



City Council Chamber
735 Eighth Street South
Naples, Florida 33940

City Council Regular Meeting - January 19, 1994 - 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:
Kim Anderson
R. Joseph Herms
Alan R. Korest
Ronald M. Pennington
Peter H. Van Arsdale

Also Present:

Dr. Richard L. Woodruff, City Manager	Dr. John H. Fitch
Maria J. Chiaro, City Attorney	Elizabeth Berg
Paul Reble, Police Chief	Leonard Russum
Jeff Whittaker, Police Captain	Max Miller
Paul Sireci, Police Captain	Jack Shafer
Dr. Jon Staiger, Natural Resources Manager	Herb Anderson
Mary Kay McShane, Human Resources Director	Robert Noble
Mark Thornton, Community Services Director	Chris Ott
Nick Long, Dock Master	Jim Lennane
John Cole, Chief Planner	Nancy Stroud
Bill Harrison, Finance Director	John Van Arsdale
Dan Mercer, Utilities Director	John Remington
Janet Cason, City Clerk	Jerry Pugh, Colony Cablevision
George Henderson, Sergeant-At-Arms	Eric Staats, Naples Daily News
Marilyn McCord, Deputy City Clerk	Other interested citizens and visitors

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ITEM 1

INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor David Mallory
First Assembly of God Church

ITEM 3

ITEMS TO BE ADDED

The following items were added to the agenda:

- 23. Authorization to purchase additional fuel tank for the City Dock.
- 24. City co-sponsorship of running event
- 25. City co-sponsorship of June 6, 1994, 50th anniversary celebration of D-Day.
- 26. Tank Order 10-93 - Water plant and distribution system analysis.

Items 21 and 22 were taken off the consent agenda for discussion purposes.

ITEM 16

APPROVAL OF MINUTES

City Council Workshop Meeting

January 3, 1994

ITEM 17

**BID AWARD - HAULING OF PRIVATELY-OWNED/LEASED ROLL-OFF
SOLID WASTE CONTAINERS (ANNUAL CONTRACT), BID #94-23**

ITEM 18

TRANSFER FROM THE GENERAL FUND CONTINGENCY TO THE BEACH PARKING FUND IN THE AMOUNT OF \$3,135.00 TO ACCOUNT FOR BEACH PARKING SPECIALIST DUTIES PROVIDED AT THE ENTRANCE TO BEAR'S PAW.

ITEM 19

AUTHORIZE RICHARD A. GATTI, ENGINEERING MANAGER, TO PARTICIPATE IN THE DEFERRED COMPENSATION PLAN THROUGH THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION (ICMA) RETIREMENT CORPORATION.

RESOLUTION NO. 94-7105

ITEM 20

A RESOLUTION DETERMINING SATISFACTORY PERFORMANCE OF CITY MANAGER RICHARD L. WOODRUFF PURSUANT TO THE EMPLOYMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

MOTION: To **APPROVE** the consent agenda, add Items 23, 24, 25, and 26 to the agenda and remove Items 21 and 22 from the consent agenda.

Anderson		Y
Hermes	S	Y
Korest	M	Y
Pennington		Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 94-

ITEM 9

AN ORDINANCE ANNEXING AN 11.5 ACRE TRACT OF LAND LOCATED ON THE SOUTH SIDE OF NORTH ROAD AND EAST OF THE NAPLES MUNICIPAL AIRPORT TERMINAL ENTRANCE, MORE PARTICULARLY DESCRIBED HEREIN; AMENDING SECTION 1.2 OF THE CHARTER OF THE CITY OF NAPLES, FLORIDA, RELATING TO THE BOUNDARIES OF THE CITY TO PROVIDE FOR THE ANNEXATION OF THIS SITE; AND PROVIDING AN EFFECTIVE DATE.

NOTE: Mayor Muenzer announced that this item will be continued.

MOTION: To **CONTINUE** Item 9 to March 16, 1994.

Anderson		Y
Hermes	S	Y
Korest	M	Y
Pennington		Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y

(7-0)

M=Motion S=Second

Y=Yes N=No A=Absent

ITEM 4

ANNOUNCEMENTS

City Manager Woodruff read a proclamation (Attachment #1) in honor of Detective Philip Valdario, commending him for service to the City and wishing him a complete recovery from his illness. Police Chief Reble added that Detective Valdario has been an excellent Police Officer and noted that the Police Department has been very supportive during this difficult time.

ORDINANCE NO. 94-7106

ITEM 5-a

AN ORDINANCE AMENDING SECTION 15-3(b) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA TO ADD A PROVISION PROHIBITING THE HARASSMENT OF BIRDS, EXCEPT FOR SPECIES DECLARED TO BE A PUBLIC NUISANCE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Mayor Muenzer reported that he had received several letters (Attachment #2) and telephone calls with respect to this ordinance. Natural Resources Manager Jon Staiger said that he had also received five telephone calls from concerned citizens, of which three were in support of the harassment ordinance.

Dr. John H. Fitch, President of The Conservancy

Dr. Fitch expressed his pleasure in some of the action already taken with respect to treatment of the pelicans. He noted that one fish cleaning area at the Pier was already protected by wire, and a fisherman has donated a holding cage. Dr. Fitch commented, "I believe it is important we add the term 'harass' because for a very small percentage of people who believe in cruelty to pelicans, this adds an extra measure of law enforcement."

Elizabeth Berg, 13 High Point Circle North

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Ms. Berg told Council that she was happy to hear about the possibility of hiring an employee solely for the welfare of pelicans. She emphasized the fact that unenforced laws are not effective; a fulltime employee is needed in order to enforce the law protecting pelicans. Ms. Berg made reference to a book entitled "Beyond The Limits," which discusses the whaling industry, saying, "The analogy is this: Are you willing to take a financial loss of pennies per person to hire personnel to protect them, or when the pelicans are gone will you find some other means to attract tourists, like jazz festivals?" Ms. Berg commented that current City employees should also be trained to assist with the pelicans, since it takes a minimum of two people to get a pelican off a fishline.

Measures being taken are excellent, said Ms. Berg, but cannot prevent hook and line injuries. Even without the presence of fishermen, the Pier will attract the pelicans since it provides a tall vantage point, she noted. Ms. Berg suggested, as she had done at a previous Council meeting, that Tourist Tax funds might be used to hire additional personnel. If that is not possible, she said that one rescue coordinator would cost each County taxpayer twenty-two cents a year for a dawn-to-dusk employee. Ms. Berg concluded by asking Council to a) enforce the anti-cruelty law, b) help protect endangered species, and c) help protect tourism by protecting the endangered species.

Anderson	S	Y
Herns		Y
Korest		Y
Pennington	M	Y
Sullivan		Y
VanArsdale		Y
Muenzer		Y

(7-0)

M=Motion S=Second

Y=Yes N=No A=Absent

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

Vice Mayor Sullivan reminded everyone that birds have traditionally been provided sanctuary in the City. Regarding the Muscovy Ducks, Mr. Sullivan said that moving them or their eggs to another area was not harassment, in his opinion. He noted, "I think we're making an awful lot out of an awful little. I would ask that we try to bear in mind the wisdom of some degree of balance in decisions we make. I don't think it's appropriate to declare warfare on the Muscovy Duck."

RESOLUTION NO. 94-

ITEM 5-b

**A RESOLUTION DECLARING THE MUSCOVY DUCK, *Cairina moschata*,
TO BE A PUBLIC NUISANCE; AND PROVIDING AN EFFECTIVE DATE.**

Title read by City Attorney Chiaro.

City Manager Woodruff said that this ordinance would simply remove protection of the ducks. Council Member Korest agreed with Mr. Sullivan's previous comments and asked that Council handle this matter with common sense.

Public Input:

Camille Thomas, 1329 San Marcos Boulevard

Ms. Thomas agreed that this topic had been blown out of proportion and suggested that other steps could be taken to protect the ducks. She agreed that some of the male ducks can be testy but said that the females are practically no problem. Ms. Thomas commented further, "I don't want to see open season on them. I've talked to Animal Control; they will remove and euthanize the ducks. I don't advocate taking baby ducks away from their mothers." She went on to describe her own experiences with raising abandoned Muscovy Ducks when no one from the City or County would take them. Ms. Thomas told everyone that the ducks were fun to watch and enjoy being near humans. She asked that the issue be addressed when and if it becomes a problem.

Elizabeth Berg, 13 High Point Circle North

Ms. Berg addressed Council again, asking for complete protection of Muscovy Ducks. She stressed that this was a very serious matter and begged Council's support.

Leonard Russum, 349 Eighth Avenue South

Mr. Russum, who is President of a Naples condominium association, reported that the Muscovy Ducks had made it impossible for residents to use the pool. He said that attempts have been made to chase the ducks away, however nothing seems to work. Mr. Russum concluded, "Even though this seems like a humane question, they (the ducks) can't be discouraged."

Max Miller, 1666 Osprey Avenue

Mr. Miller began by expressing appreciation for the many good things Council has done in the past. He commented that some people love the ducks and think they are cute, but said that he did not, although no one should be cruel to them. Mr. Miller said that since moving to Naples thirteen years ago, every day he has had to clean up after the ducks in the area of his boat, pool, and dock. At one point, said Mr. Miller, he made a trap and Animal Control picked up the ducks, however the ducks learned to avoid the trap. Mr. Miller recommended humane removal of the ducks to The Conservancy.

Jack Schafer, 25 Sixth Street North

Mr. Schafer said that he has observed ducks stopping traffic on Central Avenue and on U.S. 41. He believes many of the ducks come from the hospital pond area. Mr. Schafer commented, "I'm all for protecting wildlife but not farm animals. I'm not against ducks and not saying we should do anything to hurt them, but we also need to protect people driving on the roads. The best way is to control them. It's up to the City to take care of this." Mr. Schafer noted that the duck population was increasing; he never had a duck in his yard until six months ago.

Dr. John H. Fitch, President of The Conservancy

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Dr. Fitch pointed out that it was evident this issue was a complex one and had many different concerns. The Conservancy believes that native species in this area are in need of the kind of protection advocated by adding the word "harass" to the ordinance. Dr. Fitch recommended combining the resolution at issue with some of his knowledge of wildlife terminology and experience. He informed everyone that The Conservancy does not take domestic animals at its rehabilitation center; if it did so, permits could be lost. In conclusion, Dr. Fitch suggested that adequate remedies probably exist for this problem with a separate resolution solely for Muscovy Ducks. In response to Council Member Pennington, Dr. Fitch said that he would be willing to provide the City with some advice and background information.

Joseph O'Shaughnessy, 2731 Citrus Lake Drive

Mr. O'Shaughnessy, who operates the snack bar at Lowdermilk Park, announced that he represented the children. He said that it seemed very unhealthy for children to be playing in the sand near droppings from the ducks. Mr. O'Shaughnessy mentioned seagulls as well, noting that children were often terrified when seagulls swoop down to take food from their hands.

MOTION: To **DENY** the resolution.

Council Member Van Arsdale said that he was not sure of the best way to solve this problem, however he would appreciate staff attempting to come up with some solutions. Mayor Muenzer agreed that some solution was needed. The duck population is escalating greatly, he said, especially in the area of the Hospital. It is also a major concern of those who own swimming pools. The Mayor stressed that he did not believe in cruelty to animals, however this is a severe problem and a consistent complaint of property owners near the Hospital. He suggested the possibility of retaining a part-time employee who could perform animal control duties. The Mayor asked that staff come back in sixty days with a recommendation. Council Member Anderson asked that pelicans at the Pier be discussed at the same time.

Anderson		Y
Hermes	M	Y
Korest		Y
Pennington		Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

Vice Mayor Sullivan asked that policies such as disruption of nesting sites, destroying eggs, and trapping and relocating ducks be considered. He recommended that staff cooperate with Animal Control and develop a policy of working toward a humane solution to this problem.

BREAK: 10:20 a.m. - 10:25 a.m.

ORDINANCE NO. 94-7107

ITEM 6

AN ORDINANCE AMENDING SUBSECTION 2-3, "DEFINITIONS", SUBSECTION 3-84-1, "DEFINITION; PURPOSE; GENERAL REQUIREMENTS (FOR EXPANDING, ENLARGING OR CHANGING A NONCONFORMITY", AND SUBSECTION 9-2-8, "GUEST HOUSES", OF THE COMPREHENSIVE DEVELOPMENT CODE BY CHANGING THE TERMINOLOGY FROM "GUEST HOUSE" TO "GUEST UNIT"; AMENDING THE DEFINITION OF SUCH UNITS; ALLOWING FOR THE CONSTRUCTION OF GUEST UNITS ON SINGLE FAMILY RESIDENTIAL LOTS SMALLER THAN 30,000 SQUARE FEET WITH CITY COUNCIL APPROVAL; FURTHER LIMITING THE SQUARE FOOTAGE OF GUEST UNITS; PERMITTING THE RENTAL OF GUEST UNITS WHICH MEET CERTAIN CRITERIA; ALLOWING THE RENOVATION OF NONCONFORMING GUEST UNITS; AND PROVIDING FOR THE DEMOLITION AND REBUILDING OF A PRINCIPAL RESIDENCE WHILE RETAINING THE RIGHT TO THE GUEST UNIT; 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		Y
Herns	S	Y
Korest		Y
Pennington		Y
Sullivan	M	Y
VanArsdale		N
Muenzer	Y	
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 94-

ITEM 7-a

AN ORDINANCE AMENDING SUBSECTIONS (B)26 AND 27 OF SECTION 7-7.1 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO ALLOW FOR COMMERCIAL BOAT LEASES AT THE CITY DOCK TO BE TERMINABLE UPON THE TERMS AND CONDITIONS OF SAID LEASE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

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Title read by City Attorney Chiaro.

City Manager Woodruff suggested that prior to second reading of this ordinance, Council schedule discussion of the proposed Dock rules and regulations. In response to the Mayor's question, Dock Master Nick Long said that as long as no one creates a disturbance, no attempt is made to control the consumption of alcoholic beverages on the boats at the Dock. There is no drinking allowed on the Dock itself.

Public Input: None.

MOTION: To **APPROVE** the ordinance at first reading.

Anderson		Y
Herms	M	Y
Korest		Y
Pennington		Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 94-7108

ITEM 7-b

A RESOLUTION AUTHORIZING THE USE OF A LEASE DOCUMENT FOR THE RENTAL OF COMMERCIAL SLIPS AT THE MUNICIPAL DOCK, IN SUBSTANTIALLY THE FORM ATTACHED HERETO; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff reported that in the future staff would also draft a lease for residential slips for Council's consideration.

Public Input: None.

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

(7-0)

M=Motion S=Second

Y=Yes N=No A=Absent

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

ORDINANCE NO. 94-7109

ITEM 10

**AN ORDINANCE REPEALING ORDINANCE NO. 93-6868 WHICH
CREATED A COMMUNITY REDEVELOPMENT AGENCY; PROVIDING
A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN
EFFECTIVE DATE.**

Title read by City Attorney Chiaro.

The City Attorney noted that since Council had considered different boundaries to the redevelopment area, the previous ordinance setting the boundaries had to be repealed.

Public Input: None.

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

Anderson		Y
Herns	M	Y
Korest		Y
Pennington		Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(7-0)		

**M=Motion S=Second
Y=Yes N=No A=Absent**

ORDINANCE NO. 94-

ITEM 12

**AN ORDINANCE AMENDING SECTION 21A-11 OF ARTICLE II OF THE
CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA,
ENTITLED "UTILITIES SERVICES TAX", TO REDUCE THE TAX OF
EACH AND EVERY PURCHASE OF ELECTRICITY, METERED OR**

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BOTTLED GAS (NATURAL, LIQUIFIED PETROLEUM OR MANUFACTURED, WHETHER BOTTLED OR OTHERWISE), TELEPHONE AND TELEGRAPH SERVICE IN THE CITY OF NAPLES, TO SEVEN PERCENT (7%) OF THE PAYMENTS RECEIVED BY THE SELLER THEREOF; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff reviewed the item, noting that previously Council had voiced the intent that should a more appropriate funding source for the road overlay present itself, the utility tax would be repealed. Effective January 1, 1994, the Council implemented a five-cent local option gas tax, of which the City will receive 14.48% of the proceeds. According to State Statute, those funds can only be used for roadway improvement projects specifically identified in the capital improvements section of the Comprehensive Plan. Prior to expenditure of any of the new gas tax funds, the Comprehensive Plan must be amended.

Public Input: None.

MOTION: To **APPROVE** the ordinance at first reading.

Anderson		Y
Hermes	S	Y
Korest		Y
Pennington		Y
Sullivan	M	Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ITEM 23

PURCHASE OF ABOVE GROUND FUEL STORAGE TANK TO BE LOCATED AT THE CITY DOCK.

Staff had requested, and Council authorized, the purchase of an above ground fuel storage tank in order that diesel fuel sales would be made available to commercial customers without the necessity of charging the recently enacted Federal excise tax.

Public Input: None.

Anderson		Y	
Hermes			A
Korest	M	Y	
Pennington		Y	
Sullivan	S	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 purchase of a fuel storage tank priced at \$23,351.40.

ITEM 24

**APPROVE CO-SPONSORSHIP OF GULFCOAST RUNNERS 1/2
MARATHON JANUARY 30, 1994.**

Special Events Committee Chairman David Lykins reported that the Committee recommended implementation of Council policy and authorization for 50% of the personnel costs for this event, which will consist of extra Police duty. A temporary use permit for this event was submitted and all criteria have been met.

Public Input: None.

MOTION: To **APPROVE** co-sponsorship of the 1/2 Marathon to be held on January 30, 1994.

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

ITEM 25

**APPROVE CELEBRATION OF 50TH ANNIVERSARY OF D-DAY ON
JUNE 6, 1994.**

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

(7-0)

M=Motion S=Second

Y=Yes N=No A=Absent

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City Manager Woodruff reviewed the request for the use of Cambier Park for a celebration of the 50th Anniversary of D-Day.

Public Input: None.

MOTION: To **APPROVE** the use of Cambier Park for the 50th Anniversary of D-Day celebration, waiving any fees.

RESOLUTION NO. 94-7110

ITEM 13

**A RESOLUTION APPOINTING A CITY ELECTOR TO THE
CANVASSING BOARD FOR THE CITY OF NAPLES GENERAL
ELECTION OF FEBRUARY 1, 1994; AND PROVIDING AN EFFECTIVE
DATE.**

Title read by City Attorney Chiaro.

Public Input: None.

MOTION: To appoint Edwin J. Putzell, Jr., a City elector to the Canvassing Board for the February 1, 1994, Naples general election.

Anderson		Y
Herms		Y
Korest		Y
Pennington	M	Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 94-

ITEM 14

AN ORDINANCE AMENDING SUBSECTION 5-2-1 OF THE COMPREHENSIVE DEVELOPMENT CODE, TO ESTABLISH EXCEPTIONS FOR DESIGN PROFESSIONALS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff advised that with the adoption of the 1991 version of the Southern Building Code, language was included relative to the requirement of design professionals being involved in all aspects of work for commercial buildings. This requirement results in design professionals being involved in structural matters, but also requires their involvement in non-structural and rather incidental matters. It is staff's opinion that this is not necessary, and therefore this proposed ordinance change is recommended.

Public Input: None.

MOTION: To **APPROVE** the ordinance at first reading.

Dr. Woodruff commended staff for their efforts in simplifying codes when it is possible to do so.

BREAK: 11:00 a.m. - 11:10 a.m.

RESOLUTION NO. 94-

ITEM 8

A RESOLUTION UPHOLDING THE DENIAL OF A BUILDING PERMIT FOR RENOVATIONS TO A BUILDING AT THE KEEWAYDIN CLUB; AND PROVIDING AN EFFECTIVE DATE.

Anderson		Y
Herns		Y
Korest	M	Y
Pennington		Y
Sullivan		Y
VanArsdale	S	Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

**A RESOLUTION OVERRULING DENIAL OF A BUILDING PERMIT FOR
RENOVATIONS TO A BUILDING AT THE KEEWAYDIN CLUB; AND
PROVIDING AN EFFECTIVE DATE.**

Titles read by City Attorney Chiaro.

Both staff and the Planning Advisory Board (PAB) recommended denial of the petition, noting inconsistency with both PD (Planned Development) and R3T-12 zoning.

The permit applicant, Mr. Chris Ott, told Council that he was withdrawing his request for the building permit. Mr. Ott said that he was not exactly sure why the permit was refused. He provided historical background of the proposed renovations, noting that he could find nothing to prevent the use of the Cove House as a meeting room. In the past that room has been used for functions of the Chamber of Commerce, The Conservancy, churches, etc. Mr. Ott said that he had concluded that meetings were a grandfathered use.

Mr. Ott requested that Council direct staff to answer several questions relative to this matter. (A copy of those questions included as Attachment #3.) Mr. Ott added that he did have a conceptual plan which settled all disputes with The Conservancy and the State.

It was noted by Council Member Korest that if any questions from the petitioner to staff are specific questions dealing with their current rights and how those are interpreted, the City Attorney should offer her opinion, which may not be identical to staff's.

MOTION: To **TABLE** the proceedings until March 2, 1994, at 1:30 p.m.

Anderson
Herms
Korest
Pennington
Sullivan
VanArsdale
Muenzer
(7-0)
M=Motion S=Second
Y=Yes N=No A=Absent

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AN ORDINANCE AMENDING SUBSECTION 5-7-8(A) OF THE COMPREHENSIVE DEVELOPMENT CODE OF THE CITY OF NAPLES, FLORIDA, TO ESTABLISH RULES AND REGULATIONS GOVERNING THE USE OF POTABLE WATER FROM THE CITY'S WATER SYSTEM FOR LAWN IRRIGATION WITHIN THE CITY OF NAPLES' WATER SERVICE AREA; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff reviewed the proposed ordinance which includes some key language not incorporated in the irrigation ordinance which was adopted last year.

Public Input: None.

MOTION: To **APPROVE** the ordinance at first reading.

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

BREAK: 11:55 a.m. - 12:00 a.m.

ITEM 8 (CONTINUED)

Attorney Nancy Stroud, representing Mr. Ott, asked Council to reconsider its decision to table this matter without opening up the public input process. Attorney Stroud pointed out that twelve individuals had signed up to speak at today's meeting and she believed that it was only fair that they have an opportunity to voice their opinion.

The City Attorney clarified that at the time the motion was made on this item, the petition had not been withdrawn. Council Member Anderson concurred with Attorney Stroud that in fairness public input should be allowed. Mrs. Anderson told those present, "There is nothing here to be decided. Everything you want to say may be changed in 45 days. You've hired a very fine attorney capable of summarizing your points." It was the consensus of Council to proceed with public input. City Attorney Chiaro emphasized the fact that her opinion relative to zoning had no legal input; only a judge can make that ruling.

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MOTION: To **TABLE** the proceedings and direct staff to prepare responses to Mr. Ott's questions with respect to Cove House and the Shore Station, within 45 days.

Council continued to discuss the matter, and City Manager Woodruff commented, "Where the courts rule zoning is no longer valid, it's not incumbent for staff to notify the owner what the zoning presently is. Some of the language in the court's statement leave us at a loss. We aren't empowered to interpret what the judge said. We can't give an interpretation of what the judge said. Perhaps it's incumbent upon Mr. Ott to go back to the judge and get specific clarification. There are certain areas here where staff cannot give an opinion." Dr. Woodruff continued, "There will be interpretations made by staff that people on either side of the issue have a right to appeal, so appeals will be back before you. The staff position is not the final ruling of City government. The final ruling comes when Council votes, then civil action before a judge. Unless you want clarification of staff's positions or address items not previously addressed, I don't know what tabling this will accomplish."

Anderson	S	Y	
Herms		Y	
Korest		Y	
Pennington		Y	
Sullivan	M	Y	
VanArsdale			A
Muenzer		Y	
(6-1)			
M=Motion S=Second			
Y=Yes N=No A=Absent			

Community Development Director Missy McKim explained the grandfathering is not an issue at this point. A conditional use for transient lodging has never been approved for this site. Ms. McKim said, "It's a narrow interpretation that I have made that the use of a specific building that was a support building to the lodge under nonconforming status cannot be changed to another accessory use. That's the appeal before Council." Ms. McKim went on to say, "We've brought very small nonconformities to Council in the past. This is actually a use that's nonconforming. Accessory uses are very broad in nature. Changing from an employee dormitory to a meeting room, to me, that's a change in the nonconformity that I interpret needs Council action."

Mr. Ott argued that the nonconforming use is the transient lodge and all other uses are accessory uses to the nonconforming use. He requested that Council not confuse the matter, saying, "I think the best thing to do is table this, or else I'll withdraw my application." City Manager Woodruff asked that Council not lose sight of the appeal process.

With respect to the PD zoning, Ms. McKim said that her analysis found the proposed changes did not comply with the PD master plan, subsequently the PD was voided, with the zoning reverting back to R3T-12. The building permit was denied under either zoning category.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE TASK ORDER NO. HMA 10-93, FOR WATER TREATMENT PLANT AND POTABLE WATER DISTRIBUTION SYSTEM EVALUATION TO BE PROVIDED BY HOLE, MONTES AND ASSOCIATES, INC; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff pointed out that this Task Order accompanies the Consent Order approved at the January 4, 1994, meeting. Hole, Montes and Associates representative Ron Benson said that his firm will be meeting with the State throughout this process to ensure all guidelines are met. City staff will perform the necessary tests with advice from the engineer. Hole, Montes will compile the data and recommend a solution. The estimated cost for the first phase is \$10,000.00, however it may be less depending upon how much work is required in order to be certified by the State. Cost for the second phase of the work is approximately \$8,000.00, and approximately \$4,000.00 to prepare the written reports required by the Department of Environmental Protection. It was noted that the State requires certification by an outside engineer for any consent order issued by the State. Dr. Woodruff stated, "No one should think this is a health problem. It is a color issue. We are not as clear on color (in the water) as we should be."

Public Input: None.

MOTION: To **APPROVE** Task Order No. HMA 10-93, not to exceed \$23,000.00 in cost.

Anderson		Y
Hermes	M	Y
Korest		Y
Pennington		Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y

(7-0)

M=Motion S=Second

Y=Yes N=No A=Absent

ITEM 8 (CONTINUED)

Attorney Stroud formally presented the petition signed by 132 residents of the south end of Naples, urging Council and staff to deny the building permit for the meeting facility. (The petition is included in the original file for this meeting, in the City Clerk's Office.) She reviewed some of the historical background of Key Island, including the Appellate Court ruling which upheld the trial court's decision that the PD was invalid. The nature of the club has changed, stated Attorney Stroud, with not much notice by the community until recently. She said further, "This is a critical juncture for City Council. Should Keywaden Club stay a private resort, or change to a hotel facility with meeting space and convention facilities...The Comprehensive Plan says you need to do that through a PD." Attorney Stroud continued, "Here is a gradual nibbling away of the Island. We think it should stop. We believe City Council should uphold staff's decision. It's been discussed and the issue is not very complicated. The consequence of not making a decision today is to allow activities at the Shore Station to continue. At least say they must maintain their status quo, otherwise we'll continue to get delays while the Club continues to operate illegally. It will be much more difficult to change. I urge you to look at this now; don't put it off. The only advantage is with the club owner, who is in violation." Attorney Stroud mentioned the fact that things are happening in the Fifth Avenue area with respect to redevelopment and Council may be back trying to rehabilitate south Naples if the area is allowed to erode. She concluded, "You have the PAB recommendation; they support staff. It's not fair to the neighbors to continue."

Mayor Muenzer announced that the decision to table this matter until March 2nd would stand. In reply to a citizen's comment about the Shore Station, Dr. Woodruff said that he and Ms. McKim had met with the owners and agreed upon certain things that would occur. If those conditions are not met, the matter will go before the Code Enforcement Board. Citations were in fact issued, and the appeal, 94-AA1, is scheduled to come before Council on February 2, 1994.

BREAK: 12:45 p.m. - 12:50 p.m.

RESOLUTION NO. 94-7111

ITEM 21

A RESOLUTION AFFIXING THE SALARY OF THE CITY CLERK, JANET CASON; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

City Manager Woodruff announced that in previous years the City Clerk's performance evaluation had been done by the City Manager. The City Clerk is now correctly in the employ of City Council.

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No contract has been prepared for the City Clerk, and Dr. Woodruff said that he believed an employment agreement should be established. Mayor Muenzer concurred and stated that the subject of employment agreements will be brought before the new Council.

Human Resources Director Mary Kay McShane explained that the Clerk's salary was at the maximum of its range. Ms. McShane reviewed the bonus program and said that there is no cap on the bonus. Dr. Woodruff said that last year bonuses spanned from 1% to 3%. He also described the process by which the Human Resources Department analyzes the market place to find comparable pay for a position.

In response to the Mayor, City Clerk Janet Cason reviewed changes made in her office during the past year, including handling the general election. Mrs. Cason said she hoped not to fill the vacancy which will soon exist in her office.

Council Member Korest commented that none of the Council Members work closely enough with the City Clerk to evaluate the function of her office or how efficiently it is carried out. Dr. Woodruff remarked that he would grade the City clerk high in every evaluation category. A motion was made and subsequently withdrawn by Council Member Korest to approve the resolution, with a base salary of \$48,030.00 plus a bonus of \$2,000.00.

Council Member Herms said that with the tremendous number of additional responsibilities, plus the elections this past year, his evaluation of the City Clerk would reflect a higher bonus. Council Member Anderson noted that since staff would be reviewing this matter in March, she was comfortable with maintaining the Clerk's present salary. She commented, "I think it's sad that Council has been hobbled with this, doing a good evaluation. We have nothing to fall back on. We will have some criteria in March or April."

Council Member Van Arsdale said that he would prefer the City Manager make this decision. Vice Mayor Sullivan said that he believed Mrs. Cason's performance had been more than satisfactory. Although he has supported salary caps, said Mr. Sullivan, he also believed that high performance should be rewarded. He said further that Mrs. Cason had been recognized on a national level and that the City was fortunate to have someone of her capabilities. Mr. Sullivan said that a 4% bonus was in his opinion an absolute minimum.

Mayor Muenzer noted that it was a new process for Council to evaluate Mrs. Cason and he had hoped every Council Member would spend some time with her and learn about her job. With respect to the salary cap, the Mayor reminded everyone of the Clerk's additional responsibilities and said that perhaps the cap level should be re-evaluated.

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Council Member Pennington commended the Human Resources Department for the functions performed there, noting that he would expect them in larger scale organizations and was quite impressed. Mr. Pennington said that he did not believe the salary range should be adjusted at this time and anticipates that the Clerk's salary will be reviewed during salary review. He suggested a bonus of \$1,500.00.

MOTION: To **APPROVE** the resolution, with a salary of \$48,030.00 and a bonus of \$2,000.00.

Anderson		Y
Herns	M	Y
Korest		Y
Pennington		Y
Sullivan	S	Y
VanArsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 94-

ITEM 15

A RESOLUTION APPROVING THE CONTRACT OF MARIA J. CHIARO AS CITY ATTORNEY FOR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. 94-7112

ITEM 22

A RESOLUTION DETERMINING SATISFACTORY PERFORMANCE OF CITY ATTORNEY MARIA J. CHIARO PURSUANT TO THE EMPLOYMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Titles read by City Attorney Chiaro.

The City Attorney expressed confidence in addressing any of Council's concerns. She said, "I believe I do a good job for you in balancing your needs, so the issue of your evaluation is exactly that. I proposed an employment agreement because the present one does not provide for any reviews in the future. That's an important issue for me." Attorney Chiaro stated that she had submitted the proposed contract because she believed it provided clarification.

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Council discussed the fact that in March or April employment agreements will be discussed. Council Member Van Arsdale commented that there was nothing inappropriate with Attorney Chiaro's request to change the contract at this time. He said that some concerns might possibly exist because of going through a change in Council.

MOTION: To reaffirm and ratify the present contract, based upon satisfactory performance of the City Attorney, to be ongoing and renegotiated no later than May 18, 1994.

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

(4-3)

M=Motion S=Second

Y=Yes N=No A=Absent

Council Member Anderson commented that she did not believe Council was properly addressing the City Attorney's concerns, and instead had made this an emotional issue. Mrs. Anderson said she would have preferred this discussion be handled at a Workshop first. She voted in the negative. Council Member Herms agreed and also voted "no." Vice Mayor did likewise, noting, "If I vote 'yes' I deny what I've already done; I cannot do that."

Mrs. Anderson then asked to change her vote to "yes" with the understanding that the City Attorney was agreeable to accepting the present contract..

OPEN PUBLIC INPUT

No one registered to speak.

City Manager Woodruff distributed copies of the City's response to the Greater Naples Civic Association report. (A copy of that document is located in the file for this meeting, in the City Clerk's Office.)

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ADJOURN: 2:30 p.m.

PAUL W. MUENZER, MAYOR

Janet Cason
City Clerk

Marilyn McCord
Deputy City Clerk

These minutes of the Naples City Council were approved on March 2, 1994.

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January 19, 1994

Convened 9:00 a.m./ Adjourned 2:30 p.m.

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