



# City of Naples

City Council Minutes

Regular Meeting 04/19/89

City Council Chamber:  
735 Eighth Street South  
Naples, Florida 33940

-SUBJECT-	Ord. No.	Res. No.	Pa.
<u>ANNOUNCEMENTS</u>			
MAYOR PUTZELL: None.			
CITY MANAGER JONES: None.			1
<u>APPROVAL OF MINUTES: April 5, 1989, Regular Meeting</u>			1
<u>PURCHASING</u>			
-BID AWARD for one economy passenger van.	89-5793		1
-BID AWARD for one 90 hp backhoe/loader.	89-5794		2
-BID AWARD for truck chassis.	89-5795		2
-BID AWARD for a 16-foot flatbed dump body.	89-5796		2
-APPOINTMENTS to Police and Fire Pension Board.	89-5798		2
<u>RESOLUTIONS</u>			
-APPROVE variance from CCSL to permit construction of a rock revetment, 4540 Gordon Drive.	89-5799		3
-CONTINUE variance request to keep a non-conforming roof sign, Naples Armature Works, 1101 Fifth Avenue South.	89-_____		5
-DENY variance request to construct a swimming pool enclosure, 1630 Dolphin Road.	89-_____		6
-APPROVE variance request to construct a home which will encroach into the rear yard setback area, 507 14th Street North.	89-5802		6
-APPROVE variance request to permit a second story addition, 22 Fourth Avenue South.	89-5803		7
-DENY amendment to a previously approved GDSP for Power Corporation.	89-_____		7-
-APPOINT members to the Planning Advisory Board.	89-5804		10
-APPOINT members to the Board of Appeals.	89-5805		10
-APPOINT three members to the Code Enforcement Board.	89-5806		10
-APPOINT three members to the Contractors Examining Board.	89-5807		11
-APPOINT seven members to the Ad Hoc Advisory Committee on Naples Bay Management.	89-5808		11
-APPROVE project for improvements at the Four Corners intersection.	89-5809		11
-APPROVE amendment to conditional use permit, 287 11th Avenue South.	89-5810		12
-APPROVE Change Order No. 1 to Cardinal Contractors, Inc., \$24,536.	89-5811		14
-APPROVE resolution cancelling the July 5, 1989, regular City Council meeting.	89-5812		14
<u>ORDINANCES - Second Reading</u>			
-ADOPT clarification of language in the Police Pension ordinance.	89-5800		4
-ADOPT amendments to the General Employees Pension Plan.	89-5801		4-
<u>ORDINANCES - First Reading</u>			
-APPROVE rezone request for First Christian Church of Naples to eliminate non-conforming status.	89-_____		5-
<u>DISCUSSION/ACTION</u>			
-Consider rescinding revocation of a building permit issued to Power Corporation.			9
-Set a date and time for public hearings relating to a proposed ordinance to temporarily prohibit the permitting of boat slips and dockage sites.			9-
-Discussion about a public hearing to listen to citizens complaints relating to traffic hazards.			14
-Reminder that City under Phase I water restrictions effective April 17, 1989.			14-

CITY COUNCIL MINUTES  
Regular Meeting

City Council Chambers  
735 Eighth Street South  
Naples, Florida 33940



Time 9:00 a.m.

Date 04/19/89

Mayor Putzell called the meeting to order and presided as Chairman:

ROLL CALL: Present: Edwin J. Putzell, Jr., ITEM 2  
Mayor

Kim Anderson-McDonald  
William E. Barnett  
Alden R. Crawford, Jr.  
John T. Graver  
Paul W. Muenzer  
Lyle S. Richardson,  
Councilmen

Also Present:

Franklin C. Jones,  
City Manager

David W. Rynders,  
City Attorney

Mark W. Wiltsie,  
Assistant City Manager

Gerald L. Gronvold,  
City Engineer

Ann "Missy" McKim,  
Community Dev. Dir.

Norris C. Ijams,  
Fire Chief

Jodie M. O'Driscoll,  
Deputy Clerk

Christopher L. Holley,  
Community Services Dir.

Steven R. Ball,  
Chief Planner

Stewart K. Unangst,  
Purchasing Agent

James L. Chaffee,  
Utilities Director

Jon C. Staiger, Ph.D.,  
Natural Resources Mgr.

George Henderson,  
Sergeant-At-Arms

See Supplemental Attendance List - Attachment #1.

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INVOCATION: Reverend Russell E. Mase ITEM 1  
First Presbyterian Church

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ANNOUNCEMENTS: ITEM 3

MAYOR PUTZELL: None.

CITY MANAGER JONES: None.

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-----CONSENT AGENDA-----

APPROVAL OF MINUTES ITEM 4

April 5, 1989, Regular Meeting

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PURCHASING ITEM 5

---RESOLUTION NO. 89-5793 Item 5-a

A RESOLUTION AWARDED THE BID FOR ONE (1)  
ECONOMY PASSENGER VAN; AUTHORIZING THE  
CITY MANAGER TO ISSUE A PURCHASE ORDER  
THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

Tamiami Ford  
Naples, Florida  
\$12,376.00

Title not read.

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COUNCIL  
MEMBERS

M	S			A
O	E			P
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I	O	Y	N	E
O	N	S	O	N
N	D			T

## ---RESOLUTION NO. 89-5794

Item 5-b

A RESOLUTION AWARDDING CITY BID NO. 89-50  
FOR ONE (1) 90 HORSEPOWER BACKHOE/LOADER;  
AUTHORIZING THE CITY MANAGER TO ISSUE A  
PURCHASE ORDER THEREFOR; AND PROVIDING AN  
EFFECTIVE DATE.

Coastline Equipment Company  
Ft. Myers, Florida  
\$57,540.00

Title not read.

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## ---RESOLUTION NO. 89-5795

Item 5-c

A RESOLUTION AWARDDING CITY BID 89-42 FOR  
TWO (2) TANDEM AXLE, DIESEL-POWERED TRUCK  
CHASSIS; AUTHORIZING THE CITY MANAGER TO  
ISSUE A PURCHASE ORDER THEREFOR; AND  
PROVIDING AN EFFECTIVE DATE.

Palm Peterbilt/GMC  
Ft. Lauderdale, Florida  
\$117,880.00

Title not read.

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## ---RESOLUTION NO. 89-5796

Item 5-d

A RESOLUTION AWARDDING CITY BID 89-53 FOR  
ONE (1) TWO-TON TRUCK WITH A 16 FOOT  
FLATBED DUMP BODY; AUTHORIZING THE CITY  
MANAGER TO ISSUE A PURCHASE ORDER  
THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

Bartow Ford Company  
Bartow, Florida  
\$26,200.00

Title not read.

Councilman Richardson noted that the aforementioned  
items were funded in the current fiscal year budget.

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## ---RESOLUTION NO. 89-5798

ITEM 6

A RESOLUTION CONFIRMING THE REAPPOINTMENT  
OF WILLIAM KAVERMAN TO THE FIREMEN'S  
PENSION BOARD AND F. SCOTT PAUZAR TO THE  
POLICE PENSION BOARD; APPOINTING ONE  
PERSON TO FILL THE UNEXPIRED TERM OF  
BARRIE KEE ON THE POLICE PENSION BOARD;  
AND PROVIDING AN EFFECTIVE DATE.

Title not read.

MOTION: To APPROVE the Consent Agenda as presented.

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Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

X

X

X

X

X

X

X

X

X

COUNCIL  
MEMBERS

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-----END CONSENT AGENDA-----

-----ADVERTISED PUBLIC HEARINGS-----

---RESOLUTION NO. 89-5799

ITEM 7

A RESOLUTION GRANTING A VARIANCE FROM THE CITY'S MOST RESTRICTIVE COASTAL CONSTRUCTION SETBACK LINE TO PERMIT CONSTRUCTION OF A ROCK REVETMENT IN FRONT OF A SEAWALL AT 4540 GORDON DRIVE, SUBJECT TO THE STIPULATION SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

PUBLIC HEARING: Opened: 9:10 a.m.  
Closed: 9:21 a.m.

Referring to a plat provided in the packet, Natural Resources Manager Staiger advised the petitioner had requested a variance from the City's Coastal Construction Setback Line (CCSL) to construct a rock revetment in front of an existing seawall. During Tropical Storm Keith, a concrete patio which had extended to the north of this seawall was destroyed. The Department of Natural Resources (DNR) has advised it would not permit construction of a similar structure at that same location. This area has suffered a great deal of erosion over the past several years, Dr. Staiger contended, and such construction would help strengthen the existing seawall in the event of another major storm.

Mr. Edward Chlumsky, adjacent property owner to the north, asked if it was possible for the City to permit such activity without DNR approval. Dr. Staiger, however, pointed out that the City did not at this time have such authority, and, currently, it takes approximately two to three months to obtain State approval.

Councilman Muenzer asked if access to this project could be accomplished through the petitioner's property. Mr. Rick Meyer of Scofield Marine confirmed that to be true.

Discussion then ensued regarding placement of the proposed revetment. In response to Council's concerns, Mr. Meyer assured Council that the petitioner would provide a pedestrian walkway over the revetment should access to the beach be cut off by erosion, storms, etc. Mayor Putzell said he believed there should be some stipulation in the ordinance providing that in the event the MHWL (mean high water line) moves landward thereby restricting public access, the petitioner would be required to provide a pedestrian walkway over the revetment.

MOTION: To APPROVE the resolution with the condition that should the MHWL (mean high water line) move landward and prohibit beach access, a walkway over the revetment would be provided for the public.

Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

X  
X  
X  
X  
X  
X  
X

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COUNCIL  
MEMBERS

M	S		A
O	E	Y	P
T	C	E	S
I	O	N	E
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N	D		T

## ---ORDINANCE NO. 89-5800

## ITEM 8

AN ORDINANCE AMENDING SECTIONS 18-106(b), (d) and (e) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. PURPOSE: TO PROVIDE THAT THE MAXIMUM POLICE PENSION BENEFIT COMPENSATION FORMULA SHALL NOT BE LESS THAN TWO (2) PERCENT FOR EACH YEAR OF SERVICE AND TO CLARIFY CERTAIN LANGUAGE NOT AFFECTING THE POLICE PENSION PLAN.

Title read by City Attorney Rynders.

PUBLIC HEARING: Opened: 9:22 a.m.  
Closed: 9:22 a.m.

No one present to speak for or against.

City Manager Jones advised the intent of this ordinance was to clarify certain language as recommended by the State Department of Insurance to bring the Police Pension Plan into compliance with State law.

MOTION: To ADOPT the ordinance as presented at second reading.

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Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

X
X
X
X
X
X
X
X

## ---ORDINANCE NO. 89-5801

## ITEM 9

AN ORDINANCE AMENDING SECTIONS 18-34(b), 18-35(b) AND 18-35(c) OF THE GENERAL PENSION ORDINANCE FOR CITY EMPLOYEES; AND PROVIDING AN EFFECTIVE DATE. PURPOSE: TO KEEP THE PENSION BENEFITS CURRENT AND EFFECTIVE FOR THE EMPLOYEES OF THE CITY OF NAPLES BY PROVIDING AN EARLY RETIREMENT OPTION FOR DEFERRED RETIREES, INCREASING THE MULTIPLIER FOR COMPUTING PENSIONS TO 2.00 PERCENT, AND CHANGING THE EARLY RETIREMENT REDUCTION FACTOR TO 1/4 OF ONE PERCENT.

Title read by City Attorney Rynders.

PUBLIC HEARING: Opened: 9:24 a.m.  
Closed: 9:24 a.m.

No one present to speak for or against.

Finance Director Hanley advised this ordinance was necessary to comply with the City's required bi-annual review of pension benefits for its general employees. The General Pension Board has recommended several changes including an increase of the multiplier, changing the early retirement reduction factor and providing early retirement for the deferred employees. All of the above has been reviewed by the actuaries for cost analysis.

Mrs. Anderson-McDonald said that one member of the audience had questioned cost of the early retirement reduction factor. Mr. Hanley replied that this

CITY OF NAPLES, FLORIDA

City Council Minutes

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MEMBERS

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reduction factor would provide the early retiree a lesser benefit for a longer period of time.

MOTION: To ADOPT the ordinance as presented at second reading.

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Mayor Putzell took a break from the regular agenda and presented Mr. C. Lodge McKee, Chairman of the Historic District in Naples, with a certificate from the National Historic Register declaring the portion of Naples referred to in the Comprehensive Plan as the "Historic District" to be certified as such. Mr. McKee thanked Council and advised that the plaque would be on display at Palm Cottage during the upcoming Historic Week.

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-----END ADVERTISED PUBLIC HEARINGS-----

COMMUNITY DEVELOPMENT DEPARTMENT/ NAPLES  
PLANNING ADVISORY BOARD

---RESOLUTION NO. 89---

ITEM 10

A RESOLUTION GRANTING A VARIANCE FROM SECTIONS 6.30(J)(8) AND 6.30(L) OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO KEEP A NONCONFORMING ROOF SIGN ON THE NAPLES ARMATURE WORKS BUILDING AT 1101 FIFTH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

This item was continued until the Council's regular meeting in June, 1989.

Citizen Tom Morgan asked if he could speak now inasmuch as he did not believe he could attend the next meeting. Mr. Morgan questioned the integrity of the City's current sign ordinance and said he believed historical signs such as the Naples Armature Works should remain as a symbol of Naples' past.

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---ORDINANCE NO. 89---

ITEM 11

AN ORDINANCE REZONING THE PROPERTY LOCATED AT 1789 MANDARIN ROAD FROM R1-10, SINGLE FAMILY RESIDENTIAL, TO PS, PUBLIC SERVICE, IN ORDER TO COMPLY WITH THE COMPREHENSIVE PLAN AND ZONING ORDINANCE; AND PROVIDING AN EFFECTIVE DATE. PURPOSE: TO REZONE THE PROPERTY DESCRIBED HEREIN AT THE REQUEST OF THE PROPERTY OWNER, FIRST CHRISTIAN CHURCH OF NAPLES, IN ORDER TO ELIMINATE THE NONCONFORMING STATUS OF THE CHURCH PROPERTY.

Title read by City Attorney Rynders.

Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

X  
X  
X  
X  
X  
X  
X  
X



COUNCIL  
MEMBERS

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Community Development Director McKim advised the First Christian Church of Naples had applied to make some improvements to their building; however, the property currently is zoned R1-10, single family residential. In order for any changes to be made, the zoning of the property must first be in compliance with the Comprehensive Plan and rezoned to FS, public service.

MOTION: To APPROVE the ordinance as presented at first reading.

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---RESOLUTION NO. 89-

ITEM 12

A RESOLUTION GRANTING A VARIANCE FROM SECTION 6.32 OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO PERMIT CONSTRUCTION OF A SWIMMING POOL ENCLOSURE AT AN EXISTING RESIDENCE AT 1630 DOLPHIN ROAD; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Community Development Director McKim explained the petitioner had requested a variance to allow construction of a swimming pool enclosure in the rear setback area. Staff and the Planning Advisory Board (PAB) have recommended denial inasmuch as there are no extenuating circumstances and the variance criteria has not been met.

MOTION: To DENY the resolution as presented.

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---RESOLUTION NO. 89-5802

ITEM 13

A RESOLUTION GRANTING A VARIANCE FROM SECTION 5.4(F)(3) OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO CONSTRUCT A HOME WHICH WILL ENCROACH FIVE FEET SIX INCHES INTO A REQUIRED 20 FOOT REAR YARD SETBACK AT 507 14TH STREET NORTH; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Staff advised that the petitioner has asked to construct a home which would encroach five feet six inches into a 20-foot rear yard setback. Community Development Director McKim pointed out that the petitioners had worked diligently with staff to find the best model home which would suit the property shape.

Councilman Crawford expressed concern about the canal bulkheads in this area and said that he believed them to be rather unstable. Staff, however, noted the Department of Environmental Regulation (DER) was in the process of developing a program which would cleanup that whole waterway system and stabilize the canal banks.

MOTION: To APPROVE the resolution as presented.

Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

		X		
		X		
		X		
X		X		
		X		
	X	X		
		X		

Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

	X	X		
		X		
		X		
		X		
		X		
X		X		
		X		

Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

		X		
		X		
		X		
X		X		
	X	X		
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## ---RESOLUTION NO. 89-5803

## ITEM 14

A RESOLUTION GRANTING A VARIANCE FROM SECTION 5.2(F)(2) OF APPENDIX "A" - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES WHICH REQUIRES A 15 FOOT SIDE YARD SETBACK FOR A TWO STORY RESIDENCE IN ORDER TO PERMIT A PARTIAL SECOND STORY ADDITION TO AN EXISTING ONE STORY RESIDENCE WHICH HAS A SIDE YARD SETBACK OF 7.66 FEET AT 22 FOURTH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Community Development Director McKim explained the petitioner had requested a variance to permit a partial second story addition to an existing structure. Staff and the Planning Advisory Board (PAB) had recommended approval as they believed all criteria for a variance had been met.

Councilman Crawford, however, expressed concern that a similar request had previously been denied. Mrs. McKim, however, pointed out that the other request was not in keeping with the surrounding neighborhood which is not the case with this request.

MOTION: To APPROVE the resolution as presented.

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-----END COMMUNITY DEVELOPMENT/PAB-----

## ---RESOLUTION 89-

## ITEM 15

A RESOLUTION APPROVING AN AMENDMENT TO A PREVIOUSLY APPROVED GENERAL DEVELOPMENT AND SITE PLAN FOR POWER CORPORATION AT THE SOUTHEAST CORNER OF U.S. 41 AND RIVER POINT DRIVE; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Referring to a packet of material distributed by the petitioner, City Attorney Rynders reviewed the Council's policy about accepting such information. The documentation submitted at this meeting cannot be made a part of the record, he said, or referred to in the meeting packet according to Resolution No. 89-5781.

Community Development Director McKim advised that the petitioner had applied for a building permit to construct a 45,000 square foot building. Staff initially was hesitant about issuing such a permit because of the impacts such an intense use could have upon traffic flow on U.S. 41; however, upon direction by the City Attorney, it was told to issue the permit. Staff was not aware of the GDSP (general development site plan) previously issued in 1980 and, had it been aware of such a GDSP, would not have issued the aforementioned building permit.

Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(6-1)

X

X

X

X

X

X

X

X

X

X



In response to Mayor Putzell's concerns regarding setback requirements for this project, Attorney Maloney advised that the 45,000 square foot proposed structure met all setback requirements if this project were considered as an individual plot instead of a GDSP. Councilman Crawford said he believed this site should be considered part of the

Date 04/19/89

-9-



COUNCIL MEMBERS	M	S	Y	A
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	D	D	O	T

<p><u>MOTION:</u> To <u>SET</u> the following public hearing dates: May 10, 1989, at 7:00 p.m. and May 24, 1989, at 5:30 p.m. to consider a proposed ordinance which would temporary prohibit the permitting of boat slips and dockage sites.</p> <p>***</p> <p style="text-align: right;">***</p> <p style="text-align: right;"><u>ITEM 13</u></p> <p>---<u>RESOLUTION 89-5804</u> <span style="float: right;"><u>Item 18-a</u></span></p> <p>A RESOLUTION APPOINTING TWO MEMBERS TO THE PLANNING ADVISORY BOARD TO FILL THE VACANCIES CREATED BY THE EXPIRATION OF THE TERMS OF JOHN M. PASSIDOMO AND HUBERT E. HOWARD; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p>Mayor Putzell advised that should the alternate of this Board be appointed to fill one of these expired terms, then that position would also need to be filled.</p> <p><u>MOTION:</u> To <u>APPOINT</u> John Passidomo and Tor Kolflat to the Planning Advisory Board and Ellin Goetz as alternate.</p> <p style="text-align: center;">*****</p> <p>---<u>RESOLUTION 89-5805</u> <span style="float: right;"><u>Item 18-b</u></span></p> <p>A RESOLUTION APPOINTING TWO (2) MEMBERS TO THE BOARD OF APPEALS TO FILL THE VACANCIES CREATED BY THE EXPIRATION OF THE TERMS OF SERGIO E. G.-MONTES AND WALTER L. KELLER; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p><u>MOTION:</u> To <u>APPOINT</u> Sergio E. G.-Montes to the Board of Appeals.</p> <p style="text-align: center;">*****</p> <p>---<u>RESOLUTION 89-5806</u> <span style="float: right;"><u>Item 18-c</u></span></p> <p>A RESOLUTION APPOINTING THREE (3) MEMBERS TO THE CODE ENFORCEMENT BOARD TO FILL THE VACANCIES CREATED BY THE EXPIRATION OF THE TERMS OF BETTY FORSYTH, JAMES MCLAUGHLIN AND WILLIAM G. TRACY; AND PROVIDING AN EFFECTIVE DATE.</p> <p>Title read by City Attorney Rynders.</p> <p><u>MOTION:</u> To <u>APPOINT</u> James Adams, James McLaughlin and William Tracy to the Code Enforcement Board; and to <u>REAPPOINT</u> Ed McMahon and David Nemore to be effective June 17, 1989, for another term.</p> <p style="text-align: center;">*****</p>	Anderson-McDonald	X	X	
	Barnett		X	
	Crawford	X	X	
	Graver		X	
	Muenzer		X	
	Richardson			X
<p>Putzell (6-1)</p> <p>Anderson-McDonald</p> <p>Barnett</p> <p>Crawford</p> <p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p>	Putzell		X	
	Anderson-McDonald	X	X	
	Barnett	X	X	
	Crawford		X	
	Graver		X	
	Muenzer		X	
<p>Richardson</p> <p>Putzell (7-0)</p> <p>Anderson-McDonald</p> <p>Barnett</p> <p>Crawford</p> <p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p>	Richardson		X	
	Putzell		X	
	Anderson-McDonald		X	
	Barnett	X	X	
	Crawford		X	
	Graver		X	
<p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p> <p>Anderson-McDonald</p> <p>Barnett</p> <p>Crawford</p> <p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p>	Muenzer		X	
	Richardson		X	
	Putzell		X	
	Anderson-McDonald		X	
	Barnett	X	X	
	Crawford		X	
<p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p> <p>Anderson-McDonald</p> <p>Barnett</p> <p>Crawford</p> <p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p>	Graver		X	
	Muenzer		X	
	Richardson		X	
	Putzell		X	
	Anderson-McDonald		X	
	Barnett	X	X	
<p>Crawford</p> <p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p> <p>Anderson-McDonald</p> <p>Barnett</p> <p>Crawford</p> <p>Graver</p> <p>Muenzer</p> <p>Richardson</p> <p>Putzell (7-0)</p>	Crawford		X	
	Graver		X	
	Muenzer		X	
	Richardson		X	
	Putzell		X	
	Anderson-McDonald		X	

CITY OF NAPLES, FLORIDA

City Council Minutes

Date 04/19/89

COUNCIL  
MEMBERS

M O T I O N	S E C O N D	VOTE		A B S E N T
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---RESOLUTION NO. 89-5807

Item 18-d

A RESOLUTION APPOINTING THREE MEMBERS TO THE CONTRACTORS' EXAMINING BOARD TO FILL THE VACANCIES CREATED BY THE EXPIRATION OF THE TERMS OF THOMAS P. ABBOTT II, JERRY CURLEW AND MICHAEL BAVIELLO; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

MOTION: To APPOINT Thomas Abbott, II to the Contractors Examining Board.

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Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

X  
X  
X  
X  
X  
X  
X

---RESOLUTION NO. 89-5808

ITEM 19

A RESOLUTION APPOINTING SEVEN (7) MEMBERS TO THE AD HOC ADVISORY COMMITTEE ON NAPLES BAY MANAGEMENT; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

MOTION: To APPOINT Francis Finch, John Penner, Capt. Allen Walburn, Joseph Freni, Jr., Don Barber, Col. James Adams and Gerald Neumann to the Ad Hoc Advisory Committee on Naples Bay Management.

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Anderson-  
McDonald  
Barnett  
Crawford  
Graver  
Muenzer  
Richardson  
Putzell  
(7-0)

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---RESOLUTION NO. 89-5809

ITEM 20

A RESOLUTION AUTHORIZING A PROJECT FOR IMPROVEMENTS AT THE "FOUR CORNERS" INTERSECTION; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Assistant City Manager Wiltsie, also a member of the Fifth Avenue South Parking Committee, presented that group's recommendations to the Council. As part of improvements to the Four Corners intersection, he said, the Committee has recommended that all left hand turns, excluding southbound traffic, be eliminated. This action would change that intersection from the current four phase signalization to three phase. Additionally, he said, the Committee has recommended that approximately 15 parking spaces be removed from Fifth Avenue South between Eighth Street, South and U.S. 41 to provide for widening of that roadway which would also improve traffic flow.

Mr. Herb Anderson of the Naples Beautification Council spoke in favor of this project and advised that his group fully supported it.

Businessman Ed Verdesca of Jami's on Fifth Avenue South asked that if the bidding for this project was not completed by July 1, staff postpone construction plans until the next year. Any construction work during the busy winter season could be detrimental to those businesses within the area to be improved.



COUNCIL  
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Mr. Wiltsie pointed out that while staff was confident it could stay on schedule, it could not anticipate how long it would take to secure a permit from the Florida Department of Transportation (FDOT). In response to Councilman Richardson, staff approximated this process to take one month.

Mr. Charles Wallace of Alexandra's Cafe asked Council to consider after six parking in front of those stores which would lose on-street parking. Assistant City Manager Wiltsie, however, pointed out that it would be almost impossible to provide such parking unless the entire block was shut down after six o'clock.

Mr. Sal Tenaglia of Regina's Ice Cream supported Mr. Wallace's remarks.

Referring to the redirection of traffic away from Fifth Avenue South, Councilman Muenzer asked if it would be feasible to route traffic to Central. If traffic was directed to Central, he said, it would then be necessary for a left turn lane to be installed going east where it intersects U.S. 41. City Engineer Gronvold advised that staff has been conducting several surveys of the City's streets and would include Central Avenue in those studies. He noted that any changes to traffic flow must first be approved by FDOT.

Discussion then ensued regarding progress on the parking structure. Assistant City Manager Wiltsie announced that the final survey had been hand delivered to tenants and property owners on Fifth Avenue South within a 800-foot diameter of the proposed garage to determine interest in the project. City Manager Jones added that he was very comfortable that monies in the Capital Improvement Program (CIP) would be available for funding this and other improvements.

**MOTION:** To APPROVE the resolution as presented.

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--RESOLUTION NO. 89-5810

ITEM 21

A RESOLUTION AMENDING THE CONDITIONS ATTACHED TO THE CONDITIONAL USE APPROVAL CONTAINED IN RESOLUTION NO. 88-5577 OF JULY 20, 1988; APPROVING THE REQUEST TO POSTPONE THE REQUIREMENT FOR COMPLYING WITH THE CITY OF NAPLES FIRE CODE FOR A SPRINKLER SYSTEM AND THE REQUIREMENT FOR CONSTRUCTING A SIDEWALK ALONG THE THIRD STREET SOUTH SIDE OF THE PROPERTY AT 287 11TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

Community Development Director McKim advised the petitioner had requested requirements for a sprinkler system and sidewalk be waived as outlined in a previously approved conditional use permit for this bed and breakfast facility. Staff has no objection to delaying the sidewalk provision; however, the Fire Department strongly opposed waiving the requirement for a sprinkler system.

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Richardson  
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Petitioner Elise Sechrist explained she had recently discovered that it would be necessary for the entire house to be rewired prior to opening the bed and breakfast facility. In response to Councilman Crawford, Ms. Sechrist said that she had no objections to such rewiring but did not agree with the requirement for a sprinkler system or electric smoke detectors.

Referring to the electric smoke detectors required by the Fire Department, Mrs. Anderson-McDonald said that she did not believe this to be a prohibitive cost inasmuch as the house could be wired for such use simultaneously to the already contracted work.

Discussion then ensued regarding the approval period for Ms. Sechrist's conditional use permit. City Attorney Rynders advised that at the July 20, 1988 meeting, staff had recommended approval based on a one-year trial period; however, when Council moved to approve the resolution, it did not include that stipulation. Council directed the City Attorney to review the tape of those proceedings to determine whether there was a time limit placed on this operation.

Fire Chief Ijams then supported his Department's objection to waive the requirement for electric smoke detectors and the sprinkler system. There have been several concessions made on the part of the City, he said, relative to Code to ensure installation of the sprinkler system. He noted that should Council waive the requirement for such a system, those concessions previously relinquished would have to be met prior to the issuance of a certificate of occupancy.

Councilman Crawford commented that while he was very sympathetic to Ms. Sechrist's cash flow problem, he could not support her request based on that premise. Ms. Sechrist contended that she did not believe the sprinkler system was necessary as it was not required in similar facilities throughout the State.

Referring to the Council's support for installation of sprinkler systems in other cases, Mayor Putzell said that it was very important for the Council to be consistent with regard to such enforcement. People will be frequenting that facility as paying guests, he said, and are entitled to a certain degree of protection.

In response to Councilman Muenzer, Chief Ijams explained that a sprinkler system would eliminate the need for hood protection above the stove which, he pointed out, was one of the concessions made in support of the sprinkler system. Mr. Muenzer also asked if Ms. Sechrist had met all the parking requirements; staff advised that she had.

Citizen Neal Hawley asked to be heard and stated that he was sure there would be a one-year trial period for this facility. He further noted that his condominium group would watch this operation closely for violation as they did not want the quiet atmosphere of their neighborhood disturbed.



COUNCIL  
MEMBERS

MOTION	SECTION	YES	NO	ABSENT
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City Attorney Rynders advised that Council could add a provision to this resolution stipulating a one-year probationary period if it so desired.

MOTION: To APPROVE the resolution excepting the request to waive the sprinkler system requirement.

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## ---RESOLUTION NO. 89-3811

## ITEM 22

A RESOLUTION AUTHORIZING THE ISSUANCE OF CHANGE ORDER NO. 1 TO CARDINAL CONTRACTORS, INC. IN THE AMOUNT OF \$24,536.00 IN CONJUNCTION WITH THE CONSTRUCTION OF THE TWO NEW WATER STORAGE TANKS LOCATED AT SOLANA ROAD AND SHADOWLAWN DRIVE; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

No discussion either for or against.

MOTION: To APPROVE the resolution as presented.

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## ---RESOLUTION NO. 89-3812

## ITEM 23

A RESOLUTION CANCELLING THE JULY 5, 1989, REGULAR CITY COUNCIL MEETING; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Rynders.

No discussion either for or against.

MOTION: To APPROVE the resolution as presented.

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CORRESPONDENCE AND COMMUNICATIONS:

Councilman Muenzer suggested that a public hearing be set to allow citizens the opportunity to communicate traffic hazards or corrections which they may have encountered or perceived. One member of Council, the City Manager and City Engineer could be present to answer any such concerns, he said. City Manager Jones pointed out that the various departments have been working on their Capital Improvement Program (CIP) budget submissions for the upcoming fiscal year which include traffic problems communicated to staff by the public. Mayor Putzell further noted that such topics were discussed at the Council's annual budget hearing process. A program very well publicized, but not very well attended.

City Manager Jones reminded Council that the City was under Phase I water restrictions effective April 17, 1989. Currently, those offenders of this restriction are being issued warnings; however, at

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Muenzer  
Richardson  
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the end of the two week warning period, they would be issued citations.

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ADJOURN: 12:06 p.m.

EDWIN J. PUTZELL, JR., Mayor

JANET CASON  
CITY CLERK

JODIE M. O'DRISCOLL  
DEPUTY CLERK

These minutes of the Naples City Council were approved on 5-3-89.



SUPPLEMENTAL ATTENDANCE LIST

Tom Peek  
Chuck Mohlke  
Tom Morgan  
Charles Andrews  
George Smyth  
Lee Layne  
Gilbert Weil

Marcie Flinn  
George Hills  
W.W. Haardt  
Rick Meyer  
Jeff Whitaker  
Dick Sykes

John Van Arsdale  
Bob Galloway  
Ruth Richmond  
Herb Anderson  
Bill Hill  
Lodge McKee

Other interested citizens and visitors.

NEWS MEDIA

Bryan Hoopes, Palmer  
John Goff, WINK-TV

Lori Darvas, Naples Daily News

FAA350



# City of Naples

## --- MEMO ---

TO: THE HON. MAYOR AND MEMBERS OF CITY COUNCIL  
FROM: DAVID W. RYNDERS, CITY ATTORNEY  
DATE: APRIL 17, 1989  
RE: LEGAL ISSUES RAISED BY THE POWER CORPORATION'S  
APPLICATION FOR GDSP AMENDMENT

Mr. Maloney, attorney for the Power Corporation, in connection with the above, has argued, at least to this office, that the approval of the GDSP amendment requested by his client is merely a ministerial act involving no legislative discretion with the Council to reduce the intensity of development on that site. Precisely the opposite is true. In the case of City of Boynton Beach v. V.S.H. Realty, Inc., 443 So.2d 452 (Fla. 4th DCA 1984), exactly the same question was raised about the City Council's approval of site plans. The Court said, contrary to the land owner's argument, that:

"In deciding whether to grant approval, the City Council is called upon to exercise an informed legislative discretion, which would clearly involve consideration of factors and criteria stated in the ordinance, so as to protect the various interests of the public, particularly neighboring residents and property owners."

Based on this, and the language in Section 14 of the Naples Zoning Ordinance that states that developments of five acres or more are "presumed to have a significant impact upon the City", the Council has legislative discretion to determine what intensity of use is appropriate on this site under the "C2-A" Zoning and may grant or deny the application or reach a compromise with the land owner.

Mr. Maloney also alleges that because of the mistake of the City in not initially realizing that the application for a 45,000 square foot office building exceeded the GDSP approved in 1980, his client has suffered and should be able to finish the structure. Briefly, the substantial weight of authority opposes Mr. Maloney's claim. In a similar case, the Court stated:

"We reverse upon a holding that a governmental entity is not estopped from the enforcement of its ordinances by an illegally issued permit which is issued as a result of mutual mistake of fact." Dade County v. Bengis Associates, Inc., 257 So.2d 291 (Fla. 3d DCA 1972).

In the Bengis case, the Court also noted "the initial mistake or misrepresentation was made by the appellee sign company" which is also true in the present case.

This rule may seem somewhat harsh, and the Court recognizes that:



"While at first blush it seems that the application of the rule may be harsh, it would be inconceivable that public officials could issue a permit, either inadvertently, through error, or intentionally, by design, which would sanction a violation of an ordinance adopted by the legislative branch of government. Only the duly constituted members of the Metropolitan Dade County Commission enjoy that prerogative and then only in accordance with established procedure." Corona Properties of Florida, Inc. v. Monroe County, 485 So.2d 1314 (Fla. 3d DCA 1986).

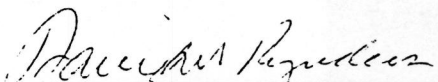
Power Corporation will undoubtedly claim that they have expended substantial funds in reliance upon the issued permit. Under other circumstances, this would give rise to an estoppel, however:

"...one's own wrongful act ordinarily cannot serve as a basis of a claim of estoppel against another, and it can be applied as an estoppel against estoppel. Florida Land Inc. Co. v. Williams, 98 Fla. 1258, 116 So. 642." Jefferson National Bank At Sunny Isles v. Metropolitan Dade County, 271 So.2d 207 (Fla. 3d DCA 1972).

Furthermore:

"Generally speaking, a permit issued under mistake of fact or in violation of law confers no right or privilege on the grantee. The applicable principle is that every person is presumed to know the nature and extent of the powers of municipal officers. McQuillin on Municipal Corporations, Rev. Vol. 3, 2d Ed., par. 1021; 9 Am.Jur. 204, par. 8." Miami Shores Village v. Brockway Post No. 124 of American Legion, 24 So.2d 33 (Fla. 1945).

In conclusion, no legal or equitable principal requires the Council to allow Power Corporation to continue under the mistakenly issued building permit. Secondly, the Council has full legislative discretion to grant, deny, or compromise with Power Corporation on their application for GDSP amendment.

  
David W. Rynders, City Attorney

DWR/plr