



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

Planning Advisory Board Regular Meeting – December 10, 2008 – 8:30 a.m.

Chairman Klaas called the meeting to order and presided.

ROLL CALL ITEM 1

Present:

Richard Klaas, Chairman
James Hughes, Vice Chairman
Wafaa Assaad
David Ball
Dorothy Hirsch
Gloria Kovacs
Linda Penniman
Samuel Saad, Alternate

Absent:

Amy Taylor, School Board Rep. (non-voting)

Also Present:

Adam Benigni, Planner
Brenda Blair, Technical Writing Specialist
Mireidy Fernandez, Planner
Robert Pritt, City Attorney
Robin Singer, Planning Director
Buddy Bonollo, Police Officer
Roger Jacobsen, Code Enforcement Officer
Russell Adams, CRA Executive Director

Christopher Thornton
John Passidomo
John English
Scottie Yeager
Mary Ellen zum Felde
Jack Conroy
Gary Wasserman
Michael Delate

Hetty Christiansen
Larry Kelley
Annette Van Dongen
Jack Pickett
Antoinette Pelc
Eugene Issacs
Yoshimi Issacs
Richard Kostyra
Donna Krall
Jeffrey Curl
Bill Mallory
Beverly Worthington
William Dempsey
Lance Miller
Lindsay Thomas
Don Stevenson
Jack Sullivan

Other interested citizens and visitors.

APPROVAL OF MINUTESITEM 2

MOTION by Assaad to ***APPROVE*** the November 12, 2008, regular meeting minutes as amended (Pg. 7 - ***Assaad Hirsch***); seconded by Penniman and unanimously carried (Assaad-yes, Ball-yes, Hirsch-yes, Hughes-yes, Kovacs-yes, Penniman-yes, Klaas-yes).

CHANGES TO THE AGENDAITEM 3

Later in the proceedings, Item 9 was continued to the January meeting (see below).

.....ITEM 4

Public Hearing: Neighborhood Improvement District

Petitioner: City of Naples

Location: Citywide

Consideration of an ordinance authorizing the creation of special neighborhood improvement district as provided by Section 163.511, Florida Statutes. Upon adoption, City Council may create a special residential or business neighborhood improvement district often referred to as a Business Improvement District (BID) by the enactment of a separate ordinance for each district.

Planning Director Robin Singer noted that various documents prepared by the Community Redevelopment Agency (CRA) had been included in the meeting packet, such as a staff white paper on the subject, and a ULI (Urban Land Institute) publication dealing with BIDs had also been made available through the CRA office. (It is noted for the record that documentation referred to during these proceedings is contained in the file for this meeting in the City Clerk's Office.) CRA Executive Director Russell Adams noted that he had previously reviewed this matter in detail with the Board; and summarized the proposal as outlined in his memo dated October 23, 2008 (Attachment 1). He explained that there are approximately 1,000 BIDs nationwide and that the ULI reports a recertification rate of approximately 100% when the BID terms expire.

Member Hirsch reiterated her previously stated objection to a citywide ordinance since this issue had specifically been brought forward for the benefit of Fifth Avenue South; she also cautioned that the proposition could potentially increase property taxes and includes such powers as eminent domain. She further noted that the Fifth Avenue South Special Overlay District currently collects millions in revenue through the CRA (Community Redevelopment Agency) and is currently constructing a new parking garage which must still be paid for. She also noted that the City Manager had indicated that there are means of accomplishing the stated goals other than establishing a BID and expressed the belief that such issues should be brought forward instead to City Council and included in the City's overall budget. Member Kovacs however characterized the current proposal as simply an enabling ordinance and that it does not establish individual districts. In further discussion, Member Saad received clarification from CRA Executive Director Adams that a variety of choices exist in order to establish a BID, such as through Section 163.511, Florida Statutes. City Attorney Robert Pritt also noted that alternatives are outlined in Section 4 (Attachment 2) of the subject ordinance and clarified that the overall enabling ordinance must be enacted for individuals desiring to petition the City to establish a district. Under the alternative method, Mr. Pritt explained, the enabling ordinance would bring in other methodologies totally outside of Section 163.511, Florida Statutes, such as Council could directly adopt a BID.

Member Hughes noted that the PAB discussed this item extensively at the prior month's meeting and questioned the reasoning for tabling it and resubmitting it at the current meeting. Member Hirsch noted that Member Saad had requested that the PAB be provided with copies of the

aforementioned white paper. She further pointed out a City Council Member had spoken against the taxing of a portion of the population which may be opposed to purchasing a site such as the Renaissance Village property (formerly Grand Central Station Shopping Center). The same, she said, would apply in this instance where a portion of the residents either were opposed to or could not afford to pay additional taxes for various neighborhood improvements. Chairman Klaas however referred to a unanimous vote of property owners for landscaping, new lighting, and annual maintenance at an abutting roadway. Member Hirsch noted that, absent 100% property owner support, there were means of achieving the goal proposed in this instance. Chairman Klaas stressed that the ordinance would nevertheless be in place for use by any area of the City desiring such a district. City Attorney Pritt concurred, noting that this is a general authorizing ordinance.

Noting that the PAB had already received the white paper, Member Hughes said that Members are simply re-stating what had already been said. He also questioned the rationale for the PAB receiving this petition since it deals with land planning issues and this is a request by a small group of individuals desiring to use a particular vehicle to impose taxes on neighbors who are unwilling to participate. Member Assaad said that although he did not oppose the enabling ordinance, objections and concerns had been expressed by various downtown property owners. As an alternative, he suggested that the enabling ordinance be adopted simultaneously with a taxing district for a particular area, similar to approving a comprehensive plan amendment in conjunction with a rezone petition.

Member Hirsch proffered a motion recommending that the City Council not adopt the ordinance (see action below).

Public Input: (8:54 a.m.) None.

City Attorney Pritt noted that the only applicable clause in this instance is in Section 163.511(1), Florida Statutes: "After a local planning ordinance has been adopted authorizing the creation of special neighborhood improvement districts..." He explained that the term "local planning ordinance" is a technical term employed by the State of Florida which means that review goes to the local planning agency (PAB); the alternate provisions in Section 163.511(4) are not required to go through the local planning agency.

MOTION by Hirsch to RECOMMEND that City Council not adopt Neighborhood Improvement District; seconded by Assaad and carried 4-3 (Assaad-yes, Ball-yes, Hughes-yes, Penniman-no, Hirsch-yes, Kovacs-no, Klaas-no).

During the vote, Member Hughes criticized the proposal stating his objections on both philosophical and constitutional grounds. He said he felt that a group of merchants, unable to convince fellow merchants to pool promotional funds, had identified a scheme to tax both the majority of merchants who do not wish to participate and the various professional offices which receive no benefit from attracting visitors. Member Kovacs however took issue with Mr. Hughes referring to the proposal as a scheme; property owners and the downtown association held numerous meetings and the consensus was to determine whether this petition would go forward, she added. Chairman Klaas also maintained that he has observed similar endeavors in the past that have been successful. This item will be heard by City Council on January 14, 2009.

(Items 5-7 will be heard concurrently).....ITEM 5

Public Hearing: Comprehensive Plan Petition – 08-CPA7

Petitioner: Naples Yacht Club - Parking Lot
Location: 678 14th Ave. S.
Agent: Christopher J. Thornton, Cheffy Passidomo Wilson & Johnson, LLP
Request: An ordinance adopting a small scale map amendment to the City of Naples future land use map to change the future land use designation of a 0.3 acre property from a future land use designation of Low Density Residential to a designation of Public, Semi Public and Private Recreation and Open Space.

.....ITEM 6

Public Hearing: Rezone Petition – 08-R3

Petitioner: Naples Yacht Club - Parking Lot
Location: 678 14th Ave. S.
Agent: Christopher J. Thornton, Cheffy Passidomo Wilson & Johnson, LLP
Request: An ordinance rezoning a 0.3 acre parcel from R1-7.5 Residence District to PS Public Service District.

.....ITEM 7

Public Hearing: Conditional Use Petition – 08-CU7

Petitioner: Naples Yacht Club - Parking Lot
Location: 678 14th Ave. S.
Agent: Christopher J. Thornton, Cheffy Passidomo Wilson & Johnson, LLP
Request: Request for approval of a Conditional Use petition pursuant to Section 58-833 of the Land Development Code in order to allow the expansion of the parking lot for the Naples Yacht Club.

Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. This being a quasi-judicial proceeding, Board Members offered ex parte disclosures to the effect that each had visited or were familiar with the site; in addition, Member Penniman noted a conversation with a neighbor; Member Hughes noted a conversation with the petitioner's attorney; Member Ball noted that he frequently drives by the site and had also had contact with the petitioner and neighbors; Member Hirsch noted a conversation with the petitioner's agent and neighbors; and Member Saad noted a conversation with the petitioner's agent. Planning Director Robin Singer reviewed the request as outlined in the three petitions described above. (It is noted for the record that a printed copy of the electronic presentation made in conjunction with this item and other materials referred to during the discussion are contained in the file for this meeting in the City Clerk's Office.)

Attorney Christopher Thornton explained that the Yacht Club had been in existence for many years and had been a good neighbor to the surrounding area. The proposed parking lot expansion includes the conversion of some existing asphalt parking to grass surface which will be the case with all of the new spaces in order to improve stormwater filtration. In anticipation of surrounding neighbors' concerns, he said, all lighting will be low-level bollards and landscaping has been designed so as not to be intrusive to surrounding properties. Attorney Thornton further assured the Board that there would be no changes in current Yacht Club operations and no new vertical improvements are proposed since the additional proposed parking will accommodate special events, the Club having undergone remodeling over the past few years. He then displayed photographs of the subject property and proposed parking lot adjacent to single family residences. He explained that plans were provided to some of the surrounding property owners and noted that various adjacent residents had expressed no objection to the proposal.

Engineer Michael Delate, also representing the petitioner, reiterated the intent of the proposal as enhancing the ability to retain stormwater runoff through replacing some of the impervious parking with turf and installing new turf parking. This will result in an overall decrease in impervious surface by 1/10-acre. The proposed stormwater management system includes the following: trench drains utilizing perforated pipe; open-air dry retention areas; re-grading of some of the existing paved parking spaces in order to collect stormwater runoff; and stormwater collection and treatment on site prior to discharge into the City's system. Additionally, Mr. Delate confirmed that the project exceeds the City's water quality requirements.

Jeffrey Curl, the petitioner's landscape architect, explained that planting in detention areas simulates the rain garden adjacent to City Council Chamber but will be partially obscured by trees. The landscape buffer consists primarily of native plant species, trees, ground cover, and hedge, which will extend westward and along the waterway for continuity. Paver stripes will border each parking space for exiting vehicles. Lighting, he said, is low intensity and hidden by the hedge within the landscape buffer, drawings of which he displayed from the perspectives of the subject property, the canal, and 14th Street South. In response to Member Assaad, Mr. Curl clarified that the hedge surrounding the property is four feet in height; vehicle heights vary and SUV's (Sport Utility Vehicles) are approximately 5-1/2 feet in height, he added.

Attorney Thornton then directed the Board's attention to aerial photographs of projects approved in 2004 and 2005 for Trinity-by-the-Cove Episcopal Church and First Presbyterian Church where the land had been converted from residential use and grass parking installed via the conditional use petition process. He explained that the First Presbyterian parking lot is similar to the one being proposed by the Yacht Club. He reiterated that the petitioner had designed a grass parking lot that will improve stormwater management and respect neighborhood concerns; the hedge not only shields the parking lot from view, but shields headlights within the parking lot. Attorney Thornton also pointed out that the proposal actually opens residential views to the north, and the hedge to the west will be maintained at a height so as not to block neighbors' views while still shielding the parking lot.

Commodore Bill Mallory explained that the Yacht Club has 625 members and has been at the same location for 48 years; in consideration for neighboring properties, the redesign of the existing parking lot and installation of the new parking lot will be a green area. The Club takes pride in its facility, he said, and the new parking lot has been designed to be both attractive and non-intrusive. He therefore requested that the PAB forward a recommendation of approval to City Council.

Planning Director Robin Singer noted that staff had, during initial discussions, expressed reservations about the appropriateness of a parking lot across from single family zoning; the compelling reason, however for staff to change its position is the proposal for grass parking with landscaping and subsequent maintenance. The intent is to control overflow parking which would have less of an impact on the residential neighborhood than the proposed lot. She also noted that existing curb cuts will be utilized. In its recommendation for approval, she said, staff suggests that the petitioner be required to develop the site substantially in accordance with the drawings and plans submitted as part of the petition package. She further noted that staff had numerous conversations with residents and noted letters from residents in the meeting packet and additional letters distributed that day. She also noted that an individual registering a preference by

telephone subsequently submitted a letter; a neighbor immediately to the west initially submitted a letter but followed with a telephone call expressing concern that the trees might obstruct their view of the waterway while expressing overall preference for this use of the property over the potential for another single family home on the site.

Public Input: (9:24 a.m.) **Donna Krall, representing Port Royal Property Association**, noted that Trinity-by-the-Cove Episcopal Church is in Port Royal and the additional parking lot at Trinity did not become an issue nor did it lower property values. It is well maintained and neighbor views are preserved. She indicated that she had visited the site and reviewed the plans and complimented the use of grass parking; and noted that the association supports the request. **Eugene Isaacs, 686 15th Avenue South**, recommended that the area be maintained as residential since he said he felt it was unnecessary to expand the parking lot. **Jack Pickett, 500 17th Avenue South**, said he was opposed to the request since this is a residential area. He further expressed the view that the Yacht Club had not moved forward with the parking lot when it purchased the property approximately 10 years before because the addition to the facility itself had not yet been completed. **Antoinette Pelc, 650 15th Avenue South**, concurred with those who had previously spoken in opposition to the petition expressing the hope that the neighborhood could remain without intrusion of commercial into residential. She urged the Board to reject the request. **Annette van Dongen, 655 16th Avenue South**, expressed concern that if one residential lot is rezoned it will set a precedent for such rezoning in the future. **Gary Wasserman, 691 15th Avenue South**, noted that his property is most impacted since it faces the parking lot. He said he had been attracted to the area in part because of the Yacht Club and complimented the recent addition; however, he had expressed concern to the Yacht Club that the parking lot was unkempt. He said that he had therefore requested an attractive landscape buffer along the canal; however, he was informed that such an installation was not required under the City's ordinances. The Yacht Club Commodore had further noted that it was impossible to install a buffer because it would obscure the harbormaster's view of boats moored along the canal and present a safety hazard for boaters boarding/disembarking. Mr. Wasserman said, but indicating that he disagreed with that assessment of the situation. He also said that he considered the current lighting to be harsh, and noted that there have been frequent fuel spills with no attempt at cleaning them up, further citing noise associated with deliveries and vessels at all hours of the night with no regard for the intrusion upon the neighborhood. In conclusion, he expressed doubt for the need of additional parking since relatively few cars are present on any given day; otherwise, valet service could be used for special events. **Hetty Christiansen, Naples resident**, noted that she is a member of the Yacht Club and said she supported the request. **Larry Kelley, Naples resident**, noted that he is a member of the Yacht Club and requested that the Board approve the request. **Jack Conroy, 636 15th Avenue South**, said he felt that the introduction of commercial uses into any residential area is offensive. **Mary Ellen zum Felde, 635 15th Avenue South**, noted that she had been an Aqualane Shores Association board member when the Yacht Club purchased the lot in question and had subsequently inquired as to the intended use. The Yacht Club's response had been that the harbormaster needed a place to reside, she said; however, Aqualane Shores had expressed its objection at that time. She also noted that she is a realtor and the house east of her property was recently sold; the new owner made a considerable investment in remodeling and had expressed the view that he would not have purchased the property had he known there would be a parking lot across the channel. In summary, Ms. zum Felde pointed out that changing residential zoning to some other use changes the character of the neighborhood and impacts property values. **Scottie Yeager, 684 15th Avenue South**, stated that

her property is approximately 200 feet south of the subject property; she also said that approximately 22 residents in Aqualane Shores in close proximity are opposed to the rezone and change of use. Referring to photographs of the north side of the canal along 15th Avenue South and westward to the subject parking lot, she explained that the Yacht Club is surrounded exclusively by residential property and any non-residential rezoning or use is incompatible and intrusive to the quiet enjoyment of one's property. The letters, emails, and photographs have been submitted in order to show current and possible future impacts on neighbors living on the north side of 15th Avenue South, Ms. Yeager said, and also noted that property values would decline making it difficult to sell in close proximity to the Yacht Club. The issue however is preventing intrusion into residences and investments, she said, urging denial of all three petitions.

Attorney Thornton noted that the same presentation had been made to the Aqualane Shores Association Board of Directors, and further expressed the belief that the proposal is not commercial and would not negatively impact the neighborhood since it has successfully been done on two prior occasions (Trinity-by-the-Cove Episcopal and First Presbyterian Churches). He further noted that the existing hedge was not present in Ms. Yeager's photographs, but installed following the request for additional landscaping by Mr. Wasserman at a Design Review Board meeting during review of the Yacht Club expansion, noting that the hedge had not yet fully matured.

In response to Member Penniman, City Attorney Robert Pritt explained that, generally, individuals do not have a right to a view; an exception is the right to a view of the closest channel from property located on the water, but individuals are not entitled to a view across someone else's property to the water. Attorney Thornton clarified that the Yacht Club had in fact not made any commitment to maintain the single family home on the subject lot in perpetuity. He also confirmed that the Yacht Club currently meets the Code requirement for parking, the need being additional parking during special events. He also noted that the yacht club had considered selling the lot, but instead decided to utilize it for parking without negatively impacting the neighborhood. Member Assaad suggested instead limiting the number of invitees to a special event; although the parking lot is well designed, he said he felt that the expansion into the residential area is an intrusion. Single family zoning is most important and should be guarded; and therefore he said he would not support the request.

Member Hirsch suggested that staff investigate the comments concerning fuel spills and lighting. She complimented the design with the exception of the existing parking lot which should be entirely pervious, she said, and expressed concern that this could set a pattern for the future conversion of residential into commercial, such as the aforementioned churches. She also suggested that the petitioner consider renting parking spaces and utilizing a valet service or vans to transport patrons if the expansion is for the occasional special event. The Yacht Club has been in existence for many years, she further noted, and should not have planned to expand beyond known limitations. This expansion will be a nuisance, create noise, and increase traffic, and represents spot zoning, and is something that she would not support.

MOTION by Penniman to RECOMMEND that City Council not adopt Comprehensive Plan Petition – 08-CPA7; seconded by Hirsch and unanimously carried (Ball-yes, Hughes-yes, Kovacs-yes, Penniman-yes, Hirsch-yes, Assaad-yes, Klaas-yes).

During the vote, Member Ball said he opposed non-residential encroachment into residential areas. Member Hughes concurred with previous statements that this is an intrusion although a good case has been made for the intrusion.

MOTION by Penniman to DENY Rezone Petition – 08-R3; seconded by Hirsch and unanimously carried (Hirsch-yes, Penniman-yes, Hughes-yes, Ball-yes, Kovacs-yes, Assaad-yes, Klaas-yes).

MOTION by Penniman to DENY Conditional Use Petition – 08-CU7; seconded by Hirsch and unanimously carried (Ball-yes, Hughes-yes, Penniman-yes, Hirsch-yes, Assaad-yes, Kovacs-yes, Klaas-yes).

Chairman Klaas suggested that the petitioner contact residents in the vicinity of Trinity-by-the-Cove Episcopal Church to determine whether they are still opposed to the zoning change to construct a parking lot. Director Singer noted that these items would be heard by City Council in the spring.

.....ITEM 8

Public Hearing: Nonconformity Petition – 08-N1

Petitioner: Seapoint at Naples Cay Condominium Association, Inc.

Agent: John M. Passidomo and Francesca Passeri

Location: 10 Seagate Drive

Request: Request approval of a nonconformity petition in order to extend the lobby level parking deck even with the nonconforming lower level parking deck to allow for construction of a multipurpose room, exercise room and parking for Seapoint at Naples Cay, located at 10 Seagate Drive.

Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. This being a quasi-judicial proceeding, Board Members offered ex parte disclosures to the effect that they each had no contact. Planner Adam Benigni reviewed the petition described above and noted that staff recommends approval. (It is noted for the record that a printed copy of the electronic presentation made in conjunction with this item is contained in the file for this meeting in the City Clerk’s Office.)

Petitioner's attorney William Dempsey displayed an aerial photograph of the subject and surrounding properties and explained that the property was part of a large land area annexed in 1989 with existing improvements that did not conform with the underlying zoning district (R3-12 Residence District) for reasons that are still unclear. He then reviewed images of the proposed changes which include the relocation of certain garage spaces, construction of a new multi-purpose room, exercise studio, and porte cochere. These improvements are in an area that is currently nonconforming and the nonconformity is being expanded vertically only on the north side of the building. The distance between the subject building and the nearest residences to the south is approximately 300 feet. Planner Benigni stated that staff concurs with the petitioner's analysis; the nearest neighbors to the south are approximately 260 feet, to the east approximately 475 feet, and further to the east approximately 860 feet. Staff recommends approval since the petitioner has met all the conditions for a nonconformity petition, Mr. Benigni concluded.

Public Input: (10:10 a.m.) **Beverly Worthington, 10 Seagate Drive**, stated that the residents appreciate consideration and requested that the petition be approved. **Richard Kostyra, 10 Seagate Drive**, association president, stated that this is a major assessment for 28 residents, 24 of which voted in favor and one abstention, which is a powerful motivation by the owners to

proceed; and thanked the PAB for its consideration. Chairman Klaas noted for the record that 196 letters were sent to surrounding property owners and no opposition responses had been received.

MOTION by Hughes to APPROVE Nonconformity Petition – 08-N1; seconded by Penniman and unanimously carried (Kovacs-yes, Assaad-yes, Hirsch-yes, Hughes-yes, Ball-yes, Penniman-yes, Klaas-yes).

This item will be heard by City Council on January 14, 2009.

Recess: 10:13 a.m. – 10:28 a.m. It is noted for the record that the same members were present when the meeting reconvened.

(Items 10-12 will be heard concurrently).....ITEM 10

Public Hearing: Conditional Use Petition – 08-CU10

**Petitioner: Hamilton Harbor Marina
Agent: John M. Passidomo, Cheffy Passidomo Wilson & Johnson, LLP
Location: 7077 Hamilton Avenue
Request: Request approval of a conditional use to allow for live entertainment outdoors on the premises, pursuant to the Hamilton Harbor Planned Development document.**

.....ITEM 11

Public Hearing: Live Entertainment Petition – 08-LE13

**Petitioner: Hamilton Harbor Marina
Agent: John M. Passidomo, Cheffy Passidomo Wilson & Johnson, LLP
Location: 7077 Hamilton Avenue
Request: Request approval of a live entertainment permit for outdoor entertainment at Hamilton Harbor, pursuant to the Hamilton Harbor Planned Development document.**

.....ITEM 12

Public Hearing: Residential Impact Statement Petition – 08-RIS17

**Petitioner: Hamilton Harbor Marina
Agent: John M. Passidomo, Cheffy Passidomo Wilson & Johnson, LLP
Location: 7077 Hamilton Avenue
Request: Request approval of a residential impact statement to allow for live entertainment outdoors at Hamilton Harbor, pursuant to the Hamilton Harbor Planned Development document.**

Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. This being a quasi-judicial proceeding, Board Members offered ex parte disclosures to the effect that each had visited or were familiar with the site from prior visits. In addition, Member Penniman noted a conversation with a neighbor; Member Hughes noted a conversation with the petitioner's attorney and with several neighbors; and Members Kovacs, Ball, Hirsch, and Saad noted conversations with the petitioner's agent. Planner Mireidy Fernandez reviewed the petitions described above and noted that staff finds that the request is compatible with the current live entertainment and conditional use criteria and recommends approval. She also noted distribution that day of two letters of opposition and three letters of support; the PAB approved a request for indoor live entertainment at the October meeting, she added.

Attorney John Passidomo, representing the petitioner, explained that the proposal is for background dining music. Live entertainment permits are non-transferrable and subject to annual review by City Council, City noise ordinance limitations, and revocation upon violation. The Code does not require a live entertainment permit for piping amplified music outdoors, which is currently being done, but it does require a permit for live entertainers. He also noted on an aerial

photograph the nearest neighbors to the north, east, and west which, he noted, had all been contacted in this regard. Attorney Passidomo explained that Stanley Consultants, Inc., certified to perform preliminary sound tests at the Grand Opening Event, had been engaged to conduct the preliminary test; Code Enforcement Officer Roger Jacobsen, Police Officer Buddy Bonollo, and surrounding neighbors were all informed that this was to occur. A subsequent test was performed last Friday evening, which the consultant then reviewed with the Board as outlined in the correspondence from Stanley dated December 8, 2008 (Attachment 3); this was also provided to the Police Department, Code Enforcement, and Planning Departments. He also noted letters of no objection from surrounding property owners (copies of which are contained in the file for this meeting in the City Clerk's Office). Planner Fernandez said that this item will be heard by City Council on January 14, 2009.

Public Input: (10:42 a.m.) **Donna Krall, a Port Royal resident**, representing the Port Royal Property Association, stated that she observed the sound test Friday evening from a vacant lot across from the Hamilton Harbor Yacht Club and that she heard no sound. She further noted that Jack Sullivan, Yacht Club general manager, agreed to work with residents if there were any issues and said she felt that the Club intends to be considerate of its neighbors. She also suggested that PAB Members consider observing sound from surrounding properties when considering future live entertainment permits. She clarified for Member Ball that she had not observed the sound test during the grand opening.

Planner Fernandez noted that Police Officer Buddy Bonollo and Code Enforcement Officer Roger Jacobsen were available to answer questions. Planning Director Robin Singer stated that noise readings were included in the report. Police Officer Bonollo reported that he observed the noise readings on both November 18 and December 5, and reported no problems. Code Enforcement Officer Jacobsen explained that he had also set up the City's sound equipment next to Stanley's and that his measurements were within one decibel on every test area on both days. He also noted that he had performed ambient noise tests the week before the grand opening, the week of the event, as well as a night reading, and in every instance, the City's sound equipment registered below the maximum decibel level allowed by Code.

In response to Member Hirsch, Mr. Jacobsen explained that during one of his daytime tests the reading was over 60 decibels, however, landscape personnel were working in the area and a power washer was in use; he also observed speed boats passing by. He explained that in most instances only an officer responds without a sound meter which normally results in a request to turn down the music, which is on the record. He further clarified that code enforcement and police officers are in constant contact with the Planning Department in this regard, and if continuous complaints are received, Planning would be notified. Planning Director Singer noted the process dealing with complaints, which would ultimately go to the City Council for permit revocation. Mr. Jacobsen further clarified that the goal with a noise complaint as with any issue is compliance. Ms. Singer noted that in order to issue a Notice of Violation, an infraction must be proven by taking noise readings when the music is both on and off. Police Officer Bonollo confirmed for City Attorney Pritt that the City's sound meters are calibrated annually and a number of police officers are trained to use the equipment. Chairman Klaas reiterated that there is a revocation process for violations, and Police Officer Bonollo confirmed that officers always respond in person for noise complaints.

Member Penniman questioned why the PAB is reviewing this live entertainment if piped outdoor music is acceptable without a permit. Planning Director Singer explained that City Council requested that staff review the live entertainment process, which will be presented to Council in January, and will include recommended changes to the noise ordinance and live entertainment process in order to clarify the compliance process.

MOTION by Ball to APPROVE Conditional Use Petition – 08-CU10; seconded by Hughes and carried 6-1 (Ball-yes, Hughes-yes, Penniman-yes, Kovacs-yes, Hirsch-no, Assaad-yes, Klaas-yes).

During the vote, Member Penniman concurred with the request since it is for one year and since there are regulations in place to address complaints. Member Hirsch however spoke against allowing live entertainment in what she characterized as a pristine area.

MOTION by Ball to APPROVE Live Entertainment Petition – 08-LE13; seconded by Hughes and carried 6-1 (Hughes-yes, Penniman-yes, Assaad-yes, Ball-yes, Hirsch-no, Kovacs-yes, Klaas-yes).

MOTION by Ball to APPROVE Residential Impact Statement Petition – 08-RIS17; seconded by Hughes and carried 6-1 (Penniman-yes, Assaad-yes, Ball-yes, Kovacs-yes, Hirsch-no, Hughes-yes, Klaas-yes).

These items will be heard by City Council on January 14, 2009.

.....ITEM 13

Public Hearing: Subdivision Plat Petition – 08-SDP3

Petitioner: Estuary at Grey Oaks
Agent: John C. English, P.E., Wilson Miller
Location: 1252 and 1260 Gordon River Trail
Request: Request for approval of a Subdivision Plat per Section 54-31 of the Land Development Code providing the replat of Lots 7, 8 and 9 of Estuary at Grey Oaks, Tract “A”, Plat Book 43, Pages 6-11, Collier County Florida, in order to allow a portion of Lot 8 to be joined with Lot 9 and the remaining portion of Lot 8 to be joined with Lot 7 for properties located at 1252 and 1260 Gordon River Trail.

Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. This being a quasi-judicial proceeding, Board Members offered ex parte disclosures to the effect that each had had no contact, except Member Saad, who indicated that he frequently visits the Estuary at Grey Oaks. Planning Director Robin Singer explained that the petitioner is converging three lots into two resulting in a reduction in density; staff recommends approval since it is consistent with the Comprehensive Plan and current zoning. (It is noted for the record that copies of documents pertaining to this item are contained in the file for this meeting in the City Clerk's Office.)

Petitioner's engineer John English explained that the request is to allow a portion of Lot 8 to be joined with Lot 9 and the remaining portion of Lot 8 to be joined with Lot 7, which he reviewed on the survey displayed, noting that all infrastructure is available and has the capacity to service these two lots.

Planning Director Singer noted that Traffic Engineer George Archibald recommends approval concurrently of both the preliminary and final plat as outlined in his memo contained in the meeting packet. Planning staff also recommends approval, Ms. Singer noted.

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

MOTION by Penniman to APPROVE Subdivision Plat Petition – 08-SDP3; seconded by Kovacs and unanimously carried (Ball-yes, Penniman-yes, Kovacs-yes, Hughes-yes, Assaad-yes, Hirsch-yes, Klaas-yes).

This item will be heard by City Council on January 14, 2009.

Member Hughes noted that gas stations along US 41 are becoming unsightly with many vehicles parked on their property with "for sale" signs. Planning Director Robin Singer noted that this is a prohibition of use issue and that she would contact Code Enforcement in this regard.

CONTINUEDITEM 9

Public Hearing: Variance Petition – 08-V8

Petitioner: Lizabeth Becton

Agent: John D. Remington

Location: 76 13th Avenue South

Request: Request for approval of a variance from Section 56-146 of the Land Development Code which requires a 35 foot front yard setback in order to allow two porches that extend 5' beyond the setback, two stairways that extend approximately 7' and portions of two window seats that extend approximately 4.3' for a proposed single-family residential property to be located at 76 13th Avenue South.

Planning Director Robin Singer noted that the petitioner requested a continuance to the January meeting.

MOTION by Hughes to CONTINUE Variance Petition – 08-V8 to the January meeting; seconded by Assaad and carried without objection (all present).

CALENDAR 2009ITEM 14

Planning Director Robin Singer noted that City Council is in recess during the month of July and questioned whether the Board desired to cancel one of the summer meetings. Following a brief discussion, the PAB decided to cancel the August meeting (see motion below).

MOTION by Penniman to CANCEL the August 2009, PAB meeting; seconded by Assaad and unanimously carried, all members present and voting (Assaad-yes, Ball-yes, Hirsch-yes, Hughes-yes, Kovacs-yes, Penniman-yes, Klaas-yes).

CORRESPONDENCE AND COMMUNICATIONITEM 15

None.

ADJOURNMENT

11:08 a.m.

Richard Klaas, Chairman

Robin Singer, Planning Director

Minutes Prepared By:

Brenda A. Blair, Technical Writing Specialist

Minutes Approved: January 21, 2009



Memo *Community Redevelopment Agency*

TO: Planning Advisory Board
VIA: Russell Adams, CRA Director and Robin Singer, Planning Director
FROM: Lee Willer-Spector, Senior Administrative Specialist for the CRA
DATE: October 23, 2008
SUBJECT: Business Improvement District Ordinance

The proposed ordinance brought before the PAB lays the groundwork enabling the creation of business neighborhood improvement districts in the City of Naples. A business improvement district, also known as a BID, is composed of property owners, who agree by referendum, to participate in a special district. The purpose of the special district is to voluntarily authorize an assessment or to levy a tax on their private properties, the proceeds of which are used to improve the district.

This action originated at the request of local business owners on 5th Avenue South. Their intention is to organize as one voice and to use the proceeds from the special district primarily for promoting the businesses in the BID. The Naples City Council vetted the concept at a recent workshop and, after hearing from the businesses involved, has authorized the preparation of this ordinance for the creation of special districts.

The proposed ordinance, in order to be compliant with Florida Statutes, is to be reviewed by the Planning Advisory Board in a public hearing, whose recommendation is sought before its presentation to City Council for adoption. Staff recommends approval of the ordinance.

Section 2. A referendum to implement a special neighborhood or business neighborhood improvement district as provided in Section 1. shall be held within 20 days after the occurrence of one of the following:

- a. The City Council, by the enactment of a separate ordinance, declares that there is a need for a special neighborhood or business neighborhood improvement district to function within a proposed area; or
- b. A petition containing the signatures of 40% of the electors of a proposed special neighborhood improvement district area or 20% of the property owners of a proposed special business neighborhood improvement district area is presented to City Council. The petition shall define the proposed area and shall state that it is for the purpose of calling a referendum to determine whether a special neighborhood or business neighborhood improvement district should be created in such proposed area.

Section 3. A referendum to implement a special neighborhood or business neighborhood improvement district as provided in Section 1. shall be in accordance with Section 163.511 Florida Statutes.

Section 4. Alternatively, the Council may implement the purposes of this ordinance by adoption of one or more ordinances establishing one or more of such districts and taxing or specially assessing those to be benefited in the district; in any manner Council deems necessary and advisable under the City's Home Rule powers under Article VIII, Section 2(b) of the Florida Constitution or Chapters 165 and 166, Florida Statutes; under authority of Chapters 170 and 197 of the Florida Statutes, or under any other applicable provision general law; or under the Naples City Charter and any applicable ordinance adopted to the Charter. Prior to imposition of any ad valorem tax for a district, a referendum shall be held in accordance with the provisions of the Florida Constitution and general law.

Section 5. This ordinance shall take effect immediately upon



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Attachment 3
PAB Meeting
12-10-08 / Page 1 of 4

December 8, 2008

John R. (Jack) Sullivan, CCM
Vice President of Club Operations
Hamilton Harbor Yacht Club
7065 Fern Street
Naples, FL 34112

Dear Mr. Sullivan:

**Subject: Letter of Data Collection Results
Hamilton Harbor Yacht Club Noise Study
Naples, Florida**

This Study was conducted by Stanley Consultants, Inc. for Hamilton Harbor Yacht Club to provide sound measurements to be used for compatibility and compliance purposes with the City of Naples Code of Ordinances for an outdoor live entertainment permit application. The sound tests and measurements were intended by Hamilton Harbor to:

1. Confirm that the proposed music sound levels generated at Hamilton Harbor clubhouse do not exceed 50 dBA at the nearest residential property line (the Lowe residence); and
2. Establish an on-site equivalent dBA sound level measurement at the Clubhouse for the measurement taken at the nearest residential property line. This is so Hamilton Harbor can monitor and control sound levels on an ongoing basis with regular on-site sound measurements.

Methodology

All measurements were taken between 6 p.m. and 7:45 p.m. on the night of Friday, December 5, 2008. Weather conditions on this night were favorable for data collection with winds measured at 1.9 mph and a temperature of 68 degrees F. There was very little boat traffic (and related ambient noise) in the adjacent waterway during the testing and conditions were otherwise quiet at the respective residential properties. Master Officer Kent Bonollo of the Naples Police Department was present for the initial sound measurements. Sound level data was collected in decibels (dBA) for a period of five minutes at all receivers to produce an average sound level over each 5-minute interval. On at least one occasion, a 5-minute measurement was halted to allow for an airplane to pass overhead so that the related noise did not affect the sound reading.

A Quest 2900 Sound Level Meter (SLM) was used to collect sound level data. The SLM calibration was verified on December 5, 2008. Sound data was collected at the following



receivers as recorded music was being played at the Hamilton Harbor Yacht Club (See Figure 1):

1. Property Address: 1701 Bay Street, Naples, FL, 34112 (Lowe's residence)
2. Hamilton Harbor Clubhouse (measurement taken approximately 30 feet from the sound system speakers)
3. Property Address: 1076 Nelson's Walk, Naples, FL, 34103 (measurement taken from adjacent Gordon River waterway, approximately 30' East of the shoreline)
4. Property Address: 1854 Danford Street, Naples, FL, 34112 (measurement taken from vacant lot immediately to the West of Tuzzeo residence)
5. Property Address: 1540 Gulfstar Drive South, Naples, FL, 34112 (Goebel's residence)

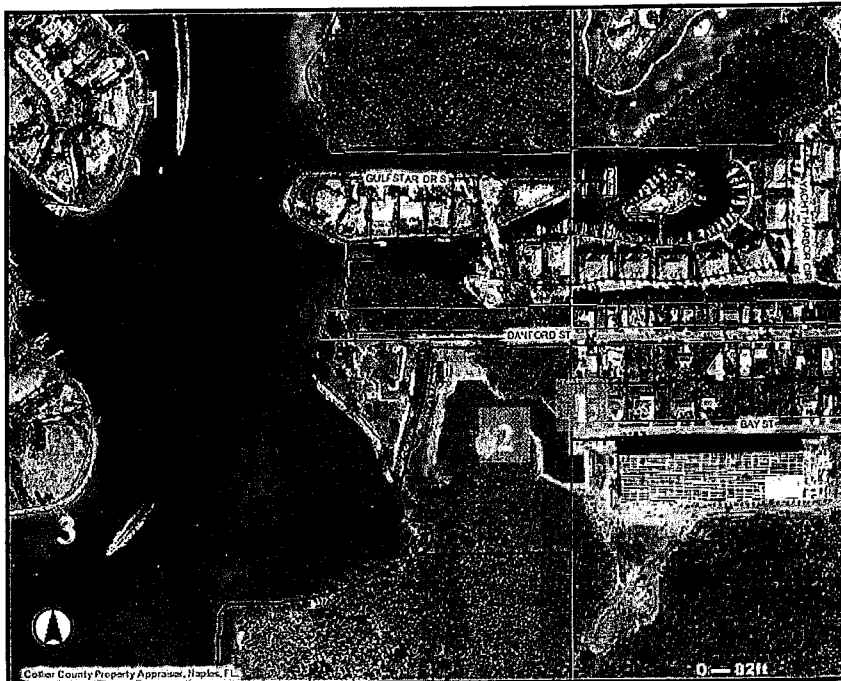


Figure 1. Aerial map showing the location of the receivers relative to the Hamilton Harbor Yacht Club. Hamilton Harbor property highlighted in yellow.



The initial sound measurement at the Lowe's residence (#1 in Figure 1) was intended to establish that the sound level at that location (which is the nearest residential property to the Clubhouse) did not exceed 50 dBA. The second sound measurement was taken to establish the corresponding sound level from a point approximately 30 feet from the sound source to establish the on-site equivalent sound level at the Clubhouse (#2 in Figure 1).

The sound measurements for locations 1, 4, and 5 (which are located generally North and East of the Clubhouse) were taken with the sound system located on the Eastern side of the Clubhouse and with the speakers pointed in the general direction of the respective properties. The sound measurement for location 3 (which is located West of the Clubhouse) was taken with the sound system located on the Western side of the Clubhouse building and with the speakers pointed to the West.

Results of Data Collection

Table 1 below contains the results of the data collection performed for this study.

Table 1. Results of data collection for the Hamilton Harbor Yacht Club Noise Study.

Receiver #	Address	Sound Measurement (dBA) (5 minute average)	Receiver Type
1	1701 Bay Street	46.1	Residential
2	Approximately 30' from sound system speakers	60.4	Private Clubhouse
3	1076 Nelson's Walk	39.2	Residential
4	1854 Danford Street	45.7	Residential
5	1540 Gulfstar Drive South	42.5	Residential

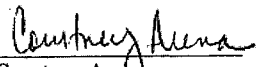
The sound levels at the residences (locations 1, 3, 4, and 5) correspond to an "on-site" sound level of 60.4 dBA at a point approximately 30 ft from the sound source. The on-site measurement will allow Hamilton Harbor to monitor the level of sound being transmitted offsite on an ongoing basis using an SLM. Although recorded music was used in this instance, there should not be a difference between recorded music played at a particular dBA level and "live" music played at the same level when channeled through speakers.

If you have any questions regarding the data presented in this letter, please call Courtney Arena at 561-712-2256.



Sincerely,

Stanley Consultants Inc.



Courtney Areha
Environmental Scientist & Noise Specialist