



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting - February 19, 1997 - 9:00 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL

ITEM 1

Present:

Bill Barnett, Mayor
Marjorie Prolman, Vice Mayor

Council Members:

Bonnie R. MacKenzie
John R. Nocera
Fred L. Sullivan
Fred Tarrant
Peter H. Van Arsdale

Also Present:

Dr. Richard L. Woodruff, City Manager
Kenneth B. Cuyler, City Attorney
William Harrison, Assistant City Manager
Missy McKim, Planning Director
Tara Norman, City Clerk
Dr. Jon Staiger, Natural Resources Mgr.
Flinn Fagg, Planner I
Nancy Byrne, Administrative Coordinator
Virginia A. Neet, Deputy City Clerk
George Henderson, Sergeant-at-Arms
Pastor Dr. Charles Lewis
Werner Haardt
Rich Locker
Kim Patrick Kobza

J. Dudley Goodlette
Maria Chiaro
Juan Carlos Lòpez-Mena
Sylvia Edwards
Carl Loveday
Wheeler Conkling
Pamela J. Arsenault, AAF Reporting
Andy Tennent
Bruce Tyson
See also Supplemental Attendance List
(Attachment 1)

Media:

Tara Beer, Naples Daily News
Frank Kinsman, WNOG

INVOCATION and PLEDGE OF ALLEGIANCEITEM 2
Pastor Dr. Charles M. Lewis, Community Congregational Church.

ANNOUNCEMENTS (9:00 a.m.)ITEM 3
Mayor Barnett recognized area high school students and teachers who have participated in the C.A.S.E. Program (City Action Seminars for Education). (Attachment 2). City Manager Richard Woodruff also recognized Administrative Coordinator Nancy Byrne for her contributions to the program.

ITEMS TO BE ADDED (9:07 a.m.)ITEM 4
City Manager Richard Woodruff requested that the following items be added to the agenda:

Item 23Determine whether an item should be reconsidered with reference to an interlocal agreement with Collier County relating to the maintenance and operation of the beach areas and related parking sites within the City. (*Requested by Mayor Barnett*)

Item 24Consider authorizing the Cambier Park Playground Planning Committee, a citizen committee independent of City government, to hire and fund a consultant/designer to re-design the Cambier Park playground.

MOTION by Sullivan to SET AGENDA ADDING ITEMS 23 and 24; seconded by Nocera and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

At this time in the meeting, Dr. Woodruff noted that Charles Andrews, long-time City Council visitor and volunteer camera operator, was ill and wished him a speedy recovery.

RESOLUTION (Continued)..... ITEM 7-b
A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A DEVELOPMENT AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO, WHICH ESTABLISHES THE DEVELOPMENT RIGHTS FOR A 3.27 ACRE PARCEL LOCATED WITHIN THE WILDERNESS PUD, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read. (9:09 a.m.)

ORDINANCE (Continued)..... ITEM 7-a
AN ORDINANCE AUTHORIZING THE ANNEXATION OF A 3.27 ACRE PARCEL LOCATED WITHIN THE WILDERNESS PUD, IMMEDIATELY EAST OF THE CITY LIMITS AND MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title not read. (9:09 a.m.)

Attorney Joseph Locker, speaking on behalf of petitioner TelTrust Group Inc., referred to his

February 18, 1997 letter in which he requested a continuance of this item. He explained that additional time was necessary to determine whether, in fact, all of the property owners had executed the petition and also noted that a supplemental petition had been filed. He then asked Council to consider this item at the next regularly scheduled meeting.

City Attorney Cuyler explained that legal objections had been raised regarding this petition and indicated that he would be able to complete his review of the documents referenced by Mr. Locker by the next meeting.

Public Input: (9:11 a.m.)

Attorney Alan B. Koslow, representing the Wilderness Country Club, requested that the materials he had provided to the City Attorney be made a part of the agenda back-up material. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.)

Public Input Closed: (9:15 a.m.)

MOTION by Van Arsdale to CONTINUE ITEMS 7-A AND 7-B UNTIL THE MARCH 5, 1997 REGULAR MEETING; seconded by Nocera and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes) Prior to the vote, Council Member Tarrant suggested that the motion include a request that the petitioner fully comply with the Collier County density requirements. City Attorney Cuyler, however, reminded Council that this issue should be addressed when the item is considered at that next meeting.

**RESOLUTION 97-7912.....ITEM 5
A RESOLUTION GRANTING AN EXTENSION OF CONDITIONAL USE PETITIONS 96-CU2 AND 96-CU3, WHICH APPROVED A PARKING NEEDS ANALYSIS AND THE DEVELOPMENT OF RESIDENTIAL UNITS ON THE C-2 ZONED PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 6TH AVENUE SOUTH AND 9TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (9:15 a.m.)**

City Manager Richard Woodruff reviewed the conditional use petitions which Council originally considered on March 6, 1996, noting that this is the site of the new Post Office branch. He also explained that due to construction and leasing delays, the petitioner had requested a one-year extension of the conditional use approvals.

In response to Council, Planner Flinn Fagg confirmed that the site had been approved for two, three-story buildings subject to the restrictions outlined in Resolutions 96-7655 and 96-7656. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.)

Public Input: None. (9:18 a.m.)

MOTION by Van Arsdale to APPROVE Resolution 97-7912 as submitted; seconded by Tarrant and carried 5-2, all members present and voting. (MacKenzie-no, Nocera-yes, Prolman-no, Sullivan-yes, Tarrant-yes, Van Arsdale-

yes, Barnett-yes)

RESOLUTION 97-7913.....ITEM 6
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT OF A CONTRACT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, WITH COASTAL PLANNING AND ENGINEERING, INC., TO DEVELOP THE THIRD PHASE OF THE GORDON PASS INLET MANAGEMENT PLAN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (9:18 a.m.)

City Manager Richard Woodruff referred to the staff report and noted that the first two phases of the Gordon Pass Inlet Management Plan had been previously authorized by Council.

Public Input: None. (9:19 a.m.)

MOTION by Van Arsdale to ***APPROVE*** Resolution 97-7913 as submitted; seconded by Prolman and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

ORDINANCE 97-7914.....ITEM 8
AN ORDINANCE AMENDING SUBSECTION (b) (1) OF SECTION 118-185. FEE SCHEDULE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Woodruff. (9:19 a.m.)

City Manager Richard Woodruff explained that this ordinance related to the parks and recreation capital facility (impact) fees and had received first reading approval on February 5, 1997.

Public Input: None. (9:20 a.m.)

MOTION by Van Arsdale to ***ADOPT*** Ordinance 97-7914; seconded by Prolman and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

.....**ITEM 9**
**AWARD OF BID AND AUTHORIZATION TO ISSUE A PURCHASE ORDER FOR CONSTRUCTION OF A SANITARY SEWER SYSTEM IN THE TWIN LAKES COMMERCIAL DISTRICT ** Contractor: Mitchell & Stark, Inc. \ Bid Amount: \$370,870.00 \ Funding: CIP Project #97N07 (Twin Lakes Commercial Sewer).

City Manager Richard Woodruff referred to the staff report and relayed staff's recommendation to award the bid to the low bidder, Mitchell & Stark, Inc. It was noted that the bid exceeded the engineer's estimate by approximately \$14,000.00; Dr. Woodruff reminded Council that the cost would be recovered through the Twin Lakes Special Assessment District.

Public Input: None. (9:21 a.m.)

MOTION by Van Arsdale to ***APPROVE*** Item 9 as submitted; seconded by Prolman and unanimously carried, all members present and voting. (MacKenzie-

yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

RESOLUTION 97-7915..... ITEM 10-a
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD TO FILL AN UNEXPIRED TERM; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Manager Woodruff. (9:21 a.m.)

Public Input: None. (9:21 a.m.)

MOTION by MacKenzie to APPROVE Resolution 97-7915 APPOINTING ALAN KOREST AS MEMBER OF THE PLANNING ADVISORY BOARD; seconded by Prolman and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

A prior nomination of Charles Dauray by Council Member Tarrant failed for lack of second.

RESOLUTION 97-7916..... ITEM 10-b
A RESOLUTION APPOINTING ONE ALTERNATE MEMBER TO THE PLANNING ADVISORY BOARD TO FILL AN UNEXPIRED TERM; AND PROVIDING AN EFFECTIVE DATE. Title not read. (9:22 a.m.)

Public Input: None. (9:22 a.m.)

MOTION by Van Arsdale to APPROVE Resolution 97-7916 APPOINTING JOHN ASHER AS ALTERNATE MEMBER OF THE PLANNING ADVISORY BOARD; seconded by Prolman and carried 4-3, all members present and voting. (MacKenzie-no, Nocera-no, Prolman-yes, Sullivan-no, Tarrant-yes, Van Arsdale-yes, Barnett-yes) During this nomination, Council Member Van Arsdale stressed the importance of PAB Members having planning experience; however, Council Member MacKenzie noted the importance of a resident's point of view.

Two prior motions by Sullivan to appoint Charles Dauray; seconded by Tarrant failed 3-4. (MacKenzie-yes, Nocera-no, Prolman-no, Sullivan-yes, Tarrant-yes, Van Arsdale-no, Barnett-no)

A prior motion by Van Arsdale to appoint John Asher; seconded by Prolman failed 3-4. (MacKenzie-no, Nocera-no, Prolman-yes, Sullivan-no, Tarrant-no, Van Arsdale-yes, Barnett-yes)

A prior motion by Nocera to appoint Michael Williams; seconded by Tarrant failed 3-4. (MacKenzie-no, Nocera-yes, Prolman-no, Sullivan-no, Tarrant-yes, Van Arsdale-no, Barnett-yes)

RESOLUTION 97-7917..... ITEM 11

A RESOLUTION APPOINTING ONE MEMBER TO THE BOARD OF APPEALS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (9:27 a.m.)

Public Input: None. (9:27 a.m.)

MOTION by MacKenzie to APPROVE Resolution 97-7917 APPOINTING GEORGE HERMANSON TO THE BOARD OF APPEALS; seconded by Prolman and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

.....**ITEM 12**
CONSIDER PURCHASE OF ANNUAL SUPPLIES OF CHEMICALS FOR WATER AND WASTEWATER TREATMENT PLANTS UNDER A COLLIER COUNTY BID Various vendors \ Estimated annual expenditure: \$865,600.00 \ Funding: Water and Sewer Divisions 52-80 (Chemical) accounts. (9:27 a.m.)

City Manager Richard Woodruff provided background information regarding the bid award which was originally submitted to Council on October 2, 1996. At that time, staff had been directed to provide a detailed analysis regarding chemical costs for other water and sewer plants in southwest Florida. Dr. Woodruff then reviewed this analysis and relayed staff's recommendation for approval. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.)

Public Input: None. (9:29 a.m.)

MOTION by Tarrant to APPROVE Item 12 as submitted; seconded by MacKenzie and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

RESOLUTION 97-7918.....ITEM 13
A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, FINDING THAT ALLEN SYSTEMS GROUP, INC. BE APPROVED AS A QUALIFIED APPLICANT PURSUANT TO s.288.106, FLORIDA STATUTES; AND PROVIDING AN APPROPRIATION OF \$30,500 AS LOCAL PARTICIPATION IN THE QUALIFIED TARGET INDUSTRY TAX REFUND PROGRAM FOR FISCAL YEAR(S) 1998 THROUGH 2002; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (9:29 a.m.)

City Manager Richard Woodruff noted that this item was a result of the February 3, 1997 joint workshop discussions between City Council and the Collier County Board of Commissioners and further noted that the City's maximum exposure would be \$30,500.00. In response to Council, Dr. Woodruff clarified that the City would contribute directly and relayed staff's prior recommendation to use Community Development Block Grant funds. Council Member Sullivan made a motion to approve utilizing Community Block Development Grant funds; however, Vice Mayor Prolman reminded Council of upcoming demands for these funds in the Tenth Street area, specifically canal

cleaning. She then suggested utilizing the General Funds.

Public Input: None. (9:33 a.m.)

MOTION by Sullivan to **APPROVE** Resolution 97-7918 **AS AMENDED TO SPECIFY FUNDING THROUGH THE GENERAL FUND OF THE CITY OF NAPLES**; seconded by Van Arsdale and carried 6-1, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-no, Van Arsdale-yes, Barnett-yes)

RESOLUTION 97-7919..... ITEM 14-a
A RESOLUTION GRANTING VARIANCE PETITION 97-V5, IN ORDER TO PERMIT A GUEST UNIT ON EACH PARCEL OF THE "VILLAS OF OLD NAPLES" SUBDIVISION, IN ACCORDANCE WITH THE REVISED SUBDIVISION PLAN; AND PROVIDING AN EFFECTIVE DATE. Titles for Item 14-a and related Item 14-b were read by City Manager Woodruff. (9:33 a.m.) and the items were discussed concurrently.

Council Member MacKenzie questioned why the City Code allows a higher lot coverage percentage in the case of a detached garage. Council Member Van Arsdale commented on other inconsistencies within the Code.

In response, Andy Tennent, agent for the petitioner, provided additional information regarding the proposed two-story buildings which he estimated would have a height of 25 feet. Planner Flinn Fagg then noted that the plat would contain language restricting the use of the guest units to the owners; however, he noted that enforcement of this restriction would be difficult. Mr. Fagg also provided a comparison of minimum lot size for a house and guest unit in the R3-12 and R1-10 Zoning Districts.

Public Input: None. (9:40 a.m.)

MOTION by Van Arsdale to **APPROVE** Resolution 97-7919 as submitted; seconded by Tarrant and carried 6-1, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-no, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

RESOLUTION 97-7920..... ITEM 14-b
A RESOLUTION AMENDING THE SUBDIVISION PLAT FOR THE "VILLAS OF OLD NAPLES," AS ORIGINALLY APPROVED BY RESOLUTION #95-7566, SUBJECT TO THE CONDITIONS HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff 9:33 a.m.) See related Item 14-a above.

Public Input: None. (9:40 a.m.)

MOTION by Van Arsdale to **APPROVE** Resolution 97-7920 as submitted; seconded by Tarrant and carried 6-1, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-no, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 15
January 15, 1997 Regular Meeting; February 3, 1997 Workshop Meeting.

RESOLUTION 97-7921.....ITEM 16
A RESOLUTION APPROVING THE CITY OF NAPLES EMPLOYEE STORM PROTECTION PURCHASE PLAN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

.....**ITEM 17**
CONSIDER ENTERING INTO AN AGREEMENT WITH THE TECH GROUP, INC. FOR PROFESSIONAL ENGINEERING SERVICES, ON AN AS NEEDED BASIS, FOR TRAFFIC ENGINEERING AND RELATED SERVICES.

.....**ITEM 18**
CONSIDER APPROVAL OF THE FOLLOWING SPECIAL EVENTS:
Music in "The Plaza" Third Street South 2/13, 2/20, 2/27, 3/6, 3/13, 3/20, 3/27, 4/3, 4/10
St. Patrick's Day Parade - 3/17
Cedar Montessori School Festival (Cambier Park) - 3/29

.....**ITEM 19**
AUTHORIZATION TO ISSUE A PURCHASE ORDER FOR CONSTRUCTION OF THE WILDERNESS COMMERCIAL SEWAGE PUMP STATION AND COLLECTION SYSTEM Contractor: D.N. Higgins, Inc. \ Price: not to exceed \$64,175.00 \ Funding: Unrestricted Water and Sewer Reserves repaid by developers.

RESOLUTION 97-7922..... ITEM 20-a
A RESOLUTION CONFIRMING THE REAPPOINTMENT OF JAMES RIVARD AND JAMES McEVOY TO THE BOARD OF TRUSTEES OF THE FIREFIGHTERS' RETIREMENT TRUST FUND, EACH FOR A TWO YEAR TERM, EXPIRING FEBRUARY 18, 1999; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 97-7923..... ITEM 20-b
A RESOLUTION CONFIRMING THE APPOINTMENT OF TIM CULLY AND STEVEN MOORE TO THE BOARD OF TRUSTEES OF THE POLICE OFFICERS RETIREMENT TRUST FUND, EACH FOR A TWO YEAR TERM, EXPIRING FEBRUARY 18, 1999; AND PROVIDING AN EFFECTIVE DATE. Title not read.

.....**ITEM 21**
AWARD OF BID ON A TERM CONTRACT FOR THE PURCHASE OF DOMESTIC WATER METERS \ Vendor: Sunstate Meter & Supply, Newberry, Florida \ Cost: \$87,075.00 \ Funding: Utilities Inventory Account and purchased by the Water Distribution Operating Account as needed.

END CONSENT AGENDA

MOTION by Sullivan to APPROVE the Consent Agenda as submitted; seconded

by Van Arsdale and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

.....ITEM 23
CONSIDER A REQUEST BY MAYOR BARNETT TO RECONSIDER AN INTERLOCAL AGREEMENT WITH COLLIER COUNTY RELATING TO THE MAINTENANCE AND OPERATION OF THE BEACH AREAS AND RELATED PARKING SITES WITHIN THE CITY. (9:40 a.m.)

City Manager Richard Woodruff referred to Mayor Barnett's February 14, 1997 memorandum requesting Council's reconsideration of this item which had been continued to the first meeting in April. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Dr. Woodruff reviewed Council's policy relating to reconsideration as outlined in Resolution 95-7397 noting that, if approved, this item would be heard at the March 5, 1997 Regular Meeting.

In response to Council Member MacKenzie, Dr. Woodruff indicated that a three-year analysis of the Consumer Price Index vs. projected population would be provided to Council prior to March 5, 1997; however, he noted that a census is not taken annually. Council Member Van Arsdale reminded Council that this item was continued in order to evaluate this and other joint City/County issues. He also noted recent discussions regarding a proposed Bayview Park fueling station and commented on the City's political leverage as it relates to the beach agreement. Council Member Tarrant took the position that the Bayview Park discussions were unrelated but agreed that Council should workshop this item prior to reconsideration. Additionally, Council Member Sullivan concurred with Mr. Van Arsdale and urged Council to contemplate alternatives before reconsideration of the beach agreement.

Public Input: None. (9:43 a.m.)

MOTION by MacKenzie to APPROVE THIS ITEM FOR RECONSIDERATION AT THE MARCH 5, 1997 REGULAR MEETING WITH WORKSHOP DISCUSSIONS SCHEDULED FOR MARCH 3, 1997; seconded by Tarrant and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

.....ITEM 24
CONSIDER AUTHORIZATION FOR THE CAMBIER PARK PLAYGROUND PLANNING COMMITTEE, A CITIZEN COMMITTEE INDEPENDENT OF CITY GOVERNMENT, TO HIRE AND FUND A CONSULTANT/ DESIGNER TO REDESIGN THE CAMBIER PARK PLAYGROUND. (9:45 a.m.)

City Manager Richard Woodruff referred to staff report noting that this citizen committee would hire and fund a consultant/designer for the Cambier Park Playground. The City staff and the Community

Services Advisory Board would participate in the process with the final design subject to Council approval.

Vice Mayor Prolman referred to the staff report and requested replacing the word "facilitate" in Paragraph #3 (Recommendation) with the word "produce."

Public Input: None. (9:47 a.m.)

MOTION by Prolman to APPROVE Item 24 AS AMENDED ABOVE; seconded by Nocera and unanimously carried, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes)

Break 9:47 a.m. - 10:15 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**ORDINANCE (Denied)ITEM 22
AN ORDINANCE GRANTING REZONE PETITION 96-R7, IN ORDER TO AMEND A
PREVIOUSLY APPROVED PLANNED DEVELOPMENT AND TO REZONE TWO
PARCELS OF LAND FROM "C2-A" TO "PD," IN ORDER TO PERMIT THE
DEVELOPMENT OF A FERRY PORT AND TERMINAL AT THE SOUTHWEST
CORNER OF U.S. 41 AND RIVER POINT DRIVE; AND PROVIDING AN EFFECTIVE
DATE. Title read by City Manager Woodruff. (10:15 a.m.)**

City Manager Richard Woodruff noted that subsequent to this ordinance's January 15, 1997 First Reading approval, several legal issues were raised by the Council Members which would be addressed by City Attorney Cuyler.

Attorney J. Dudley Goodlette, representing the petitioner, Buquebus (Florida), Inc., reminded Council that this rezone petition pertained to an accumulation of three individually owned properties and Council's decision would substantially affect the owners' property rights. As such, he requested that Council recognize the procedural issues raised by Attorney Kim Patrick Kobza representing Port-of-Call owner George Law (Geneva Lake of Naples, Inc.).

Attorney Kobza asserted that his client's property rights and those of other property owners in this petition had not been acknowledged under the City's ordinances. He referred to his February 14, 1997 transmittal which, he said, contained a complete legal analysis with respect to the City's authority to require the planned development rezone process in this matter, and took issue with Council imposing conditions unrelated to the planned development's purpose which is to protect properties from airport noise. Attorney Kobza also referred to minutes of prior City Council meetings in which the City Attorney and Council recognized the illegality of applying the PD requirement in the Comprehensive Plan process. Specifically referring to audio tapes of the August 4, 1993 City Council Regular Meeting, Attorney Kobza stated that City Attorney Maria Chiaro had

advised Council on several occasions that it had no authority to require an individual property to proceed under a PD process. He contended that the property is zoned for the proposed use and urged Council to apply the law fairly for the protection of the property owners. (A copy of the material referenced by Attorney Kobza is contained in the file for this meeting in the City Clerk's Office.)

Attorney Goodlette then noted for the record that he had provided Vice Mayor Prolman, who was absent during the January 15, 1997 First Reading, with a transcript of the portion of that meeting relating to this petition. Attorney Goodlette reiterated that the presence of the Airport High Noise Special Overlay District, and its limited purpose, was the only reason Council's approval was required for this petition. He also explained that the petitioner intended to develop a vacant portion of the property as a terminal and, pursuant to discussions with City staff, had submitted a PD rezone petition. Despite this submission, he stated, it is the petitioner's position that the PD should be judged only by the criteria outlined under the Airport High Noise Special Overlay District (Division 4 of the Code of Ordinances) and not the criteria established for other planned developments. Attorney Goodlette then requested a clear direction from staff regarding the petitioner's redevelopment rights permitted without Council's approval, noting that with this direction, the petitioner may choose not to proceed with the petition before Council. Attorney Goodlette also restated his questions to the planning staff related to their February 5, 1997 report, specifically as it relates to the Comprehensive Plan objectives and policies. He then referred to a alleged Caracas, Venezuela, news release intimating that this venture was only part of larger plan and assured Council that the release was a total fabrication, clearly produced to prejudice this proceeding. He urged Council to continue this item until the March 5, 1997 Regular Meeting in order to protect the legal rights of the petitioner.

In response to Attorneys Kobza and Goodlette, City Attorney Kenneth Cuyler advised Council that, generally, a continuance would be at Council's discretion. However, he noted for the record that he was only advised of Attorney Kobza's position the previous day and had not had sufficient opportunity to review his analysis. City Manager Richard Woodruff then relayed staff's position that express guidance regarding the property's redevelopment rights would be provided only after specific plans are submitted, to which Attorney Goodlette indicated that such a plan could be provided to staff in time for the next Regular Meeting.

Planning Director Missy McKim provided background information regarding Council's 1993 discussions referenced by Attorney Kobza. City Attorney Cuyler stated that although he could not comment on the City's prior position regarding this PD requirement, he was not, however, prepared to advise Council to ignore Code criteria for a planned development. Council Member Van Arsdale took the position that the legal issues and the City's exposure were sufficient enough to warrant a continuance.

MOTION by Van Arsdale to CONTINUE THIS ITEM TO THE MARCH 5, 1997 REGULAR MEETING. This motion failed for lack of second.

In answer to Council Member Tarrant, City Attorney Cuyler advised that although the Code provides for the protection of citizens' health, safety, and welfare, it also sets forth rules and regulations pertaining to land uses which was the issue currently before Council. He reiterated his position that Council should evaluate the planned development criteria as set forth in the Code.

City Attorney Cuyler then explained that Council's consideration of this rezone petition was a quasi-judicial proceeding and requested that Council Members disclose any ex parte communications they may have had with the petitioner or any other party relating to this item. Mayor Barnett disclosed communications with the petitioner, petitioner's representatives and several members of the public, both in favor and opposed to the project. Council Member Sullivan said he had received hundreds of telephone calls regarding the petition and commented that the public response reflected the impact of the proposal upon the community. Vice Mayor Prolman and Council Members Nocera, MacKenzie, Van Arsdale, and Tarrant also disclosed contact with what they described as hundreds of individuals on both sides of the issue along with representatives of the petitioner and other interested parties.

It is noted for the record that Pamela Arsenault of AAF Reporting administered a voluntary oath to members of the staff and audience who would be providing testimony.

In response to Mayor Barnett, City Attorney Cuyler confirmed that he had reviewed the issue regarding Mayor Barnett's minority interest Merriman's Restaurant at Tin City and his daughter's employment by the Law Firm of Treiser, Kobza & Volpe, CHTD., and had determined that neither constituted a conflict of interest under the voting conflict law. He also relayed measures taken by Attorney Kobza to preclude conflict of interest concerns as it relates to his firms' employment of Mayor Barnett's daughter. It was then confirmed that former City Attorney Maria Chiaro would be representing the Citizens to Preserve Naples Bay during these proceedings and, in response to Council, City Attorney Cuyler provided general guidelines relating to potential conflicts of interest in this regard. It was specifically noted, however, that Attorney Chiaro would be able to speak during this proceeding.

City Attorney Cuyler then referred to his memoranda wherein he addressed legal questions posed by Council and explained that the City Code, in and of itself, does not regulate the size of vessels. He also informed Council that his research indicated that no Comprehensive Plan amendment was required in this matter. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) The City's future jurisdiction over vessel size was discussed, and Council Member Sullivan questioned whether vessel width could be regulated due Naples Bay's narrow channels. City Attorney Cuyler cited situations wherein it could be within Council's purview to consider the relationship of the vessel to its land use; however, he reiterated that once the vessel is on the water, there are no City regulations regarding, size, breadth, draft, etc. Council discussion then focused on alternative locations for this project, and Planning Director Missy McKim confirmed that the ferry could be located elsewhere on Naples Bay without Council approval. Administrative and General Development Site Plan Approval processes were reviewed and Ms. McKim confirmed that the use of submerged lands may be considered in a development of considerable impact. Council Member

MacKenzie then referred to Section 86-202 of the City Code which specifies that a development of five acres or more is automatically considered of significant impact on the City and requires a G.D.S.P. despite its zoning district.

Attorney Goodlette requested that the memorandum referred to by City Attorney Cuyler be made a part of the record and stated that legitimate equal protections issue could be raised if this petition is denied. He also noted the City's recent approval of a vessel comparable in size to the proposed ferry. **At this time City Attorney Cuyler informed the petitioner's representative, staff, and members of the audience that, for the purposes of the record, copies of all exhibits and documents presented as evidence must be provided to the recording secretary.**

Planning Director Missy McKim used overhead transparencies to outline the permitted uses set forth in the PD document along with information provide by the site plan noting those project components which are not limited by the PD document. (Attachment 3) Ms. McKim then used computer-generated scale representations to compare the proposed 305-passenger, 144-foot ferry to charter boats currently permitted in the City, and referred to the staff report to review Comprehensive Plan objectives and policies which staff feels would not be met by the petition. She further noted that Comprehensive Plan compliance is necessary for approval of a rezone petition. (Attachment 3) Standards used in PD zoning approval were reviewed along with other permitted uses under the current Planned Development document. Ms. McKim also relayed the staff's position that the proposed 6-foot fence, 4-foot hedge, and trees planted at 30-foot intervals would not sufficiently buffer adjacent residents from the level of activity permitted under the PD document. She relayed that staff did not feel the size of the proposed vessel and the scale of the operation, albeit reduced from the original petition, would maintain the existing residential character of the City or adequately address the intent of Policy 1-2, and Policy 9-2 of the Future Land Use Element.

Council Member Van Arsdale questioned why these concerns did not extend to similar areas in the C2-A Waterfront District and took issue with what he described as inconsistency. In response, Ms. McKim explained that staff's consideration of the PD zoning requirements was triggered by the subject property's location in the Airport High Noise Special Overlay District. She pointed out; however, that the Department of Community Affairs had indicated that this petition was consistent with the City's Comprehensive Plan. Dr. Woodruff corrected a portion of the staff report Paragraph 11, (B)(7), noting that representatives of the Naples Bay Club and Bear Mer Condominiums had indicated support of this petition at First Reading. Ms. McKim also corrected Paragraph D of the report to indicate an additional 363,000 one-way passenger trips per year, not additional tourists.

Attorney Goodlette questioned Ms. McKim regarding the staff's findings, specifically as they relate to the Airport High Noise Special Overlay District standards. Ms. McKim explained that since the staff's review encompassed all of the PD criteria, certain issues would be unrelated to the overlay district. She added, however, that concerns such as the hours of operation may impact surrounding residents if they coincide with airport noise levels.

Barbara Cawley of Wilson, Miller, Barton, & Peek, Inc., stated that she would present information as an expert witness and technical expert for Buquebus (Florida), Inc. Council Member Tarrant objected to Ms. Cawley's appearance since she is a member of the Naples Airport Authority, citing conflict of interest concerns.

Ms. Cawley responded that she receives no compensation for serving on the Airport Authority nor would her work for the petitioner financially benefit the airport. Ms. Cawley then submitted her resume for the record and noted her prior experience as an expert witness (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) She indicated that the PD requirement was based on the new use associated with the originally proposed larger, passenger/vehicle ferry and questioned whether PD rezoning was still necessary. Ms. Cawley maintained that although Council's review was limited to those portions of the Code dealing with the Airport High Noise Special Overlay District, it was the petitioner's position that the proposal was consistent with the PD zoning criteria and would not impact the operation or safety of the airport district. She then read into the record the February 19, 1997 letter from the U.S. Department of Transportation/Federal Aviation Administration which, she added, confirmed that the proposed transportation use was compatible with airport operations. (Attachment 4) Ms. Cawley noted that, according to the recent Naples Municipal Airport Part 150 Study Update, the Airport High Noise Special Overlay District had decreased and would no longer apply to the subject property. (Attachment 5) In response to Council, Ms. Cawley conceded that this study had not yet been approved by the F.A.A.; however, she said it was unlikely that this approval would be withheld. Council Member MacKenzie reasoned that since the study was based on current airport traffic, it would be prudent to maintain the district until additional data is available.

Council Member Tarrant again raised conflict of interest concerns relating to this testimony; however, Ms. Cawley reiterated that she was not representing the Airport Authority in this matter. Ms. Cawley then relayed the petitioner's position that the proposed use was consistent with all aspects of the Comprehensive Plan, including Chapter G relating to the airport and airport noise. She took issue with staff's opinion that the proposal is inconsistent with Objective 1 and Policies 1-2 and 9-2, specifically as it relates to compatibility with adjacent properties. She reminded Council that representatives of the neighboring Beau Mer Condominiums and Naples Bay Club supported the petition and maintained that the buffering between the project and the residential properties far exceeded City requirements. She also stated that any form of commercial activity at this site would impact surrounding residential property and maintained that the petition was consistent with the VISION 2005 comprehensive planning document. Council Member Tarrant stated, for the record, that he strongly objected to the petitioner retaining Ms. Cawley due to her affiliation with the Naples Airport Authority. Ms. Cawley then, however, reserved the right to not use the VISION 2005 document and to challenge its use as a basis for Council's determination.

Attorney Santiago Enchemendia, representing Buquebus (Florida) Inc., clarified that although the proposal was consistent with the VISION 2005, the petitioner reserves the right to argue that it does

not apply to this petition since it is not part of the Comprehensive Plan or the City Code. Council Member MacKenzie responded by stating that the VISION 2005 was adopted by the City and represents community objectives.

Break 12:12 p.m. to 1:29 p.m. It is noted for the record that Council Member Van Arsdale was absent when the meeting reconvened.

Upon reconvening, Mayor Barnett noted scheduling conflicts due to the anticipated length of this item; however, it was the consensus of Council to remain until its conclusion.

Registered Landscape Architect Bruce Tyson, of Wilson, Miller, Barton & Peek, Inc., spoke on behalf of the petitioner and used aerial renderings to illustrate the project's proposed location in relation to U.S. 41 East, Naples Municipal Airport, and the PD overlay district. It was noted that the project was an assemblage of three parcels (Kelly's Fish House Restaurant/Shell Shack, Port O'Call Marina, and the unoccupied Wolfe Marina parcel), and Mr. Tyson confirmed that the combined property totalled approximately 5.4 acres (3.9 acres upland, 1.48 underwater, a portion of which is submerged land). Mr. Tyson contended that the subject property was ideal for this project since it provided the harbor, roadway access, and necessary land area with minimal impact to the community. In his presentation, Mr. Tyson noted how the proposed land use would actually reduce the lot coverage percentage and said the Old Florida style terminal would be in keeping with Naples' character. He pointed out that all City buffering requirements had been met or exceeded and said the proposal tripled the interior open space/parking lots requirements. Projected traffic flow and bus parking were reviewed, and Mr. Tyson estimated that overall traffic would increase only slightly. Mr. Tyson then relayed the following information: 1) The proposed vessel is 144 feet long, 38 feet wide, and 28 feet high above the water line and draws 5 feet, 4 inches when fully loaded; 2) The vessel would replace approximately 38 boats slips at Port O'Call and would reduce the number of boats trips in Naples Bay annually by approximately 13,500.

It is noted for the record that Council Member Van Arsdale returned to the meeting at 1:46 p.m.

He noted that the "Friendship V" was actually 112 feet long, not 98.8 feet as represented by staff and reminded Council that the project's 440 linear feet of promenade would add 17% to the existing open space within the City. In response to Council Member Sullivan, Mr. Tyson confirmed that the rendering of the proposed vessel and terminal was to scale, and explained that the building height would be measured from 10 feet above the water line. He also confirmed that there would be no duty-free shop on the vessel.

In response to Planning Director Missy McKim, Port O'Call Marina owner George Law provided information regarding the size and capacity of his rental boats which, he said ranged between 6-12 passengers. Ms. McKim also questioned whether the petitioner would be willing to grant an easement over the promenade.

Ms. Cawley then used aerial maps to illustrate the submerged lands currently under lease with the State and also confirmed that the submerged land lease would not be expanded to incorporate the Buquebus use. Stephen Crawford, of 5129 Castello Drive, also responded to Council's question regarding boat slips south of the marina noting that there is currently no active commercial use.

At this time, Environmental Engineer Pat Riley, of W. Dexter Bender & Associates, Inc., spoke on behalf of the petitioner and provided Council with his qualifications as an expert witness in this field and as a licensed United State Coast Guard Master Captain. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Mr. Riley reviewed his Buquebus/Naples Bay Analysis for Council (Attachment 6) which resulted from a study of marine and environmental issues relating to the petition. In his presentation, Mr. Riley noted the vessel's maneuverability in narrow channels and said that its jet pump propulsion would not cause scouring or a "vacuum cleaner" effect on the Bay bottom. He specifically referred to the 70-foot channel from Marker 19 to 21 and indicated that there would be sufficient room for the ferry and a small boat to pass. Potential impacts to manatees were discussed, and Mr. Riley distributed a letter from the Department of Environmental Protection (Division of Marine Resources) stating that the Buquebus would not affect the manatees in Naples Bay and Gordon Pass (Attachment 7). Other provisions to protect manatees in the ferry docking area were noted and Mr. Riley maintained that the jet pump would be less detrimental to marine life than propeller driven vessels. Anticipated sound levels for the Buquebus were reviewed, and Mr. Riley indicated that the proposed ferry would be quieter than other vessels in the channel and no louder than present ambient conditions. He also reviewed the vessel's compliance with State and Federal pollution laws.

In response to Council Member Tarrant, Mr. Riley estimated the ferry's travel time in the Key West channel at 15 minutes; Mr. Tarrant therefore reasoned that the Naples/Key West trip would exceed two hours due to the additional 30 minutes needed to navigate Naples Bay.

Mr. Riley then responded to further Council inquiries stating that, at 9 knots, the ferry would create less than six inches of wake. He also confirmed for the record his qualifications as a certified engineer, Master Boat Captain, and marine consultant. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Attorney Goodlette then clarified for Council that the ferry would use the Key West Bight, which does not have a harbormaster, and concluded his presentation by reserving the right to respond to issues raised during public input.

Public Input: (2:47 a.m.)

It is noted for the record that due to the amount of public input, registered speakers are listed as either opposing or supporting the petition. Documents submitted by the speakers are contained in the file for this meeting in the City Clerk's Office. Summaries are provided for those speakers representing citizen groups or where Council participated in the discussion.

Peter Eberle, 3760 Fort Charles Drive - not present when called (see later in the meeting)

George Williams, 1325 7th Street South - opposed

Betty Pennington, 289 Springline Drive - opposed

Ron Pennington, 289 Springline Drive - opposed

Wheeler Conkling of 652 Bridgeway Lane (Citizens to Preserve Naples Bay, Inc.) relayed his organization's opposition to the Buquebus petition and requested additional speaking time to allow representatives of his organization to make presentations. Mayor Barnett noted Council's policy limiting speakers to four minutes; however, Council Member Tarrant suggested flexibility for what he described as a unique situation. Council Member MacKenzie noted prior exceptions to the four-minute rule, and Council Member Sullivan said Council should hear all relevant information. Vice Mayor Prolman and Council Member Van Arsdale, however, stated that the four-minute limit should be maintained.

By voice vote, it was the consensus of Council to allow ten minutes per registered speaker.

Fran Stallings of Bonita Springs (Citizens to Preserve Naples Bay, Inc.) stated that he was also speaking on behalf of the Save The Manatee Club and relayed his qualifications and experience as an environmental consultant. Mr. Stallings said that although it was unlikely that the Buquebus vessel would hit a manatee head-on, it would cause manatees to scatter thus increasing their chance of being hit by other boats. He indicated that approximately 12 manatees frequent Naples Bay during warmer months and equated this danger to destroying a forest one tree at a time. He then urged Council not to open the door to over-commercialization of Naples Bay. Mayor Barnett questioned whether the fleet of rental boats to be replaced by the Buquebus would not be more detrimental to the manatees. Mr. Stallings, however, took the position that the proposed ferry would not reduce the number of boats in the Bay and cautioned that the jet-driven ferry would cause turbidity during its dockage which could cause pollution and threaten seagrass.

Natural Resources Manager Jon Staiger responded to Mr. Stallings comments and indicated that the proposed ferry would not significantly impact current turbidity levels in the proposed docking area. In response to Attorney Enchemendia, Mr. Stallings stated that he had not conducted a study on the proposed vessel as it relates to manatees and turbidity.

Jim Weigel of 2825 Leeward Lane (Citizens to Preserve Naples Bay, Inc.) stated that he was in the real estate profession and described the Buquebus as a hidden economic threat to the citizens of Naples through negative impacts on residential property values. Council Member Van Arsdale noted that bayfront properties, particularly in Port Royal, have continued to appreciate despite increased boat traffic. In response to Attorney Enchemendia, Mr. Weigle stated that his opinion was not based upon a comparable sales analysis.

Break 3:19 p.m. to 3:41 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Harry Timmins of 555 Kingstown Drive (Citizens to Preserve Naples Bay, Inc.) provided Council with information regarding his education and experience in geography, limnology, cartography, and navigation, and used aerial charts and scale renderings of Naples Bay to outline C.T.P.N.B.'s concerns relating to potential navigational hazards. Mr. Timmins clarified that these concerns were not with the ability of the Buquebus, and its professional captain, to navigate Naples Bay but rather with the associated safety discomfort level for the non-expert boaters in the Bay. Mr. Timmins outlined areas of potential safety impact within Naples Bay which included the east end of Gordon Pass where the channel is less than 70 feet, the area surrounding Marker 31, and the 89-foot wide area south of the U.S. 41 bridge near Tin City. Based upon this information, Mr. Timmins asserted, Council not only has the grounds to deny this petition but also the absolute obligation to do so in the interest of community safety and welfare. The impacts of this vessel arise from and are inseparable from the land use, he added.

Council Member Van Arsdale then questioned how the City could regulate the size of a vessel coming into its waterways. In response to Attorney Enchemendia, Mr. Timmins indicated that he had little knowledge regarding the charter boat "Friendship V", understood the draft of the proposed ferry to be 5.4 feet, was unfamiliar with the maneuverability of a catamaran, had not studied the maneuverability of the proposed ferry, and understood that Naples Bay was not exclusively under federal jurisdiction.

Sewell Corkran of 213 9th Avenue South (Citizens to Preserve Naples Bay, Inc.) relayed his study of Florida growth management law and growth management cases and stated that he was before Council as a layman expert. Mr. Corkran contended that Council's approval of this high-speed ferry would disregard the City's Comprehensive Plan, break the City's pledge to its citizens, and violate Florida Administrative Law. He noted Naples' finite amenities and said the impact of an additional 300,000 tourists would seriously threaten the City's carrying capacity. Mr. Corkran further contended that the proposed ferry would not benefit the City as a whole.

James Kessler of 3520 Gin Lane (Citizens to Preserve Naples Bay, Inc.) relayed his experience in opposing major development proposals and explained how the petition would violate the City's Comprehensive Plan, specifically as it relates to the Conservation and Coastal Elements. Mr. Kessler maintained that approval of this petition would require an amendment to the Comprehensive Plan and said the proposed use was not identified in the Comprehensive Development Code, the Code of Ordinances, or the Comprehensive Plan. He then urged Council to deny the petition since it violates Section 102-715 of the Code of Ordinances.

Attorney Maria J. Chiaro (Citizens to Preserve Naples Bay, Inc.) relayed her qualification as the only attorney in Collier County designated by the Florida Bar as an expert in City, County, and local government law and said she was retained by the C.T.P.N.B. to present the legal basis upon which the rezone petition should be denied. Council must consider the staff report, the Planning Advisory Board recommendation, the petition as submitted, and the testimony presented which, she asserted,

supports the conclusion that the petitioner has failed to show that the proposed rezoning complies with current land use regulations. Attorney Chiaro said that petition as submitted does not intend the ferry and terminal to be a charter boat and cited Buquebus' advertisements which, she added, indicate the petitioner's intent to enlarge this project. She referred to the City Code and noted that since transportation facilities are specifically excluded from the charter boat definition, placement of this facility in any zoning district in the City is not permitted. Attorney Chiaro stated that Attorney Kobza's submissions to Council earlier in the meeting were inapplicable since his clients voluntarily submitted to the PD petition. She also stated that Council failed to adequately disclose ex parte communications pursuant to Resolution 95-7474 and said Mayor Barnett's interest in Merriman's Wharf and his daughter's employment with the law firm representing one of the subject property's owner may taint these proceeding if the Mayor casts a vote on this item. She then requested that Council deny the petition as it is not in the best interest of the citizens of Naples and fails to comply with City regulations.

In response to Council Member Van Arsdale, Attorney Chiaro stated that Council's consideration of a rezone petition was broad and would include compliance with the Comprehensive Plan. She also confirmed for the petitioner's counsel that she had been retained to represent the Citizens to Preserve Naples Bay, Inc. in their opposition of this petition.

Referring to Attorney Chiaro's comments regarding disclosure of ex parte communications, City Attorney Cuyler read a portion of Resolution 95-7474 requiring Council Members to disclose the substance of any ex parte communication and to make the identity of the person, group, entity, or written communication part of the record. After further discussion, and with comments by the petitioner's attorney, it was determined that there would be no amplifications of the prior ex parte communications.

Wheeler Conkling used overhead transparencies to summarize results of recent surveys pertaining to the Buquebus project and what he described as the overwhelming public opposition. He then asked the petitioner to stand by his promise to withdraw the project if it is not what the community wants.

Attorney Enchemendia objected to the surveys/petitions referenced by Mr. Conkling being made a part of the record without prior review by the petitioner.

Public Input (*Continued*)

John Ayres, 1901 Gulf Shore Boulevard - in favor

It is noted for the record that Deputy City Clerk Virginia Neet acted as recording secretary for the preceding portion of the meeting and at 5:02 p.m. City Clerk Tara Norman assumed these responsibilities until the 5:58 p.m. recess.

Dean Edmonds, Jr., 1019 Spyglass Lane - opposed

Wendy Edmonds, 1019 Spyglass Lane - chose not to speak when called

Art Jacob, 2201 Regal Way (Manager of Tin City) - in favor

Eileen Arsenault, 1188 Gordon Drive - opposed

John Dwyer, 400 Park Shore Drive - not present when called

C.W. Harvey, 3780 Ft. Charles Drive - not present when called

J.S. Crawford, 5129 Castello Drive stated that he was co-owner of the largest parcel of land included of this petition and relayed his support. He reminded Council of its January 1996 approval of a petition which would allow this land to be used for the same purposes currently requested by the petitioner with only a requirement for General Development and Site Plan approval. Mr. Crawford said Council should be consistent with its resolutions and urged Council to grant the petition since it would be the best addition to the gateway to Naples.

Planning Director Missy McKim reviewed the previously approved planned development referenced by Mr. Crawford which included a ticket office. She took the position, however, that a ferry terminal is different than a ticket office and noted that the existing PD did not apply to all of the properties involved in the petition. In response to Council, Ms. McKim indicated that the use permitted in the present PD are permitted in the C2-A Waterfront District; however, Attorney Goodlette noted for the record that the staff report does not reflect that a passenger ferry boat is not a permitted use on this site.

Toni Tuttle, 87 6th Avenue South - not present when called (opposition statement provided)

Joseph Sample, 940 Admiralty Parade - opposed

Virginia Corkran, 213 9th Avenue South - opposed

Mrs. D'Archangelo, 2171 Gulf Shore Boulevard North - not present when called

Dorothy Donaldson, 659 Palm Circle E. - not present when called

Judy Keller, 406 Golfview Drive - not present when called (see later in the meeting)

Wayne Beazer, 801 River Point Drive - in favor

Mrs. John Banks, 1325 7th Street South - not present when called

Bolton Drackett, 1300 3rd Street South - not present when called

Pegge Hooker, 921 Galleon Drive - not present when called

Mrs. John Deerholt, 1550 Galleon Drive - not present when called

Louise Thaell, 730 9th Avenue South - in favor

Robert Flinn, 376 3rd Street South - not present when called

Jon Christiansen, 438 16th Avenue South - not present when called

John Beaton, 5870 Washington Street - opposed

Break 5:58 p.m. to 7:27 p.m. It is noted for the record that Council Member Van Arsdale returned to the meeting at 7:31 p.m. and Council Member Nocera returned at 7:34 p.m.

James P. Lennane of 4228 Gordon Drive relayed his opposition to the petition and stated that he had authored the false press release referred to by Attorney Goodlette earlier in the meeting. In response, Attorney Goodlette stated that appropriate actions would be taken for what he described as

Mr. Lennane's libelous actions.

Jerry Nichols, 720 Goodlette Road North - not present when called

Mary Lou Coyne, 37 High Point Circle East - not present when called

David Guggenheim, 710 Starboard Drive - not present when called

Judy Keller (Naples Chamber of Commerce), 3620 North Tamiami Trail - in favor

Vern Aitchison, 613 14th Avenue South - undecided

Christina Hansel, 730 9th Avenue South - in favor

Jeff Street, 4865 22nd Avenue S.W. - in favor

Brandon Magnan, 5077 6th Avenue S.W. - in favor

Allen Walburn of 539 11th Avenue South relayed his opposition to the petition and took issue with earlier representations as it relates to travel time between Naples and Key West and the scale of the proposed ferry and terminal. In response, Allen Reynolds of Wilson, Miller, Barton, & Peek, Inc., referred to the rendering and explained that the terminal's height would be measured from the flood elevation (approximately 10 feet), not the height of the seawall. Council Member MacKenzie pointed out that this information conflicted with prior statements and it was further clarified that the starting point for measuring the terminal building's height is ten feet above the water line which includes both the F.E.M.A. (Federal Emergency Management Agency) elevation and the seawall.

Suzi Matthews, 2094 Rookery Bay Drive - in favor

Diane Oczkowski, 1245 Jardin Drive - not present when called

W. Confoy, 3215 Crayton Road - not present when called

Lynne Adams, 650 Bow Line Drive - not present when called

Jack Sturgis, 595 Third Street North - not present when called

Helen Bumham, 1120 Spyglass Lane - not present when called

Robert Ott, 3400 Rum Row - opposed

John A. Bumham, 1120 Spyglass Lane - not present when called

Joseph Herms, 167 3rd Avenue North - opposed

Michael Simonik, Environmental Policy Coordinator for the Conservancy of Southwest Florida, stated that although the Conservancy was unable to oppose the petition based on environmental reasons, his organization was still unable to support the proposal, describing it as a symptom of a greater concern for Naples Bay. He further relayed the Conservancy's support for efforts to study and manage impacts on Naples Bay, including those resulting from increased vessel traffic.

Lynne Hixon Holley, 590 14th Avenue South - opposed

Attorney John Passidomo of Cheffy, Passidomo, Wilson & Johnson, 821 Fifth Avenue South stated that he represented property owners who have interests on Naples Bay and who are concerned about the speed of the proposed vessel in the Bay and Gordon Pass. Mr. Passidomo informed Council that the petitioner had responded to these concerns by agreeing, in writing, to incorporate a covenant into the Planned Development Document affirming that no-wake, idle speed would be maintained for any vessel moored at the site of this proposed petition. He read this covenant into the record as contained in his February 17, 1997 letter to Attorney Goodlette. (Attachment 8) In response to Vice Mayor Prolman, Natural Resources Manager Jon Staiger defined idle speed noting

it would vary depending on the vessel's size.

Jim Rice, 9529 Hemingway Lane E. - in favor

Ahmet Gursoy, 1035 Pettit Court (Marco Island) - in favor

John Gursoy, 4002 Cindy Avenue (Gulf Coast Skimmers) - in favor

Frank Donahue, P.O. Box 9887 (Marine Industries Association of Collier County) - relayed his organization's support for the petition.

Max Keltner, representing the marina at 854 River Point Drive - in favor

Tenika Taylor, 4012 Outer Drive - in favor

George Turner, 172 Colonade Circle - not present when called

V. Cecelia Sweet, 800 River Point Drive - not present when called

Louise Hunter, 800 River Point Drive - not present when called

Kay Toolar, 4012 Outer Drive - in favor

Norm Robbins, 805 River Point Drive - in favor

Mickey Miller, 800 River Point Drive - opposed

Robert A. Azman, 800 River Point Drive (President of Naples Bay Club Condominium Association) clarified that the Naples Bay Club Association would not object to the petition; however, would not come forward in support.

Bill Boggess, 1100 8th Avenue South - in favor

George Law of 390 14th Avenue South (owner of Port O'Call Marina) cited staff's preliminary indications that the proposed use was consistent with that permitted on the property and asserted that Council's denial would indicate that the petitioner was misled. Mr. Law also said his property rights are being violated and asked Council to give him a clear direction regarding an acceptable use for his property.

Duke Turner of 899 10th Street South (owner of Turner Marine) also cited property owners' rights and reminded Council that this is the only petition related to this property which actually meets all of the zoning requirements. Mr. Turner said he was appalled at what the property owners and the petitioners have endured on this issue, equating it to prohibiting a home owner from making needed improvements. He then relayed his support for the petition stating that it would be good for the property and the City and suggested working together for a better waterfront.

Break 9:45 p.m. to 9:57 p.m. It is noted for the record that the same Council members were present when the meeting reconvened.

Peter Eberle, 3760 Fort Charles Drive - in favor

Public Input Closed: (10:06 p.m.)

Council Member Van Arsdale referred to the issue raised by Attorney Kobza and prior Council concerns relating to PD zoning requirements and its conflict with development rights when all applicable zoning standards can be met. He read portions of prior meeting minutes and staff reports and a prior City Attorney's opinion that PD rezones in the Comprehensive Plan were illegal.

City Attorney Cuyler reiterated that he had not reviewed Attorney Kobza's transmittal on this issue and was unable to provide an opinion regarding legality. He added that it is unusual to have a prohibition on development of property without a planned development; however, he could not advise Council to ignore the City's current regulations. Ms. McKim reminded Council that this petition involved three properties, one of which is presently a planned development, and that all properties are contained in the Airport High Noise Special Overlay District. In response, Council Member Tarrant suggested additional time to research this issue.

Responding to prior information regarding channel depths, Natural Resources Manager Jon Staiger provided 1991 Army Corps of Engineers survey information which indicated greater depth than that presented by the Citizens to Protect Naples Bay organization.

At this time, Attorney Kobza offered the material he had presented earlier for the record including the February 1, 1993, August 4, 1993, and February 1994 City Council Meeting Minutes along with an audio tape of the August 4, 1993 Regular Meeting. Additionally, his February 14, 1997 opinion letter was provided for the record. (This material is contained in the file for this meeting in the City Clerk's Office.) He responded to prior statements by Attorney Chiaro and said his client, Mr. Law, had not waived his right to challenge the PD requirement simply by signing the petition. He also confirmed, for the record, that he was not able to relay this information to Attorney Cuyler until 6:00 p.m. of the previous evening.

Attorney Enchemendia then requested that the following items also be included in the record; 1) the City Attorney's memorandum in response to moratorium inquiries; 2) the entire public hearing file; 3) all transcripts from the prior proceedings and transparencies referenced by the Planning Director; 4) the "Friendship V" advertisement; and, 5) the minutes of the 1993 proceeding referenced by Council Member Van Arsdale. (This material is contained in the file for this meeting in the City Clerk's Office.)

Attorney Goodlette clarified that when he first met with the Planning Director regarding this project, he was instructed that a planned development approval process was necessary since this property was in the Airport High Noise Special Overlay District, an accumulation of parcels, and included a proposed ferry terminal. He further confirmed that the vessel's journey time from Naples to Key West would be two hours to two hours/fifteen minutes and reiterated that the criteria upon which this proposal should be judged had in fact been met. In response to Mayor Barnett, Attorney Goodlette confirmed that the petitioner would voluntarily agree to the ten conditions set forth at First Reading by Council Member Tarrant and offered the same as a condition of approval. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) He cautioned, however, that if the petition is not approved, or if a decision is rendered in another forum, the petitioner would not agree to the conditions. He also confirmed that, in the event of denial, his client would either reconfigure the existing facilities at the proposed site or proceed to acquire the Turner Marine property for the project.

On behalf of the City, Mayor Barnett apologized to petitioner Sr. Lopez-Mena for derogatory comments made during the public input session, and the false press release. Council Member Tarrant echoed this sentiment but stated that Sr. Lopez-Mena was backing away from his prior commitment not to pursue this project in the event of denial. He also referred to comments from the petitioner's engineering consultant which, he said, clearly indicated plans for future expansion. Attorney Enchemendia responded that the vessel size would be restricted to the currently proposed dimensions and explained that Sr. Lopez-Mena's commitment was made prior to attacks on his character; as a matter of principle and law, he should therefore have the right to go forward. In response to Council Member MacKenzie, Attorney Enchemendia clarified the operation would comply with the Jones Act since a U.S. Corporation would own the vessel; Buquebus (Florida), Inc. would be the operator.

It is noted for the record that Deputy City Clerk Virginia Neet acted as recording secretary for the preceding portion of the meeting and City Clerk Tara Norman acted as recording secretary from 11:05 p.m. until adjournment.)

Vice Mayor Prolman also referred to Sr. Lopez-Mena's commitments at First Reading including the promise not to take legal action and Council Member Tarrant suggested a referendum to determine the citizens' sentiment. He also took issue with a high-speed ferry being classified as a charter boat and pointed out that no one has seen this 144-foot boat or its ability to navigate Naples Bay.

At this time, Attorney Goodlette relayed a statement from Sr. Lopez-Mena in which he thanked the Mayor and commended the democratic virtues of the United States.

Council Member Sullivan pointed out to the petitioner that Royal Harbor, Port Royal, Park Shore, Moorings, Coquina Sands, Old Naples, and Aqualane Shores homeowners' associations have all significantly rejected this petition in addition to recommendations for denial from the City staff and the Planning Advisory Board. He stated that Council must consider whether the proposed operations would benefit the community as a whole and, based on the information presented, he could not identify any benefit.

MOTION by Sullivan to DENY this ordinance on second reading; seconded by MacKenzie. After the discussion which appears below, this motion carried 5-2, all members present and voting. (MacKenzie-yes, Nocera-yes, Prolman-yes, Sullivan-yes, Tarrant-yes, Van Arsdale-no, Barnett-no)

Vice Mayor Prolman referred to Section 102-715 (2) of the City Code and the Comprehensive Plan to assert that the law does provide a basis for denial. She also read portions of the Comprehensive Plan which, she said, consistently calls for the City's residential component to take precedence over commercial uses and stated that the proposed ferry would not be compatible with the City's character under both the Comprehensive Plan and the PD considerations.

Council Member Tarrant also indicated his support for the motion to deny; however, Mayor Barnett took the position that this project would be the best use for the property and an opportunity to enhance the City's gateway. He said he believed the Buquebus would eventually come to Naples and the proposal and conditions before Council would be the best alternative. Council Member Nocera challenged Council to make a commitment to its citizens regarding this property, even if it means purchasing it to build an acceptable gateway to Naples. He then stated that he would support the vote for denial since it was the what community desires. Council Member Van Arsdale predicted that, if denied, the project would be developed downtown and reminded the public that Council Members are elected to judge what is best for the City. Denial, he added, would ignore the property rights of the owners.

ADJOURN.....
11:16 p.m.

Bill Barnett, Mayor

Tara A. Norman
City Clerk

Prepared by:

Virginia A. Neet
Deputy City Clerk

Minutes approved: 3/19/97

Supplemental Attendance List

Toni Tuttle
H. Reuter
George W. Williams
Duke Turner
Ron Pennington
Betty Pennington
Virginia Corkran
Harry Timmins
Dean Edmond, Jr.
Wendy Edwards
Art Jacob
Eileen Arsenault
John Dwyer
C.W. Harvey
J.S. Crawford
Robert Ott
Michael Simonik
Tenika Taylor
George Turner
Cecelia Sweet
Louise Hunter
Kay Tollar
Judy Keller
Norm Robbins
Mickey Miller
Robert Azman
Bill Boggess
George Law
Joseph Sample
Mrs. D'Arcangelo
Dorothy Donaldson
John Beaton
Jon Christensen
Robert Flinn
Louise Thael
Mrs. John Deerhall
Pegge Hooker
Mrs. John Banks
Wayne Beazer
Ellie Krier

James Lennane
Jerry Nichols
Mary Lou Coyne
David Guggenheim
Judy Keller
Christina Hansel
Jeff Street
Brandon Magnan
Allen Walburn
Suzi Mathews
Diane Oczkowski
W. Confoy
Lynne Adams
John Bumham
Joseph Herms
Lynne Hixon-Holley
John Passidomo
Jim Rice
Ahmet Gursoy
John Gursoy
Bolton Drackett
Lew Aitchison
Jack Sturgis
Helen Bumham
Peter Eberle
Sewell Corkran
John Ayres
Frank Donohue
Max Keltner
Zola Harris
Barbara Cawley
Al Reynolds
Bruce Tyson
Santiago Enchemendia
Kendall Oliver
William Roll
Pat Riley

Other interested citizens and visitors.