301 • (954) 525-8000 Tel

State v. Frontier Acres Community Dev. Dist. Pasco County, 472 So. 2d 455 (Fla. 1985).

CHAPTER 5: HOME RULE REVENUE SOURCES

* 5.01. General.

Under Article VII, section 1(a), Florida Constitution, all taxes, other than ad valorem taxes, are preempted to the state. The 1968 Florida Constitution expressly authorized counties to levy ad valorem taxes but preserved state wide legislative discretion as to the levy of all other taxes by constitutionally requiring a general law authorization.

All local government revenue sources are not taxes requiring general law authorization under Article VII, section 1(a), Florida Constitution. The judicial inquiry, when a county or municipal revenue source is imposed by ordinance, is whether the charge meets the legal sufficiency test for a valid fee or assessment. If not, the charge is a tax and general law authorization is required under the tax preemption provisions of Article VII, section 1(a). As discussed subsequently, if not a tax under Florida case law, the imposition of the fee or assessment by ordinance is within the constitutional and statutory home rule power of municipalities and counties.¹⁵

Whether a fee, assessment or charge authorized by a local government ordinance and not a general law is constitutionally permissible depends on the Florida case law requirements established for its validity. The difficulty in this analysis results from the various requirements that exist for the different types of constitutionally valid fees.

In the constitutional analysis as to the validity of a home rule fee, judicial reliance is often placed on the type of governmental power being exercised. For example,

¹⁵See City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992) (held that Chapter 170, Florida Statutes, was supplemental authority to the power of self-government of a municipality to levy special assessments authorized in section 166.021, Florida Statutes).

special assessments, like taxes, are imposed under sovereign powers, as an enforced contribution from the property owner. In contrast, regulatory fees are imposed pursuant to the police power as regulation of an activity or property. In further contrast, user fees, franchise fees or rental fees are imposed pursuant to the exercise of the proprietary right of government.

Although fees and assessments are imposed through the exercise of differing governmental powers, judicial analysis has created limitations on home rule fees to ensure that they are not taxes. For example, restrictions are ingrained in Florida case law to ensure that special assessments do not exceed the special benefit provided to assessed property, that regulatory fees do not exceed the cost of regulation, and that fees imposed under the proprietary right of government are not unreasonable. Use restrictions are also imposed on special assessments and regulatory fees to ensure that the proceeds are used for the purpose for which they were imposed. In contrast, no use restrictions apply to fees imposed under the proprietary capacity of government as long as the amount of the fee is reasonable.

5.02. Fees.

Generally, fees fall into two categories: (1) regulatory fees imposed under the police power in the exercise of a sovereign function of the local government; and (2) fees imposed in the assertion of the proprietary power of local government. Each category of fee has its own special rules developed by Florida case law that distinguishes a valid fee from a tax.

Examples of regulatory fees imposed under the sovereign power are building permit fees, inspection fees, impact fees, and stormwater fees. Such regulatory fees cannot exceed the cost of the regulatory activity and are generally required to be applied solely to pay the cost of the regulatory activity for which they are imposed. As an example, as explained in Section 5.04, the fee imposed on development to regulate its impact on the need for future capital facilities must meet the "dual rational nexus test." In other words, the impact fee cannot exceed the cost of the capital facilities required as a consequence of the development regulation and must be used and

the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) Limit administrative charges for the collection of impact fees to actual costs.

(d) Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.

(4) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

✕ 5.05. Special Assessments.

Increasingly, counties and municipalities have utilized special assessments as a home rule revenue source to fund certain services and to construct and maintain capital facilities.

As established by case law, two requirements exist for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. See City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992).

The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service is

whether there is a "logical relationship" between the services provided and the benefit to real property. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).

Lake County v. Water Oak Management Corp., 695 So. 2d 667, 669 (Fla. 1997). This logical relationship to property test defines the line between those services that can be funded by special assessments and those failing to satisfy the special benefit test.

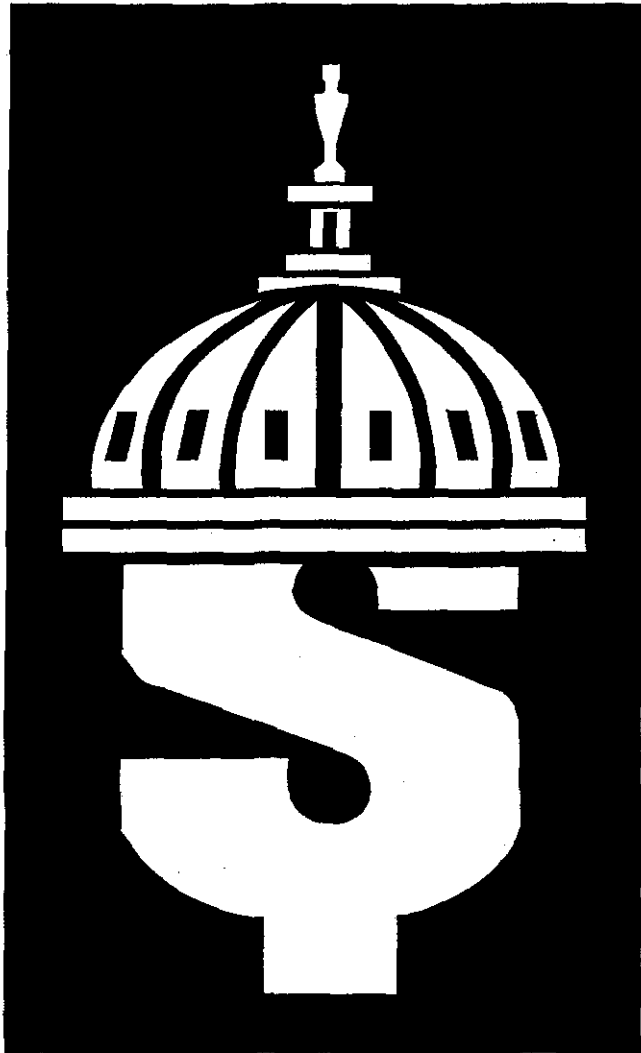
General governmental functions such as indigent health care, general law enforcement activities and the general provision of government fail to bear a logical relationship to property and thus are required to be funded by taxes.

Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include: garbage disposal, Harris v. Wilson, 693 So. 2d 945 (Fla. 1997) and Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977); sewer improvements, City of Hallandale v. Meekins, 237 So. 2d 318 (Fla. 4th DCA 1970) and Meyer v. City of Oakland Park, 219 So. 2d 417 (Fla. 1969); fire protection, South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973) and Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969); fire and rescue services, Sarasota County v. Sarasota Church of Christ, 641 So. 2d 900 (Fla. 2d DCA 1994), rev'd on other grounds, 667 So. 2d 180 (Fla. 1995); Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997); City of Pembroke Pines v. McConaghey, 728 So. 2d 347 (Fla. 4th DCA 1999), rev. den'd, 741 So. 2d 1136 (Fla. 1999); street improvements, Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla. 1922) and Bodner v. City of Coral Gables, 245 So. 2d 250 (Fla. 1971); parking facilities, City of Naples v. Moon, supra; downtown redevelopment, City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992); stormwater management services, Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995); and water and sewer line extensions, Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995).

Once an identified service or capital facility satisfies the special benefit test, the assessed amount is required to be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

Generally, a special assessment, whether imposed for capital projects or services, is collected on the annual ad valorem tax bill. Under such statutory collection procedure, the special assessment is characterized as a "non-ad valorem assessment." See § 197.3632(1)(d), Fla. Stat.

SPECIAL ASSESSMENTS



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SPECIAL ASSESSMENTS

1. Special Assessment are a home rule revenue source that local governments may use to fund local improvements or essential services. Non-charter counties have home rule power to create special assessments and user fees. Speer v. Olson, 367 So.2d 207 (Fla. 1978); State v. City of Port Orange, 690 So.2d (Fla. 1995) municipalities; likewise, have such home rule powers. City of Boca Raton v. State, 595 So.2d 25 (Fla. 1999); Contractors and Builders Assn. v. City of Dunedin, 329 So.2d 314 (Fla. 1976); See also City of Gainesville v. State Department of Transportation, 778 So.2d 519 (Fla. 1st DCA 2001) as to whether a stormwater utility fee is a special assessment or a utility fee. Special assessments are neither taxes nor user fees. The fun comes in trying to tell the difference.

2. What is a Special Assessment?

A valid special assessment must satisfy two tests: first, the property burdened by the special assessment must derive a special benefit from the service provided by the assessment. Second, the assessment for the services must be properly apportioned among the properties receiving the benefit. Lake County v. Water Oak

Management Corp., 695 So2d 667 (Fla. 1997), City of Winter Springs v. State, 776 So2d 255 (Fla. 2001). If the assessment fails either test, it is an unauthorized tax and illegal.

3. What is Special Benefit?

Special benefit does not depend upon whether or not the benefits are unique or are different in type or degree from the benefit provided to the community as a whole. There must be a logical relationship between the services provided and the benefit to real property. Lake County v. Water Oak Management Corp., 695 So2d 667 (Fla. 1997). There is a presumption that property adjacent to a linear public improvement derives a special benefit from that improvement. City of Treasure Island v. Strong, 215 So2d 473 (Fla. 1968). See also Sound and Fury: Property Owners Cannot Defeat Special Assessment With Bald Speculation That Their Property Cannot be Developed, by Sidney F. Ansbacher, Stetson Law Review, Winter 2002. Vol. XXXI Number 2. While front foot or square foot method of apportionment is more traditional, other methods are permissible. City of Boca Raton v. State, 595 So2d 25 (Fla. 1999). Services such as general law enforcement activities, provision of courts, and indigent health care cannot be funded by Special Assessments. Lake County v. Water Oak Management Corporation, 695 So.2d 667 (Fla. 1997) (dicta). See Sarasota County v. Sarasota Church of Christ, Incorporated, 645 So.2d 667 (Fla. 1997) See also Harris v. Wilson, 693 So.2d 945 (Fla. 1997). The benefit required for a valid special assessment consists of more than simply an increase in

market value and includes both potential increases in value and the added use and enjoyment of the property. Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969). In Meyer, the Supreme Court upheld a sewer assessment on both improved and unimproved property, stating that the benefit need not be direct nor immediate but must be substantial, certain and capable of being realized within a reasonable time. Furthermore, the benefit need not be determined in relation to the existing use of the property. See City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970), aff'd, 245 So.2d 253 (Fla. 1971).

Although the benefit derived need not be direct and immediate, the benefit must be special and peculiar to the property assessed and not simply a general benefit to the entire community. Thus, services which are provided by a government may be essential to the public welfare but fail to provide the special benefit necessary for the imposition of a valid assessment. For example, in Crowder v. Phillips, 1 So.2d 629 (Fla. 1941), a special assessment for the establishment and maintenance of a hospital was found to not afford a special or peculiar benefit to the real property assessed. The court reasoned that the hospital provided benefits to the entire community because of its availability to any person but that no logical relationship existed between the construction and maintenance of the hospital and the assessed property. Additionally, in Whisnant v. Stringfellow, 50 So.2d 885 (Fla. 1951), an assessment for the county health unit was held to be invalid in that it benefited everyone in the county, regardless of their status as property owners. In SMM Properties, Inc. v. City of

North Lauderdale, 760 So.2d 998 (Fla. 4th DCA 2000) the court found that emergency medical services provided by city could not be the subject of a valid special assessment but an integrated fire rescue program provided by city conferred a special benefit on property, and thus those services could be the subject of a valid special assessment. See also City of Pembroke Pines v. McConaghey, 728 So.2d 347 (Fla. 4th DCA 1999).

4. What is a Valid Method of Apportionment and How is it Determined?

An improvement or service which specially benefits the assessed properties must also be "fairly and reasonably apportioned among the benefited properties." City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992); Parrish v. Hillsborough County, 123 So. 830 (Fla. 1929). For example, in South Trail Fire Control Dist. Sarasota County v. State, 273 So.2d 380 (Fla. 1973), the Court upheld an apportionment scheme that assessed business and commercial property on an area basis while other property was assessed on a flat rate basis. The Supreme Court held that the manner of the assessment's apportionment is immaterial and may vary provided that the amount of the assessment for each property does not exceed the proportional benefits it receives as compared to other properties. See also Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977).

However, improper apportionment will defeat a special assessment even if a special benefit is present. In City of Ft. Lauderdale v. Carter, 71 So.2d 260 (Fla. 1954), a special assessment

for garbage, waste and trash collection was apportioned based upon the value of the property. The Court held this assessment to be an unconstitutional tax rather than a special assessment in that apportioning on the basis of value did not bear any reasonable relationship to the services provided. See St. Lucie County-Ft. Pierce Fire Prevention and Control District v. Higgs, 141 So.2d 744 (Fla. 1962)(Court struck fire assessments imposed against property based on the ratio of the assessed value of each property to the total value of all property in the district). Once again, the imposition was determined to be a tax.

In comparison, the Supreme Court in City of Naples v. Moon, 269 So.2d 355 (Fla. 1972), found that the levying of a special assessment for improved parking facilities was valid because the City established specific guidelines to measure the benefits accruing to the assessed property. The guidelines were value of the property benefited, relative floor space of each improved property, its kind, susceptibility to improvement, and the maximum annual benefits to be conferred thereon. City of Naples, 269 So.2d at 358. Other methods of apportionment which have been upheld include sewer improvements on a square foot basis and street improvements on a lineal front foot basis. See Bodner v. City of Coral Gables, 245 So.2d 250 (Fla. 1971); See also Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969).

5. How Does the Court Review the Legislative Decision?

The determination of a proper apportionment method is not a quasi judicial decision; it is, rather, a legislative decision which will be upheld if fairly debatable. City of Winter Springs, Id. In that regard, a mere disagreement of experts as to the choice of methodology is legally inconsequential. City of Winter Springs, Id. See Rosche v. City of Hollywood, 55 So2d 909,(Fla. 1952). Legislative determination as to the existence of special benefit and as to the apportionment of those benefits should be upheld unless arbitrary. Workman Enterprises, Inc. v. Hernando County, 790 So2d 598 (Fla App 5th DCA 2001). The Court in Workman opined that if the evidence as to benefits is conflicting and is predicated on the judgment of expert witnesses, the findings of city officials will not be disturbed - citing City of Gainesville v. Seaboard Coastline Railroad Co., 411 So2d 1339 (Fla. 1st DCA 1982). The court also cited City of Gainesville for the proposition that the property owner has the burden of rebutting the presumption of correctness of special assessments and such presumption may be overcome only by strong, direct, clear and positive proof. The evidence presented must be viewed in the light the most favorable to the County. Rinker Materials Corp. v. Town of Lake Park, 494 So.2d 1123 (Fla. 1986). The Legislative determination as to special benefit must be upheld unless it is "palpably arbitrary". Sarasota County v. Sarasota Church of Christ, 667 So.2d 180 (Fla. 1995). In order to overcome presumptions of correctness, "strong, direct and positive" proof is required. Bay Colony No. 1 Condominium v. Village of Key Biscayne, 651 So.2d 779 (Fla. 3rd DCA 1993).

Finally, in determining the reasonableness of the apportionment, courts generally give deference to the legislative determination of a local government. Harris v. Wilson, 693 So.2d 945 (Fla. 1997). Similarly, in Rosche v. City of Hollywood, 55 So.2d 909 (Fla. 1952), the Florida Supreme Court stated:

The apportionment of assessments is a legislative function and if reasonable men may differ as to whether land assessed was benefited by the local improvement the determination as to such benefits of the city officials must be sustained.

Rosche v. City of Hollywood, 55 So.2d at 913; See also Key Colony No. 1 Condominium Assoc., Inc. v. Village of Key Biscayne, 651 So.2d 779 (Fla. 3d DCA 1995). The Court can, however, consider evidence other than that presented to the Legislative Body. City of Winter Springs, supra, Workman Enterprises, Inc. v. Hernando County, 790 So.2d 598 (Fla. 5th DCA 2001).

The concept of judicial deference to legislative findings has been subsequently strengthened and expanded by the Florida Supreme Court in its recent decisions of Sarasota County v. Sarasota Church of Christ and Harris v. Wilson.

6. When is a Charge a User Fee and Not a Special Assessment?

A valid user fee is not a special assessment. See City of Gainesville v. State, Dept of Transp., 778 So.2d 519 (Fla. 1st DCA 2001), holding that a stormwater management fee was not a special assessment but, rather, a valid user fee. Contrast Collier County v. State, 733 So.2d 1012 (Fla. 1999) - Interim governmental services fee

was neither a valid special assessment, nor a user fee nor an impact fee, but was, rather, an invalid unauthorized tax.

7. When is a Purported Special Assessment a Tax?

The greatest challenge in imposing a valid special assessment is to avoid classification as a tax. Under the Florida Constitution, no tax, other than ad valorem taxes, may be levied without general law authorization.

Special assessments and taxes are distinguishable because no requirement exists that taxes provide a specific benefit to property; taxes are levied for the general benefit of residents and property. Two requirements exist under case law for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. City of Boca Raton v. State, 595 So.2d at 29. If a special assessment ordinance withstands the special benefit and fair apportionment tests, the assessment is not a tax and the judicial focus is then on whether the methods prescribed by the home rule ordinance were substantially followed. In Collier County v. State, 733 So.2d 1012 (Fla. 1999) the Court held that an interim governmental services fee" imposed to counter a windfall to property owners from lack of ad valorem tax on uncompleted improvements was not a valid special assessment, but, rather, a tax.

8. What May be Funded Using Special Assessments?

An assessment may provide funding for either capital expenditures or the operational costs of services, provided that the property which is subject to the assessment derives a special benefit from the improvement or service. Sarasota County v. Sarasota Church of Christ, 667 So.2d 180 (Fla. 1995).

Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include: solid waste disposal, Harris v. Wilson, 693 So.2d 945 (Fla. 1997); garbage disposal, Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977); sewer improvements, City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970) and Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969); fire protection, South Trail Fire Control Dist., Sarasota County v. State, 273 So.2d 380 (Fla. 1973) and Fire Dist. No. 1 of Polk County v. Jenkins, 221 So.2d 740 (Fla. 1969); fire and rescue services, Sarasota County v. Sarasota Church of Christ, 641 So.2d 900 (Fla. 2d DCA 1994), rev'd on other grounds, 667 So.2d 180 (Fla. 1995); Lake County v. Water Oak Management Corp., 695 So.2d 667 (Fla. 1997), distinguished by Collier County v. State, 733 So.2d 1012 (Fla. 1999); street improvements, Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla. 1922) and Bodner v. City of Coral Gables, 245 So.2d 250 (Fla. 1971); parking facilities, City of Naples v. Moon, supra; downtown redevelopment, City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992); stormwater management services, Sarasota County v. Sarasota

Church of Christ, 667 So.2d 180 (Fla. 1995); and water and sewer line extensions Murphy v. City of Port St. Lucie, 666 So.2d 879 (Fla. 1995).

9. What are the Collection Methodologies?

Two fundamental methods of collecting special assessments exist: (1) the uniform collection method that uses the ad valorem tax bill and (2) the traditional collection method that uses a separate bill.

Section 403.0893(3), Florida Statutes (2001), authorizes local governments to "use the non-ad valorem levy, collection, and enforcement method as provided in Chapter 197 for collecting stormwater charges." This enforcement method incorporates by statutory definition the Florida case law criteria for the imposition of a special assessment. Section 197.3632(1)(d) Florida Statutes (2001), defines a non-ad valorem assessment as "only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in Art. X § 4, of the State Constitution." See Atlantic Gulf Communities Corp. v. City of Port St. Lucie, 764 So.2d 14 (Fla. 4th DCA 1999).

Under the Uniform Method for the Levy, collection, and enforcement of Non-Ad Valorem Assessments law, Section 197.3632, Fl. St., the Local government may elect to use this uniform method of collection regardless of when the assessment was originally imposed or whether it had previously been collected by another method. Section 197.3632.

The section 197.3632 ad valorem tax bill collection or "uniform method" is a favored method because the special assessments are

collected in the same manner as ad valorem taxes. No specific enforcement action is required by the governmental unit that imposes the assessment. This assures a high collection rate for charges on the ad valorem tax bill.

The substantive requirements of the tax bill collection method derive from the constitutional protection against the forced foreclosure sale of homesteads for debts. This method of collecting assessments uses the ad valorem tax collection process, which includes the attachment of liens against homesteads (tax certificates) and through the issuance of a tax deed, the divestiture of the delinquent taxpayer from his or her homestead. " 197.363(3) and 197.3632(8), Florida Statutes (2001).

Sections 197.363 and 197.3632, Florida Statutes (2001), authorize local governments to use the ad valorem tax bill for collecting "non-ad valorem assessments," which are defined to include assessments that may become a lien against a homestead as provided by Art. X, § 4, Florida Constitution which provides:

There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: (1) a homestead. . .

Florida Constitution, Art. X, § 4(a).

Thus, special assessments, which meet the special benefit and reasonable apportionment requirements, may be collected on the annual ad valorem tax bill.