



City Council Chamber
735 Eighth Street South
Naples, Florida 33940

City Council Regular Meeting - August 17, 1994 - 9:00 a.m.

Mayor Muenzer called the meeting to order and presided.

ROLL CALL

ITEM 2

Present:

Paul W. Muenzer, Mayor
Alan R. Korest, Vice Mayor

Council Members:

Ronald M. Pennington
Marjorie Prolman
Fred L. Sullivan
Fred Tarrant
Peter H. Van Arsdale

Also Present:

Dr. Richard L. Woodruff, City Manager
Maria J. Chiaro, City Attorney
Janet Cason, City Clerk
Mark Thornton, Comm. Services Dir.
Dr. Jon Staiger, Ph.D., Natural
Resources Manager
John Cole, Chief Planner
Missy McKim, Comm. Development Dir.
Kevin Rambosk, Assistant City Manager
William Harrison, Finance Director
Sheldon Reed, Acting Fire Chief
William Overstreet, Building Official
Glen Chesebrough, Division Chief of
Operations, Fire
George Henderson, Sergeant-At-Arms
Katie Gibson-Jones, Admin. Assistant
Marilyn A. McCord, Deputy City Clerk

Werner W. Haardt
Charles Andrews
Attorney Dudley Goodlette
Robert Noble
James Rideoutte
Rich Gunter
William P. Whalen
Frank Fry
Ken Fuchs
Terry Bienstock, Esq.
William P. Whalen
Maqbool A. Qurashi
Attorney Adrian Herbst
Other interested citizens and visitors

Media:

Jerry Pugh, Colony Cablevision
Eric Staats, Naples Daily News

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ITEMS TO BE ADDED

ITEM 3

Item 21 Budget amendment to subsidize expenses for redevelopment of test block on Fifth Avenue South.

CONSENT AGENDA

APPROVAL OF MINUTES

ITEM 12

August 1, 1994 Workshop Meeting
August 3, 1994 Regular Meeting
August 8, 1994 Special Meeting

RESOLUTION NO. 94-7244

ITEM 13-a

A RESOLUTION URGING CONGRESS TO ESTABLISH AN ADDITIONAL PERMANENT FEDERAL JUDGESHIP FOR THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, WITH THE UNDERSTANDING THAT A PERMANENT FULL-TIME JUDGE WILL BE ASSIGNED TO THE FORT MYERS DIVISION; URGING THE CHIEF JUDGE OF THE DISTRICT TO ASSIGN A FULL-TIME JUDGE TO THE FORT MYERS DIVISION; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. 94-7245

ITEM 13-b

A RESOLUTION URGING THE CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TO ASSIGN A PERMANENT FULL-TIME U.S. DISTRICT COURT JUDGE TO THE FORT MYERS DIVISION; AND PROVIDING AN EFFECTIVE DATE.

COMMUNITY REDEVELOPMENT AGENCY AND CABLE ATTORNEY FEE PURCHASE ORDERS.

ITEM 14

BID #94-51

ITEM 16

BID AWARD FOR WATER MAIN EXTENSION AT ACADIA LANE.

BID #94-57

ITEM 17

BID AWARD TO PURCHASE ONE COLOR TELEVISION SEWER INSPECTION SYSTEM.

BID #94-63

ITEM 18

BID AWARD FOR ELECTRIC MOTOR STATOR REWINDS, ANNUAL CONTRACT. PURCHASE ORDER

ITEM 19

AUTHORIZATION TO ISSUE A PURCHASE ORDER - CONTAMINATION ASSESSMENT REPORT.

RESOLUTION NO. 94-7246

ITEM 20

A RESOLUTION ADOPTING A SCHEDULE OF FEES TO BE CHARGED AT THE CAMBIER TENNIS COMPLEX, PURSUANT TO SECTION 46-72 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

END CONSENT AGENDA

MOTION: To add Item 21 to the agenda; remove Items 15-a and 15-b from the consent agenda for further discussion; and approve the consent agenda, consisting of Items 12, 13-a, 13-b, 14, 16, 17, 18, 19, and 20.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
Van Arsdale		Y
Muenzer		Y

(7-0)

M=Motion S=Second

Y=Yes N=No A=Absent

ANNOUNCEMENTS

City Manager Woodruff announced that former Naples Mayor Francis Ford had recently passed away. Mr. Ford served as Mayor from 1960 to 1964. All flags on City property will be flown at half mast for the day.

City Clerk Janet Cason was invited to the podium and recognized by Mayor Muenzer and Dr. Woodruff for achieving Third Sustaining Membership in the International Institute of Municipal Clerk's Academy for Advanced Education. Mayor Muenzer read excerpts from a letter to Mrs. Cason from the President of the International Institute of Municipal Clerks (Attachment #1).

City employees were recognized and thanked for their efforts removing and destroying an abandoned boat located in the Gordon River. Those acknowledged were:

- Dave Graff, Utilities Maintenance Superintendent
- Mike Whitcavage, Utilities Analyst
- Joe Ruggiero, Traffic Control Technician
- Sergeant Kyle Clark, Police Department
- Phil Buck, Parks & Parkways Supervisor

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- . Tom Cobb, Equipment Operator III
- . Don Dudich, Police Officer
- . Kathy Grose, Police Officer
- . Frank Jinian, Crew Leader III
- . Vincent Romano, Service Worker I
- . Perfecto Reyes, Service Worker I

ORDINANCE NO. 94-7247

ITEM 7

AN ORDINANCE AMENDING SECTION 38-91, "FIRE PREVENTION CODE ADOPTED," BY ADDING SUBSECTION (b)(1)d., RELATING TO THE FIRE SPRINKLER REQUIREMENTS; 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.

Korest		Y
Pennington		Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
Van Arsdale	S	Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 94-7248

ITEM 8

AN ORDINANCE AMENDING CHAPTER 102 DIVISION 4. "R1-15A" RESIDENCE DISTRICT OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY ADDING THERETO A NEW SECTION 102-121 REGULATING PIER LOCATION AND DIMENSIONS AND BOAT MOORING LOCATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Public Input: None.

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

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
Van Arsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 94-7249

ITEM 9

AN ORDINANCE AMENDING SECTION 102-116 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY ADDING THERETO A NEW PARAGRAPH (7) TO ESTABLISH A MINIMUM SETBACK REQUIREMENT FOR DRIVEWAY GATES WITHIN THE "R1-15A" SINGLE FAMILY RESIDENCE DISTRICT; 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.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
Van Arsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 7250

ITEM 10

A RESOLUTION REQUESTING THE GOVERNOR AND CABINET TO INCLUDE THE FUNDING REQUEST FOR THE COLLIER COUNTY BEACH RESTORATION PROJECT IN THE FISCAL YEAR 1995/96 FIXED CAPITAL OUTLAY LEGISLATIVE BUDGET; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

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Council Member Pennington commented that this recommendation had been initiated with the D.E.P. (Department of Environmental Protection). In response to Council Member Tarrant, Mr. Pennington said that the funds involved were a part of an ongoing State program for beaches and shores. All areas are in competition for the limited funds. Natural Resources Manager Jon Staiger explained that the Governor and the Cabinet draft a budget for an erosion prevention fund, making this a line item in the State's general revenue budget. The Legislature appropriates money for the individual projects. A study done several years ago recommended that a special revenue source be developed specifically for beaches and added on to the document stamp tax. That was not accomplished, said Dr. Staiger. Ever since, the fund has proceeded with an annual appropriation. The State usually funds two beach restorations per year, so a local lobbying effort is necessary.

Council Member Tarrant said that although he respects Dr. Staiger's point of view, he personally does not prescribe to this matter. Mr. Tarrant pointed out that the State forcibly takes money from taxpayers, many of whom never see a beach. Mayor Muenzer pointed out that Naples residents have helped many times to pay for interior State projects. With respect to the beach restoration funds, the Mayor said, "If we choose to turn our back on these funds, we neglect the people of the County." Mr. Tarrant countered, "There is a lot of validity to that, but my constituents want to see more power and decision making coming here."

Public Input: None.

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

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		N
Van Arsdale		Y
Muenzer		Y
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

RESOLUTION NO. 94-7251

ITEM 11

A RESOLUTION APPOINTING TWO MEMBERS TO THE CITY OF NAPLES AIRPORT AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Chiaro.

Public Input: None.

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MOTION: To appoint Joseph Bawduniak and Barbara Cawley to the Naples Airport Authority.

Council Members Sullivan and Pennington commented on the excellent caliber of applicants for the two vacancies. Vice Mayor Korest pointed out that Council, and the entire community, owe a vote of thanks to Gene Schmidt and Bill Kielhorn for the exceptional job they had done during their tenure with the Airport Authority.

Korest	M	Y
Pennington		Y
Prolman		Y
Sullivan		Y
Tarrant		Y
Van Arsdale	S	Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ITEM 21

BUDGET AMENDMENT TO SUBSIDIZE EXPENSES FOR REDEVELOPMENT OF TEST BLOCK ON FIFTH AVENUE SOUTH.

City Manager Woodruff reported that the Staff Action Committee (S.A.C.) had approved plans for a pilot program from Four Corners westward to 8th Street on Fifth Avenue South. These plans replicate all improvements recommended by Mr. Duany. Dr. Woodruff requested that Council approve transfers in the C.I.P. (Capital Improvement Program) funds so that the pilot program can be completed. Funds would be transferred from the Meneffee and Merihue Parks redevelopment project (\$19,950.00) and from the 7th Street North landscaping project (\$10,000.00).

After the public has had an opportunity to view the improvements, the Fifth Avenue merchants and Council will be asked to make a decision on future improvements for the remainder of Fifth Avenue. For the record, Dr. Woodruff stated that T.I.F. (Tax Increment Funding) funds were a potential source for redevelopment efforts.

Vice Mayor Korest remarked that the City was most fortunate to have the Community Redevelopment Agency Advisory Board, consisting of many dedicated people. He noted that at least four meetings were held to approve the test project plans. Noted Mr. Korest, "We need to show our appreciation to the people who've spent so much of their own time to keep the momentum of this important project."

Public Input: None.

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MOTION: To **APPROVE** the budget amendment as requested.

Korest		Y
Pennington	S	Y
Prolman		Y
Sullivan	M	Y
Tarrant		Y
Van Arsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ITEM 5

REQUEST FROM COLLIER COUNTY REQUESTING RECONSIDERATION OF STAFF REVIEW AND APPROVAL OF CERTAIN PARKING AND ROADWAY IMPROVEMENTS PROPOSED ON THE CITY RIGHT-OF-WAY AROUND THE CENTRAL LIBRARY.

City Manager Woodruff announced that Engineering Manager Dick Gatti had given the necessary approval for the Library driveway. The Library has agreed that discussions about the median cut and parking on Sixth Street South should be delayed. From staff's standpoint, all issues have been settled. For the record, Mayor Muenzer noted that he had communicated with a representative of the Library Board. The Board has worked out arrangements with a nearby church for a parking supplement. The additional parking will be marked with signage.

Due to the fact that this issue was settled, it was removed from the agenda.

ITEM 15-a

BUDGET AMENDMENTS TO COVER COSTS OF RENOVATIONS AND EQUIPMENT NECESSARY TO MOVE THE PLANNING DIVISION TO FIFTH AVENUE, AND RENOVATION OF THE PLANNING DIVISION.

Dr. Woodruff explained that the necessary work could be accomplished by staff. However, in order to comply to the City's Building Code, the work must be done by a licensed contractor. Staff has reviewed the remodeling proposal estimates and will continue to work to bring the figure down. City employees will do the painting. Dr. Woodruff pointed out that money designated for capital projects can only be spent for capital projects; operating funds cannot be spent for capital. Vice Mayor Korest commented that it was important for people to know that the two funds are not interchanged.

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Council Member Tarrant expressed his concern about the necessity of the proposed expansion. Dr. Woodruff explained that staff hopes to streamline the permit application process. To do so, all people involved in the permit process will be relocated on the second story of City Hall. To make room for those employees, the Planning Division's eight employees will move to a rented location off of Fifth Avenue South. During the eighteen months these changes will be in place, staff will do a spatial analysis and conceive a spatial master plan for the City's needs during the next five to ten years. Dr. Woodruff told Council that staff believes it will eventually be necessary to procure additional square footage to accommodate all of the City staff. He emphasized, "I assure you this is not a plan to bring in additional employees, but to expand customer services."

The second portion of Item 15-a, renovation of the Planning Division, was reviewed by Assistant City Manager Kevin Rambosk. Building Official Bill Overstreet distributed plans of the proposed renovations (Available in the City Clerk's Office, in the original file for this meeting). The renovations will speed up the permit approval process, said Mr. Rambosk. Existing desks and equipment will be utilized wherever possible. The budget amendment would also fund uniforms, special shoes, and hard hats for the inspectors. Presently the uniforms are rented; purchasing the uniforms will not result in increased costs.

Public Input: None.

MOTION: To **APPROVE** the budget amendment as presented.

Korest	M	Y
Pennington	S	Y
Prolman		Y
Sullivan		Y
Tarrant		Y
Van Arsdale		Y
Muenzer		Y
(7-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ITEM 15-b

BUDGET AMENDMENT TO REFLECT EXPENDITURES FOR DESIGN WORK, FOR THE EXPANSION OF THE WASTEWATER TREATMENT PLANT, ADVANCED WASTEWATER TREATMENT, AND EXPANSION OF THE RE-USE SYSTEM.

Council Member Tarrant asked that Council not move forward with this project until a committee consisting of a few citizens was appointed to work with the appropriate government employees for the purpose of examining the pros and cons of committing the City to such a large financial expenditure. Mr. Tarrant said that he continues to read and hear more about the strong opposition to discharging chemically treated water into a salt water body. He noted also that by the time the City's wastewater is cleaned and purified to an even greater extent, there is no guarantee that it will be acceptable to the State regulators. Mr. Tarrant pointed out that in March, 1994, Council was

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informed that part of this program was to work cooperatively with the Board of County Commissioners on this common problem. He urged Council not to be pressured with the threat of unfunded mandates from State officials. For the protection of the taxpayers, said Mr. Tarrant, Council needs to move more cautiously and do more research.

Mayor Muenzer noted that some of Mr. Tarrant's concerns had in fact already been addressed, including selling reuse water to local golf courses. The Mayor stressed the fact that the City must comply to State mandates, commenting, "If you choose to believe the State's ultimatum, we have no choice but to comply."

Council Member Tarrant suggested making an aggressive and immediate appeal to the State Legislature for relief on this item in order to gain more time, at least ten years. He asked why Council should not appeal to the State. Mayor Muenzer replied, "We indicated that many cities and counties with more political clout than Naples have explored this and have not been able to make any inroads with the State. We have only one State representative here. It seems impossible to believe we could get a change to our benefit." Mr. Tarrant thanked the Mayor for his comments, adding, "The State is not giving us any guarantee of any kind that at the end of five years they won't give us further mandates. It's pure intimidation. The State Legislature is there to help us.....I'm only one voice on this Council."

City Manager Woodruff said that staff and Council have begun the process of talking with the D.E.P. (Department of Environmental Protection) and with the Legislature. Dr. Woodruff said, "Until the law is changed, we deal with the present law. The five year window is the maximum the State allows anyone. We are pursuing that avenue, but must comply with current law." Council continued to discuss the matter, with Mayor Muenzer commenting that this issue has been in the process for four and one-half years.

Dr. Woodruff assured Council that staff was aggressively working with property owners to extend the reuse service. The advanced wastewater treatment process had been chosen by Council because it produces the cleanest discharge. Dr. Woodruff also noted, "It is my prediction that within a short period of time, we will have a closed loop environment."

Vice Mayor Korest expressed his appreciation for Mr. Tarrant's comments and asked if Mr. Tarrant would share with Council and staff the correspondence, reports, etc. which he has made during his personal protest with the consent order. In the interim, said the Vice Mayor, he believed Council had no choice but to move forward with this matter.

Public Input: None.

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MOTION: To **APPROVE** the budget amendment as presented.

Council Member Tarrant did not support the motion, stating, "For at least five or six years I've been waging war on all types of State mandates. I can have virtually no effect alone. It takes concerned people to accomplish that."

BREAK: 10:55 a.m. - 11:05 a.m.

Korest	M	Y
Pennington	S	Y
Prolman		Y
Sullivan		Y
Tarrant		N
Van Arsdale		Y
Muenzer		Y
(6-1)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

ORDINANCE NO. 94-ITEM 6 APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BY ORDINANCE WITH INTERACTIVE CABLE, INC.

City Attorney Chiaro announced that this was a public hearing on an ordinance which would approve the granting of a franchise for cable services in the City. If approved, Attorney Chiaro will read the ordinance title.

Assistant City Manager Rambosk began the presentation by noting that the communications industry, once notably recognized predominantly as a provider of entertainment services, is rapidly evolving into wide ranging communications systems. The purpose of the staff review, said Mr. Rambosk, was to provide Council, as the franchising authority, information, background, and a financial and technical assessment of the plan and desire of Interactive Cable Vision, Inc. (ICV) to be granted a franchise to provide a communications system to the City.

Mr. Rambosk reviewed the steps taken to date, which began with Council adopting an ordinance replacing a previous one which established regulations and provided procedures for the issuance of communications systems and related franchises. Mr. Rambosk enumerated the application requirements and the concerns which the franchising authority must consider. Those concerns are:

- Impact on the City right-of-way with the addition of the proposed communications system.
- Needs of the City.
- Legal, technical, and financial qualifications of the applicant.
- Quality of the service proposed.
- Experience, character, background, and the financial responsibility of any applicant and its management and owners.
- Willingness and ability to abide by policy conditions.
- Franchise limitations and requirements.

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- . Other considerations deemed pertinent to the Council for safeguarding the interest of the City and the public.

Next Mr. Rambosk explained the methodology utilized in providing a comprehensive review of information, assessments, and supporting data. The review is comprised of the following components:

- . Introduction, which outlines the purpose of the document and the process outline by ordinance.
- . Background, which provides an overview of CATV and communication services in the City and a historical review of the overbuild pursuit.
- . Scope of information.
- . General background information on overbuilds.
- . Summary of the communications system design and plan.
- . ICV's franchise request submission and all potentially applicable data and information since the City's original Request For Information (RFI).
- . The proposal technical and financial review by Charles Gramlich.
- . A verification, general and alternative information section.
- . Recommendations and conclusion section.
- . An ordinance, resolution, and agreement section providing the actual enabling documents and a franchise agreement as developed by Attorney Adrian Herbst and the City of Naples Cable Committee.
- . General reference information on technology and the future of communications systems.

Mr. Rambosk introduced Mr. Charles Gramlich of Charles Gramlich & Associates, Austin, Texas. Mr. Gramlich was the consultant who reviewed the technical and financial aspects of the franchise. Mr. Gramlich told Council: "I believe the system proposed by ICV is state of the art. Its capital requirements are reasonable. Rights-of-way are adequate without causing harm, although there will be disruptions. I believe the operating financial projections are reasonable. It is impossible to predict what will happen in projecting how the system will perform. It is not unusual for competing cable systems to divide the subscriber base. A rate war was not included in the projections."

In reply to Mayor Muenzer, Mr. Gramlich clarified that overbuild may cause some disruptions regardless of what cable company came in. He said that there would be potential liability to anyone who digs in the easements; those concerns are addressed in the franchise document. It is hard to predict how many cuts will be necessary. Mr. Gramlich has suggested that City management manage this part of the operation very closely in the beginning. It will be incumbent upon ICV to make the cuts and mess as small as possible, however it may reach the point where the City may have to spend additional resources to provide management.

Council discussed the possibility of rate wars. Mr. Gramlich noted that in most situations, there

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have been rates wars, but generally the end result was that one company bought its competitor out.

The total system consists of 125 miles of cable; 75 of those are underground. The current provider was required to be 85% underground. Attorney Herbst told Council that if the City has an ordinance requiring undergrounding of all utilities, ICV would do so as well, as part of its agreement. This issue will require further examination, said Attorney Herbst.

Attorney Herbst explained that if effective competition exists, rates cannot be regulated. Should one company buy the other out, Council's ability to regulate rates would go back into place. Rates are limited to the level established by the FCC (Federal Communications Commission).

Mr. Rambosk reviewed the verification portion of the presentation, including:

- . Verification of Resumes
- . Cable System Ownership
- . Penetration Rates For Overbuilds
- . "Green Mail" Concern
- . Legal, Technical, and Staff Review Subjects

A reference manual is currently being compiled, accumulating all information received by staff. Mr. Rambosk pointed out that nationally approximately 100 overbuilds exist; ten of those are in Florida. The overall benefit of cities surveyed was a lower cable rate. One negative impact was the fact that double the paperwork was needed. Some cities have had dual systems for as long as 25 years. The "Green Mail" concern addresses the fact that ICV could not sell out for a three year period.

After the general overview by staff, Council's questions were answered. Attorney Herbst reviewed the legal overview. He told Council that the current cable provider must soon renew its franchise. The same type of document should be put into place with both ICV and the existing provider. It may be necessary to modify the existing regulating ordinance. Attorney Herbst assured Council that the franchise document was written to include as much flexibility as possibility.

Design provisions and the construction timetable were discussed. With respect to programming, there will be an institutional network implemented. Council Member Pennington inquired about providing a governmental channel, if possible requiring the coverage of City Council and County Commission meetings. Attorney Herbst noted that generally within a franchise the content of programs and the actual programs provided are not dictated. Council could, however, give some guidelines to a public access channel. Mr. Pennington continued to state his concern about requiring certain things as part of a franchise. Attorney Herbst indicated that he was aware of nothing that would preclude a cable provider from doing local generation. "If you want certain meetings covered, you should request that," he stated.

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Council Member Van Arsdale referred to the documents, noting, "Some things in here make me think we are overreaching our responsibilities." Attorney Herbst commented, "The document is created, and really authorized, by you. So you can create the level and degree of control management or request. You made a request of your Cable Committee to look at providing you with a synopsis of those things that they felt were important, that you should consider for inclusion in the agreement.

City Manager Woodruff explained, "Why are all these things in here? First of all, because this is completely new territory that you as a Council have never dealt with before. We have gotten the very best input that we could from those who have experience. You have appointed an Advisory Board. That Advisory Board has spent hundreds of hours meeting and researching, and part of their requirement placed upon them by you and by us as staff who sat with them, was that they were to determine what they felt the community should want in a system. The other thing, as we met with the attorney Mr. Herbst and also with the technical advisor Mr. Gramlich, what we were looking for there was their experience in other cable franchises around the country. So yes, it's true, there is everything from A to Z." Dr. Woodruff continued, "The reason why it's so detailed is because we felt that we should bring to you the most thorough application, the most thorough document, that we could bring to you. If you decide you want local origination, you have the ability to do that. If you decide you don't want local origination, then you need to take it out. But I want to explain to you why it is as thorough as it is, and the record needs to reflect the process that we went through to make it this comprehensive."

Attorney Herbst informed Council that consumer protection provisions were included in the document. Also included is an annual performance checklist. Periodic evaluations will be accomplished. In reply to Vice Mayor Korest, Attorney Herbst said that in his experience it was necessary to spell out every term of the document in a precise manner. He agreed that the document was lengthy. The cable business is strictly regulated, however, with technological trends changing almost daily. Attorney Herbst pointed out that the document could be used in negotiations with the City's current provider.

LUNCH RECESS: 1:05 p.m. - 2:20 p.m.

NOTE: Administrative Assistant Katie Gibson-Jones relieved Deputy City Clerk Marilyn McCord as recording secretary after the lunch recess until 4:50 p.m.

Roll Call was taken after the lunch recess. All Members of Council were present. Council Member Prolman left the meeting at 2:30 p.m.

Attorney Herbst reviewed Section 12 of the Cablevision Franchise Agreement noting under Section

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12.02 (D) that a 3-year holding period was required mandating that the operator may not sell or otherwise transfer ownership in a cable system within a 36 month period following either the acquisition or initial construction of the system. He pointed out that Section 14 outlined the procedures for arbitration and that the remaining document included the acceptance requirement, the ordinance, a glossary of terms, an exhibit for programming services that will be provided initially, notice forms and a guarantee that insures fairness of services.

Mac A. Quarshi, Director, President & CEO, ITI Technical Services

Mr. Quarshi thanked City Staff for their superb job in coordinating the efforts of the application. He presented a brief summary of background information regarding the cablevision industry and noted that the National Cable Act of 1992 encouraged the granting of competitive cable franchises in markets that can support more than a single system. He stated that their application in Naples was in response to the City's request for information and a need for competition in this area. Mr. Quarshi pointed out that as a result of competitive cable companies, rate reductions up to 17% had been reported in other areas. He also referred to the 1986 Florida Statue #166.046 in reference to The Level Playing Field which states that all granted franchises be equal in content and rules and that no franchisee be favored over another or restricted in any way unless those same restrictions/rules apply to the first franchisee. Mr. Quarshi explained that Interactive CableVision is a new entity created for the purpose of implementing the franchise in Naples and therefore, no financial statements are available. However, he added that a letter of commitment for the required funds shall be presented during the required contract negotiations before presentation to City Council at second reading. He stated that the network system will go underground in areas that are not served by street poles and that no installation of additional poles was anticipated. He explained that the system will be a fiber-to-coax configuration and include multiple fiber optic cables terminating into nodes where coaxial cables will serve between 300 to 1000 subscribers. Mr. Quarshi stated that the estimated cost for construction of the system is \$5,600,000.

In response to Council Member Pennington's question regarding ICV's provision of cable services outside the City limits, Mr. Quarshi stated that they would be restricted to service in the City area only until a County franchise could be obtained. Regarding questions concerning interaction with the other cable franchisee, Mr. Quarshi stated that they might not find it suitable to combine programs, that one of the main reasons for provision of another cable company is to offer diversity. He added, however, that the time may come when requirements may mandate interaction. Mr. Quarshi emphasized the fact that their company would work to be a community oriented cable system and that they currently proposed to offer to provide 110 programs daily.

Questions from the Council followed concerning proof of financial commitment for construction as well as their concern over the company's use of City rights-of-way. Attorney Herbst added that the agreement would have to be fine tuned regarding the use of City rights-of-way.

Council Member Tarrant expressed his concern over the quality of the programming to be allowed.

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In response to his question as to who would fulfill this duty, Mr. Quarshi explained that the company would have to abide by the Supreme Court rulings and the FCC rulings regarding free speech.

Some discussion followed concerning what effect approval at this first hearing would have over the overall process of approval should more complex changes than anticipated occur. Attorney Herbst responded that substantive changes should not be made, however, correction of verbiage was acceptable as long as it concerns matters that should be left out. His direction at this point recommended that Council continue this item, finalize the document, bring it back in acceptable form, then proceed with the first reading.

Vice Mayor Korest stated that he would be in favor of action on the item at this meeting. Assistant City Manager Rambosk commented that Staff's original intention was to provide a document to the franchisee that would be acceptable with possibly the exception of minor changes. He added that the plan was always to bring an acceptable document to Council. Mayor Muenzer pointed out that the applicants were content with the document and so far, Council indicates only the need for minor changes.

Mr. Quarshi stated that time was a very important issue to them considering the element of competition and the fact that business success is so tied to the approaching tourist "season" in Naples. In response to Mayor Muenzer's question regarding the applicant's anticipated start-up time, Mr. Quarshi stated that they expected to start as soon as paperwork was finalized. Regarding the financing of the project, Council Member Pennington requested some clarification as to when definite proof of financing would be available. Attorney Herbst stated that all issues involved in the application and agreement have to be in place before financing can be finalized. He also pointed out that the document currently provides a parent company guarantee, however, this is a point that should be further clarified in the document.

Mr. Herbst responded to Council Member Pennington's concern over whether or not the City should provide periodic audits to compare the system against industry standards through his explanation that the FCC now provides standards that were not available at the time the earlier franchise was made with the City.

Frank Fry, 6732 Pelican Bay, Naples, Florida

Mr. Fry stated that he had been involved in the cable industry since 1979. He indicated that his interest in this item stemmed from the possibility that Pelican Bay could be annexed into the City and the fact that ICV was interested in expanding into the County. He stated that his experience with overbuilds resulted in his determination that they do not work. However, he stated that this may not be an issue for Council to consider since it is a federal government mandate to allow competition into the cable business. Mr. Fry pointed out that if an applicant is willing to spend five million dollars, and a lending institution is willing to lend that amount on an overbuild, and if the applicant meets qualifications, the possibility of a municipality turning down that applicant is not

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feasible. He recommended that the City spend its time becoming involved and addressing issues concerning the regulation of the franchise within the City.

Ken Fuchs, General Manager, Colony Cablevision, 301 Tower Road, Naples, Florida

Mr. Fuchs pointed out that Colony provides cable to 11,544 households in the community. He indicated that adequate solid answers had not been provided to questions raised. Mr. Fuchs also noted that the services offered by Colony were up to date and of excellent quality. He added that often the quality of customer service declines as a result of a cable overbuild.

Terry Bienstock, Esq., 200 S. Biscayne Blvd. Miami, Florida 33137, Representing Colony Cablevision

Mr. Bienstock stated that he did not advise either to grant or to deny this issue today. He noted that the situation was complex and that in order for him to be satisfied, a lot more answers needed to be provided. Mr. Bienstock stated that the application, in his opinion, had not complied with the ordinance. He said that questions prevail on some four out of six of the required elements for acceptance and noted them as follows: 1) Financial Statements (no certified financial statements); 2) Experience (lacking references of operational experience); 3) Resolve that a requirement should exist mandating 85 - 100% of system be underground cable. He recommended that this issue be addressed and specified within the agreement before a vote. 4) Impact to the City rights-of-way, the fact that this impact had not been considered and whether or not at least 50% of the area would be serviced immediately upon installation of the system. He pointed out that the City Attorney had not officially stated that the applicant had complied with the application process. Mr. Bienstock also questioned the absence of a feasibility study, noting that he believed this to be a requirement. He presented copies of feasibility studies of overbuilds from Dade and Hillsboro Counties to Assistant City Manager Rambosk for his perusal.

Attorney Herbst requested that the letter from Colony Cablevision dated August 10, 1994, be added to the record. He responded to questions raised by Mr. Bienstock stating that staff and the consultants were fully aware of the issues he raised as well as the fact that they needed to be resolved. Mr. Herbst explained that the material presented is structured to insure that everything is in order before the franchise becomes effective, including certified financials, financing, etc. He further explained that some of the items had to be put into place a step at a time and indicated that he was satisfied that all of the items were addressed thoroughly in the documents provided. In terms of a feasibility study, emphasized in the letter from Colony, Mr. Herbst cited the case of Triad Cable TV vs. the City of Hastings, Michigan. He stated that the court, in this overbuild situation, dealt with the question of negative impact of overbuilds on existing cable operators and that "... local market municipalities must consider the economic impact of allowing two operators to compete in a single market before awarding competing franchises." The court finding said "we disagree" and stated that it is a matter of discretion in the governing body, saying further: "... if a municipality chooses to permit competition to avoid potential liability for the first amendment violation to offer another option to disgruntled customers of the existing cable operator or simply to reap a perceived

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benefit of enhanced competition, the due process does not require the municipality to analyze the economic consequences of its decision prior to granting of the competing franchise." He added that in terms of feasibility, the criteria as set out in the application in which findings must be made are attempting to address the impact on the rights-of-ways on existing cable operators and on benefits to the community.

In response to Mayor Muenzer's question regarding whether or not the items discussed earlier today should prevent Council action at this time, Mr. Herbst stated that the following issues were previously discussed: 1) the amount of the bond; 2) to pay franchise fees on a monthly or quarterly basis; 3) how many channels would be activated immediately, the 200 - 500 home nodes; 4) and the question of the parent company guarantee. Those issues would not preclude any action by Council at this meeting.

Rich Gunter, Cable Vision Industries, 1655 State Road 472, Deland, Florida

(Verbatim of Mr. Gunter's statement available in the Clerks Office along with backup information)

Mr. Gunter stated that he did not understand why the City was considering this overbuild because, in his opinion, overbuilds do not work. He stated that he had seen them fail from one end of the state to the other. Mr. Gunter expressed particular concern over the disruptions that would occur inside the City of Naples as a result of the installation of the cable system. He noted that lawns will be dug up, poles will be changed out, and more poles will be added. He stated that the whole installation would create an ugly mess as well as unhappy residents in one of the most beautiful cities in this State. Mr. Gunter stated that in his opinion the Federal rules concerning competition were ambiguous, complex and convoluted, and if the City is requiring that "even" rates have to exist throughout the City simply because it is supposed to promote competition, that requirement itself will negate competition. He noted that the title, "APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BY ORDINANCE WITH INTERACTIVE CABLE TELEVISION INC.," was not correct because the agreement is not completed since more discussion and information are needed before completion can occur. He indicated that the agreement, as written, states that the system will be built in six months, however, he pointed out that the applicant's intentions were to be built out within one year after the permits are issued. He stated that in his opinion, this part of the agreement was too open-ended. Finally, he pointed out that Cable Vision Industries has a franchise in this City and according to the Cable Act of 1984 and the subsequent amendments in 1992, a franchise as it exists is defined in the documents that Cable Vision Industries has in this town. Therefore, he pointed out that the City's proposal to grant a franchise to another company is contrary to Florida law. He added that Cable Vision Industries had not been allowed to build cable systems throughout the City while Interactive CableVision was actively under consideration for this ability as well as the ability to overbuild. He asked that this legal matter be cleared up before any movement forward on this issue takes place.

In response to Mayor Muenzer's question as to whether or not Mr. Gunter was advocating that Cable Vision Industries had a current franchise with the City and was currently paying franchise fees, Mr.

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Gunter responded affirmatively and also pointed out that they were serving a group of condominiums (Solarmar), in the northern part of Naples, which were annexed into the City in 1980.

Mr. Gunter explained that they provided service to their customers through a wireless and coaxial system. Dr. Woodruff pointed out that the cable service Cable Vision Industries provides is from the receiving antenna on the roof of the Solarmar Condominiums and that it goes from that roof down to the individual units. Therefore, he did not believe that Cable Vision Industries had any cable in place in any of the City of Naples rights-of-way. Dr. Woodruff offered to have staff verify this issue.

William P. Whelan, 1970 Imperial Golf Course Blvd., Naples, Florida,

Mr. Whelan stated that he was formally employed by a national cable company and that he was experienced in the area of overbuilds. He noted that there are different types of overbuilds and he recommended that the City consider other situations where a franchise faced a competitive situation. He added that the results were different in different situations. Mr. Whelan noted that the disruptions were not only in the construction stage and he urged Council to base their decision following close consideration of the possible upside consequences. He stated that in his opinion, Colony was a good company, practicing fair pricing, however, the main consideration should be the enhancements that can be provided by the prospective applicant.

Frank Merklein, Associate of ITI, commented that a lot of overbuild is in existence today due to the Cable Act of 1992 and its encouragement of competition. He stated that about 100 of the 200 overbuilds in the country today are municipally owned. He said that Mr. Quarshi is proposing a new, state of the art system and that the system available now is not a state of the art system. He presented a brief outline of the company's background, stating that it was pioneered in 1963. He countered previous claims by the opposition by stating that Interactive CableVision was experienced and had grown significantly over the years.

Dr. Woodruff noted the recommendations and conclusions listed in Section 6 of the Staff Review for a Cablevision Franchise and stated that the City recommended all of the points in that section.

Following Council Member Pennington's statement that if the application meets all of the requirements then Council has no choice other than to grant a franchise, City Attorney Chiaro recommended, in the event of procedure by motion, the motion should approve an ordinance authorizing the execution of a franchise agreement which would grant a franchise to include the recommendations of the management of the City of Naples between Interactive CableVision and the City of Naples. She further explained that in so doing, Council will approve an ordinance which authorizes the execution of the franchise agreement and that execution will take place within 60 days of the effective date of second reading of the ordinance. The franchise would then be granted upon the compliance of everything that is required in the proposed agreement within that 60 day period following second reading. She stated that in her opinion, the application did not have to comply

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with all of the requirements of the master franchise ordinance, however, before a franchise was granted, all of the conditions must be met. Ms. Chiaro concluded that since this is first reading of the ordinance, it is incorrect to perceive that a motion cannot take place because two more steps must be completed before a franchise is granted.

BREAK: 4:42 p.m. - 5:00 p.m.

City Manager Woodruff reported that should Council approve the ordinance at first reading, staff would submit a thorough report as it did during Coastland Mall discussions. Assistant City Manager pointed out that the franchise agreement as drafted will allow Council to have some controls which are not present in current agreements. The agreement contains the minimum customer service regulations developed by the FCC and have been put out for communities to adopt. These regulations have been adopted by Collier County. There are more stringent requirements, however at this point it was not believed necessary to include those.

Vice Mayor Korest said, "There's been so much public input over the last few years about objections to cable service, objections to cable pricing, just a whole lot of complaints in that general area. Since Colony has come in and since the 1992 Act has come in we've seen a number of improvements. This whole thing protects the public, and I know Mr. Van Arsdale has some misgivings about the level of protection we're providing. It's basically done in order to provide a level of security to the subscribers in this community that there would be a certain level of service adhered to, and that this would be something the City would be actively involved in. I think that's what's been accomplished in this agreement. It's also my understanding now, if this agreement becomes the final agreement in generally the form it's in, that this will also be the agreement that would apply to Colony for their future renewal. Then everyone would be playing on the same level field, which is I think one of our objectives in this whole affair. While there's some sections that may appear onerous, the fact that Mr. Kurashi and his group said yes, they could meet this, and the burden is on them, the City is not at risk in any way I can see in this matter at this point. I think the upside is substantial and the downside is virtually nothing, based on what he has to do from this point on in order to satisfy the requirements of our franchise agreement." Mr. Korest proceeded to make a motion:

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MOTION: TO APPROVE AN ORDINANCE AUTHORIZING THE EXECUTION OF A FRANCHISE AGREEMENT WHICH WOULD GRANT A FRANCHISE TO INTERACTIVE CABLE VISION, INC. FROM THE CITY OF NAPLES, SUCH FRANCHISE TO INCLUDE THE RECOMMENDATIONS OF THE MANAGEMENT OF THE CITY OF NAPLES IN AN AGREEMENT IN THE FORM SUBSTANTIALLY SUBMITTED ON THIS DATE, INCLUDING A REPEALER PROVISION AND AN EFFECTIVE DATE.

Korest	M	Y
Pennington	S	Y
Prolman		A
Sullivan		Y
Tarrant		N
Van Arsdale		N
Muenzer		Y
(4-2)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

BREAK: 4:50 p.m. - 4:52 p.m.

Open Public Input: None.

Correspondence/Communications

City Manager Woodruff reported that he and Fire Department Division Chief of Operations Glen Chesebrough had met with the low bidder for the Fire Station #1 construction project. Reductions have been negotiated which do not change the scope of the project. Dr. Woodruff reviewed particulars of the project. LAM Management, Inc., the low bidder, gave the City the option not to commit to re-roofing at this time; the City would have the option to contract for the roofing within 90 days after signing the contract. Dr. Woodruff explained that by that time, the City should know what the County's financial involvement will be in the rehabilitation of the Pier.

Staff recommended:

- ☐ Award the bid to LAB at \$479,700.00.
- ☐ Extend the contract bid from 150 to 180 days.
- ☐ Within 90 days, decide on whether or not to re-roof.

Dr. Woodruff told Council that staff believed it was appropriate to proceed with this bid.

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MOTION: Authorize the City Manager to proceed with the contract with LAM Management, Inc., for Fire Station construction.

NOTE: Mayor Muenzer adjourned the meeting at 5:10 p.m. The meeting was immediately reopened, however, in order for Council Member Tarrant to communicate a request to staff.

Korest		Y
Pennington	S	Y
Prolman		A
Sullivan	M	Y
Tarrant		Y
Van Arsdale		Y
Muenzer		Y
(6-0)		
M=Motion S=Second		
Y=Yes N=No A=Absent		

Council Member Tarrant distributed a memorandum (Attachment #2) requesting increased police patrol because of the recent increase in violent crime incidents. Mr. Tarrant asked that Council give that direction to Police Chief Reble. Mayor Muenzer reminded Council that under the Charter, Council may not direct the Police Chief. The Mayor reported that Dr. Woodruff had met with Chief Reble and that some of Mr. Tarrant's suggestions are being implemented. He asked that everyone keep things in perspective. Mayor Muenzer asked that Dr. Woodruff meet privately with each Council Member to apprise them of the Police situation.

Dr. Woodruff advised Council that Chief Reble had kept him up to date on each of the recent criminal occurrences. A plan of action was prepared immediately by Police Department senior staff members. Dr. Woodruff stated, "We agreed we should not have business as usual. What happened last week cannot become common practice here. I will have in Council's hands no later than 5:00 p.m. on Thursday (August 18) a memo outlining specifically what we've done with the exception of one or two things that would jeopardize our people. Those I will share with you verbally." Dr. Woodruff expressed his appreciation to Mr. Tarrant for the spirit in which the suggestions were made.

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ADJOURN: 5:20 p.m.

PAUL W. MUENZER, MAYOR

Janet Cason
City Clerk

Marilyn A. McCord
Deputy City Clerk

Katie Gibson-Jones
Administrative Assistant

These minutes of the Naples City Council were approved on September 7, 1994.

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City of Naples

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Convened 9:00 a.m. / Adjourned 5:20 p.m.**

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