



City Council Chamber
735 Eighth Street South
Naples, Florida 33940

City Council Regular Meeting - June 16, 1993 - 9:00 a.m.

Mayor Muenzer called the meeting to order and presided.

ROLL CALL

ITEM 2

Present: Paul W. Muenzer, Mayor
Fred L. Sullivan, Vice Mayor

Council Members:
R. Joseph Herms
Alan R. Korest
Ronald M. Pennington
Peter H. Van Arsdale

Absent: Kim Anderson, Council Member

Also Present:

Dr. Richard L. Woodruff, City Manager
Maria J. Chiaro, City Attorney
Bill Harrison, Finance Director
Missy McKim, Community Development Dir.
John Cole, Chief Planner
Ann Walker, Planner II
Mark Thornton, Community Services Dir.
Dan Mercer, Utilities Director
Russell Camire, PC Network Coordinator
Paul C. Reble, Police Chief
Joseph Whitehead, Police Officer
Marilyn McCord, Deputy City Clerk
Peter Shaff

Media:

Eric Staats, Naples Daily News

Charles Andrews
Werner W. Haardt
Norman de la Chapelle
David Rice
Robert Gebhardt
Fred Tarrant
Pamela Mac'Kie
Penelope Taylor
Tom O'Riley
Ann Collabrese
Justyna Ford
Brad McNealy
Bud Bunker
Tom Dalton
Other interested citizens and visitors

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ITEM 1

INVOCATION AND PLEDGE OF ALLEGIANCE

Reverend Jim Darcy
St. Ann's Catholic Church

ITEM 3

ITEMS TO BE ADDED

None.

ITEM 4

ANNOUNCEMENTS

Mayor Muenzer and City Manager Woodruff acknowledged several organizations involved in the City of Naples Sport Fishing Week. The Mayor congratulated representatives who were present and thanked them for their conservation efforts.

*******CONSENT AGENDA*******

ITEM 15

APPROVAL OF MINUTES

City Council Workshop Meeting	June 1, 1993
City Council Regular Meeting	June 2, 1993
City Council Workshop Meeting	June 7, 1993

RESOLUTION NO. 93-6953

ITEM 16

A RESOLUTION ACCEPTING THE DONATION OF THE POLICE ATHLETIC LEAGUE BUILDING LOCATED IN FLEISCHMANN PARK; AUTHORIZING THE COMMUNITY SERVICES DEPARTMENT TO STRUCTURE FEES FOR USERS OF THE BUILDING TO RECOVER EXPENSES FOR THE OPERATION AND MAINTENANCE OF THE FACILITY; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. 93-6945

ITEM 17

A RESOLUTION CANCELLING AND RESCHEDULING THE JULY 7, 1993, REGULAR CITY COUNCIL MEETING AND PROVIDING AN EFFECTIVE DATE.

ITEM 19-a

REHABILITATION OF TWO GRAVITY FILTERS AT WATER TREATMENT PLANT (BID 93-48/UTILITIES)

ITEM 19-c

REPLACEMENT OF STEEL WALKWAYS AT WASTEWATER TREATMENT PLANT (BID 93-55/UTILITIES)

ITEM 20

AMEND BUDGET OF THE HORTICULTURAL DIVISION TO REFLECT THE RECENTLY-APPROVED CONTRACT FOR DISPOSAL OF HORTICULTURAL DEBRIS

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MOTION: To **APPROVE** the consent agenda, consisting of Items 15, 16, 17, 19-a, 19-c, and 20.

Anderson			A
Hermes	S	Y	
Korest	M	Y	
Pennington		Y	
Sullivan		Y	
VanArsdale		Y	
Muenzer		Y	
(6-0)			
M=Motion S=Second			
Y=Yes N=No A=Absent			

ORDINANCE NO. 93-

ITEM 5

AN ORDINANCE REPEALING ORDINANCE 92-6808, ADOPTED NOVEMBER 18, 1992 WHICH REZONED A 70 ACRE TRACT OF LAND (COASTLAND MALL) BOUNDED BY U.S. 41, GOODLETTE-FRANK ROAD, FLEISCHMANN BOULEVARD AND GOLDEN GATE PARKWAY FROM "HC" HIGHWAY COMMERCIAL TO "PD" PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. 93-6946

ITEM 6

A RESOLUTION CALLING FOR A REFERENDUM TO REPEAL ORDINANCE 92-6808 WHICH ORDINANCE REZONES COASTLAND CENTER AND THE ADJACENT 10 ACRES FROM HIGHWAY COMMERCIAL TO PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. 93-6947

ITEM 6

A RESOLUTION APPROVING THE BALLOT QUESTION RELATED TO THE REPEAL OF CITY OF NAPLES ORDINANCE 92-6808 WHICH ORDINANCE REZONES COASTLAND CENTER AND THE ADJACENT 10 ACRES FROM HIGHWAY COMMERCIAL TO PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

ORDINANCE NO. 93-

ITEM 7

AN ORDINANCE AMENDING THE NAPLES COMPREHENSIVE DEVELOPMENT CODE, SUBSECTION 7-4-12 ("HC") HIGHWAY COMMERCIAL DISTRICT, AMENDING SUBSECTION 7-4-22 ("PD") PLANNED DEVELOPMENT DISTRICT AND AMENDING SUBSECTION 9-3-4 TO RESTRICT THE SIZE OF SHOPPING CENTERS AND TYPES OF PARKING FACILITIES IN THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE.

RESOLUTION NO. 93-

ITEM 8

A RESOLUTION CALLING FOR A REFERENDUM TO VOTE UPON AMENDING SUBSECTION 7-4-12 ("HC"), HIGHWAY COMMERCIAL DISTRICT, SUBSECTION 7-4-22("PD"), PLANNED DEVELOPMENT DISTRICT, AND SUBSECTION 9-3-4 OF THE COMPREHENSIVE DEVELOPMENT CODE TO RESTRICT THE SIZE OF SHOPPING CENTERS AND TYPES OF PARKING FACILITIES IN THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

NOTE: ITEM 8 REQUIRED NO ACTION, SINCE ITEM 7 WAS TABLED.

RESOLUTION NO. 93-

ITEM 8

A RESOLUTION APPROVING THE BALLOT QUESTION RELATED TO THE AMENDMENT OF SUBSECTION 7-4-12 ("HC"), HIGHWAY COMMERCIAL DISTRICT, SUBSECTION 7-4-22 ("PD"), PLANNED DEVELOPMENT DISTRICT, AND SUBSECTION 9-3-4 OF THE COMPREHENSIVE DEVELOPMENT CODE TO RESTRICT THE SIZE OF SHOPPING CENTERS AND TYPES OF PARKING FACILITIES IN THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

NOTE: ITEM 8 REQUIRED NO ACTION, SINCE ITEM 7 WAS TABLED.

City Attorney Chiaro announced that rather than read the titles of the ordinances, it was appropriate, since Council was present at the direction of a court order, to open a public hearing with reference to the repeal of the ordinance rezoning Coastland Mall.

City Manager Woodruff reminded Council and the public that should Council choose to enact the ordinances as requested, those require two readings; the second reading would be held on July 21, 1993, at the next scheduled City Council Meeting. If Council determines that it does not wish to adopt these ordinances, it is necessary to take further actions to set forth necessary elections, said Dr. Woodruff. Council will need to authorize the City to enter into a contract with the County and Supervisor of Elections Mary Morgan to conduct a mail ballot. In addition, Council will need to determine if the City Clerk should send out a notice of election letter and whether the City would pay the return postage on the ballots.

Dr. Woodruff stated, "I don't think it's a surprise to anyone that this is a matter that's under litigation. The fact that it is under litigation does have impacts on what you do today and the potential outcome as to what you decide today. If you chose to repeal the ordinance today, or if you chose to not repeal the ordinance and call for a referendum, we are all aware that pending court action could set aside any decision that you make whichever way you make it. You should also be aware (and I think that you are) that there is other litigation in the State that the City and Coastland Mall and the Petition Committee is not part of, that depending on a ruling could likewise have an impact on this issue today."

Dr. Woodruff continued, "It is certainly our recommendation that the matter proceed directly today and the issue before you, I think, is a very narrow issue, certainly a complex issue, but a narrow issue of asking 'Do you want to repeal the ordinance that gave the zoning to the Coastland Mall expansion?' If you do want to repeal it, then there is a course of action set. If you do not want to

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repeal it, then you will need to call for a referendum as the City Charter says."

Chief Planner Cole informed Council that although the petitioners would undoubtedly present their reasons for repealing Ordinance No. 92-6808, staff had not received any further information since November, when Council approved the particular request that would alter staff's petition and recommendation for approval. Mr. Cole reviewed the staff report dated June 8, 1993, which reiterates staff's approval for the Mall expansion. He also referred to a memorandum dated June 15, 1993, which provided information requested at the June 14th City Council Workshop Meeting. That memorandum points out that the site plan that was approved by Council indicated a building that contained 955,000 square feet of gross leasable area (GLA). This figure is arrived at by adding 402,332 square feet of new retail area, new theaters, and expanded food court, to the existing 552,668 square feet of GLA that is at the Mall today. Mr. Cole said that within the PD (Planned Development) narrative, there is additional language that allows for some increases in this square footage to accommodate changes in the development that might occur as the project proceeds from a conceptual plan reviewed by City Council and staff to the actual construction drawings that are made. Under no circumstance, however, said Mr. Cole, is the project permitted to exceed 995,000 square feet.

With respect to lot coverage, Mr. Cole reported that the project is not permitted to exceed 28% lot coverage. This would include any revisions that needed to be made to accommodate construction details in the future. The "Coastland Center Landscape Code Analysis," contained as an exhibit in Ordinance No. 92-6808, indicates that the total open space for the existing Coastland Center is 365,904 square feet. The proposed open space is 648,000 square feet. The existing open space for Coastland Center's sixty acre site is 14%. As completed, the project would contain 21.2% open space, if the plans are built as submitted to Council at their November, 1992 Meeting.

In response to Council Member Herms, City Attorney Chiaro quoted the Comprehensive Development Code definition of open space: "Undeveloped land suitable for passive recreation or conservation uses." Mr. Cole said that landscaped areas, water retention, and grass reserves, are included in the Mall's open space numbers. Parking areas and walkways from the parking areas to the buildings are excluded from open space calculations. Mr. Herms asked that staff provide the County Code's interpretation of "open space" prior to second reading.

Responding to Council Member Herms, Mr. Cole gave brief comments on the history of the fifth anchor store. He explained that after the submittal for Coastland Center left the PAB and was scheduled for its first Council review, Section 2, Subsection 1 was included in Ordinance No. 92-6808 to allow the developers an option to replace the food court and theaters with a two-story department store. Mr. Cole said that he placed that language in the ordinance based on discussions which occurred at the PAB. Some nearby residents had communicated their concern that there

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would be more activity with a food court and theaters than with a fifth department store. Mr. Cole said that his concern, from a staff standpoint, was that a fifth anchor (or fifth wing) would result in too much of the site being covered by building. The developers had asked for the ability to maintain their flexibility in future negotiations to be able to deal directly with a potential anchor. To address all of those concerns, said Mr. Cole, he added that section to the ordinance. At the same time, negotiations began over the project size. Language was included in Ordinance No. 92-6808 allowing the project to reach a maximum size of 995,000 square feet under any development scenario, including the scenario that would add a second story to the existing footprint of the Coastland Center and replace the proposed theaters with an additional department store. Mr. Cole went on to say that while he acknowledges the fact that after Council deliberations there was some confusion, and that there may have been an option open to the applicants when the ordinance was written, Council had not been in favor of adding a fifth department store, whether or not it was on a wing or added into a replacement for the movie theaters. The applicants have been instructed that that particular option is not available to them.

City Manager Woodruff added that during the petition drive Council Member Pennington had asked for clarification on that issue. Staff had then listened to the tape recordings and reviewed the minutes from the relevant meeting. Dr. Woodruff said that the term "fifth department store" was used in those discussions to refer to a fifth anchor that was to be located in a new part, or on an expanded footprint, of the Mall. That however was clearly not the Council's intent.

Dr. Woodruff stated that the tape and the minutes also reflect that Council did not have an objection to the food court being turned over to retail. He noted that no guidance was given as to what size those retail spaces could be. Dr. Woodruff reported that he had talked to each Council Member to verify whether it was their intent to allow a fifth anchor. Council informed Dr. Woodruff they did not want a fifth anchor store.

Dr. Woodruff explained that some of the language in the ordinance did not actually reflect Council's intent, so it was necessary to also consider the details of the drawings and of the document approved by Council. Those documents clearly show that Council had no intention of setting up a fifth major store.

Council Member Herms questioned ordinance language which, in his opinion, would allow a second floor and a fifth department store as long as density and parking requirements were met. Vice Mayor Sullivan remarked that the Mall developers had previously requested that Council approve the additional space so that the DRI (Development of Regional Impact) process could be avoided. That was rejected by Council, he said, with the exception of Mr. Herms. Council Member Pennington noted that since the petition process was under way, it was a difficult time to change the verbiage in the ordinance. The City Attorney had assured Mr. Pennington that a fifth department store could not be built and that the maximum square footage was in fact "locked in."

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NOTE: Mayor Muenzer announced that Public Input would be taken for Items 5 and 7.

Public Input - Item 5

Edith Williams, 3300 Gin Lane

Mrs. Williams told Council that in her opinion Council had approved too much of an increase for Coastland Mall. She said, "I expect my Council to defend me. We don't want it. I think if this had had a traffic survey, it would have been denied." Mrs. Williams commented that Mayor Muenzer had protected his neighborhood for almost twenty years and in her opinion Penelope Taylor should be allowed to defend hers. She ended her comments by saying that Council's decision was "Unjust, unfair, and unacceptable."

NOTE: Mayor Muenzer disagreed with Mrs. Williams, noting that he had supported the expansion of the Library, the Hospital, and a local church in his neighborhood.

Norman F. de la Chapelle, Third Street South Area Association

Mr. de la Chapelle reported that the Third Street South Area Association Board of Directors had voted to go on record that they believed it to be in the best interest of the City that the Mall expansion plans be approved. The Board of Directors is of the opinion that if the City is to preserve its economic viability, the plans should be approved, although there should be strict requirements in such areas as design and landscaping. Mr. de la Chapelle implored Council, "Please don't compromise." He explained that if the anchor stores are not allowed to expand, they will depart because it is not economically sound otherwise to remain. The demise of the Mall would in turn harm the Third Street and Fifth Avenue merchants, said Mr. de la Chapelle.

Neil Haslett, 479 Spinnaker Court

Mr. Haslett said that in his opinion the City does not need the problems that would accompany additional expansion of the Mall, including additional traffic and crime. He commented that he would not conceive that any benefits of an expanded Mall would outweigh the detrimental effects. Mr. Haslett said that he did not believe the purpose of Council should be to assist businesses in solving their problems, for instance the anchor stores requiring additional square footage. The stores accepted those risks when they moved to Naples, said Mr. Haslett, and should have known the situation and not counted on Council to change the zoning to their benefit. Mr. Haslett concluded, "I therefore recommend this expansion be disapproved."

Pam Mac'Kie, 575 Whispering Pine Lane

Attorney Mac'Kie, President of the Naples Better Government Committee, told Council that the Committee supported the Mall expansion. She said, "I know you carefully considered your decision. There have been no new facts presented to you and there are a substantial number of citizens in the City who support this." With regard to the issue of how the ordinance reads on its cover sheet, Ms. Mac'Kie urged Council not to be diverted by that concern. The ordinance is the entire record, she said, including all attachments, which leave no question about the fifth anchor store. Ms. Mac'Kie

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summarized, "I urge you to stand fast. It is difficult in the fact of public opposition, but there are many who support you."

Irv Maizlish, 4601 Gulf Shore Boulevard North

Mr. Maizlish began by stating that he had no financial or personal interest in this project and that his only desire in this issue was to see benefits to the City. He said that the Mall should have been expanded years ago and that the City deserves better mall shopping than what it presently has. Mr. Maizlich noted that if the Mall's expansion had taken place earlier, the City's retail stores perhaps would not have become so fragmented. He pointed out that early City leaders had chosen the Mall's location well, noting that it was well buffered on all sides. If Coastland Mall is expanded properly, said Mr. Maizlich, a competing mall will not be built. Should a second mall be built, he noted, the results would be disastrous. Mr. Maizlich also referred to the fact that the City's infrastructure will have to be upgraded in time and income derived from the Mall in the form of taxes will be vitally needed.

David Rice, 255 Champney Bay Court

Attorney Rice commented that he had talked to some members of the Third Street Association Board of Directors who were not in favor of the Mall's expansion. With regard to the fifth department store, he said that it appeared that the City was taking an inconsistent position. He also disagreed with Attorney Mac'Kie that an ordinance includes all supporting documents.

Robert C. Gebhardt, 2500 Tamiami Trail North

Attorney for the Naples Voters' Rights Committee

Attorney Gebhardt spoke first about the pending litigation and a proposed solution. Reviewing the issue's history, Attorney Gebhardt said that at the time the ordinance was enacted, Ms. Penelope Taylor, within the appropriate timeframe, challenged the legality of the Mall. That challenge was based on the fact that at the time she wanted a review of that ordinance and assurance that the voters would have the opportunity to review it. Because the court in that argument had sided with the City and the Mall developer, Ms. Taylor asked again, as a precaution, to have the Appeals Court review this in its entirety. The lower court deemed that this issue should go to the voters under the existing law. Mall representatives and the City asked for a rehearing and during that time Ms. Taylor decided to protect her rights and has asked the Appeals Court to review Judge Blackwell's decision. Throughout this, said Attorney Gebhardt, Ms. Taylor's position has been consistent: "Let's have the voters of the City go forward on this. Let's have them express their wishes and let's let it rise or fall with the voters."

The Petitioners' Committee believes, said Attorney Gebhardt, that the Mall will appeal the Judge's decision permitting the referendum and they may succeed, which would result in no one being in a position to do an independent review of this ordinance. He reported that the Mall had already filed papers that appear to question the validity of this Council Meeting and the voting process should it

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go forward. Consequently, a huge abyss of litigation is being created, which will plague Council for years.

Attorney Gebhardt proposed a solution. He stated that Ms. Taylor would be willing to drop all of her litigation if the Mall and the City would drop all of their litigation and agree to be bound by a vote of the community. "Let's get it out of the courts, to the people, for the voters where it belongs and let's be bound by the voters' decision." Otherwise, stated Attorney Gebhardt, this issue will be tied up in the courts for an extended period of time, which in turn will interfere with the management of the City.

Next Attorney Gebhardt discussed what he termed the technical flaws in the ordinance. On November 16, 1992, he noted, prior to the last vote on the Mall, the Mall withdrew its application for the fifth department store. The fifth store was not deleted from the submittal, said Attorney Gebhardt, resulting in a confusing, contradictory ordinance. He said, "I believe, if nothing else, you should repeal this and go back and eliminate those inconsistencies." Regardless of the referendum process, noted Attorney Gebhardt, this is an ordinance that will cause problems in the future. He told Council that the review he had made of cases in the State of Florida suggest that zoning is interpreted in favor of the landowner, not of the City, particularly in restrictive zoning. In this case, the zoning ordinance clearly states that the landowner can establish a fifth department store, pointed out Attorney Gebhardt.

Should Council eliminate the food court expansion and the theater expansion, 38,000 square feet could be used for the fifth department store. In addition to that, since there is a five percent slippage which allows the Mall to go from 950,000 to 995,000 square feet, that would represent an additional 45,000 square feet. Added together, said Attorney Gebhardt, a 90,000 square foot department store could be built, under the existing ordinance. In summary, he said, "I believe you have an ordinance that is fatally flawed and that is going to cause you problems, and this is the ideal time to repeal it. Go back to correct it and eliminate these flaws."

Penelope Taylor

Chairman, Naples Voters' Rights Committee

Ms. Taylor began by saying that since she initially appeared before Council last November, a direct mail poll conducted by the Citizens Political Committee asked the Naples City voters what kind of expansion they wanted for Coastland Mall. For the record, there was a 40% return of this direct mail piece in two days. Seventy-eight percent of those responding wanted either no increase or a limited expansion of Coastland Mall.

In December, in response to Council's vote in favor of the proposed Mall expansion, 2,500 people signed a petition asking Council to repeal the expansion plan. Ms. Taylor noted that these signatures were obtained in two weeks, at a time when people were preoccupied with the holidays. Ms. Taylor

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continued, "After we were ordered to abandon our City Hall petition station under threat of police action by the City Manager, the majority of signatures were obtained at the Collier County Library, where we relocated our petition station. In that busiest of holiday seasons, with all the pressures of shopping, entertaining and traveling, these voters took the time and stopped by the Library to sign the petition against the overdevelopment of Coastland Mall. Again, the people spoke to you, and the message was clear. The voters do not want this large a commercial development in the City."

Ms. Taylor continued, "Our plan promotes sensible Mall expansion. We have always honored the anchors' need to expand, but that expansion must be within the standards set by current City zoning. There is a residential character to the City of Naples that has been carefully nurtured as a desired environment by our zoning standards. This environment is what attracts the upscale tourist and fuels our economy. This desired environment is what has earned Naples the plaudit 'The jewel of the southwest coast of Florida' by the New York Times. Many people visit Naples and ultimately decide to live here because of the low density, residential character of our City. They do not call it that, of course, but they know Naples is different. Lots of trees, open space, seven miles of beaches, and a charming residential town. The zoning standards in the Naples Comprehensive Development Code are the framework for the environment of Naples, but six zoning standards were intentionally abandoned in the expansion plan of Coastland Mall."

At this point Ms. Taylor used a chart to compare the current zoning in the Comprehensive Development Code with the Mall rezone, highlighting six areas where the rezone varies from the Code. Ms. Taylor proceeded: "The building height established by the Naples Comprehensive Development Code is 41 feet; the Mall rezone is 46. Minimum parking - five cars per 1,000 square feet and one for every four theaters. The Mall rezone reads 4.5 per 1,000 square feet plus no additional spaces for theaters. Loading spaces - Type A required by our Code are 31 spaces and Type B are 31 spaces; the Mall has today, if this plan goes forward, under Type A, 20, and under Type B, zero. Maximum lot coverage: 25% is required by our Code; the Mall has been given 29. Landscape buffer: 25 feet setback are required by our Code; there's approximately a 12 foot setback for the Mall expansion plan. Signage, perhaps one of the most sensitive things, and which makes Naples the town it is and why we have this regulation in our zoning code. Under Highway Commercial, a major tenant is allowed two 80 foot square signs, and under the Mall rezone, each major tenant can have three 320 square foot signs. That's four times what our Code allows."

Ms. Taylor continued, "I have one question to the City Council. Why are you selling out our City for the profit of this out-of-town developer? Six of you have voted for a plan of Coastland Mall that will change the face of the City forever. Why this knee-jerk reaction to the fear tactics by the developer? The developer has threatened that the anchors will leave unless they can expand. Where are they going to go? Pine Aire Lakes has already committed, according to recent news stories, to a category type shopping mall with discount stores as anchors. And, as growth in the County heads north and east, there presumably will be another regional mall someday, perhaps closer to Interstate

I-75, perhaps leaving Coastland in the dust. Why allow LaSalle Partners to max out the site of Coastland Mall and create a potential white elephant that is almost twice the size it is now, for our future generations? There is a residential character to the City of Naples that needs to be preserved for a healthy economic future."

Ms. Taylor next referred to the 1992 tax rolls for the City, pointing out that the residential property values were more than ten times that of the commercial tax assessment. Tax assessment for 1992 for the Mall was 33.5 million dollars, she said, and at least seven condominiums are either greater than or match the Mall's appraised value. Ms. Taylor commented, "Clearly, our tax base is from the residential component of the City. Commercial development costs the City taxpayer more than residential development because of the services that a higher intensity commercial development requires, for example, fire, police, traffic mitigation. Our tax base is clearly residential. Debasing it with large, overdeveloped commercial projects destroys the tranquility, the neighborhood, and the residential character of our City." Ms. Taylor also noted that increased traffic would result, and yet parts of U.S. 41 are already close to or at their maximum capacity."

"Today we are asking you, the City Council, to think of Naples' future," said Ms. Taylor, who continued, "What kind of town do we want? The people have spoken to you, time and time again. First, the Citizens Political Committee poll, and now the petition drive in December. Growth is inevitable but we can plan for it. Growth does not have to adversely affect our quality of life. Growth must be in character with the low density residential environment of our City. Our plan wants an expansion of the Mall, but an expansion plan that is within the zoning standards established in the Naples Comprehensive Development Code. We the people can direct the future of our City. A previous Council left us with this legacy concerning the corner of Golden Gate Parkway and the Tamiami Trail, and I quote, 'There was more than enough property already zoned and developed for commercial uses. A concentrated effort should be made to maintain and enhance existing residential development. Steps should be taken to limit the expansion of commercial areas and to protect adjacent residential areas. Traffic generation should be kept to a minimum.' Where are those Council voices now? What legacy are you leaving our children? Listen to your electorate. Reconsider your original vote and repeal this ordinance."

James P. Lennane, 4228 Gordon Drive

Mr. Lennane told Council that he had joined Ms. Taylor's efforts primarily because he was concerned about: "The process that has been involved and the ongoing urbanization of Naples, the stultifying traffic problems, the selling out of our community to commercial interests, many times remote absentee landlords and all to feed off of our community. I think the final result of this is it's debasing the residential nature of our neighborhoods." Mr. Lennane said that the public's only adequate response in a case such as this is to utilize the petition process. Although there were some minor errors in the gathering of the petition, admitted Mr. Lennane, it is a fundamental inalienable right of the people. It is only a property right of a landowner, he noted, to ask to develop their

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property. Mr. Lennane said that the landowner has no entitlements to go over 700,000 square feet. Counter to that, he noted, the public has the right to go out and vote and ask Council to change its view or to have it put to an election.

Mr. Lennane commented that some Council Members had represented that they would act differently in opposition to such projects. He asked Council to stand behind those things they had represented to the citizens, adding, "The people have done their work. The people want to hold an election and we want to save them that agony, we want to save them the angst between our parties. We want to put this thing down, vote it down now, and get back as an honest broker, negotiate with this developer, come up with a quality project at 750,000 square feet." Mr. Lennane concluded by asking Council to get out of litigation and back into negotiations in order to settle the matter.

BREAK: 10:45 a.m. - 10:55 a.m.

Council Member Herms read a letter from the Lake Park Neighborhood Association into the record. (Attachment #1) The letter was dated June 14, 1993 and expresses support of a limited Mall expansion.

Mayor Muenzer next read into the record a letter from the Naples Area Chamber of Commerce dated June 15, 1993. (Attachment #2) The letter urges Council to ratify the rezone approval adopted last fall.

Brad A. McNealy, Managing Director, LaSalle Partners

Mr. McNealy began by stating that the Coastland Center principals fully support a public vote on the expansion, at the earliest possible date. He noted that a mail ballot dramatically increases voter participation. Mr. McNealy continued, "The proposed expansion of Coastland Center has already been subjected to what is probably one of the stringent governmental processes in the United States. State, regional and local authorities have spent days scrutinizing every aspect of the proposed expansion. This process has resulted in many changes to the expansion and a long list of mitigation requirements. It seems odd to me that after this lengthy, rigorous review, the opponents of Coastland Center have elected to second guess you, their elected representatives. While we regret seeing this decision move from the realm of professional planning to politics, it is the right of the citizens of Naples to do so and we not only support that right but look forward to actively participating in it. If you choose to send this to a public referendum, we will communicate openly and honestly with the citizens of Naples. The facts surrounding this issue are clear and compelling. We are confident that with a fair and just airing of those facts the residents of Naples will resoundly

approve the expansion."

Continuing, Mr. McNealy said, "The dialogue and exchanges on this issue have been extreme. In addition to the numerous hearings which have taken place and the substantive media coverage, legal actions have also been initiated by both sides. We have responded to our opponents and even initiated some actions necessary to protect our interests under the law."

Mr. McNealy told Council that rather than respond to the many comments that had been made, he would respond to one premise that had been addressed in an effort to clarify same. He said, "It has been suggested, and is indicated by the proposed initiative which will be considered later this morning, that the Mall could expand to 750,000 square feet instead of the 950,000 or 995,000 square feet that has been proposed. Expansion to 750,000 square feet is not an alternative, period. We do not have the power to dictate sizes to the department stores and we do not have the opportunity to limit the size to 750,000 square feet. As a matter of fact, if you go through the math of some of what was offered this morning, with the size of the existing department stores and the expansion that has been proposed by the department stores alone, you are already over 820,000 square feet. That alone would exceed the 750,000 square feet that's been proposed.

"Coastland Center is a quality shopping center and we are committed to the expanded Coastland Center being a quality shopping center. Coastland Center is a valued community asset, it is the center of the community. An expanded Coastland Center will provide the residents of Naples with better choice of merchandise and the convenient, familiar setting that all of you know. I'm here to ask each of you to reaffirm your vote (except of course you, Mr. Herms, and we'd like to see you change your mind) for Coastland Center, and if we must, let's let the citizens of Naples decide what they want."

Council Member Herms asked for results of the survey which had been generated by Mall representatives. Mr. McNealy said that approximately forty questions had been asked in the survey and would prefer not to supply those results to Council. Mr. McNealy said further that information in the survey was very supportive and positive and that over 50% of the citizens responding supported the expansion.

With respect to the pending litigation issue, Council Member Herms asked if the Mall principals would be willing to drop all of their litigation. Mr. McNealy commented that although that was an interesting concept, he was not sure of how that would be accomplished. Further responding to Mr. Herms, Mr. McNealy offered to provide a list of those pension funds represented by LaSalle Partnership whose funds are invested in Coastland Center.

ITEM 7

Chief Planner Cole reviewed the staff report pertaining to Item 7, which is a request to amend the Comprehensive Development Code in order to limit the size of shopping centers and the use of parking structures within the City. Specifically, language contained within the proposed ordinance would:

- . Restrict "Shopping Center" size to a maximum 750,000 square feet of gross leasable area Citywide.

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- . Prohibit shopping centers, having a gross leasable area greater than 300,000 square feet, from providing parking "other than on ground level."
- . Prohibit applications to "PD" Planned Development from including either:
 - a. proposals for shopping centers greater than 750,000 square feet in size; or,
 - b. developments **of any sort** which provide for parking other than on ground level.

Mr. Cole went on to explain that these text amendments are being considered by Council pursuant to an order of the Circuit Court related to an initiative petition proposing adoption of the amendments. He pointed out that should the changes be adopted, at least five Planned Developments in the City would become nonconforming and the exclusion of parking structures from all "PD" rezones would limit the City's options in reviewing new development and redevelopment proposals.

Accordingly, said Mr. Cole, staff recommends against adoption of the ordinance establishing additional restrictions regarding the size of shopping centers and the use of parking structures. Should Council not approve this ordinance, the question of its adoption will be scheduled for a special election according to applicable law.

Public Input - Item 7

Gary Carlson, 5155 12th Avenue, S.W.

Mr. Carlson, Chairman of the Economic Development Council (EDC), announced that the EDC supports staff's recommendation not to adopt the ordinance. He stated, "We don't feel there's a need to tie their hands right now when they have an apparent chance to better serve this community and an opportunity to make it better. I would like to use one example." The example Mr. Carlson referred to is the Hospital parking garage. He continued, "We were able to plow up a block and a half of impervious service and asphalt, put half of that space back into greenspace with property water management and landscaping, and I would hate to see us restrict people from doing that. And I think passage of this ordinance would make that virtually impossible."

Pam Mac'Kie, 575 Whispering Pine Lane

Attorney Mac'Kie addressed Council as follows: "On behalf of the Naples Better Government Committee, we're confident that you would not adopt an ordinance without a more thorough review of the issues, and we endorse the staff's position on this and ask you, please, to get as much information out to the public as you can, since this will go to referendum. It's unfortunate that we have zoning ordinances by referendum but this is obviously not an issue that you've had enough opportunity, or any of us have had enough information. No Planning Board review. And we

commend the staff for being able to analyze such a vague proposal and urge you please not to adopt it."

Robert C. Gebhardt, 2500 Tamiami Trail North
Attorney for the Naples Voters' Rights Committee

Attorney Gebhardt stated, "The intent of this proposed ordinance is clear. It is to prevent large shopping centers from having parking garages. Mr. Cole feels that it is confusing and may apply to other matters, but I'm sure that if Mr. Cole can read 'fifth department store' to mean a small retail complex, that he can read this to mean that it is for shopping centers only."

Penelope Taylor
Chairman, Naples Voters' Rights Committee

Ms. Taylor again addressed Council, stating: "Twenty-one hundred City voters have signed this petition urging you to adopt the proposed ordinance limiting the size of shopping centers within the City of Naples to 750,000 square feet and prohibiting the construction of parking garages for any shopping center over 300,000 square feet. Adopting this ordinance would prevent any repeat of overintensification of commercial development found in major cities and exemplified by Ordinance 92-6808, the Coastland Mall Expansion Plan. We are a residential town of low density commercial development. It is that quality of life we seek to preserve. Our plan for the Mall's expansion does not include mall sprawl. Our experts balance the anchor's need to expand with the residential character of Naples. This is why limiting the Mall's expansion plan to 40% will work."

Ms. Taylor reviewed each anchor store's square footage, beginning with Sears. The Committee directed a structural engineer to review Sears' blueprints. He concluded that Sears cannot be doubled in size without a massive restructuring and not economically feasible. With respect to Burdine's, Ms. Taylor said, "Burdine's can go up, but in doing so the second story would be an addition of 60,000 to 64,000 feet, not the 76,000 square feet proposed by LaSalle. This figure of 64,000 square feet is based on the square footage existing in Burdine's today."

The Committee had no criticism of plans for Penney's expansion, said Ms. Taylor. Regarding Dillard's, Ms. Taylor noted that the largest store in the Edison Mall is 130,000 square feet and is in Fort Myers serving a population almost the size of Collier County. She said, "It is not necessary to expand Dillard's any larger than 60,000 square feet."

Ms. Taylor pointed out that theaters provide no additional customers for the department stores and noted that previously the Mall had two theaters, both of which have closed. Small tenant space could be slightly expanded, said Ms. Taylor, to serve as a financial incentive for the department stores, but the proposed expansion would not be required by the anchors. She commented, "These department stores could live very well with less."

Reducing the expansion from 995,000 to 750,000 square feet, said Ms. Taylor, would eliminate the need for three costly parking garages thus reducing the need for additional retail space income. Ms. Taylor emphasized, "This is not, nor has it ever been, a stop-the-Mall movement. As you can see, our plan allows an expansion that responds to the small town atmosphere that makes Naples such an attractive destination. To link this proposed ordinance to the downtown redevelopment is stretching the whole issue a bit too far, unless of course there is a plan to drop a 300,000 square foot shopping center somewhere in the redevelopment area. Growth does not have to change the residential character of our town. Well-managed growth will enhance our quality of life, but this kind of over-intensification as represented by the Mall sprawl expansion plans will forever change our town. Twenty-one hundred people signed our petition in two weeks. They are asking you to adopt this ordinance limiting the size of the shopping center in Naples. Consider the response if the petition had been circulated for a month. Will you finally listen to the Naples City voters?"

**Donald A. Pickworth, Esquire, 3174 East Tamiami Trail
(Representing LaSalle Partners)**

With regard to the initiative ordinance, Attorney Pickworth quoted from a letter he had previously written. He noted, "It applies to the prohibition of parking garages, it applies to PD's generally, and it certainly has the potential of wreaking some of the havoc that has been mentioned here this morning with regard to downtown redevelopment. It's not a question of a 300,000 square foot commercial center being dropped in the middle of downtown. Certainly one of the tools that this and many other communities use in community redevelopment are these area-wide DRI's, area-wide Master Plans, which would encompass many properties." He suggested that Council should not adopt legislation that could prevent a sensible approach to downtown redevelopment in the future.

The second point, said Attorney Pickworth, is the objection to any possibility that any ballot on this initiative, should it go forward, be placed on the same ballot as Coastland Center. He said, "The issue that's been joined by Ms. Taylor and her group is 'Let's let the public speak about the Mall.' Therefore, that's the issue, that's the central issue, and clearly we as a community have got to have an absolutely clear, decisive and uncluttered decision on that issue, and only that issue. For that reason alone, and no other, I believe that mixing these two questions on the same ballot is going to produce a blurred result. There's been a lot of talk about one of those possibilities this morning - this subtle song that's being sung that we all want Mall expansion and the 750,000 square feet is going to be fine. In short, that isn't true, that isn't going to happen, and if you put those two things together there is a strong probability, I believe, that you are going to blur those two messages, and I don't think that would be in the best interest of the City."

Attorney Pickworth also made reference to some language in the City Charter which is potentially unclear about what the effect of the vote would be if you had two questions on the same ballot. He concluded, "I think the bottom line of all of that is you don't want to end up, after going through all of this - someone used the term 'public angst' - after going through all of that we certainly don't then

want to end up without even a clear vote. Granted, the legal actions I believe are going to continue, and that's certainly going to muddy the water, but certainly we want a vote of the people...if anything ought to be clear in this whole thing, that should be clear."

Peter H. Shaff, Senior Vice President, LaSalle Partners

Mr. Shaff responded to Ms. Taylor's analysis regarding possible expansion of the anchor stores. He also said, "If nothing else from today's proceedings, I take some heart that we've come to at least that point where we are in agreement and we are now into a debate as to whether the Center should be expanded to 750,000 square feet, which seems to be the number that our opposition has settled on, or whether the proposed 955,000 square feet is in fact the correct number." Rebuttal to Ms. Taylor's analysis included the fact that throughout the United States department stores are double-decked when that was not originally intended. Sears management believes the Naples store can be double-decked, said Mr. Shaff, and even at 150,000 square feet it will be a very average sized Sears store. He brought attention to the fact that all of the store sizes being discussed were at or below the average size of department stores throughout the State. Mr. Shaff said, "We take extreme exception to the notion out there that somehow it's a physical impossibility to double-deck a building because when it was built fifteen years ago someone didn't have the foresight to plan for that. It is simply not the case and Sears fully intends to move forward and we have an agreement in principal with Sears, and that needs to be understood by everybody."

There are vast amounts of property in Collier County that are attractive to developers, stated Mr. Shaff, and it is not feasible to tell the anchor stores, "Take it or leave it." He commented that the anchor stores have the freedom to talk to other developers and consider alternatives. Mr. Shaff went on to say, "We've been accused of scare tactics....we're not bad people. We intend to do a very high quality project, but we have tried to speak in good faith about the needs of the department stores and on occasion they have telephoned their interest directly to the Mayor, I believe, before a prior hearing."

Mr. Shaff concluded, "In the fifth department store, we show a question mark here, and it's been asserted that we tried to slip something by or slide something through or some other devious or dark kind of activity. And again, that could not be farther from the truth. The original plan that was discussed had a fifth department store pad. That pad is gone, it's not coming back, it's not in our zoning, the square footage we requested has gone down substantially. Our understanding all along was that if we wanted to convert certain of our square footage to a different use but stay within the cap, that would be acceptable. I'm hearing today there may be a different view on the Council, and we're prepared to listen to that, but we certainly have never had any devious intent and in any event this question mark is not appropriate because if there was any such fifth department store it would simply replace other GLA and not be incremental. So it would in no way imply an addition to the total, which this question mark would seem to suggest. And finally, we've said all along, and I think it's common knowledge, and others who are independent from us have stood up and said it. The

department stores are the critical factor in all of this. They get very favorable economic deals. Developers, owners of property like ourselves who are seeking to redevelop their property look to the specialty stores to provide the bulk, the lion's share, of the income that makes it work. And as far as we're concerned, we've cut that back just about as far as we can. We've already been cut in previous hearings. We're not given everything we asked for by any stretch of the imagination. I simply felt that it was important to provide at least some context to this plan that 750,000 feet can work."

In response to Council Member Pennington, Mr. Shaff confirmed that 750,000 square feet is not feasible. Not only would 750,000 feet not allow the developers to give the department stores the increases they have asked for, said Mr. Shaff, it would put the developers in a position of making substantial contributions toward their redevelopment with no ability whatsoever to generate incremental revenue.

Council Member Herms mentioned that he had asked for financial information outlining the project costs, the land costs, and actual revenues, however LaSalle Partners had not honored those requests. Mr. Shaff replied, "We do not deem that as a fair request." Mr. Herms countered that to obtain his support, the developer would have to supply written data. He said that perhaps the developer should accept the suggested standards.

Edith Williams, 3300 Gin Lane

Mrs. Williams expressed her curiosity about the credibility of LaSalle Partners' business acumen and referred to a building LaSalle had constructed in Delaware. With regard to Sears, Mrs. Williams commented, "They aren't doing well. How much will they spend to make that second story?"

James P. Lennane, 4228 Gordon Drive

Mr. Lennane proposed a settlement for Council to consider. He assured Council that the Petitioners' Committee was 100% behind the vote of the people. At the same time, said Mr. Lennane, the Committee hoped to clear up all litigation. The Committee offered to drop every item of litigation without any chance of reinstating same, assuming LaSalle would drop every piece of litigation which they had instituted. Mr. Lennane continued, "We can't make any representations about whether anyone else would litigate in the future, but I think there are some time limits which would preclude that." He urged everyone to "Get out of the litigation mode."

Tim J. McCarthy, General Manager, Coastland Center

Mr. McCarthy commented on Mrs. Williams' remarks relative to the Manufacturers Hanover Building in Wilmington, Delaware. He said that the building is 95% occupied at this time. Mr. McCarthy offered to be available for any further questions.

Council Member Korest stated that this was the first time he had heard about a proposed settlement.

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Normally, he said, in a case as complex as this, there needs to be considerable discussion about the terms by which the various parties might drop their various suits. City Attorney Chiaro confirmed that she had not been approached with the suggestions to drop the suits, nor had she received any proposals for settlement.

The City Attorney then advised Council: "Because of the pending litigation, the ramifications of your actions today take a bit of a different form than that which you normally find when you vote on various issues. You're here today at the specific direction of Judge Blackwell on two very narrow directions of his order. You are here to consider a proposed ordinance by the Petitioners' Committee, that ordinance restricting the size of certain shopping centers and parking facilities and you're here to reconsider the repeal of your rezoning of Coastland Mall. Mr. Gebhardt has explained some of the litigation that is pending. Let me recount for you the pending litigation.

"There is currently pending in the Circuit Court of Collier County an Action for Declaratory Relief requested by Penny Taylor and that action goes to a request for the Circuit Court to determine whether you followed proper procedure in adopting the rezoning of Coastland Mall. That Action is a consolidation of several actions, at least two other actions, one filed by the Petitioners' Committee and one filed by Penny Taylor. So you have two plaintiffs, perhaps more plaintiffs, in the litigation filed by Ms. Taylor and the Petitioners' Committee. That's a pending Declaratory Judgement Action in the Circuit Court. There is pending a counter claim in the Circuit Court filed by LaSalle Development. That counter claim requests that the Circuit Court stop all action both on the repeal and on the consideration of the proposed ordinance based on various arguments, one being that you can't do zoning by referendum or by initiative, one being that the development order on the site has already been issued by the State and, as an aside, the issuance of that development order was never enjoined, or Ms. Taylor or any of the Petitioners' Committee never saw it, to stop the issuance of the development order. That would have been a separate action directed at the State, issuance of the development order.

"Those two actions are pending in the Circuit Court. The City is a party to both of those actions by various legal mechanisms. Penny Taylor in fact sued the individual Council Members. I think in an additional lawsuit Penny Taylor sued Janet Cason, the City Clerk, then the Petitioners' Committee may have sued the individual Council Members or the City itself. Coastland Mall in counter claim has in effect caused...the City will have to answer that counter claim because it will be a party to the lawsuit."

City Attorney Chiaro continued, "In addition, the order that has directed you to consider the various aspects today has been appealed by Ms. Taylor to the Second District Court of Appeal. It's the same order that you are here on today but that has been appealed by Penny Taylor because there are certain parts of that order that the Petitioners' Committee and Penny Taylor disagree with. I have been informed that LaSalle Development will also seek an appeal of that order in the Second District

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Court of Appeal, seeking to challenge certain aspects of the order,

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in part that which is before you today, and various other aspects of the order." In reply to Council Member Herms, Attorney Chiaro said that the appeal is a request for a Writ of Certiorari. The order cannot be appealed in portions.

The City Attorney stated further, "LaSalle will seek the Second District Court of Appeal review by Writ of Certiorari, which is a form of an appeal, on the order which is direct to you (Council) to reconsider the rezoning ordinance and to consider the initiative ordinance. In addition, LaSalle Partners has filed a response to Penny Taylor's petition for Writ of Certiorari in the Second District Court of Appeal and that will precipitate a reply from Penny Taylor. All of the actions as described for you have the City involved because the City is either named or is required to respond in all of these actions, or is named and thus required to respond, aligned either one way or the other depending on how the lawsuits were postured. Having set that as the litigation that is currently in progress related to various issues on the rezoning of Coastland Mall and the proposed initiative ordinance."

Attorney Chiaro told Council that there were several actions that they could take. She went on to describe those actions and the ramifications of each: "You can repeal the ordinance rezoning Coastland Mall and you can adopt the proposed ordinance on the initiative. By doing that, you completely put in effect the Court's order which directs you only to consider, but you eliminate any ability to challenge the Court's order for any reason. Thus LaSalle's litigation and Penny Taylor's litigation go, they argue about all of the rights and remedies that they have, but the City by taking action and adopting the proposed ordinance and repealing the other ordinance, you've acted and you eliminate your right. You act upon the order and you can't participate in any arguments in the appeal. In addition, by adopting the proposed ordinance and/or repealing the ordinance which rezones Coastland Mall, it may be an action that has no effect, for two reasons. The Florida Statutes have prescribed only one way to enact zoning ordinances in the State of Florida, and that's pursuant to Florida Statute 166.041(3)(C). That section does not contemplate zoning or rezoning by the people, and notwithstanding a referendum provision, the Statute supersedes. So there is some question as to whether in fact you can zone or rezone based upon a referendum or initiative petition. If you take action pursuant to the Court's order today, either repealing the ordinance, enacting the proposed ordinance, or denying the ordinance, and denying the repeal and denying the adoption...if you take action and do that before you consider whether you want to appeal or not, you have precluded any rights to appeal the judge's order.

"If you want to appeal any aspects of the order, and you direct an appeal, an automatic stay on any further action occurs when a governmental entity appeals an order of the Court. That means you can't take any action if you authorize an appeal. However, if you want to appeal and you wish to go forward, either to consider the repeal of the Coastland rezoning and to grant it or deny it, or if you want to consider the adoption of the proposed ordinance, you can authorize an appeal but authorize a motion to voluntarily relinquish the automatic stay that is put in place when a governmental entity

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appeals. By appealing the order, you can have the ability to argue the sections of the Charter that may or may not affect referendum or initiative in the future. You can either relinquish the stay for one or both the repeal or initiative." City Attorney Chiaro summarized, "There are ramifications to your actions. If you take any action further then you may preclude other actions. You need to decide what actions you want to take so as not to preclude any rights you may have."

Responding to Council Member Korest's question, the City Attorney clarified that should Council act on the rezoning, it precludes its right to appeal. Council would need to authorize a voluntary relinquishment of the stay in order to proceed further.

In answer to Council Member Herms' question, "Why do we want to appeal?" City Manager Woodruff stated: "If the Council votes to repeal the ordinance or if the Council wants to uphold the ordinance, you need to proceed with an appeal anyway for the following reasons: There are sections of our Charter which we have stood before you as a Council and have said that Judge Blackwell's order leaves us in limbo for the future. I am not in favor of appealing this as a mechanism for keeping it from going to the voters. On the other hand, we will be faced, if the law says that people can from time to time file petitions to institute land use issues, there are certain portions of that ruling that are simply not clear, and I think attorneys on all three sides will agree to that. That ruling is not a ruling that only impacts this discussion. It is a ruling that has implications on future use of this section of the Charter. I'm not going to give you a recommendation as to whether you should repeal or not repeal. What I am saying, though, is if you, regardless of which way you go on that issue, for future use of this section of the Charter I believe that you have to appeal, and if you want to appeal and then waive the stay on the election I would certainly encourage that."

Responding to Council Member Herms, City Attorney Chiaro explained that the judge had made no findings as to the non-statement as to the number of signatures listed on the circulated affidavits. The judge made no ruling as to this particular petition, and no ruling as to that provision of the Charter related to any petition. Attorney Chiaro noted that the judge had declined to clarify that. City Manager Woodruff commented that with respect to the initiative petition, staff determined that the number of signatures was not sufficient. The judge never gave a ruling on that fact, said Dr. Woodruff.

Council discussed the fact that there do appear to be some problems in the Charter. Council Member Herms noted that in his opinion there were many sections in the Charter needing clarification. Council Member Korest agreed that clarification was needed, including the term "full text" as it is used in the Charter.

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MOTION: To authorize the appeal of Judge Blackwell's order of May 18, 1993 for the purpose of clarifying the Charter provision setting out referendum and initiative procedures.

Council Member Herms voted in the negative. He agreed that there were some problems in the Charter language, however, in his opinion that could easily be solved. Mr. Herms said that he did not understand why litigation should be continued and he could not support appealing this issue. He concluded, "The citizens just want the issue voted on."

Anderson		A
Herms		N
Korest	S	Y
Pennington	M	Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y

(5-1)
M=Motion S=Second
Y=Yes N=No A=Absent

MOTION: To relinquish the automatic stay with reference to the repeal of the rezoning of Coastland Mall.

Anderson		A
Herms		Y
Korest	S	Y
Pennington	M	Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y

(6-0)
M=Motion S=Second
Y=Yes N=No A=Absent

ORDINANCE NO. 93-

ITEM 5

AN ORDINANCE REPEALING ORDINANCE 92-6808, ADOPTED NOVEMBER 18, 1992 WHICH REZONES A 70 ACRE TRACT OF LAND (COASTLAND MALL) BOUNDED BY U.S. 41, GOODLETTE-FRANK ROAD, FLEISCHMANN BOULEVARD AND GOLDEN GATE PARKWAY

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FROM "HC" HIGHWAY COMMERCIAL TO "PD" PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

NOTE: TITLE DUPLICATED FOR CLARIFICATION OF VOTE.

MOTION: To **DENY** the repeal of Ordinance No. 92-6808.

In making the motion, Council Member Pennington stated that it had been his desire for some time that the citizens be allowed to vote on this issue.

Mayor Muenzer read Council Member Anderson's comments into the record (Attachment #3). Mrs. Anderson advised that although she was not present to vote on this issue, if she had been at the meeting she would vote in the affirmative.

Anderson		A
Hermes		Y
Korest		Y
Pennington	M	Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(6-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 93-6946

ITEM 6

A RESOLUTION CALLING FOR A REFERENDUM TO REPEAL ORDINANCE 92-6808 WHICH ORDINANCE REZONES COASTLAND CENTER AND THE ADJACENT 10 ACRES FROM HIGHWAY COMMERCIAL TO PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

NOTE: TITLE DUPLICATED FOR CLARIFICATION OF VOTE.

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MOTION: To **APPROVE** the resolution, which will include:

1. The election will include a notice of election letter to all registered voters.
2. The City will agree to pay the return postage on the mail ballots.
3. The City is hereby authorizing a contract to be executed by the Mayor with the Collier County Commission and the Supervisor of Elections.

Anderson			A
Herms	M	Y	
Korest		Y	
Pennington		Y	
Sullivan	S	Y	
VanArsdale		Y	
Muenzer		Y	
(6-0)			
M=Motion S=Second			
Y=Yes N=No A=Absent			

RESOLUTION NO. 93-6947

ITEM 6

A RESOLUTION APPROVING THE BALLOT QUESTION RELATED TO THE REPEAL OF CITY OF NAPLES ORDINANCE 92-6808, WHICH ORDINANCE REZONES COASTLAND CENTER AND THE ADJACENT 10 ACRES FROM HIGHWAY COMMERCIAL TO PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

NOTE: TITLE DUPLICATED FOR CLARIFICATION OF VOTE.

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

Anderson		A
Hermes		Y
Korest	M	Y
Pennington	S	Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y
(6-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 93-

ITEM 7

AN ORDINANCE AMENDING THE NAPLES COMPREHENSIVE DEVELOPMENT CODE, SUBSECTION 7-4-12 ("HC") HIGHWAY COMMERCIAL DISTRICT, AMENDING SUBSECTION 7-4-22 ("PD") PLANNED DEVELOPMENT DISTRICT AND AMENDING SUBSECTION 9-3-4 TO RESTRICT THE SIZE OF SHOPPING CENTERS AND TYPES OF PARKING FACILITIES IN THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE.

NOTE: TITLE DUPLICATED FOR CLARIFICATION OF VOTE.

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MOTION: To **TABLE** the ordinance.

Council Member Korest emphasized the importance of having only one issue to vote on, noting that it was the only way a mail ballot would result in a clear response.

Anderson		A
Hermes		N
Korest	M	Y
Pennington	S	Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y
(5-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 93-

ITEM 8

A RESOLUTION CALLING FOR A REFERENDUM TO VOTE UPON AMENDING SUBSECTION 7-4-12 ("HC"), HIGHWAY COMMERCIAL DISTRICT, SUBSECTION 7-4-22("PD"), PLANNED DEVELOPMENT DISTRICT, AND SUBSECTION 9-3-4 OF THE COMPREHENSIVE DEVELOPMENT CODE TO RESTRICT THE SIZE OF SHOPPING CENTERS AND TYPES OF PARKING FACILITIES IN THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

NOTE: ITEM 8 REQUIRED NO ACTION, SINCE ITEM 7 WAS TABLED.

RESOLUTION NO. 93-

ITEM 8

A RESOLUTION APPROVING THE BALLOT QUESTION RELATED TO THE AMENDMENT OF SUBSECTION 7-4-12 ("HC"), HIGHWAY COMMERCIAL DISTRICT, SUBSECTION 7-4-22 ("PD"), PLANNED DEVELOPMENT DISTRICT, AND SUBSECTION 9-3-4 OF THE

COMPREHENSIVE DEVELOPMENT CODE TO RESTRICT THE SIZE OF SHOPPING CENTERS AND TYPES OF PARKING FACILITIES IN THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

NOTE: ITEM 8 REQUIRED NO ACTION, SINCE ITEM 7 WAS TABLED.

ORDINANCE NO. 93-

ITEM 9

AN ORDINANCE APPROVING A FIVE-YEAR FRANCHISE EXTENSION WITH UNITED TELEPHONE COMPANY, A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, FROM AUGUST 3, 1993 TO AUGUST 3, 1998 PURSUANT TO ORDINANCE NO. 88-5585, EFFECTIVE AUGUST 3, 1988; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Manager Woodruff.

City Manager Woodruff stated that even though UTS had recommended a ten year extension due to changes in legislation, he believed it would be more appropriate to retain the five year extension. He added that the City had requested the ability to amend this ordinance, to require that as aerial wiring is replaced, it would be replaced underground.

Mr. Bud Brunker, Customer Relations Manager, Sprint, explained that markers along Eight Avenue identify a fiberoptic cable carrying emergency circuits. He indicated that the company is willing to work with the City to devise more aesthetically suitable markers, adding that UTS was committed to burying cables wherever feasible and economically practical. Mr. Brunker noted that the company was equally as concerned about storm damage, however, to introduce an amendment which would require replacement of aerial wiring would be too restrictive.

In response to Vice-Mayor Sullivan's question concerning the replacement of aerial wiring and the time frames for their replacement, Mr. Brunker stated that an ongoing plan was in place. Mr. Tom Dalton, UTS representative, further explained that company policy dictated the replacement of aerial cable. Aerial cable has a life-span of fifteen to twenty years.

Council Member Van Arsdale stated that he would be in favor of a franchise agreement between the City and UTS that included a plan designed to address the aesthetics as well as pitfalls of aerial cable replacement. Dr. Woodruff recommended that in the event of major replacements due to storm damage or aging, an agreement be designed to require that cable replacement go underground.

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Public Input: None.

Anderson			A
Hermes	S	Y	
Korest		Y	
Pennington	M	Y	
Sullivan		Y	
VanArsdale		Y	
Muenzer		Y	
(6-0)			
M=Motion S=Second			
Y=Yes N=No A=Absent			

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MOTION: To **APPROVE** the ordinance at first reading with the condition that before the second reading there will be an examination by the grantee to add some language to expedite the burial of cable.

ORDINANCE NO. 93-6948

ITEM 10

AN ORDINANCE ADDING SUBSECTION 11-1-4(B) (4) TO THE COMPREHENSIVE DEVELOPMENT CODE, ENTITLED "WATER SERVICE" RELATING TO SERVICE DEPOSITS IN THE JOINT SERVICE AREA OF UNINCORPORATED COLLIER COUNTY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Finance Director Harrison reviewed this item and recommended that if considered, that the City follow County policy with regard to refunds. Discussion ensued concerning tenant deposits and the cost of a refund program. Dr. Woodruff directed staff to research the possibility of a split refund policy and to draft an ordinance addressing this issue.

Public Input: None.

MOTION: To **ADOPT** the ordinance at second reading.

Anderson		A
Hermes		A
Korest		Y
Pennington	S	Y
Sullivan	M	Y
VanArsdale		Y
Muenzer		Y
(5-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

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ORDINANCE NO. 93-6949

ITEM 11

AN ORDINANCE AMENDING SUBSECTION 11-1-1 OF THE COMPREHENSIVE DEVELOPMENT CODE, ENTITLED "UTILITY FEES - DEFINITIONS" TO PROVIDE FOR A DEFINITION OF THE BILLING STATUS OF RESIDENCES WITH A GUEST HOUSE OCCUPYING THE SAME PREMISES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Public Input: None.

MOTION: To **ADOPT** the ordinance at second reading.

Anderson		A
Herns		A
Korest		Y
Pennington	S	Y
Sullivan	M	Y
VanArsdale		Y
Muenzer		Y
(5-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 93-6950

ITEM 12

AN ORDINANCE AMENDING SECTION 1A-28 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ADOPTING A REVISED ORGANIZATIONAL CHART; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Council Regular Meeting - June 16, 1993

Public Input: None.

Anderson		A
Herms		Y
Korest		Y
Pennington	S	Y
Sullivan	M	Y
VanArsdale		Y
Muenzer		Y
(6-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

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MOTION: To **ADOPT** the ordinance at second reading.

RESOLUTION NO. 93-6951

ITEM 13

A RESOLUTION ESTABLISHING AN ADVISORY BOARD ON REDEVELOPMENT; APPOINTING MEMBERS TO SAID BOARD; APPOINTING AN ALTERNATE MEMBER; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Manager Woodruff.

Public Input: None.

MOTION: To **APPOINT** the following candidates to the Advisory Board on Redevelopment: Richard Botthof, John T. Conroy, Lance D. Donovan, J. Dudley Goodlette, Donald R. Johnson, Edward Verdesca, Mark Weakley, Marvin Cecil and Larry Warner.

City Manager Woodruff reported that the appointees' terms of office would allow for the staggering of replacements. It was noted for the record that Mr. Warner would have to resign from the Code Enforcement Board and an advertisement would be placed for that vacancy.

Anderson			A
Herns		Y	
Korest	M	Y	
Pennington	S	Y	
Sullivan		Y	
VanArsdale			A
Muenzer		Y	
(5-0)			
M=Motion S=Second			
Y=Yes N=No A=Absent			

RESOLUTION NO. 93-6952

ITEM 14

A RESOLUTION APPOINTING A MEMBER TO THE BOARD OF APPEALS; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Public Input: None.

MOTION: To **RE-APPOINT** Walter Keller to the Board of Appeals to fill one vacancy.

Anderson			A
Herns	M	Y	
Korest		Y	
Pennington		Y	
Sullivan	S	Y	
VanArsdale			A
Muenzer		Y	
(5-0)			
M=Motion S=Second			
Y=Yes N=No A=Absent			

ITEM 19-b

COMMERCIAL REFUSE TRUCK (BID 93-62/SOLID WASTE)

Community Services Director Thornton reviewed information contained in his memo of June 15, 1993, (Attachment #4) and recommended the bid be awarded to White GMC of Palm Beach, West Palm Beach, Florida. Mr. Thornton assured Council that better maintenance of vehicles was one of staff's top priorities.

Council Member Pennington recommended that in the future detailed information concerning vehicles to be purchased by the City be provided to Mr. Herns in the formative stage to facilitate more productive use of Council meeting time.

NOTE: ITEM 19-b WAS CONTINUED LATER IN THE MEETING.

RESOLUTION NO. 93-

ITEM 18

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT, WITH CHANGES APPROVED BY THE CITY MANAGER AND CITY ATTORNEY, IN SUBSTANTIAL COMPLIANCE WITH THE PROPOSAL RECEIVED, BETWEEN THE FLORIDA CENTER FOR PUBLIC MANAGEMENT AND THE CITY OF NAPLES, TO PROVIDE CONSULTING SERVICES IN THE SELECTION AND CONTRACT NEGOTIATION FOR A COMPUTER SYSTEM FOR FINANCIAL MANAGEMENT, HUMAN RESOURCES, AND LAND USE MANAGEMENT; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff recommended that the City hire a technical consultant for assistance in designing a computerization system to standardize and modernize the current system. He noted that the nine responses received had been reviewed, and based on professional background and client overview, as well as price, the second vendor was recommended.

Finance Director Harrison indicated that this issue had been expanded to insure that all City systems today and in the future will be fully compatible. He recommended taking this additional step, adding that it would be a wise investment of taxpayers money.

In response to Mayor Muenzer's concerns over consultant credibility, Dr. Woodruff stated for the record, that Finance Director Harrison's experience had been with HTE and that the City was striving to be very "upfront" with this fact. He explained that regardless of which consultant the Council selects, HTE will be one of the finalists because HTE already has approximately 80 systems dealing with utilities, etc., operating throughout the State of Florida.

Richard Laymon, President, Poli-Sci Software, reviewed his qualifications and stated that he had 23 years progressive experience in this field. He explained that an advantage of hiring an area consultant lessened the travel expense bid about 33%; allowed him to be available upon short notice; and stimulated local economy by keeping local dollars local.

Public Input: None.

Council Member Herms made a motion to accept the lowest bidder; the motion was seconded by Council Member Sullivan. The item was subsequently tabled. Some discussion by the Council Members ensued with the consensus being that further study and interviews should be pursued.

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MOTION: To **TABLE** this item to allow for further study.

Anderson		A
Herms		Y
Korest	M	Y
Pennington	S	Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y
(6-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ITEM 19-b (CONTINUED)

Council further discussed truck engines, etc., and Community Services Director Thornton noted that staff's recommendation would remain with the lowest bidder.

In response to further discussion concerning the life expectancy of a Peterbilt compared to a White truck, Mr. Thornton assured Council that further research would be made before any purchase was made.

MOTION: To **APPROVE** the lowest bid award (#93-62) for front-loading refuse truck unless at the City Manager's discretion, and based on staff recommendation, a determination is made that Peterbilt life expectancy exceeds that of White, then the City Manager is authorized to purchase the Peterbilt truck.

Anderson		A
Herms	M	Y
Korest		Y
Pennington		Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(6-0)		
M=Motion S=Second		
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CORRESPONDENCE AND COMMUNICATION

Council discussed the rehabilitation of two gravity filters. Responding to Vice Mayor Sullivan's inquiry about budgeting \$35,000 for this project, Dr. Woodruff said that the filters must be rehabilitated. Complete rehabilitation of the filters will cost \$166,000.00. Dr. Woodruff noted that the \$35,000.00 expenditure would be for the replacement of sand within the filters only.

In response to Mr. Herms question, Dr. Woodruff stated that City Attorney Chiaro had been working with an attorney who specializes in Cable renewals. He stated that the information would be reviewed and staff would determine which questions should be forwarded to that attorney. Copies of that information will be forwarded to Council.

For Council's information, Dr. Woodruff distributed copies of a memorandum pertaining to the County's Annual Transportation Update and Inventory Report dated June 9, 1993. (A copy of this document is available in the original meeting file, in the City Clerk's Office.

OPEN PUBLIC INPUT

None.

ADJOURN: 4:10 p.m.

PAUL W. MUENZER, MAYOR

Janet Cason
City Clerk

Marilyn McCord
Deputy City Clerk

City Council Regular Meeting - June 16, 1993

These minutes of the Naples City Council were approved on July 21, 1993.



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June 16, 1993
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