



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – May 20, 1998 – 9:00 a.m.**

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Mayor Barnett called the meeting to order and presided.

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**ROLL CALL .....ITEM 1**

**Present:** Bill Barnett, Mayor  
Bonnie R. MacKenzie, Vice Mayor  
Council Members:  
Fred Coyle  
Joseph Herms  
John Nocera  
Fred Tarrant  
Peter H. Van Arsdale

**Also Present:**

Dr. Richard L. Woodruff, City Manager  
Kenneth Cuyler, City Attorney  
William Harrison Assistant City Manager  
Missy McKim, Planning Director  
Dr. Jon Staiger, Natural Resources Mgr.  
Cory Ewing, Planner  
Don Wirth, Comm. Services Director  
Mary Margaret Gruzka, Recreation Supv.  
Duncan Bolhover, Adm. Specialist

Anthony Pires  
Virginia Corkran  
Charles Kessler  
Warren Seagraves  
Robert Noble  
Mary Brett  
Steven Brisson  
Steven Hartsell

Arlene Guckenberger  
Werner Haardt  
Cheryl Coyle  
Andrea Clark Brown  
David Trowbridge  
John Passidomo  
Steven Hartsell  
J. Dudley Goodlette

**News Media:**

Marc Caputo, Naples Daily News  
Dave Taylor, Media One

Other interested citizens and visitors

**INVOCATION and PLEDGE of ALLEGIANCE .....ITEM 2**

Council Member Nocera

**ANNOUNCEMENTS .....ITEM 3**

Mayor Barnett extended condolences to Council Member Coyle in the passing of his mother. City Manager Richard Woodruff expressed appreciation to citizens and staff who participated in the recent Exotic Plant Removal Day which he said had been very successful, particularly in removal of melaleuca trees.

**ITEMS TO BE ADDED .....ITEM 4**

City Manager Richard Woodruff indicated that staff was requesting that Item 18 (regarding parking credits on 12<sup>th</sup> Street South) be added to the agenda and that Items 12, 14, 15 and 16 be continued to June 3.

***MOTION by Herms to SET AGENDA, adding Item 18 and continuing Items 12, 14, 15 and 16 to the June 3, 1998, Regular City Council Meeting; seconded by Van Arsdale and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).***

**CONSENT AGENDA**

**APPROVAL OF MINUTES .....ITEM 5-a**

Special Meetings of April 1, 1998; April 8, 1998; and April 30, 1998

**APPROVAL OF SPECIAL EVENTS ..... ITEM 5-b**

(1) Gulfcoast Runners 12<sup>th</sup> Annual Triathlon 6/4; (2) Dr. Leslie Schultzel wedding/reception 10/24; and (3) Tin City Block Party 7/4

**RESOLUTION 98-8244.....ITEM 5-c**

**A RESOLUTION RESCHEDULING THE JULY 1, AND JULY 15, 1998, REGULAR CITY COUNCIL MEETINGS TO A SPECIAL SESSION ON JULY 22, 1998; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**..... ITEM 5-d**

**AUTHORIZE A PURCHASE ORDER FOR INSPECTION SERVICES FOR THE 4TH AVENUE SOUTH MUNICIPAL PARKING GARAGE \ Engineer: Jenkins & Chartland Inc., Fort Myers, Florida \ Amount \$15,000.00 (not to exceed) \ Funding: Tax Increment Financing.**

**.....ITEM 5-e**

**This item was not provided to Council for action at this time.**

**..... ITEM 5-f**

**Removed from Consent Agenda for separate discussion (see below).**

**END CONSENT AGENDA**

***MOTION by Van Arsdale to APPROVE CONSENT AGENDA, removing Item 5-f for separate discussion (and deleting 5-e); seconded by Herms and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).***

**RESOLUTION 98-8245..... ITEM 5-f**

**APPROVE A CONTRACT AMENDMENT WITH ANDREA CLARK BROWN ARCHITECTS IN ORDER TO EXPAND THE SCOPE OF CONSTRUCTION MANAGEMENT SERVICES FOR THE MUNICIPAL PARKING GARAGE AND TO ADD DESIGN SERVICES FOR THE FIFTH AVENUE PLAZA.** Title not read. (9:11 a.m.)

Council Member Herms clarified that he had requested separate discussion of this issue because he wished to vote against it because of having voted against the parking garage itself. Council Member Coyle received additional clarification that staff believed increased inspection services to be a prudent expenditure on a project of this magnitude and, secondly, that design services for the public plaza would best be performed by the firm of Andrea Clark Brown Architects which

was the architect of record on both the adjacent City parking garage and the Naples Players Theater. Andrea Clark Brown then provided further details of the plaza, stating that design would include paving, drainage, landscaping, street furnishings, lighting, and underground utilities as well as coordination among property owners and their respective consultants in the area. Ms. Brown noted that the area in question encompasses not only the public plaza but adjacent alleyways as well as a walkway connecting Fifth Avenue with the art center in Cambier Park. Construction costs for the plaza is estimated between \$250,000 and \$300,000; Council Member Herms said he found this amount excessive for an area of that size. Assistant City Manager Harrison indicated that following design and competitive bidding, the City Council would be asked to give final approval of the expenditure.

**Public Input:** None. (9:14 a.m.)

**MOTION by Van Arsdale to APPROVE Resolution 98-8245 as presented; seconded by Nocera and carried 5-2, all members present and voting (MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Coyle-yes, Herms-yes, Barnett-yes).**

**ORDINANCE 98-8246.....ITEM 6**

**AN ORDINANCE GRANTING TO SPRINT-FLORIDA, INCORPORATED, A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE TELEPHONE, TELEGRAPH AND TELEPHONIC RADIO AND OTHER TYPES OF COMMUNICATION SYSTEMS IN THE CITY OF NAPLES, COLLIER COUNTY, FLORIDA, FOR A PERIOD OF FIVE (5) YEARS FROM EFFECTIVE DATE HEREOF, AND PRESCRIBING CONDITIONS, LIMITATIONS, RESERVATIONS AND PROVISIONS RELATING THERETO. PURPOSE: TO GRANT SPRINT-FLORIDA, INCORPORATED, A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE WITHIN THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

Title read by City Manager Richard Woodruff. (9:15 a.m.) In response to a question posed at first reading of this ordinance, City Manager Woodruff called Council's attention to an amendment (Section 6) requiring undergrounding of installations except with special approval by the City Manager or his designee. It was also noted that the franchisee concurs with this change.

**Public Input:** None. (9:16 a.m.)

**MOTION by Van Arsdale to APPROVE Ordinance 98-8246 on second reading; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).**

**ORDINANCE 98-8247.....ITEM 7**

**AN ORDINANCE DELETING SUBSECTION (7) OF SECTION 50-231; AMENDING SECTION 50-233; AMENDING SUBSECTIONS (b) AND (c) AND DELETING SUBSECTION (d) OF SECTION 50-235; ADDING SECTION 50-237; AMENDING SUBSECTION (b) OF SECTION 50-242; AMENDING SECTION 50-273 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA, IN ORDER TO MODIFY AND UPDATE THE GENERAL PENSION PLAN AND TO COMPLY WITH THE CURRENT COLLECTIVE BARGAINING AGREEMENT; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (9:17 a.m.)**

**Public Input:** None. (9:17 a.m.)

**MOTION** by Van Arsdale to **APPROVE** Ordinance 98-8247 on second reading; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

**ORDINANCE 98-8248.....ITEM 8**  
**AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, ADDING SUBSECTIONS (6) AND (7) TO SUBSECTION 50-201 (a) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ADDING TWO ADDITIONAL POSITIONS TO THE BOARD OF TRUSTEES OF THE GENERAL EMPLOYEES RETIREMENT SYSTEM; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Richard Woodruff. (9:18 a.m.)

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

**MOTION** by Nocera to **APPROVE** Ordinance 98-8248 on second reading; seconded by Van Arsdale and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

**ORDINANCE 98-8249.....ITEM 9**  
**AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING SUBSECTIONS (2) AND (3) OF SECTION 50-383, SUBSECTION (b) OF SECTION 50-431, AND SECTION 50-432 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, ARTICLE VI POLICE OFFICERS' PENSION AND RETIREMENT SYSTEM, TO COMPLY WITH CURRENT COLLECTIVE BARGAINING AGREEMENT BY CHANGING THE METHOD FOR DETERMINING EMPLOYEE AND EMPLOYER CONTRIBUTION RATE AND INCREASING CERTAIN BENEFITS; PROVIDING FOR CONFLICTING PROVISION, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Richard Woodruff. (9:19 a.m.)

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

**MOTION** by Nocera to **APPROVE** Ordinance 98-8249 on second reading; seconded by Tarrant and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

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It is noted for the record that Items 10 and 11 were considered later in the meeting upon arrival of various attorneys involved.

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**RESOLUTION Continued to 6/3/98 (See Page 2).....ITEM 12**  
**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACTUAL SERVICES AGREEMENT WITH COLLIER COUNTY FOR THE DEVELOPMENT OF A UNIFIED HAZARD MITIGATION STRATEGY; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 98-8250.....ITEM 13**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE IMPLEMENTATION PLAN OF THE FLORIDA DEPARTMENT OF TRANSPORTATION SIGNAL SYSTEM FEASIBILITY AND CONCEPTUAL DESIGN STUDY (STATE PROJECT NO. 03000-1502, WPI NO. 114174) ATTACHED HERETO AND MADE A PART HEREOF; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Richard Woodruff. (9:20 a.m.) City Manager Woodruff referred to a presentation at the May 18, 1998, City Council workshop by the Florida Department of Transportation (DOT) noting that Phase 1 of the project will result in approximately \$2.5-million in improvements inside the City; Phase 2 has not yet been budgeted. In response to Council Member Tarrant, City Manager Woodruff explained that this program will require expenditure

by the City of approximately \$50,000 to fund one additional staff position but that with installation of new equipment, the City's traffic signal maintenance budget is expected to decrease.

**MOTION** by Van Arsdale to **APPROVE** Resolution 98-8250 **AS AMENDED** as follows: (1) to consider mast arms in the 41-10 District compatible with the style selected for that area; (2) to use one-way signal timing to enhance traffic flow on US 41; and (3) to provide all-way stop functions for the safety of pedestrians, especially school children. This motion was seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, Nocera-yes, MacKenzie-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

**RESOLUTION Continued to 6/3/98 (See Page 2).....ITEM 14**  
**A RESOLUTION ACCEPTING AN UNDERGROUND UTILITY EASEMENT FROM PHILIP J. McCABE, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1986, AND FIFTH AVENUE ASSOCIATES OF NAPLES, INC.; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A QUIT-CLAIM DEED TO PHILIP J. McCABE, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1986, AND A QUIT-CLAIM DEED TO FIFTH AVENUE ASSOCIATES OF NAPLES, INC., FOR THE PREVIOUSLY VACATED ALLEY ADJACENT TO THE INN ON FIFTH; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION Continued to 6/3/98 (See Page 2).....ITEM 15**  
**A RESOLUTION GRANTING ALLEY VACATION PETITION 98-AV1, VACATING THE ALLEY DESCRIBED AS THE SOUTH 15 FEET OF LOTS 4, 5 AND 6, BLOCK C, LAKEVIEW TERRACE REPLAT, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION Continued to 6/3/98 (See Page 2).....ITEM 16**  
**AN ORDINANCE AMENDING SUBSECTION (a) AND ADDING SUBSECTIONS (c) AND (d) TO SECTION 1-15, GENERAL PENALTY; AMENDING DIVISION 3 OF ARTICLE VII OF CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO CLARIFY METHODS OF ENFORCEMENT, PROVIDE A SCHEDULE OF PENALTIES TO BE ASSESSED FOR CIVIL INFRACTIONS AND TO ADOPT A SUPPLEMENTAL METHOD OF ENFORCING THE CODES AND ORDINANCES OF THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

It is noted for the record that Item 17 was considered later in the meeting awaiting arrival of the petitioner.

**RESOLUTION 98-8251.....ITEM 18**  
**A RESOLUTION PERMITTING DRH-CB, INC., OWNER OF 1100 FIFTH AVENUE SOUTH TO PAY THE CITY FOR THE IMPROVEMENT OF 12<sup>TH</sup> STREET SOUTH RIGHT-OF-WAY AND OBTAIN CREDIT FOR FIFTY PERCENT (50%) OF THE PARKING SPACES ADJACENT TO 1100 FIFTH AVENUE SOUTH AND LEGALLY DESCRIBED BELOW AS PROVIDED IN SECTION 102-539 OF THE CODE OF ORDINANCES, SUBJECT TO A NUMBER OF CONDITIONS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (9:24 a.m.) Warren Seagraves, representing the petitioner, indicated that the owners of the 1100 Building were attempting to bring their property into compliance with parking requirements in anticipation of sale; with re-striping on site, approximately 6 additional spaces are needed. (It was learned later in the discussion that when constructed, the 1100 Building had included a separate structure and parking spaces across 12<sup>th</sup> Street which had subsequently been sold resulting in the a deficit at the main**

1100 Building and a surplus at the smaller structure.) To achieve these additional spaces, the owner had agreed to underwrite the cost of parking improvements in the right-of-way on 12<sup>th</sup> Street South on the west side of the building, which would require City Council action to allocate some of those spaces to the 1100 Building. As an alternative, Mr. Seagraves suggested allocating existing spaces south of the building on 6<sup>th</sup> Street South, pointing out that there had never been a need for tenants and visitors to the 1100 Building to park other than on the site. It was also learned that, time permitting, the petitioner could have opted for a parking needs analysis petition or variance petition. Closing the 12<sup>th</sup> Street driveway to the 1100 Building could yield as many as three additional spaces. City Manager Woodruff pointed out that the 6<sup>th</sup> Avenue South on-street parking had not been allocated to any of the adjacent businesses, although Tin City (Old Marine Market Place) had paid for materials and the City had furnished equipment and labor to construct the parking. During discussion of the motion which appears below, it was suggested that Tin City and other neighborhood establishments be allowed to use the 1100 Building's parking garage after regular business hours with the appropriate assumption of liability. It was also clarified that the City should be reimbursed for construction of existing spaces (\$8,800); nevertheless, it was noted that use of the 1100 Building parking would not however work to facilitate expansion of Tin City.

**Public Input:** None. (9:50 a.m.)

***MOTION by Herms to APPROVE Resolution 98-8251 AS AMENDED as follows: (1) six parking spaces on 6<sup>th</sup> Street South will be allocated to the 1100 Building and shared with neighborhood commercial interests; (2) the entire garage at the 1100 Building will be available after business hours for customers of neighborhood commercial interests; and (3) DRH-CB, Inc., will pay the City \$8,800 for parking spaces allocated on 6<sup>th</sup> Street South. This motion was seconded by Van Arsdale and unanimously carried, all members present and voting (Tarrant-yes, Van Arsdale-yes, Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Barnett-yes).***

**RESOLUTION 98-8252.....ITEM 17**  
**A RESOLUTION GRANTING VARIANCE PETITION 98-V11 FROM SECTION 102-148, “MAXIMUM HEIGHT,” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH LIMITS MAXIMUM HEIGHT OF STRUCTURES IN THE “R1-15,” RESIDENCE, ZONING DISTRICT TO THIRTY (30) FEET IN ORDER TO PERMIT A THIRTY-FIVE (35) FOOT STRUCTURE AT 3350, 3400 AND 3406 GORDON DRIVE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Richard Woodruff. (9:51 a.m.) Attorney John Passidomo represented the petitioners who, he said, intended to substantially renovate their six-acre Gordon Drive property (including parcels on the east and west side of the street), noting that they had occupied the current residential structure for approximately 15 years. Zoning is R1-15 Residence, he added, which limits height to 30 feet; the petitioners wish to build to a height of 35 feet on a small portion of the property. Mr. Passidomo cited what he described as special conditions supporting the request: 1) it is consistent with the intent of the zoning ordinance; 2) it provides a practical solution to a design problem; and 3) it achieves greater aesthetic character than a literal interpretation of the code allows. He displayed a scale model showing the position of the proposed renovated structure in relation to the surrounding area. Mr. Passidomo then pointed out that the petitioners' property is significantly larger than required lot sizes in either the R1-15 Residence or R1-E Estate districts and the proposed home will therefore also exceed minimum yards in either and has a carrying capacity to accommodate the proposed structure. If the property were located in the R1-E district, Mr. Passidomo noted, there would be no need for a variance because maximum height in R1-E is 35 feet. In conclusion, Attorney Passidomo said that the petitioners would voluntarily comply with the minimum setbacks and lot size in the R1-E district.

It was noted during Council's discussion that the petitioners anticipate being required to meet current flood elevations, estimated at 19.5 feet as opposed to the 13.5 feet which Council Member Herms noted was the elevation shown on the drawings, making the structure a total of 53.5 feet in height and higher to the peak of the roof. Nevertheless, Attorney Passidomo pointed out that the petition before Council was simply allowance for an additional five feet in height in exchange for agreement to abide by the R1-E zoning district regulations, regardless of additional requirements which may be imposed by the Florida Department of Environmental Protection.

Council Member Coyle expressed concern about approving the petition prior to consideration of an additional Coastal Construction Control Line variance for the proposed pool, and also about a structure marked "D" on the diagram but not shown on the scale model. He said that the position of structure "D" would result in what he described as three massive structures on the beachfront. Attorney Passidomo said that while the petitioners have no control over structure "D" the petitioners' 415 foot lot width on Gulf would actually accommodate four estate-sized lots. However, structure "D" will most likely be removed; where there had historically been three structures on the petitioners' property, there would now be only one, he added. Mr. Passidomo also explained that this petition was being pursued prior to application to the state because the state requires evidence of compliance with local zoning laws which can only be done through the City's variance process. He also mentioned that because the criteria governing the Council's deliberations on CCSL variances for pools are very narrowly drawn, denials have historically been unlikely.

The Council then engaged in a discussion with Attorney Passidomo regarding whether the properties owned by the petitioners would be subdivided and whether the 35 foot height variance would apply to each parcel. Attorney Passidomo clarified that the height variance was being sought only for the parcel occupied by the structure, while all three would retain the self-imposed estate zoning which would help to guard against the current local trend of subdividing larger lots. He also noted that, having assembled various parcels for placement of their home, the petitioners have no intent to subdivide any portion of the site during their ownership.

Project Architect Steven Brisson clarified that the scale model floor elevation is 17.5 feet NGVD (National Geodetic Vertical Datum); the document created for the Florida Department of Environmental Protection permit application listed 13.6 NGVD as the main floor elevation, although it was uncertain what elevation would ultimately be required by the state. The existing front yard grade is 10.5 feet; the scale model illustrates 12.5 feet to represent anticipated site modifications. Mr. Brisson also verified that there would be a 42.5 foot elevation from ground to peak of roof.

***MOTION by Tarrant to APPROVE Resolution 98-8252 AS AMENDED to include in Section 2 the requirement that construction must adhere to the site plan provided but at a NGVD height required by the Florida Department of Environmental Protection; seconded by Van Arsdale and carried 5-2, all members present and voting (Coyle-no, Herms-no, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes). (It was clarified by City Attorney Kenneth Cuyler that Section 3 language would also be amended to specify that the R1-E zoning district standards are to apply to the parcels of approximately four acres in size located west of Gordon Drive.)***

**Public Input:** None. (10:32 a.m.)

During discussion of the motion cited above, Attorney Passidomo indicated that while he would accept a condition that the height conform to DEP requirements, he could not commit the petitioners to removal of structure "D" as a condition of approval even though he understood that

this to be their intent. Council Member Tarrant also noted that he believed that this petition helped to protect estate-type properties from subdivision.

**Recess: 10:35 a.m. to 10:52 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

**RESOLUTION (None approved).....ITEM 10  
PUBLIC HEARING TO CONSIDER SETTLEMENT OF LITIGATION, CHARTER  
CLUB OF NAPLES AND OTHERS VS. THE CITY OF NAPLES RELATING TO  
NAPLES LANDING.** Title ready by City Manager Richard Woodruff (11:52 a.m.) City Manager Woodruff reviewed the circumstances leading up to the proposed Memorandum of Settlement, including the request from the Council that all three parties enter mediation to achieve a settlement. All three parties, despite strong feelings and ideals, had negotiated in good faith and certain concessions made by each, in order to achieve a common good; nevertheless, Dr. Woodruff said he did not feel any one of the parties was totally satisfied. If the agreement in its present form is not approved, however, litigation will resume, he noted.

After ascertaining that neither of the other parties wished to make an introductory statement, Dr. Woodruff reviewed the following provisions of the Memorandum of Settlement (Attachment 1). He noted that the purpose of the document was to postpone litigation and, following accomplishment of the conditions set forth therein, the litigation will in fact be closed. The City Manager then reviewed the exhibits showing three phases of Naples Landing development which would obligate the City to budget and expend necessary funds to implement those phases. Phase I, he said had already been accomplished; Phase II is estimated at \$98,500, to be shared equally by the City and County and scheduled for completion on August 1, 1998; Phase III is estimated at \$169,000, to be partially completed by December 31, 1998 with paving finished by June 1, 1998, and funding assistance requests now pending before both the County and State; and Phase IV is estimated at \$135,000 with completion by December 31, 1999, and funding applications are yet to be made to the County and State. Dr. Woodruff noted, however, that should funding assistance not be realized on Phases III and IV, under the Memorandum of Settlement, the City would be obligated to fund the entire amount. Also, it was noted that adoption would obligate the City to construct the elements as shown on the Naples Landing plan. City Manager Woodruff then reviewed Exhibit B to the Memorandum of Settlement which illustrates various modifications to trees in the park which he indicated would actually result in more trees than currently exist.

Anthony Pires, attorney for the parties initiating the litigation, requested that he be afforded an opportunity to address the Council, along with David Trowbridge and Robert Noble, following a question and answer period with City staff. Mayor Barnett, however, called for immediate public input, including Attorney Pires and Messrs. Trowbridge and Noble.

**Public Input: (11:30 a.m.)**

A written message was read into the record from **Mary Brett, 530 First Avenue North, (Old Naples Association)** as follows: “The Old Naples Association opposed the use of Naples Landing as a construction staging area when it first came up and we still do.” **David Trowbridge, President of Charter Club Resort, 1000 Tenth Avenue South**, said that he and others had initiated litigation because they believed that the actions of a prior Council in 1997 did not represent the best interests of the community. They had, he said, spent considerable funds on the litigation and mediation and urged the Council to act; nevertheless, he said that the beliefs of his group remain unchanged. **Robert Noble, 1100 Ninth Street South**, said he



reluctantly signed the Memorandum of Settlement because a public park should not be used in the manner proposed with reference to construction staging.

In response to questions from Council City Manager Woodruff provided further details on which trees would be removed and the number to be planted. In addition, approximately 5 of 20 trees to be removed could be transplanted, Dr. Woodruff reported, noting that the high cost of transplanting one mature tree could fund several other trees. Council Member Coyle questioned Mr. Trowbridge on his group's willingness to allow the City a certain flexibility in the elements of the phases as set forth in the attachments to the Memorandum of Settlement. He said the while he wanted the improvement program for the park to go forward as quickly as possible, his group was primarily interested in the landscaping element.

It was clarified that the City's authority over Naples Landing under the proposed Memorandum of Settlement was for operation but not amendment of the park plan attached to the Memorandum of Settlement. In addition, it was noted that dismissal of litigation as agreed to in the document prohibited re-filing of the litigation. City Manager Woodruff also clarified that should it be necessary for the dispute resolution procedures to be implemented, the Council would be given an opportunity to provide the City's representatives with their input. He also said that if the City had proceeded with a master plan for the park apart from mediation it most likely would not have removed the number of trees set forth for removal in the Memorandum of Settlement.

After indicating that he wished to make a motion on this issue, Council Member Tarrant noted his support for the Keewaydin development and commended all parties involved for what he described as a good faith effort to reach a settlement. However, he said that consideration should be given to a much broader range of interests including users of the park and how they would be affected by commercial activity which would be expanded from traffic in conjunction with normal seawall repair to as many as 240 uses per year. Mr. Tarrant also said that the improvements to the park should be made in a timely fashion, regardless of whether or not the settlement is approved or whether the developers are allowed to use the facilities. He noted that the group litigating against the City had spent approximately \$80,000 for legal fees and that Messrs. Trowbridge and Noble indicated that they nevertheless did not actually support the agreement. He said these individuals had limited resources in comparison to the City or a developer who had, since the litigation was filed, acquired a marina with adequate loading facilities. Council Member Tarrant indicated that he would make a motion to deny the settlement resolution and also to rescind the previous City Council actions on June 2, and 18, 1997, which granted permission to use Naples Landing for intensified commercial barge and crane operations, and to return the park to normal recreation activities and normal maintenance barge use historical in that location. Council Member Nocera indicated that he would second such a motion. Mr. Tarrant also said that he recalled City Attorney Cuyler indicating that the Council could rescind the conditional use approval of Naples Landing. Mayor Barnett asked for clarification from City Attorney Cuyler, however, noting that such action would represent significant legal exposure in relation to the Key Island developer. Mr. Cuyler said that, while he did not recall advising that the conditional use could be rescinded, and noting a conflict which exists in his commenting on the specifics of the litigation, he nevertheless indicated that from a general perspective the conditional use was not on that day's agenda and therefore should not be considered by the Council until listed on a published agenda. Council Member Tarrant, therefore, indicated that the first part of his motion should stand with the second part deleted.

***MOTION by Tarrant to DENY the settlement resolution as presented; seconded by Barnett and carried 4-3, all members present and voting (See discussion***

*below, before and after a recess, which occurred prior to the vote on this motion.) (Tarrant-yes, Van Arsdale-yes, Coyle-no, Herms-no, Mackenzie-yes, Nocera-yes, Barnett-no).*

Council Member Coyle suggested, instead, that the Memorandum of Settlement be tabled so that it and the issue of rescinding prior Council actions could both be considered. Council Member Herms also noted a requirement in the conditional use for an annual review and whether, at that annual review, permission for the developer to use Naples Landing could be turned down. He requested a recess in order to review documents relative to the conditional use.

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**Recess: 12:19 p.m. to 12:30 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened. Correspondence and Communications was considered prior to continuation of Agenda Item 10.**

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**CORRESPONDENCE and COMMUNICATIONS.....**

Council Member Nocera noted transmission of his memorandum on the status of the **Airport Authority** and requested Council's support for his recommendation that the Airport Authority be retained. Council Member Coyle observed what he described as a contentious attitude and lack of response on the part of the Airport Authority to requests and suggestions by the City Council. This could only be solved by either changing the people who serve on the Airport Authority, which he said could be achieved by not automatically reappointing everyone who seeks another term, or by obtaining additional authority over operation of the airport. He further suggested that a candidate's ability to fly an aircraft should be considered a disqualification because of the possibility of vested interests in defending the rights of the aviation industry to the detriment of the community.

Council Member Herms urged Council Members to examine the **trees installed by the City** on First Avenue North between Ninth and Tenth Streets, on Central Avenue, and on First Avenue South between Tenth and Goodlette Road in preparation for a subsequent workshop discussion on the subject.

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**It is noted for the record that at this time the Council returned to discussion of Agenda Item 10. (12:36 a.m.)**

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City Manager Richard Woodruff quoted a motion by Vice Mayor MacKenzie at the June 2, 1997, City Council meeting. "Approve Naples Landing as a staging area for the Key Island Development project with the following requirements: 1) hours of operation must be 8:00 a.m. to 4:00 p.m.; 2) days of use Monday through Friday; 3) off-site staging and storage to be identified; 4) contractor will pay the City a fee of \$300 per half day, which is a minimum of 4 hours, and additional pro rated charges for more than 4 hours per day; 5) the permit must be annually renewed at Council's discretion and not to be unreasonably withheld; 6) the collected fees from the Key Island development project will be used for City park improvements; 7) access to the staging will be reconfigured so trucks will enter and exit via the same route; and 8) all staff restrictions not in conflict with this motion will remain in place." Vice Mayor MacKenzie stressed what she described as continuing strong feelings that a government facility should not be in competition with private enterprise and therefore the majority of the restrictions were intended to discourage Naples Landing being used unless no other facilities were available. She stated that she had not been willing to foreclose the development of Key Island by preventing access to Naples Bay and that following a review by the Council of this use of Naples Landing for the project, the extension of the conditional use should not unreasonably be withheld. However, she said, the restrictions in her motion were intended to be punitive in nature to encourage the developer to seek other staging sites.

***Mayor Barnett then withdrew his second to the motion by Council Member Tarrant to deny the settlement agreement (see above). Mr. Nocera then seconded the motion.***

Council noted that the time allotted for annual review could be most strictly be interpreted that since approval was granted on June 2, 1997, it would be reviewed annually on June 2. Vice Mayor MacKenzie said that her intent had not been that the permit could necessarily be revoked after one calendar year, but rather after one year of operation which, she pointed out, had not yet begun. After one year's operation, she said, the Council could then make adjustments or take the extreme measure of revoking the conditional use.

In response to Mayor Barnett, Attorney Hartsell explained that while the Council could at a future time rescind the approval of the loading plan granted on June 2, 1997, the Memorandum of Settlement now before them, if adopted, would be binding on the City in this regard. In response to Council Member Tarrant, however, Mr. Hartsell clarified that if the Memorandum of Settlement were rejected, it could not control any future actions of City Council in rescinding prior approvals granted to Key Island Partners. The Memorandum of Settlement, however, would not apply to any other proposed large commercial users who would also be subject to the same conditional use process as Key Island Partners, Mr. Hartsell noted, but would apply to construction of the homes on Keewaydin Island, regardless of time frame.

Attorney Anthony Pires, referring to the June 2, 1997, Council action, said that one of the issues his clients had raised was that, in fact, a conditional use had been adopted on June 2, 1997, without going through the conditional use process. Council Member Herms then pointed out that since the City did not legally undertake the proper procedure, no conditional use is in place giving the Council a stronger legal position. Attorney Hartsell said that the City's position, however, is that restrictions imposed by the Council on June 2, 1997, were a normal function of the Council in placing conditions on use of a City park.

Attorney Hartsell also reminded City Council Members to keep in mind the concessions made by Key Island Partners and their actions since June 2, 1997, which include continuing to pursue other options than Naples Landing; in fact, he said, in the Memorandum of Settlement the developers have indicated that use of Naples Landing would be minimized to the extent possible. Vice Mayor MacKenzie observed that had there been other options than Naples Landing, the developers would not have felt it necessary to be a party to the Memorandum of Settlement; to deny a conditional use could in fact be a denial to develop the island property, she concluded.

Prior to a final vote on the motion to deny, City Manager Woodruff noted that the all three parties, including the taxpayers of the City, would be committed to continuation of litigation. Also, he said, that if at a future date the Council rescinds the utilization plan, the Council would most likely be faced with another lawsuit by the developer. The three parties to the Memorandum of Settlement, he said, had accomplished voluntarily the mission with which the City Council had charged them. He said his plea was to settle this issue so that the community, the developer and City government could proceed. Council Member Tarrant said that while he had felt that mediation would be a useful process, there was no way of predicting the outcome of the mediation and that Council had given no guarantee to a settlement. City Attorney Cuyler, however, observed that to expect that in a mediated settlement that the developer would relinquish all right to use Naples Landing Park was an unrealistic expectation which, he said, all parties knew when entering the process.

*Vote on the above motion was then held with the result being approval 4-3, all members present and voting (Tarrant-yes, Van Arsdale-yes, Coyle-no, Herms-no, MacKenzie-yes, Nocera-yes, Barnett-no). During the vote, Council Member Van Arsdale took issue with the provision of the agreement to accommodate what he described as modifying trees as a concession to the customers of the Charter Club, which he said was his primary reason for voting to deny. Also during the vote, Council Member Coyle while noting his strong opposition to commercial operations at Naples Landing, predicted that the Memorandum of Settlement was the best that could be achieved under the circumstances. Council Member Herms said he, too, felt that trees should not be removed from the park but that the Memorandum of Settlement may be the best option available. Council Member Nocera said that he had continues to be against use of Naples Landing as an intrusion by private enterprise on public property and also stated his opposition to the provision regarding removal of trees from the park. Vice Mayor MacKenzie said she could have accepted the majority of the provisions in the Memorandum of Settlement but described her extreme opposition to placing effective veto power over improvements in Naples Landing park in the hands of people who seek to cut down trees, including mangroves which in many cases pre-date the Charter Club. Mayor Barnett said he, too, felt that the Memorandum of Settlement should not have included removal of trees which he described as extortion; he said he would prefer to have had an opportunity to negotiate further.*

Council Member Van Arsdale said he felt the Memorandum of Settlement would be more acceptable to him if all landscaping decisions in the park (Exhibit B) be made by City staff with the approval of Council in a public forum. (This was later restated and clarified in the form of the motion appearing below.) Mayor Barnett agreed. Attorney Pires said that since only two of the parties he represents were present, he had no authority to agree to modifications, but if the costly process of discovery could still be held in abeyance, he would discuss proposed changes with all of his clients. Attorney Hartsell noted that the Council would then, in effect, be making a counter offer for a set period of time; however, he asked that the Council not place limitations on his activities in defense of the City.

**MOTION by Van Arsdale to EXTEND A COUNTER-OFFER TO THE OTHER PARTIES UNTIL JUNE 3, 1998, eliminating Exhibit B of the Memorandum of Settlement and that landscaping issues would be dealt with by City staff with the approval of City Council. This motion was seconded by Barnett and carried 5-2, all members present and voting (Coyle-yes, Herms-yes, Nocera-no, Van Arsdale-yes, Tarrant-no, MacKenzie-yes, Barnett-yes). During the vote, Council Member Herms observed that all other sections of the agreement would remain in effect and Council Member Tarrant noted his belief that the issue was more of commercial use of a City park than of landscaping.**

City Manager Woodruff then noted that attorney fees (Agenda Item 11) would not be discussed at that meeting. Attorneys Hartsell and Cuyler noted that a resolution of Council would be necessary to approve the amended Memorandum of Settlement if the counter offer were accepted by the other parties. It was again noted that discovery would be held in abeyance as well as oral arguments.

.....**ITEM 11  
CONSIDER A REQUEST FROM CHARTER CLUB OF NAPLES AND OTHERS FOR REIMBURSEMENT OF LEGAL FEES PERTAINING TO NAPLES LANDING LITIGATION. (See Item 10 above)**

**It is noted for the record that the Council then returned to discussion of items under Correspondence and Communications. (1:13 p.m.)**

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Council Member Nocera returned to his discussion of the Naples Airport Authority, noting that retaining the current configuration of the Authority would preserve the goal of airport operations being apart from local politics. He said that he would support a member of Citizens for Control of Airport Noise (CAN being appointed to the Airport Authority. Nevertheless, he commended the work of the Airport Authority and noted his opposition to the Council assuming responsibility for operation of the airport. Mr. Nocera said that he felt the discussion of abolishing the Airport Authority had communicated the Council's serious concerns; however, he stated his commitment that changes could nevertheless be made if the Airport Authority is in fact not responsive. Council Member Coyle said that while he believed that a short-term change would occur but that a similar problems would again materialize. He pointed out that Collier County Commission retains authority over budgeting and leasing at County airports and that the Lee County Commission operates Southwest International. He recommended that the Council ask the Airport Authority to relinquish approval of long-term leases to the City Council because prior to the 1990 Airport Noise Compatibility Act, the City Council did enjoy more flexibility with reference to activities at the airport. With reference to the suggestion that a CAN member serve on the Airport Authority, Mayor Barnett observed that other qualifications than merely purchasing a membership in CAN should be considered. While Council Member Herms observed that a minority of the airports surveyed by Mr. Nocera were independently operated, Council Member Van Arsdale said that he had had experience in leasing space at most of them and that there were few examples of effective management by the prevailing governmental body, the Naples Airport being a superior operation to those listed.

Vice Mayor MacKenzie then referred to a prior comment by Council Member Coyle regarding automatic reappointment of advisory board members. She stated that only the performance of incumbent members, not merely attendance or willingness to continue serving, should be the criterion for reappointment. Council Member Coyle, however, said that his comment had been prompted by a public statement by Mayor Barnett that it had been a practice to reappoint a sitting board member, noting that neither Airport Authority Members Pennington nor Thornton would have been appointed had they been opposed by an incumbent. Mrs. MacKenzie took issue with what she described as an extrapolation that because a Council Member is in favor of retaining the structure of the Airport Authority, this automatically means the people on the Authority are grandfathered in. Council Member Van Arsdale noted that in the past, appointments of new members to the Airport Authority had in fact been made over the incumbents because the Council had been dissatisfied with the incumbents' performance. Council Member Herms said he felt that Airport Authority Member Bawduniak, whose term was ending in the near future, had no regard for the views of the City Council or the public and should not therefore be reappointed. Council Member Tarrant said he felt Mr. Nocera's report was helpful and thought provoking.

Council Member Nocera noted that he planned to attend the Florida League of Cities convention in August and urged others to do likewise. It was noted that each Council Member is allowed a \$1,000 annual travel allowance.

**OPEN PUBLIC INPUT .....**  
None.

**ADJOURN** .....  
1:28 p.m.

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Bill Barnett, Mayor

Minutes prepared by:

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Tara A. Norman, City Clerk

Minutes approved: 7/22/98