



*City of Naples*

-SUBJECT-	Ord. No.	Res. No.	Page
<u>ANNOUNCEMENTS:</u>			
-MAYOR BILLY - reminded speakers to file their speaker registration forms with the Deputy Clerk			1
- appointed Fire Chief Ijams as Sergeant-at-Arms for this meeting			1
- noted that he would move Agenda Item 18 up, to be heard immediately after Agenda Item 11			2&6
CITY MANAGER JONES - noted that all spaces at the City Dock were fully leased at this time			1
- stated that the electrical problems at the City Dock were in the process of being repaired			1
<u>APPROVAL OF MINUTES</u> - 09/26/84, Special Meeting 10/03/84, Regular Meeting			1
<u>RESOLUTIONS</u>			
-Approve authorizing ICMA for retirement trust		84-4571	1&2
-Approve Dredging permit DR84-6, 933 18th Av So, Richard Morris		84-4577	2&3
-Express appreciation to Jakob's Enterprises for paving blocks - Pier		84-4578	3
-Appt. Willie Anthony & Joan Vega to Parks & Rec Advisory Board		84-4579	3
-Approve Spec. Ex. Pet. 84-S11 - Blackhawk Computer School		84-4580	4
-Approve Var. Pet. 84-V17 & Spec. Ex. Pet. 84-S12 - In-town Mini-Warehouse		84-4581	4
-DENY Var. Pet. 84-V15 - 10' wall in front yard setback, 214 8th Av So, Dr. Grant Palmer		84-___	4&5
-Approve Var. Pet. 84-V16 - pool deck in rear yard setback, 1550 Mullet Lane, Joshua Foss		84-4582	5
-Approve Street Vac. Pet. 84-SV1 & Alley Vac. Pet. 84-AV1 - Naples Community Hospital, 4th Av No & US 41		84-4583	5
-Approve request to Dept. Natural Resources, Div. Marine Resources - No Wake signs in Naples Bay		84-4584	6
-DENY temporary use permit - motorhome parking, 3115 Gulf Shore Blvd No., Bruce Hayhoe		84-___	7
-Auth. retaining Peter J. Hurtgen - labor relations attorney		84-4585	7
-Approve execution of agreements w/golf courses - use of reclaimed irrigation water		84-4586	8
<u>PURCHASING</u>			
-Award Bid - annual requirements, concrete curbs & gutters		84-4572	2
-Award bid - annual requirements, drainage materials		84-4573	2
-Award bid - annual requirements, water meters		84-4574	2
-Award bid - concrete slab, Equipment Maintenance		84-4575	2
-Award bid - vacuum filter pump		84-4576	2
<u>ORDINANCES - First Reading</u>			
-Approve Rezone Pet. 84-R6 - Naples Church of God to "PS"	84-___		3
-Approve amending Schedule of License Taxes, increase	84-___		6
<u>DISCUSSION</u>			
-Upcoming referendum re four year term for mayor			6
-Alternative configurations - connection of Seagate Drive to Crayton Road			7&8
-Possible ordinance re hours of operation for businesses selling alcoholic beverages			8&9

City Council Chambers  
735 Eighth Street South  
Naples, Florida 33940



Time 9:08 a.m.

Date October 17, 1984

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	
<p><u>ROLL CALL:</u> Present: Stanley R. Billick <u>ITEM 2</u> Mayor</p> <p>R. B. Anderson William E. Barnett William F. Bledsoe Lyle S. Richardson Wade H. Schroeder Kenneth A. Wood Councilmen</p> <p>Also present: Franklin C. Jones, City Manager John McCord, City Engineer Chris Holley, Parks &amp; Recreation Director Gerry GronVold, Utilities Engineer Norris Ijams, Fire Chief Bill Hanley, Finance Director Mark Wiltsie, Assistant to the City Manager Steve Cramer, Chief Planner Roger Barry, Community Development Director Ellen Marshall Weigand, Deputy Clerk Stewart Unangst, Purchasing Agent</p> <p>See Supplemental Attendance list - Attachment #1</p> <p><u>INVOCATION:</u> Reverend Lawrence Bennett <u>ITEM 1</u> First Assembly of God Church</p> <p>*** ***</p> <p><u>ANNOUNCEMENTS:</u> <u>ITEM 3</u></p> <p><u>Mayor Billick</u> - reminded those who wished <u>ITEM 3-a</u> to speak should turn their completed registration forms in to the clerk.</p> <p>- noted that Fire Chief Ijams would act in the capacity of Sergeant-at-Arms for this meeting.</p> <p><u>City Manager Jones</u> - noted that there was <u>ITEM 3-b</u> 100% occupancy at the City Dock at this time.</p> <p>- reported that the City had received an estimate of \$3,000 to correct the electrical problem at the Dock.</p> <p>*** ***</p> <p>-----CONSENT AGENDA-----</p> <p><u>APPROVAL OF MINUTES</u> - Special Meeting, 09/26/84 <u>ITEM 4</u> Regular Meeting, 10/30/84</p> <p>*** ***</p> <p><u>RESOLUTION 84-4571</u> <u>ITEM 5</u></p> <p>A RESOLUTION ADOPTING THE DECLARATION OF TRUST FOR THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT TRUST; AUTHORIZING EXECUTION THEREOF; APPOINT A COORDINATOR RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title not read.</p>					

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COUNCIL MEMBERS	MOTIONS	VOTE		ABSENT
		YES	NO	
<u>CONSENT AGENDA (Cont)</u>				
<u>PURCHASING</u> <span style="float:right"><u>ITEM 6</u></span>				
--- <u>RESOLUTION 84-4572</u> <span style="float:right"><u>ITEM 6-a</u></span>				
A RESOLUTION AWARDDING THE BID FOR THE CITY'S ANNUAL REQUIREMENTS FOR CONCRETE CURB AND GUTTER INSTALLATION; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER THEREFOR; AND PROVIDING AN EFFECTIVE DATE.				
Title not read.				
--- <u>RESOLUTION 84-4573</u> <span style="float:right"><u>ITEM 6-b</u></span>				
A RESOLUTION AWARDDING BIDS FOR THE CITY'S ANNUAL REQUIREMENTS FOR DRAINAGE MATERIALS; AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.				
Title not read.				
--- <u>RESOLUTION 84-4574</u> <span style="float:right"><u>ITEM 6-c</u></span>				
A RESOLUTION AWARDDING THE BIDS FOR THE CITY'S ANNUAL REQUIREMENTS FOR WATER METERS; AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.				
Title not read.				
--- <u>RESOLUTION 84-4575</u> <span style="float:right"><u>ITEM 6-d</u></span>				
A RESOLUTION AWARDDING THE BID FOR THE INSTALLATION OF A CONCRETE SLAB AT THE CITY'S EQUIPMENT MANAGEMENT GARAGE AREA; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER THEREFOR; AND PROVIDING AN EFFECTIVE DATE.				
Title not read.				
--- <u>RESOLUTION 84-4576</u> <span style="float:right"><u>ITEM 6-e</u></span>				
AUTHORIZING THE PURCHASE OF A VACUUM FILTER PUMP, WAIVING THE REQUIREMENTS FOR COMPETITIVE BIDS THEREON; AND PROVIDING AN EFFECTIVE DATE.				
Title not read.				
Anderson	X	C O N S E N S U S		
Barnett				
Bledsoe				
Richardson				
Schroeder	X			
Wood				
Billick				
<u>MOTION:</u> To <u>APPROVE</u> the minutes and <u>ADOPT</u> the resolutions as presented.				
-----END CONSENT AGENDA-----				
Mayor Billick announced that he had been asked to move Agenda Item 18 forward. He suggested it be heard immediately following Agenda Item 12. It was the consensus of Council to do so.				
-----ADVERTISED PUBLIC HEARINGS-----				
--- <u>RESOLUTION 84-4577</u> <span style="float:right"><u>ITEM 7</u></span>				
A RESOLUTION AUTHORIZING DREDGING ACTIVITIES AT AN EXISTING BOAT SLIP ADJACENT TO NAPLES BAY ON PROPERTY LOCATED AT 933 18TH AVENUE SOUTH, SUBJECT TO THE CONDITIONS SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.				
Title read by City Attorney Rynders. Public Hearing: Opened - 9:15 a.m. Closed - 9:17 a.m.				

	COUNCIL MEMBERS	VOTE			A B S E N T
		M O T I O N	S E C O N D	Y E S	
<u>ADVERTISED PUBLIC HEARINGS (Cont)</u>					
<p>---<u>RESOLUTION 84-4577 (Cont)</u> <span style="float:right"><u>ITEM 7 (Cont)</u></span></p> <p>Petitioner Dick Morris and his engineer, Bruce Green, addressed Council in support of the petition.</p> <p><u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.</p> <p>-----<u>END ADVERTISED PUBLIC HEARINGS</u>-----</p>	Anderson Barnett Bledsoe Richardson Schroeder Wood Billick (7-0)	X		X X X X X X	
<p>---<u>RESOLUTION 84-4578</u> <span style="float:right"><u>ITEM 8</u></span></p> <p>A RESOLUTION EXPRESSING THE CITY'S APPRECIATION TO JAKOB'S ENTERPRISES, INC. FOR DONATING AND INSTALLING DECORATIVE INTERLOCKING PAVING BLOCKS AT THE ENTRANCE TO THE CITY PIER; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Several councilmen commented on the good job done and Mayor Billick acknowledged the presence of Mr. Hammerle of Jakob's Enterprises.</p> <p><u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p>	Anderson Barnett Bledsoe Richardson Schroeder Wood Billick	X	X	C O N S E N S U S	
<p>---<u>RESOLUTION 84-4579</u> <span style="float:right"><u>ITEM 9</u></span></p> <p>A RESOLUTION APPOINTING TWO MEMBERS TO THE PARKS AND RECREATION BOARD TO FILL THE UNEXPIRED TERMS OF ANITA UTTER AND GORDON GLORCH; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Council interviewed Lance Donovan, Doris Lewis, Joan Vega, and Willie Anthony. He acknowledged the applications of Father Thomas Goggin and Attorney Dudley Goodlette both of whom were unable to be present. Councilmen discussed their preferences and noted that all the applicants were desirable.</p> <p><u>MOTION:</u> To <u>ADOPT</u> the resolution as presented and inserting the names of Willie Anthony and Joan Vega.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p>	Anderson Barnett Bledsoe Richardson Schroeder Wood Billick (5-2)	X	X	X X X X	X X
<p><u>COMMUNITY DEVELOPMENT DEPARTMENT/NAPLES PLANNING ADVISORY BOARD</u> <span style="float:right"><u>ITEM 10</u></span></p> <p>---<u>ORDINANCE 84-</u> <span style="float:right"><u>ITEM 10-a</u></span></p> <p>AN ORDINANCE REZONING LOTS 27 AND 28, BLOCK "A", LAKE FOREST SUBDIVISION, FROM "R1-7.5" SINGLE FAMILY RESIDENTIAL TO "PS" PUBLIC SERVICE; DIRECTING THAT THE ZONING ATLAS BE AMENDED ACCORDINGLY; AND PROVIDING AN EFFECTIVE DATE.</p> <p>PURPOSE: TO REZONE SAID PROPERTY AT THE REQUEST OF THE PROPERTY OWNER, NAPLES CHURCH OF GOD, TO ALLOW CONSTRUCTION OF A PARKING LOT BY SPECIAL EXCEPTION.</p> <p>Title read by City Attorney Rynders.</p> <p>Reverend Walter Lauster of the Church of God stated that he was present to answer any questions Council may have. In response to a question from Mr. Schroeder, Community Development Director noted this would make the parking in excess of the requirements.</p> <p><u>MOTION:</u> To <u>APPROVE</u> the ordinance as presented on First Reading.</p> <p>*** <span style="margin-left: 150px;">***</span> <span style="margin-left: 150px;">***</span></p>	Anderson Barnett Bledsoe Richardson Schroeder Wood Billick (7-0)	X	X	X X X X X X	X X

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COUNCIL MEMBERS

M O T I O N	S E C O N D	Y E S	N O	VOTE		A B S E N T

COMMUNITY DEVELOPMENT DEPARTMENT/NAPLES  
PLANNING ADVISORY BOARD

ITEM 10

---RESOLUTION 84-4580

ITEM 10-b

A RESOLUTION GRANTING A SPECIAL EXCEPTION TO PERMIT THE OPERATION OF A COMPUTER SCHOOL IN THE PARK SQUARE COMMERCIAL COMPLEX AT 4085 TAMiami TRAIL N., SUBJECT TO THE CONDITIONS AND TIME LIMITATION SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Citizen Harry Rothchild made a lengthy statement (Attachment #2) criticizing the manner in which the Planning Advisory Board conducted the meeting at which this item was discussed and recommended for approval. He noted that he did not believe they met the criteria for a quorum inasmuch as one of the three members present disqualified himself for voting purposes due to a conflict of interest. City Attorney Rynders responded by stating that the State statute and Robert's Rules allowed for the presence of the disqualifying member as constituting a quorum. Petitioner David Mikelson spoke in support of the request and noted that most students would be attending during the evenings or on weekends and would not create much of an impact on traffic. Dennis Lynch, member of the Planning Advisory Board, concurred.

Anderson					X	
Barnett		X			X	
Bledsoe					X	
Richardson		X			X	
Schroeder					X	
Wood					X	
Billick					X	
(7-0)						

MOTION: To ADOPT the resolution as presented.

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---RESOLUTION 84-4581

ITEM 10-c

A RESOLUTION GRANTING A VARIANCE FROM THE PROVISIONS OF SECTION 5.16 F(2) OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO PERMIT CONSTRUCTION OF A WAREHOUSE BUILDING WITH A SIDE-YARD SETBACK OF FIVE FEET AT 400 GOODLETTE-FRANK ROAD NORTH; AND GRANTING A SPECIAL EXCEPTION TO ALLOW A SECOND STORY DWELLING UNIT FOR A RESIDENT MANAGER AT SAID WAREHOUSE COMPLEX, SUBJECT TO THE CONDITIONS SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Don Bellamy, engineer for the project, spoke in support of the petition and noted that a requirement of the Occupational Safety & Health Administration (OSHA) had created the need for the variance for the setback. Lynn Pattyson, Florida Power & Light (FP&L) corroborated Mr. Bellamy's statement about the OSHA requirement and noted the need for the five foot setback because of the proximity of the FP&L installation.

Anderson		X			X	
Barnett		X			X	
Bledsoe					X	
Richardson					X	
Schroeder						X
Wood						X
Billick					X	
(5-2)						

MOTION: To ADOPT the resolution as presented.

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---RESOLUTION 84-45

ITEM 10-d

A RESOLUTION GRANTING A VARIANCE FROM THE PROVISIONS OF SECTION 6.8(A) OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO ALLOW A TEN FOOT HIGH DECORATIVE WALL IN THE FRONT-YARD SETBACK AREA AT 214 8TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Jon Joseph, contractor for the petitioner, addressed Council and stated his contention that this was not a wall because it was a part of the house. He passed pictures among Council members to demonstrate this fact. Ed McMahon, representing the Old Naples Association, spoke in opposition to the petition, stressing the fact that the wall had been built before the variance had been

COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	
<u>COMMUNITY DEVELOPMENT DEPARTMENT/NAPLES PLANNING ADVISORY BOARD(Cont)</u>					
<u>---RESOLUTION 84- (Cont)</u>					
<u>ITEM 10</u>					
<u>ITEM 10-d (Cont)</u>					
requested. He suggested that the removal of the wall should be the responsibility of the contractor. Lodge McKee, member of the Planning Advisory Board, spoke to Council, also noting that the wall had been constructed before the request was submitted and advocated denial of the petition and removal of the wall at the contractor's expense.					
<u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.					
***					
***					
***					
<u>---RESOLUTION 84-4582</u>					
<u>ITEM 10-e</u>					
A RESOLUTION GRANTING A VARIANCE FROM THE PROVISIONS OF SECTION 6.35(A)(1) OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO PERMIT THE INSTALLATION OF A POOL DECK TO WITHIN EIGHT FEET OF THE REAR PROPERTY LINE AT 1550 MULLET LANE, SUBJECT TO THE CONDITION SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.					
Title read by City Attorney Rynders.					
Joshua Foss, petitioner, addressed Council in support of his request, Ed McMahon, representing the Old Naples Association, again asked for denial of the petition because the project had been constructed before the request was made. Mr. Richardson noted that there was a canal between the petitioner and his neighbors and the infringement on setback did not really affect the neighbors.					
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***					
***					
<u>BREAK:</u> Recessed - 10:45 a.m. Reconvened - 11:00 a.m.					
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<u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.					
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***					
<u>---RESOLUTION 84-4583</u>					
<u>ITEM 10-f</u>					
A RESOLUTION VACATING AND ABANDONING A PORTION OF THIRD AVENUE NORTH AND AN UNIMPROVED NORTH/SOUTH ALLEY, LOCATED BETWEEN TAMIAMI TRAIL NORTH AND EIGHTH STREET NORTH, SOUTH OF FOURTH AVENUE NORTH, MORE PARTICULARLY DESCRIBED HEREIN, RESERVING THEREIN EASEMENTS FOR UTILITY PURPOSES; AND PROVIDING AN EFFECTIVE DATE.					
Title read by City Attorney Rynders.					
Public Hearing: Opened - 11:02 a.m. Closed - 11:10 a.m.					
Attorney Thomas R. Brown, representing Naples Community Hospital, addressed Council in support of the petitions and noted the Hospital's submission of \$28,000 as compensation. He further noted his belief that there should be no charge; however, he added that the Hospital was not interested in litigating the issue. Mr. Anderson made the distinction that if the City initiated a vacation, there would be no charge; however, a petitioner who requested the vacation and who would receive a benefit, would be charged. Mr. Rothchild, citizen, noted his belief that the matter should be decided in a court of law.					
<u>MOTION:</u> To <u>ADOPT</u> the resolution as presented.					
----- END PLANNING ADVISORY BOARD -----					

Anderson  
Barnett  
Bledsoe  
Richardson  
Schroeder  
Wood  
Billick  
(3-4)  
FAILED

Anderson  
Barnett  
Bledsoe  
Richardson  
Schroeder  
Wood  
Billick  
(4-3)

Anderson  
Barnett  
Bledsoe  
Richardson  
Schroeder  
Wood  
Billick  
(7-0)

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COUNCIL MEMBERS

MOTION	SECTION	VOTE		ABSENT
		YES	NO	

Mayor Billick once more noted that Council would take up Agenda Item 18 immediately after discussing Item 11.

FIRST READINGS

ORDINANCE 84-

ITEM 11

AN ORDINANCE RELATING TO OCCUPATIONAL LICENSE FEES; AMENDING SECTION 12.47, "SCHEDULE OF LICENSE TAXES," OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.  
 PURPOSE: TO INCREASE CERTAIN OCCUPATIONAL LICENSE FEES, PROVIDING FOR SAID FEES TO BE BASED UPON SIZE AND GROWTH FACTORS AND TO ADD A CLASSIFICATION FOR BANKS.

Title read by City Attorney Rynders.

In response to questions from Mr. Schroeder about charging for various types of employees, City Manager Jones explained that the ordinance had been structured to reflect growth in different types of businesses. Citizen Harry Rothchild questioned the need for any increases.

MOTION: To APPROVE the ordinance as presented on First Reading.

Anderson				X
Barnett				X
Bledsoe				X
Richardson				X
Schroeder	X			X
Wood		X		X
Billick (7-0)				X

END FIRST READINGS

DISCUSSION OF UPCOMING REFERENDUM WITH REFERENCE TO THE MAYOR'S TERM OF OFFICE

ITEM 18

Requested by Arnold Lamm.

Past Vice-Mayor and Past Councilman Arnold Lamm spoke in opposition to a 4-year term for a mayor because he said he believed a person may deteriorate over a four year period of time. He also said he felt the people should not lose the right to decide whether to re-elect an incumbent or elect a new mayor. Citizen Bruce Shannon also spoke against the four year term for similar reasons, citing the fact that the mayor is a member of the legislative body and on a state and federal level, most members of the legislative bodies are elected every two years. They both noted that a four year term would not give the electorate an opportunity to change an apparent majority every two years by electing three councilmen and one mayor. Past members of Council Gilbert Blanquart, Jim McGrath and Virginia Cockran all spoke in opposition to the four year term. David Bennett, representing the Park Shore Association spoke in support of the recommended four year term. Mayor Billick noted that he did not intend to debate the matter, but would leave in the hands of the electorate to vote on the referendum. There was no comment from other Councilmen.

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RETURN TO REGULAR AGENDA

RESOLUTION 84-4584

ITEM 12

A RESOLUTION REQUESTING THE DEPARTMENT OF NATURAL RESOURCES, DIVISION OF MARINE RESOURCES, TO DESIGNATE CERTAIN AREAS ON THE WEST SIDE OF NAPLES BAY, BETWEEN 14TH AVENUE SOUTH AND 17TH AVENUE SOUTH, AS A RESTRICTED ZONE FOR THE PURPOSE OF REGULATING BOAT SPEEDS AND WAKES IN SUCH AREAS; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

MOTION: To ADOPT the resolution as presented.

Anderson				X
Barnett				X
Bledsoe	X			X
Richardson		X		X
Schroeder				X
Wood				X
Billick (7-0)				X

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COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE	
			Y E S	N O
<p>---RESOLUTION 84--- <span style="float: right;">ITEM 13</span></p> <p>A RESOLUTION GRANTING A TEMPORARY USE PERMIT TO ALLOW A MOTORHOME TO BE PARKED OVERNIGHT AT 3115 GULF SHORE BOULEVARD N.; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Herbert Whiting, resident of the condominium where the petitioner wishes to park his motorhome, addressed Council in opposition to the request. He noted that it was against the rules of the condo. Mr. Barnett spoke in support of the request inasmuch as Mr. Haynce only planned to be in residence until December 15th. Virginia Newman, president of the Moorings Property Owners Association and citizen Charles Andrews, condominium resident, both spoke in opposition to the request because they each had refused similar requests where they lived. David Bennett, Park Shore Association, also noted that parking motorhomes was not allowed in their area.</p> <p><b>MOTION:</b> To <u>ADOPT</u> the resolution as presented.</p> <p>*** <span style="margin-left: 100px;">***</span> <span style="float: right;">***</span></p>				
Anderson				X
Barnett			X	
Bledsoe			X	
Richardson			X	
Schroeder	X			X
Wood		X		X
Billick (2-5)				X
<p><b>FAILED</b></p>				
<p>---RESOLUTION 84-4585 <span style="float: right;">ITEM 14</span></p> <p>A RESOLUTION RETAINING PETER J. HURTTGEN, ATTORNEY-AT-LAW, MIAMI, FLORIDA, TO REPRESENT THE CITY OF NAPLES IN LABOR RELATIONS MATTERS; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p><b>MOTION:</b> To <u>ADOPT</u> the resolution as presented.</p> <p>*** <span style="margin-left: 100px;">***</span> <span style="float: right;">***</span></p>				
Anderson				X
Barnett				X
Bledsoe	X			X
Richardson				X
Schroeder				X
Wood		X		X
Billick (7-0)				X
<p><b>DISCUSSION/ACTION WITH REFERENCE TO ALTERNATIVE CONFIGURATIONS FOR THE CONNECTION OF SEAGATE DRIVE TO CRAYTON ROAD AS PROPOSED BY THE COLLIER COUNTY METROPOLITAN PLANNING ORGANIZATION.</b> Requested City Engineer.</p> <p>Mr. Richardson summed up the work of the ad hoc committee and the Metropolitan Planning Organization(MPO) which produced the recommended alternatives as shown on Exhibit 2 (Attachment #3). He noted that Alternate "E" had been added to Exhibit 2 as shown in the packet and the revised Exhibit 2 had been distributed to Council this morning. He spoke in support of Alternate "E". David Bennett, Park Shore Association; Bill Brickman, Crayton Road Association; and Virginia Newman, Moorings Property Owners; all spoke in support of Alternate "E". Robert Lyle, speaking for himself and Len Caldwell of the Seagate Association, spoke in support of Alternate "A". He stated his belief that Gulf Shore Boulevard would eventually be opened to Seagate and he said he felt Alternate "A" would work out better in that instance. He said it was his understanding that the owner of the property involved would be willing to donate the property. Mr. Richardson noted that a letter had been written to the property owner, Mr. Pulling, asking about a price for the property and no answer had been received. R. W. Tesché, Russell Mase, and Frank Gargiulo all spoke against Alternate "E" and in favor of Alternate "A". Mrs. Newman again spoke in support of Alternate "E", which she said she understood had been recommended at the MPO meetings. Mayor Billick stated his belief that Alternate "E" had been agreed upon and he was perplexed at the opposition voiced today. It was his feeling, he said, that Council not make any specific recommendation at this meeting. City Manager Jones asked for a consensus of Council recommending one of the alternates. Mayor Billick stated his feeling that Council would not recommend any, but if a cut-thru was going to made, to be consistent with all the discussions heretofore, he said he thought that Alternate "E" should be the one. It</p>				
<p>ITEM 15</p>				



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COUNCIL MEMBERS	M O T I O N	S E C O N D	VOTE		A B S E N T
			Y E S	N O	

DISCUSSION/ACTION WITH REFERENCE TO  
ALTERNATIVES - CONNECTION - SEA GATE  
DRIVE - CRAYTON ROAD (Cont)

ITEM 15  
(Cont)

was the consensus of most Councilmen to concur with the Mayor's statement; however, Mr. Schroeder stated that he did not even want to recommend Alternate "E". Mr. Anderson stated that he was interested in working towards opening Gulf Shore Boulevard onto Seagate Drive.

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---RESOLUTION 84-4586

ITEM 16

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS FOR THE DELIVERY AND USE OF RECLAIMED IRRIGATION WATER WITH GOLF COURSES LISTED HEREIN.

Title read by City Attorney Rynders.

Mr. Schroeder suggested that the proper corporate name of each of the entities involved in each agreement be used in the agreements.

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Mr. Anderson left the Council table - 12:51 p.m.

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City Attorney Rynders responded that the staff will insure that they are executed under the proper corporate name.

MOTION: To ADOPT the resolution as presented.

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Mr. Anderson returned to the Council table - 12:53 p.m.

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REPORT BY CITY ATTORNEY CONCERNING  
POSSIBLE ORDINANCE AMENDMENT REGULATING  
HOURS OF OPERATION FOR BUSINESSES SELLING  
ALCOHOLIC BEVERAGES.

ITEM 17

Pursuant to City Council discussion at Regular Meeting of October 3, 1984.

City Attorney Rynders stated that he had met with legal counsel for the condominium and suggested that Council listen to Attorney Henry Johnson's summary of their discussions. Attorney Johnson reviewed the problem and the discussions held with the City Attorney as summarized in the City Attorney's memo (Attachment #4). City Attorney Rynders further explained that one of the options would set up a basis for the condo to take the restaurant to court where the matter could be decided. Attorney Robert Hines, representing the Cactus Flower Restaurant, spoke against any rezoning as being "blatantly arbitrary". He further noted the efforts that the Cactus Flower owners had made to control the noise in the parking lot adjacent to the condominium. He also noted the fact that the Gulfshore Square property had been zoned commercial at the time the Delmar Club was built. Walter Olson, security guard, noted that he had worked with the Cactus Flower and had not encountered the types of noise noted in the complaints. Attorney Louis X. Amato, representing Gulfshore Enterprises, spoke in opposition to the type of rezoning being

Anderson  
 Barnett  
 Bledsoe  
 Richardson  
 Schroeder  
 Wood  
 Billick  
 (6-0)

X

X

X  
 X  
 X  
 X  
 X  
 X

X

COUNCIL MEMBERS

M O T I O N	S E C O N D	VOTE		A B S E N T
		Y E S	N O	

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REPORT BY CITY ATTORNEY - HOURS OF OPERATION - ALCOHOLIC BEVERAGES (Cont)

ITEM 17 (Cont)

discussed. It was the consensus of Council to direct City Attorney Rynders to propose an ordinance that would create a statutory cause of action for the condominium residents.

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CORRESPONDENCE & COMMUNICATIONS: None.

ADJOURN: 1:35 p.m.

*Stanley R. Billick*  
Stanley R. Billick, Mayor

*Janet Cason*  
Janet Cason  
City Clerk

*Ellen Marshall Weigand*  
Ellen Marshall Weigand  
Deputy Clerk

These minutes of the Naples City Council approved 11/07/84

1 2 4  
Supplemental Attendance list - Regular Meeting, October 17, 1984

Reverend Lawrence Bennett  
 Charles Andrews  
 Rev. Walter Lauster  
 Charles Reinbolt  
 Van Miller  
 Marshall Davenport  
 Richard Sykes  
 Franklin Robert  
 Arnold Lamm  
 Hank Cabellero  
 David Mikelson  
 Tish Gray  
 Dr. & Mrs. Grant Palmer  
 Jacob Hammerle  
 Dick Morris  
 Harry Rothchild  
 Robert Lyle

Glenn Mackay  
 Willie Anthony  
 Bruce Green  
 Lance D. Donovan  
 Bob Russell  
 Doris Lewis  
 Robert Hines  
 Bob Galloway  
 Joan Vega  
 Dennis Lynch  
 Dr. Jack Briggs  
 Gilbert Weil  
 Jim McGrath  
 Virginia Newman  
 Walter Olson  
 Gilbert Blanquart  
 Ed McMahon  
 Russell Mase

Lynn Pattyson  
 Jon Joseph  
 Herb Anderson  
 Don Bellamy  
 Tom Brown  
 Virginia Corkran  
 Bruce Evans  
 David Bennett  
 Frank Gargiulo  
 Garland Harris  
 Bill Brickman  
 R. W. Tesché  
 Henry Johnson  
 Louis X. Amato  
 Mr. & Mr. Bruce Shannon  
 Lodge McKee  
 Herbert Whiting

## News Media:

Dorothy Yacobocci, TV-9  
 Randy Sell, TV-9  
 Brian Grinonneau, WNOG  
 Bev Cameron, WINK TV-11  
 John Moore, WINK TV-11  
 Beth Markett, News Press

Carolina Bischof, Naples Star  
 Todd Holzman, Naples Daily News  
 Mary Armbruster, WEVU TV-26  
 Gene Kelly, WEVU TV-26  
 Tom Morgan, Naples Sun

Other interested citizens and visitors.

The facts on this case are very clear and simple. We have a 5 man Planning and Advisory Board with 3 members constituting a quorum, as specifically provided in Section 2 of Ordinance #1295 adopted on Aug 2, 1967. On Oct 4, 1984 only 3 members of the Board were present - Hodge McKee, Vice Chairman, Earl Johnson and Dennis Lynch. It was known before the meeting that Mr. Lynch would disqualify himself with respect to this item due to the fact that he had a conflict of interest in that he is part owner of the building in which the school would be located. Mr. Lynch did disqualify himself and moved to sit in the audience. Since there were only 2 members remaining who were qualified to vote on the item under consideration the question of a quorum was raised.

According to the tape of that meeting which I listened to, the matter of a quorum was discussed. The Vice Chairman Hodge McKee said "Dennis and I discussed this when the question came up and I checked with the City Attorney and you may proceed on the matter and you will obviously need 2 votes on the matter one way or the other to take any action, but you may proceed and act on it. Do you have any objection to proceeding, Earl?" Mr. Johnson said "No". Then Mr. Johnson made a motion to approve this item and Mr. McKee seconded the motion. At that point Mr. Clayton Begg, <sup>who has been</sup> a long time member and Chairman of the P.A.B. asked "How can you make a motion without a quorum?"

Hodge McKee then said "We have checked through Roger Barry with the City Attorney prior to this meeting knowing that 2 members would be absent and that we might have to disqualify himself and it was the City Attorney's ~~opinion~~ opinion that we are not required to operate under Roberts Rules of and that we may act without a quorum in this circumstance". Clayton Begg continued to object, whereupon Roger Barry said "There is a quorum present. There are 3 members of the Board present. One of them is abstaining and the City Attorney determined that given the presence of a quorum and the abstention of one member, the other two could consider and vote on the matter". My comment with respect to that statement is that it is absolutely amazing.

Clayton Begg said "Never in my life have I seen or heard of such an action". Mr. Barry said that all he could say to Clayton Begg was

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to have him discuss the matter with the City Attorney. Roger Barry said he was of the same opinion expressed by Clayton Briggs. Earl Johnson said, "I would be inclined to agree with Clayton. I understand a little bit about Roberts Rules of Order also, but this is not the final decision. The final decision will come from the City Council. This is merely an advisory situation and with a quorum present I can see why Mr. Rynders made the recommendation that he did. That's the only reason I am willing to go along with this situation." With all due respect to Mr. Johnson I should like to point out that while it is true that the final decision rests with the City Council, the P.A.B. must adhere to its own rules which called for 3 members to constitute a quorum, and that means 3 members, present and qualified to vote. Mr. Lynch disqualified himself and then left the Board area and sat on the audience. It would be absolutely wrong for any reasonable person to suggest that Mr. Lynch was a qualified member of the Board or that he was present in the accepted sense of that word.

Roger Barry then said "It should be clear too, that David made that ~~statement~~ determination with the understanding that the Board has not adopted Roberts Rules of Order and that the Board could choose not to act on the matter if it so desired." I am sure that any lawyer in the audience or on the City Council, or anyone who understands the English language would agree that that statement leaves a lot to be desired.

Judge Mc Kee then said "I had no choice but to seek the decision or the advice or the opinion of the City Attorney on the matter." Clayton Briggs still questioned the authority or basis for the City Attorney's decision and continued to assert that there was no quorum present for this item.

Earl Johnson made the motion to approve

Judge Mc Kee seconded the motion and they both voted "Yes".

The tape of this P.A.B. meeting is available for anyone to listen and understand. I have given you the facts as provided on the tape. Now I should like to offer my comments.

If we were to accept the City Attorney's opinion as told to Roger Barry that given the presence of a quorum and the abstention of one member, the other two could consider and vote on the matter, I wonder whether we could extricate from that opinion and consider whether, given the presence of 3 members and then having 2 of the 3 disqualify themselves because of a conflict of interest, whether

the one remaining qualified member could consider and vote on an item. It would be interesting to all this one remaining qualified member make a motion to approve, then second his own motion and then vote upon the motion. How ridiculous can we get? There were a number of errors made at this meeting on this item but it cannot be called "A Comedy of Errors". It is too serious to be lightly dismissed.

I have discussed this situation with a number of citizens here in town and everyone, without exception agrees that the City Attorney was wrong and the Board should not have acted on this item. I discussed this case with a former City Attorney. He was astounded and asked what authority David Rynders could quote to justify his decision. I told him that in matters of this sort Mr. Rynders does not quote his authority. He is the sole judge of Parliamentary questions. I called the Chairman of the Coastal Area Planning Commission, Mr. Karl Corley and discussed the question of a quorum with him. They have 7 members on their Commission, with 4 as a quorum. I asked what he would do if 3 members were absent and an item came up on which one of the 4 members present had an interest and he disqualified himself. The Chairman said he would not act on that item but would proceed to the next case. I then called County Attorney Paul Saunders and posed the same hypothetical question to him. Mr. Saunders said under those conditions a quorum was not present and the Commission would be required to postpone any action until a fully qualified quorum was present.

It is well known that David Rynders and I have been at odds for years but that fact does not and should not deprive me of the right to express my opinion with respect to the manner in which the City Attorney discharges his duties. I can still have my rights as a citizen and taxpayer and I believe my observations are pertinent and valid and will be considered as such by the citizens of Naples. I feel safe in saying that Mr. Rynders decision in this case is incorrect, incomprehensible and indefensible. He knows his decision was wrong, therefore we have to question his motives. Was he trying to give an opinion which benefitted one person? If so, the public has not been properly served. This Council has, in my opinion, only one possible action it could take with respect to the item under discussion. In order to preserve and maintain the integrity of the P.A.D. the item should be returned to the Board for proper action in accordance with its rules. The City Attorney was wrong and this Council should not compound the error nor should you forget or forgive this terrible assault on truth and justice.

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The Planning Advisory Board should perform its duties without granting a special privilege to anyone, least of all one of its members. While I was a member of this Council I was one of those who voted to place Dennis Lynch on the P.A.B. I would feel much better if Mr. Lynch came forward now and requested the removal of this item from the Council agenda, which in my opinion he should have done before the P.A.B. took any action on his petition. I am quite certain that Dennis Lynch now realizes that the City Attorney was wrong in his decision.

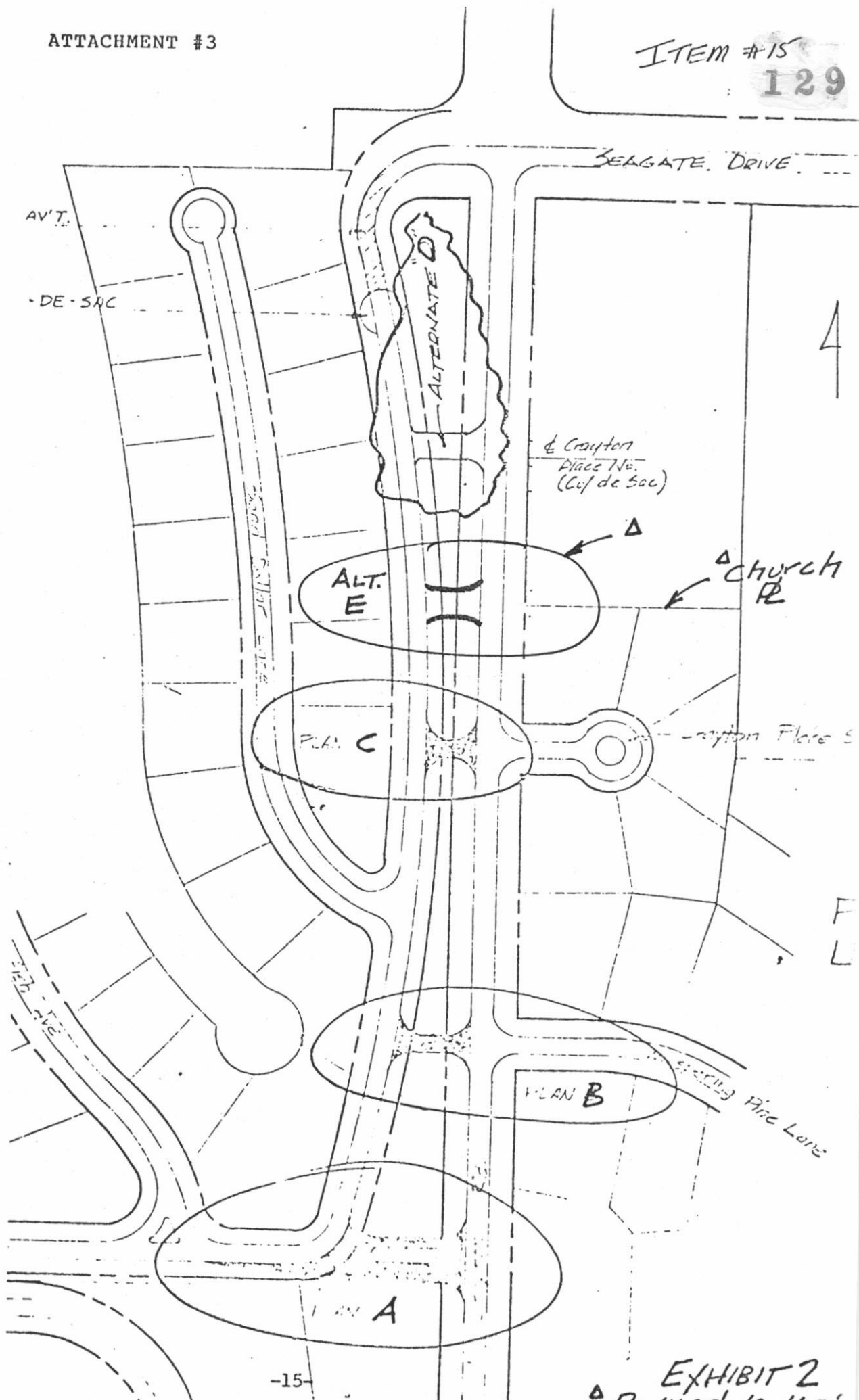
Each member of this Council has a primary obligation to act in the best interest of this City and not to extend any special privilege to any of our ~~the~~ citizens. The City Manager and the City Attorney are under the same strict obligation. Any violation of this principle should be warrant immediate dismissal.

David Rynders gave a strange decision which supported an action taken by Frank Jones, the City Manager about a year ago with respect to the retroactive charge at a higher rate for water consumed at a lower rate. The Mayor and the City Manager were obligated to admit the error and accordingly refunded over \$10,000 to users of our services who had been illegally charged. The question is - do we need any more decisions of this sort?

I fully expect this Council to give serious consideration to a review of its arrangement with David Rynders as the City Attorney of Niplov. The decision in this quorum case throws into question the competence and integrity of David Rynders. This Council cannot ignore the implications of this case without taunting themselves.

I look for an early review which I trust will be held in strict conformity <sup>with</sup> the Florida Sunshine Law. One final comment. When Harry Heneman was mayor he placed Clayton Bigg who was ill and asked him if he could come to the Joint meeting of the Council and the P.A.B. Mr. Bigg was needed for a quorum on the P.A.B. The matter was considered by Mayor Heneman to be very important and the Council needed the recommendation of the P.A.B. Mr. Bigg left his sick bed in order to make the quorum. In that case the law was followed to the letter. We must have faith in our government. The law should be fair and applied equally to everyone. No special privileges to anyone. Gentlemen the ball is in your court.

Harry Rockwell





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ATTACHMENT #4

AGENDA ITEM #17  
10/17/84

*City of Naples*

--- MEMO ---

October 12, 1984

TO: Hon. Mayor and Members of Council  
FROM: David W. Rynders, City Attorney  
RE: Hours of Operation for Businesses  
Selling Alcoholic Beverages  
Cactus Flower Restaurant/Delmar Club

At the last Council meeting you directed me to meet with Attorney Henry Johnson to discuss possible remedies to the situation involving the Cactus Flower and the Delmar Club. Mr. Johnson and I met and developed several ideas which will be presented and discussed in some detail at the Council meeting on October 17.

One idea involves the rezoning of the Third Street South business area to a C-1A zone, identical to that in which the Fifth Avenue area is situated, and the subsequent adoption of an ordinance restricting the hours of operation of businesses serving alcoholic beverages in the C-1 zone, in which the Cactus Flower Restaurant is now located.

The second idea involves the creation of a statutory cause of action for residential neighbors of businesses serving alcoholic beverages, setting forth the specific elements necessary to prove a nuisance in court and providing a specific remedy for the court requiring the early closing of such businesses.

The pros and cons of both of these ideas will be discussed in full at the Council meeting, and the Council may direct that either or both of these ideas be formally presented at future public hearings for consideration.

David W. Rynders  
City Attorney

DWR:bh