



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – June 3, 1998 9:07 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 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
Missy McKim, Planning Director
Kevin Rambosk, Chief of Police &
Emergency Services
Dan Mercer, Utilities Director
Susan Wiesing, Human Resources Dir.
Dr. Jon Staiger, Natural Resources Mgr.
Ron Lee, Senior Planner
Susan Golden, Planner
Cory Ewing, Planner
Bill Overstreet, Building Official
Molly Reed, Recording Specialist
Diane Grant, Sr. Admin. Specialist
Keith Kipp, Utility/Solid Waste Coord.
Louanne Melone-Fischer, Tennis Supvr.
Gunnar Christianson, Building Inspector
Duncan Bolhover, Admin. Specialist

Mae Davis, Secretary to Mayor/Council
Robin Williams, Executive Secretary
Rev. Clyde Mills
Pamela Arsenault
Charles Kessler
Cheryl Coyle
Arlene Guckenberger
Werner "Duke" Haardt
Anthony Pires
John Passidomo
Other interested citizens and visitors
(Attachment 1)

Media:

Dawn Grodsky, WNOG
Marc Caputo, Naples Daily News
Michelle Vachon, Naples Daily News
Denis Husty, Ft. Myers News Press

INVOCATION AND PLEDGE OF ALLEGIANCE.....ITEM 2

Reverend Clyde Mills, Berean Baptist Church

ANNOUNCEMENTSITEM 3

Myra Shapiro, President of the Naples Alliance for Children, presented The 1998 Business and Family Partnership Advocate of the Year Award to the City. Mayor Barnett and Human Resources Director Susan Wiesing accepted the award and introduced parents and children who participate in the City's on-site infant care program. Cambier Park Tennis Supervisor Louanne Melone-Fischer presented Council with tee shirts commemorating the 29th Annual City of Naples Tennis Championships. Naples Garden Club President Helen Stephens accepted a proclamation from Mayor Barnett declaring June 7th through June 13th as National Garden Week. City Manager Richard Woodruff recognized the passing of Norman June Sloan who moved to Naples in 1933 and established the first private real estate company in the City.

ITEMS TO BE ADDEDITEM 4

None.

MOTION by Van Arsdale to SET AGENDA; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

CONSENT AGENDA

APPROVAL OF MINUTESITEM 5a

April 13, 1998 Workshop Meeting

RESOLUTION 98-8253.....ITEM 5b

A RESOLUTION ACCEPTING AN EASEMENT FROM JANE BRADLEY PETTIT IN CONJUNCTION WITH THE INSTALLATION OF A 12-INCH WATER LINE FROM GORDON DRIVE EAST AND TERMINATING AT THE WATER STORAGE TANKS LOCATED ON LANTERN LANE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

.....ITEM 5d

AUTHORIZE A PURCHASE ORDER TO MADSEN-BARR/PHILIP UTILITIES MANAGEMENT CORP. TO RELINE AN 18-INCH STORM SEWER WITHIN AN EXISTING UTILITY EASEMENT NEAR 2600 GULF SHORE BLVD. NORTH \ AMOUNT: \$22,750.00 (NOT TO EXCEED) \ FUNDING: STORMWATER BUDGET (OTHER CONTRACTUAL SERVICES).

.....ITEM 5e

AUTHORIZE A CHANGE ORDER TO MADSEN-BARR/PHILIP UTILITIES MANAGEMENT CORP. TO RELINE THE SANITARY SEWER IN THE 100-BLOCK OF 4TH AVENUE NORTH \ AMOUNT \$17,500.00 \ FUNDING: CIP 98N04.

RESOLUTION 98-8254.....ITEM 5f

A RESOLUTION ACCEPTING, FROM PHILIP J. MCCABE, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1986, A BILL OF SALE AND A WARRANTY/GUARANTY FOR THE NEWLY RECONSTRUCTED SEWER LINES, MAINS AND APPURTENANCES, IN THE ALLEY OFF OF 4TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 98-8255.....ITEM 5g
A RESOLUTION ACCEPTING, FROM COLLIER COUNTY, A BILL OF SALE AND A UTILITY EASEMENT FOR WATER LINES AND MASTER WATER METERS, LOCATED IN SUGDEN REGIONAL PARK; AND PROVIDING AN EFFECTIVE DATE.
Title not read.

END CONSENT AGENDA

MOTION by Van Arsdale to ***APPROVE*** the Consent Agenda removing Item 5c(1) and 5c(2) for separate discussion; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8256..... ITEM 5c(1)
A RESOLUTION GRANTING A TEN-FOOT WIDE EASEMENT TO FLORIDA POWER & LIGHT COMPANY FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF UNDERGROUND ELECTRIC UTILITY FACILITIES AT THE PUBLIC PARKING GARAGE; AND PROVIDING AN EFFECTIVE DATE. Title not read.
(9:24 a.m.)

It was clarified that both 5c(1) and 5c(2) pertained to the public parking garage.

Public Input: None (9:24 a.m.)

MOTION by Nocera to ***APPROVE*** Resolution 98-8256; seconded by Van Arsdale and carried 5-2 (Coyle-yes, Herms-no, MacKenzie-yes, Nocera-yes, Tarrant-no, Van Arsdale-yes, Barnett-yes).

..... **ITEM 5c(2)**
ISSUE A PURCHASE ORDER TO FLORIDA POWER & LIGHT IN THE AMOUNT OF \$42,519.00 (NOT TO EXCEED) TO UNDERGROUND EXISTING ELECTRICAL LINES \ FUNDING: CIP 97C03. (9:25 a.m.)

Public Input: None (9:25 a.m.)

MOTION by Nocera to ***APPROVE*** Item 5c(2); seconded by Van Arsdale and carried 5-2 (Coyle-yes, Herms-no, MacKenzie-yes, Nocera-yes, Tarrant-no, Van Arsdale-yes, Barnett-yes).

ORDINANCE (First Reading).....ITEM 6
AN ORDINANCE APPROVING REZONE PETITION 98-R4, REZONING THE PROPERTY DESCRIBED HEREIN, FROM “PD” PLANNED DEVELOPMENT TO “PD” PLANNED DEVELOPMENT TO ALLOW EIGHTEEN (18) SINGLE-FAMILY HOMES AND ACCESSORY USES AND STRUCTURES AT KEEWAYDIN ISLAND SOUTH OF GORDON PASS, AND DEVELOPMENT OF THE ASSOCIATED SHORE STATION AT 260 BAY ROAD, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE. Title read by City Manager Woodruff. (9:25 a.m.)

City Attorney Kenneth Cuyler noted that the hearing for Agenda Items 6 and 7 was quasi-judicial, and court reporter Pamela Arsenault administered an oath to all witnesses. Council Members then offered ex-parte disclosures as follows: Council Member Herms said he had not spoken with any of the petitioners and had spoken with David Trowbridge regarding Naples Landing; Council Member Nocera said he had spoken with Attorney J. Dudley Goodlette and

David Trowbridge; Vice Mayor MacKenzie said she had spoken with Attorney Goodlette and petitioner Donahue; Mayor Barnett disclosed having spoken with Attorney Goodlette and petitioner James Murphy; Council Member Van Arsdale said he had spoken with Attorney Goodlette and petitioner Murphy; and Council Members Coyle and Tarrant said they had not had any communications regarding this ordinance.

Attorney J. Dudley Goodlette, representing petitioners Shannon Development and Keewaydin Island Limited Partnership, entered into the record the resumes of Brett Moore, Robert Duane, and George Hermanson who would be addressing Council. (Copies of the resumes are contained in the file for this meeting in the City Clerk's Office.) He then noted that the Planning Advisory Board (PAB) had unanimously approved the Planned Development (PD) amendment and that staff had approved it with conditions that are acceptable to the petitioners. Senior Planner Ron Lee confirmed that the proposed changes, with staff's conditions, comply with the City's Land Development Code and were consistent with the City's Comprehensive Plan.

It is noted for the record that the title for Item 7 was read at this time in order to enable all speakers to address both Items.

**RESOLUTION 98-8257.....ITEM 7
A RESOLUTION APPROVING THE PRELIMINARY AND FINAL SUBDIVISION
PLAT AND APPROVING A UNIQUE LAND DEVELOPMENT SUBDIVISION
INCORPORATING 18 SINGLE FAMILY LOTS AND 10 OUT PARCELS LOCATED
ON THE NORTHERN 61 ACRES OF KEEWAYDIN ISLAND SOUTH OF GORDON
PASS, TO BE KNOWN AS KEEWAYDIN ISLAND PLAT MORE PARTICULARLY
DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City
Manager Woodruff. (9:35 a.m.)

George Hermanson, Sr. Vice President of Hole, Montes & Associates Inc., said that his company had designed and received approvals from the City and State for the potable water system, on-site waste treatment, traffic circulation system, stormwater management system, and the subdivision plat. He then stated that the changes from the original 1996 PD were either considered neutral or would decrease the intensity of the development. Vice Mayor MacKenzie inquired about the wastewater treatment system, and Mr. Hermanson responded that a multi-flow system which is comparable to the City's wastewater plant was proposed for the Keewaydin project. In response to Council Member Nocera, he stated that waste solids would be removed every two to five years by being enclosed in a tank and shipped off the island by a licensed hauler. City Manager Richard Woodruff determined from Mr. Hermanson that the waste would be treated, odorless, and identical to the 6.8 million gallons of waste treated daily by the City and, further, it followed the recommendations of the Nature Conservancy. Mr. Hermanson reported that, although septic tanks would be permitted, the proposed system was preferable.

Robert Duane, Planning Director for Hole, Montes & Associates, Inc., reviewed the proposed changes which include a reduction from 20 to 18 dwelling units, removal of the secondary dune, elimination of the great lawn, height increases, and relocation of amenities, all of which are consistent with the Comprehensive Plan and rezone criteria within the Land Development Code.

Council Member Tarrant requested an explanation for the meeting's quasi-judicial status and City Attorney Cuyler explained that the courts had determined that a rezone is a quasi-judicial proceeding wherein the petitioner has the right to present a case, the right to be heard, and the right to make inquiries of staff. Council then determines whether there is competent, substantial evidence to support a final decision. He explained that the petitioners' attorneys were following the rules and Council must follow suit since a review of the record would be the only basis for review by the courts in the event of a challenge.

Council Member Herms asked how rezone of a PD differed from an amendment to a PD and Attorney Cuyler noted that the City's zoning code determined that the procedure for Council review of the criteria would be handled similarly in either event. Dr. Woodruff also clarified that City code permits staff approval of amendments provided it is considered insignificant. He cited examples and added that, in this case, the elimination of certain amenities and a reduction in the number of dwellings required Council approval.

In response to Council Member Herms, coastal engineer Brett Moore stated that the savings from elimination of one of the dunes would be approximately \$1 million for sand that would not have to be barged to the island. He further explained that the State requires a dune enhancement program which is the purpose of the primary dune; the secondary dune, however, was simply an aesthetic feature. Mr. Moore also noted that Natural Resources Manager Jon Staiger had expressed concern that storms could wash material from the secondary dune into nearby mangroves and, therefore, staff and the developer had eliminated it. Mr. Moore also reported that the secondary dune had not been endorsed by either the Conservancy or the City and its elimination was met favorably by both the City and State. Mr. Herms then determined however that since it had been part of the original PD, it would have to be included unless Council approved the amended PD.

Vice Mayor MacKenzie questioned the need for 49 boat spaces which exceeds two per dwelling and Mr. Duane said that one space would be allotted to use by Rookery Bay activities. Mr. Moore added, however, that the Department of Environmental Protection (DEP) had approved the original plans and would also be responsible for approving any changes regarding docks. Attorney Goodlette then requested permission to rebut future comments that may or may not be relevant to the proceeding.

In response to Council Member Coyle, Senior Planner Ron Lee explained that the increase in building height from 30 to 35 feet was due to the transitional conservation designation of the property. Further, he said that the prior PD permitted enhancements up to 35 feet, which staff had determined was appropriate.

Mr. Coyle then questioned the flight path from the island's helicopter pad to Naples Airport. Attorney Goodlette responded that while there are no established flight patterns, the flight path would be over uninhabited areas and waterways. Placement of fixed firefighting equipment at the landing pad, Dr. Woodruff explained, allow transport of firefighting personnel only rather than both personnel and equipment in emergencies. In addition, Mr. Goodlette explained that the helicopter pad was intended for emergency use and that no helicopter would be stored on the

island. Mr. Coyle, however, observed that the amended PD also said the pad would be used by residents as well and Mr. Goodlette said such personal use would be negligible. Mr. Lee confirmed that the helicopter pad and its use had been approved by the PAB. He also noted that the parking structure at the shore station was required to be built as shown in the submitted drawings. Vice Mayor MacKenzie suggested that flights per day be limited as suggested by the nearest neighbor, Mr. Donahue. Council Member Van Arsdale learned that the homeowner association would assume pad management responsibility. Robert Larson of the Naples Airport Authority (NAA) reported that the normal flying altitude would be 500 feet and flight paths would be determined by the airport control tower.

Public Input: (9:57 a.m.)

Sarah Coble, 277 Lakeview Drive, expressed concern that a 500-foot altitude would, nevertheless, be disturbing and inquired whether uninhabited areas had been determined. She also inquired about the transport of personnel and cargo from the Bayshore Drive substation. Mr. Goodlette noted that the use of that substation was not relevant to the current discussion.

Dr. Woodruff clarified that Federal Emergency Management Agency (FEMA) and State requirements call for a 12 to 18-foot foundation elevation which is considered separately from the permitted building height. Nevertheless, Council Member Herms said that dwellings with a peaked roof could then be built to a 55-foot height and that the 35-foot elevation number was, therefore, not accurate.

Also in response to Mr. Herms, Planner Lee explained that both PDs required that a construction management plan be submitted for City Manager approval; he then cited the specific section in the PD which does not specify use of Naples Landing. However, Dr. Woodruff clarified that the use of Naples Landing was assumed within the construction management plan and, therefore, until a settlement had been reached in the courts with those opposing its use, it would remain in the plan. Mr. Herms asked whether the developer would decline use of Naples Landing and Attorney Goodlette said they would not.

Vice Mayor MacKenzie obtained clarification that transient lodging would not be part of the project, that hurricane evacuation would be to the shore station, and that jet skis would not be prohibited. At this time, Council Member Van Arsdale offered a motion to approve Item 6.

Public Input: continued (10:31 a.m.)

Jack Wasmer, 4301 Cutlass Lane, spoke in favor of the proposed development, which would enhance Port Royal property values. In response to Mr. Tarrant, Mr. Wasmer said barges frequently pass his home and he is perplexed by the opposition to the use of Naples Landing as a staging area although he would object to a staging area at the end of Gordon Drive. He also said he did not object to the helicopter.

Council Member Van Arsdale then reiterated his motion to approve the amended PD with staff's recommendations; Council Member Herms however countered with a motion to table to June 17, maintaining that a motion to table had precedent. City Attorney Cuyler confirmed that a motion to table has precedent unless it is determined that a prior motion is in effect with a second. Mayor Barnett seconded Mr. Van Arsdale's motion, thereby requiring a vote. Council Member Tarrant then seconded Mr. Herm's motion to table, stating that he would be presenting an agenda item on June 17 that, he noted, would precede the Second Reading of the Keewaydin PD amendment.

Mr. Herms pointed out a need to mediate between Old Naples and Keewaydin development, asserting that by saving \$1 million with Council's approval of the amended PD, the developer should accede to a delay to formulate such a compromise and adding that it would benefit the City to cease litigation on the issue. Mayor Barnett, however, determined that the developer could proceed under the original PD and, in fact, was not required to come before Council at all in order to build on the island. He said that it was therefore not fair to link this PD amendment to the issue of Naples Landing. Mr. Herms, observed however that the developer had admitted that the amended PD would save him \$1 million and that the problem of the staging area at Naples Landing was not yet resolved all of which, he asserted, could be resolved in two weeks by consensus. Mayor Barnett then pointed out that protracted negotiations had already occurred and it was unlikely that two additional weeks would produce more satisfactory results.

Mayor Barnett predicted that if mediation in the Naples Landing suit failed, he anticipated that on June 17 Council Member Tarrant would propose that Council rescind the original permission to use Naples Landing by the developer which would result in additional, costly litigation and impact to taxpayers. Mr. Tarrant however said that he believed the question to be whether it is good for the City to combine the park with a commercial loading facility and that the solution could be determined immediately so long as the Keewaydin developers abandoned the threat of a lawsuit. Vice Mayor MacKenzie countered that the issue could also be resolved if the plaintiffs in the current suit abandoned their requirement for tree and mangrove reduction as a condition of mediation.

Attorney Goodlette stated that it is legally inappropriate to link the issue of use of Naples Landing to the PD amendment, adding that he would discuss the Naples Landing issue at the proper time in the agenda. Mr. Herms then reiterated the benefits of a two week delay stating that prior Council decisions were in error and resulted in litigation that had proved costly to the City. Mr. Goodlette, however, pointed out that all parties had participated in conscientious and extensive mediation without result. Council Member Tarrant noted that the developers have an alternate staging site and questioned why Attorney Goodlette, who is a candidate for State office, would encourage use of a park for what he described as an industrial operation. Mr. Goodlette however said that the record had been established regarding intentions and motivations and requested that Robert Diffenderfer, attorney for the developers, further address the legal questions for the record.

Attorney Diffenderfer responded to what he described as Council Member Herm's suggestion that the developer, as a condition of the PD approval, abandon their right to utilize Naples Landing, maintaining that such a condition is inappropriate and irrelevant in considering the criteria required to approve the PD petition. Further, Mr. Diffenderfer asserted that uncontradicted and un rebutted evidence had been presented in relation to the petition and the proposed changes to the PD satisfy all of the conditions of the City's Land Development Code and Comprehensive Plan. This evidence, he added, is in fact the only issue under consideration. Although Council Members Herms and Tarrant noted PD references to use of Naples Landing, Mr. Diffenderfer explained that this staging area provision was not being amended and therefore was not then under consideration. The petitioner, he said, is entitled to have a decision made on the public record based on substantial, competent evidence. He then introduced into the record a

copy of a memorandum dated May 27, 1998, from Council Member Tarrant to the Mayor and Members of City Council (Attachment 2) dealing, he said, with linking Naples Landing use and the PD amendment and based on the intention to condition the PD approval upon some evidence not considered in that day's record. Mr. Tarrant requested a reading of the above memorandum in order to publicly clarify Vice Mayor MacKenzie's statements. Mrs. MacKenzie emphasized that her statement cited in the memorandum did not preclude the use of Naples Landing in the development of Keewaydin Island and was instead intended to make its use sufficiently difficult to cause the developer to pursue alternative staging sites. She concluded that the goal of her statements was very different from Mr. Tarrant's goal.

Council Member Coyle expressed his support for continuing the issue to a future session due to the use of a helicopter flight pad and an unclarified flight path. He also requested evidence regarding the jurisdiction of the DEP over decisions that, he asserted, should be determined by the City including construction of docks, piers and building heights. Planner Lee clarified that the City Natural Resources Manager is also required to submit approvals.

MOTION by Herms to TABLE Items 6 and 7; seconded by Tarrant and failed 3-4 (Coyle-yes, Nocera-no, MacKenzie-no, Herms-yes, Tarrant-yes, Van Arsdale-no, Barnett-no).

MOTION by Van Arsdale to APPROVE Item 6 on First Reading with the following amendments:

- ***All helicopter flights must take off to the south until reaching the minimum FAA altitude (500 feet) for flying over inhabited areas and must follow a flight pattern westward ½ mile, northward to 5th Avenue South and eastward to the Naples Airport;***
- ***Non-emergency helicopter flights are limited to five arrivals per 24 hour period between the hours of 7:00 a.m. and 10:00 p.m.; and***
- ***All trash and solid waste must be containerized for transport.***

The motion was seconded by Barnett and carried 4-3 (Nocera-yes, Herms-no, MacKenzie-yes, Coyle-no, Tarrant-no, Van Arsdale-yes, Barnett-yes).

MOTION by Van Arsdale to APPROVE Resolution 98-8257 with staff recommendations; seconded by Barnett and carried 4-3 (Herms-no, MacKenzie-yes, Nocera-yes, Tarrant-no, Van Arsdale-yes, Coyle-no, Barnett-yes).

Council Member Herms called Council's attention to the fact that the three dissenters to the above motions had not been lobbied by the developer. Council Member Van Arsdale responded that it was also informative to note that Mr. Herms had attempted to abrogate citizens' rights by extorting concessions from them, which he described as reprehensible.

Recess: 11:05 a.m. to 11:15 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION (Continued to 6/17/98).....ITEM 16
A RESOLUTION HOLDING A PUBLIC HEARING AUTHORIZING SETTLEMENT OF COLLIER COUNTY CIRCUIT COURT CASES #97-2263-CA; #97-2264-CA; #97-2480-CA; #97-2759-CA, AND FLORIDA DIVISION OF ADMINISTRATIVE HEARING CASE #97-4549, ALL RELATING TO THE USE OF NAPLES LANDING PARK, PURSUANT TO THE ATTACHED MEMORANDUM OF SETTLEMENT; DIRECTING THE MAYOR TO EXECUTE THE MEMORANDUM OF SETTLEMENT; ADOPTING THE NAPLES LANDING PARK MASTER PLAN SHOWN AS EXHIBITS A.1, A.2, AND A.3, IN THE MEMORANDUM OF SETTLEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (11:16 a.m.)

Attorney Steve Hartsell, representing the City in the suit, said that although he had attempted to contact the plaintiffs' attorney, Anthony Pires, via mail and by telephone, he had received no response. Attorney Pires requested a two week continuance since two of the plaintiffs are out of town and one of them, Mr. Jepson, wanted to address Council on the issue at that meeting. He explained that he had learned of Mr. Jepson's request only that morning.

Council Member Tarrant said that he intended to move to rescind Council's prior actions to permit use of Naples Landing by the Keewaydin Island developers. However, he stated that City Attorney Kenneth Cuyler had indicated that it would not be legally possible to do so prior to the next Regular Meeting. Attorney Cuyler, however, clarified that he and Mr. Tarrant had held a generic conversation, not specifically related to Naples Landing, and further that when a specific agenda item with exacting terms and conditions is before Council for settlement, and a Council Member prefers a different, specific solution, it was preferable to have that issue appear as a separate item on an upcoming agenda. Mr. Tarrant concurred with the accuracy of the conversation as described by Mr. Cuyler.

Mayor Barnett expressed concern that Mr. Jepson could have addressed Council via a number of methods rather than delay a solution for two additional weeks. He noted that the City had submitted an uncomplicated counter-offer that warranted an immediate response. Council Member Tarrant referred to the settlement offer as a capitulation by the plaintiffs and favoring the developers; Mayor Barnett noted, however, that the proposal to mediate had originated with Mr. Tarrant.

Public Input: (11:25 a.m.)

MOTION by Herms to CONTINUE to the June 17th Regular Meeting; seconded by Tarrant and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

It was determined that Mr. Pires would be in contact with Mr. Hartsell prior to June 5. Mayor Barnett stated that this Item would appear first on the agenda. Although Mr. Tarrant said his proposal to rescind use of Naples Landing should appear first, Mayor Barnett explained that continuation of old business would appear before new.

.....**ITEM 17**
CONSIDER A REQUEST FROM CHARTER CLUB OF NAPLES AND OTHERS FOR REIMBURSEMENT OF LEGAL FEES PERTAINING TO NAPLES LANDING LITIGATION. This Item was not considered as it is pursuant to Item 16 above.

RESOLUTION 98-8258.....ITEM 12
A RESOLUTION GRANTING VARIANCE PETITION 98-V13 FROM SECTION 102-146(1), “MINIMUM YARDS,” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES A FORTY (40) FOOT FRONT YARD SETBACK IN THE “R1-15,” RESIDENCE, ZONING DISTRICT IN ORDER TO PERMIT A RESIDENCE TO ENCROACH THE REQUIRED FRONT YARD SETBACK BY FIVE (5) FEET, AT 3861 GORDON DRIVE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (11:27 a.m.)

John Remington, representing the petitioner, said the house had been built in the 1950s on a piling foundation. The owners, he said, proposed to rebuild at the Federal Emergency Management Agency (FEMA) elevation using the original footprint and adding a non-habitable porch on the western side. A five-foot variance to use the building footprint was necessary in order to remain exempt from State Department of Environmental Protection (DEP) requirements. During the ensuing discussion it was learned that the new floor level of the house would increase from six feet to 11 feet, whereas the DEP would require a height of 20 feet if moved off the existing foundation and would represent an additional cost of \$20,000 to \$30,000. Council Member Coyle noted the 50% rule for rebuilding on the existing footprint, but Mr. Remington responded that the new foundation equates to building a new structure to FEMA standards and, therefore, the renovation is placed outside DEP guidelines.

Public Input: None (11:34 a.m.)

MOTION by Nocera to APPROVE Resolution 98-8258; seconded by Van Arsdale and carried 6-1 (Van Arsdale-yes, Coyle-no, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Barnett-yes).

RESOLUTION 98-8259.....ITEM 8
A RESOLUTION GRANTING CONDITIONAL USE PETITION 98-CU10, FOR CONDITIONAL USE APPROVAL OF A CAR WASH AND GASOLINE SERVICE STATION IN THE “HC,” HIGHWAY COMMERCIAL ZONING DISTRICT AT 1863 NINTH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Manager Woodruff. (11:35 a.m.)

Architect Jim Boughton, agent for the petitioner, explained that five existing parking spaces were to be relocated westward in order to move them from the right-of-way. Council Member Coyle, however, questioned whether front parking was necessary and petitioner Richard MacClugage responded that the front parking area was needed so that a tow truck could safely deliver a vehicle. Additional discussion included the landscaping plan, the traffic flow through the proposed car wash, and signage. Council Member Van Arsdale noted that existing sign code calls for a monument sign rather than a pole sign. Mr. MacClugage explained however that the sign had been purchased from Chevron only two years before and to replace it now would be costly since the car wash was a financial priority; removal of the sign would also require his partner’s consent, he added.

City Manager Richard Woodruff explained that the City is responsible for the right-of-way landscaping which the owner would then maintain. Vice Mayor MacKenzie asked whether Mr. MacClugage would consider installation of an emergency generator in order to dispense gasoline during power outages and he responded that this appeared to be worthwhile since the only other such location is in Immokalee. He then agreed to install wiring from the pumps to an emergency generator which could be added at a later date.

Public Input: (11:56 a.m.)

Glenn MacKay, 1827 Mandarin Road, stated his approval for the improvements to the service station and expressed a preference for additional plantings such as a beachplum hedge and flowering trees.

MOTION by Nocera to APPROVE Resolution 98-8258 amended to note that a sign in accordance with the City sign code will be installed in seven years; seconded by MacKenzie and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

Recess: 11:59 a.m. to 1:30 p.m. It is noted for the record that Council Member Nocera returned at 1:32 p.m. and Council Member Van Arsdale returned at 1:34 p.m.

It is noted for the record that Items 9a, 9b, and 9c were read and considered simultaneously.

RESOLUTION 98-8260.....ITEM 9a
A RESOLUTION GRANTING CONDITIONAL USE PETITION 98-CU5, FOR CONDITIONAL USE APPROVAL OF AN EXPANDED GASOLINE SERVICE STATION AS REQUIRED BY SECTION 102-503, "CONDITIONAL USES," OF THE CODE OF ORDINANCES IN ORDER TO PERMIT THE REDEVELOPMENT OF AN EXISTING SERVICE STATION AT 31 NINTH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Manager Woodruff. (1:30 p.m.)

RESOLUTION 98-8261.....ITEM 9b
A RESOLUTION GRANTING CONDITIONAL USE PETITION 98-CU8, APPROVING A PARKING NEEDS ANALYSIS TO PERMIT THIRTEEN (13) PARKING SPACES RATHER THAN TWENTY-FIVE (25) REQUIRED IN ACCORDANCE WITH SECTION 106-104(7), "NUMBER OF PARKING SPACES, GROCERY STORES," OF THE CODE OF ORDINANCES AT 31 NINTH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by City Manager Woodruff. (1:30 p.m.)

RESOLUTION 98-8262..... ITEM 9c
A RESOLUTION GRANTING VARIANCE PETITION 98-V8 FROM SECTION 110-124(c)(13), “GASOLINE SERVICE STATIONS, PERMITTED SERVICES,” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH LIMITS THE FLOOR AREA OF CONVENIENCE STORES TO FIFTY PERCENT (50%) OF THE OVERALL FLOOR AREA OF A GAS STATION, IN ORDER TO PERMIT A CONVENIENCE STORE OF 2,419 SQUARE FEET AT 31 NINTH STREET NORTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff (1:31 p.m.)

Mobil Oil representative Todd Pressman reported that the objective of the renovation was to meet the City’s expectations with reference to design and therefore a number of changes from earlier proposals had been made. Architect Larry Warner explained that the proposal modifies Mobil’s standard size but is rendered with a more residential quality. (A copy of the conceptual design is contained in the file for this meeting in the City Clerk’s Office.) Vice Mayor MacKenzie expressed concern that a subsequent architect used by Mobil would not adhere to Mr. Warner’s concepts; Mr. Warner, however, pointed out that Council would be able to control the final design once the conceptual plans had been approved.

Changes in the proposal included: elimination of a carwash; reduction of the convenience store from 3,000 to 2,700 square feet; entrances only on US 41 and Central Avenue; monument signage; and additional landscaping. Mr. Pressman confirmed that there would be no objection to a requirement that final plans emulate the conceptual design and, further, that staff approve the final lighting plan. Council Member Coyle noted that the total number of parking spaces differed between the plans and the permit request and Dr. Woodruff assured that inconsistencies would be rectified.

Vice Mayor MacKenzie requested installation of an emergency generator to allow pumping in the event of a power failure. Ed Gatt, representing Mobil Oil, explained that experience during Hurricane Andrew had demonstrated that portable generators were most effective to avoid the need to deliver fuel from Port Everglades which is closed during the threat of a storm. He concluded that although such a generator could be installed, there would be a significant delay prior to its availability to the public.

Public Input: None (1:57 p.m.)

MOTION by Van Arsdale to APPROVE Resolution 98-8260 amended to include:

- ***installation of an emergency generator;***
- ***staff must approve the final lighting plan; and***
- ***the final design must mirror the conceptual plan as presented.***

The motion was seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

MOTION by Herms to APPROVE Resolution 98-8261; seconded by Van Arsdale and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

MOTION by Van Arsdale to ***APPROVE*** Resolution 98-8262; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8263.....ITEM 10
A RESOLUTION GRANTING VARIANCE PETITION 98-V10 FROM SECTION 102-266(1), “MINIMUM YARDS, FRONT YARD,” OF THE CODE OF ORDINANCES WHICH REQUIRES A TWENTY-FIVE FOOT FRONT YARD SETBACK, AND SECTION 102-266(2)(b), “MINIMUM YARDS, SIDE YARD,” OF THE CODE OF ORDINANCES WHICH REQUIRES A TEN-FOOT SIDE YARD SETBACK IN ORDER TO PERMIT CONSTRUCTION OF A SECOND STORY TO A SINGLE-FAMILY RESIDENCE IN THE “R3-12,” MULTIFAMILY, ZONING DISTRICT, AT 509 THIRD AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (2:01 p.m.)

Petitioner John Meyer explained that, since the house is located on a corner lot, a six-inch variance was needed on the east side and a five-foot setback variance on the west side. Further, a second story would be added over the existing walls of the wings of the house to the north and south to be connected by a covered walkway. It was determined that Federal Emergency Management Agency (FEMA) regulations would not affect the renovation. Council Member Van Arsdale said the drawings were not clear and Council Member Coyle referred to a neighbor's letter expressing concern about construction noise. City Manager Richard Woodruff pointed out that City Code prohibits Sunday construction except by special permit.

Public Input: None (2:24 p.m.)

MOTION by Herms to ***APPROVE*** Resolution 98-8263, amended to include the provision that should the structure be razed, a new structure must conform to the existing code; seconded by Tarrant and carried 6-1 (Coyle-no, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

Following the vote, Dr. Woodruff noted that a technical error appeared in the petition. Therefore, a substitute resolution would be submitted; the corrected resolution appears above.

RESOLUTION (Continued to 6/17/98).....ITEM 11
A RESOLUTION GRANTING VARIANCE PETITION 98-V12 FROM SECTION 110-88(b), “EXTERIOR LIGHTING, PROHIBITED LIGHTING,” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH PROHIBITS THE USE OF EXTERIOR LIGHTING OR LIGHT FIXTURES ON ANY PORTION OF THE FAÇADE OR ROOF OF A MULTIFAMILY STRUCTURE ABOVE THE FIRST HABITABLE FLOOR IN ORDER TO PERMIT EXTERIOR LIGHTING ABOVE THE FIRST HABITABLE FLOOR AT THE BRITTANY, 4021 GULF SHORE BOULEVARD NORTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (2:26 p.m.)

Attorney John Passidomo, representing the Brittany homeowners, noted that in April 1997 Council had passed an ordinance prohibiting upper story lighting on condominiums. He said that the homeowners had not participated in the public hearings leading up to the ordinance and, therefore, the only avenue for recourse to homeowners at Beacon House and the Ardisson as well as the

Brittany was a variance. He cited as the only relevant issue was the fact that the Brittany lights were initially permitted by the City under existing rules long before Council changed those rules. He submitted a memorandum for the record outlining the history of the building's construction and noting that the lights are a permanent part of the structure. (Attachment 3) Legal implications, he said, include the City's original permit for the lights and the precedent set by an after-the-fact alteration to the rules; he characterized Council's action as selective enforcement.

Mr. Passidomo then submitted a letter from Architect Frank Williams which described the custom designed light housings which are a permanent component of the structure and stating that their removal would diminish the architectural integrity of the building. (Attachment 4) Further, Attorney Passidomo said the issue was not related to style or taste but to fairness, noting that the residents have voluntarily dimmed the lights by 50% and extinguish them at 11:00 p.m. The staff report, he said, fails to mention the above facts.

He offered the following proposal:

- Apply the City's ordinance to future construction only and, in effect, grandfather the rights of the homeowners similar to the grandfathered rights pertaining to docks and piers;
- Eliminate the Brittany's right to forfeit retention of the lighting originally permitted by the City; and
- Permit the homeowners at the Brittany, the Ardisson and Beacon House to retain their original right to existing lighting.

Public Input: (2:36 p.m.)

Joe Natchael, 4021 Gulf Shore Boulevard North, said that the façade lights were a factor in his decision to purchase at the Brittany which he said are of value and should be retained. **John Williams, 4021 Gulf Shore Boulevard North**, said he had acquired his unit at the Brittany with the understanding that the City had approved the lighting. He noted that the wattage had been reduced, shields placed around the lights, and since the lights are on the front of the building, they do not affect turtle nesting. In addition, he said the residents were not given advance notice of the hearings and, therefore, were not able to speak to the issue. **Myron Hirsch, 4021 Gulf Shore Boulevard North**, said he was concerned about basic constitutional questions pertaining to property owners and after-the-fact decisions by government. **Jane Earle, 4951 Gulf Shore Boulevard**, representing the Park Shore Association Board of Directors, requested Council's denial of the variance. She said that even since the lights had been dimmed she had received two complaints from Venetian Bay residents who object to the reflection of the lights in the water and into their homes. **Wendell Jones, 4001 Gulf Shore Boulevard North**, said the lights shine into the bedrooms of his building which is located two buildings south of the Brittany. **Dodie Briskey, 4236 Crayton Road**, president of the Crayton Road Association, said the lights were appropriate for the commercial districts of a large city, but urged Council to require the Brittany lights be turned off in order to restore what she referred to as the integrity of the neighborhood. Residents, she said, had understood that the problem had been solved. **William Kroeschell, 272 Mooring Line Drive**, representing the Board of Governors of the Moorings Property Owners Association, said many Mooring residents object to the lights. He urged Council to deny the variance.

City Manager Richard Woodruff said that at the time building permits were issued, no lighting restrictions existed and the lights did not become an issue until the building was completed. The subsequent hearing was duly advertised, he said, and the agenda pertaining to the lights was

published. Following Council's action, notices were sent to approximately four condominiums informing them of the new ordinance. Vice Mayor MacKenzie said she had proposed the ordinance in response to complaints about the glaring lights. She said that the issue is, indeed, fairness since the lights prevent surrounding residents from enjoying starlit nights and noted that numerous appeals had been made to the developer who had refused to compromise.

City Attorney Kenneth Cuyler said that additional legal research would be necessary in order to respond to the memorandum just received from Attorney Passidomo; he therefore requested a continuance. Council Member Van Arsdale observed that many buildings have outdoor lighting above the second story, and questioned why this type of lighting was not also included in the ordinance. Planner Corey Ewing responded that such porch or hallway safety lighting is exempt from the ordinance. City Attorney Cuyler explained that the legal issue pertains to the concept of estoppel or grandfathering considerations, but Council Member Tarrant said that he felt legal opinions are a waste of time in common sense matters like this one.

MOTION by Van Arsdale to CONTINUE to the June 17, 1998 Regular Meeting; seconded by Herms and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 13
AN ORDINANCE GRANTING REZONE TO PLANNED DEVELOPMENT PETITION 98-R3 IN ORDER TO AMEND THE PLANNED DEVELOPMENT DOCUMENT FOR LITTLE HARBOUR, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT AN UNROOFED POOL AND SPA TO BE PLACED IN A FRONT YARD WITH APPROVAL OF A LANDSCAPE PLAN, AND TO ALLOW ONE OF THE FRONT YARD SETBACKS TO BE TWENTY-FIVE (25) FEET; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Woodruff. (3:10 p.m.)

Council Member Herms received clarification from Planning Director Missy McKim that so long as the setback requirements were met for the pool and its enclosure, a front yard would be permitted. City Manager Richard Woodruff pointed out, however, that because Little Harbor is a Planned Development (PD) and does not address this situation, a rezone change to the original PD is required.

Attorney John Passidomo, representing the petitioner, said the PD amendment would permit an unroofed pool and spa to be located in the front yard of a property in a corner of the subdivision with no abutting properties exposed to it. He called attention to an extensive landscaping plan which would buffer the visual impact of the pool and spa since only half of each would be located in the front yard. Council Member Herms expressed the opinion that the design for the house was oversized for the lot; and suggested that it be reduced, enabling the pool and spa to be built within the existing setbacks. However, Council Member Van Arsdale clarified that the proposal was a modification of a PD and not a variance.

Public Input: None (2:19 p.m.)

MOTION by Van Arsdale to APPROVE this Ordinance on First Reading; seconded by Barnett and carried 5-2 (Coyle-no, Tarrant-yes, Nocera-yes, MacKenzie-yes, Herms-no, Van Arsdale-yes, Barnett-yes).

ORDINANCE (First Reading).....ITEM 14
AN ORDINANCE AMENDING SUBSECTION 2-119(c), PERSONAL VEHICLES, OF
THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA, UPDATING
MILEAGE REIMBURSEMENT RATES TO MEET INTERNAL REVENUE SERVICE
GUIDELINES, PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION
AND AN EFFECTIVE DATE. Title read by City Manger Woodruff. (3:20 p.m.)

City Manager Richard Woodruff reported that this ordinance was intended to reimburse employees' use of private vehicles at the 31.5 cent rate set by the Internal Revenue Service.

Public Input: None (3:21 p.m.)

MOTION by Herms to APPROVE this Ordinance on First Reading; seconded by Van Arsdale and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8264.....ITEM 15(a)
A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
STIPULATED SETTLEMENT AGREEMENT WITH THE DEPARTMENT OF
COMMUNITY AFFAIRS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (3:22 p.m.)

ORDINANCE (First Reading).....ITEM 15(b)
AN ORDINANCE ADOPTING TEXT AMENDMENTS TO THE FUTURE LAND USE,
COASTAL CONSERVATION, AND TRANSPORTATION ELEMENTS OF THE
ADOPTED COMPREHENSIVE PLAN; PROVIDING A SEVERABILITY CLAUSE; A
REPEALER PROVISION; AND AN EFFECTIVE DATE. Title read by City Manger Woodruff. (3:22 p.m.)

Council Member Herms questioned the land use category for Downtown Mixed Use with a floor area ratio of 3, which he said would mean that a lot of 40,000 square feet would accommodate a structure of 120,000 square feet. Senior Planner Ron Lee said that this would be the maximum size permitted so long as all other criteria had been met. Planning Director Missy McKim explained that the downtown mixed use district was in place prior to its zoning; currently the area consists of 10 or more zoning districts. Since the Department of Community Affairs (DCA) requires a floor area ratio and because the Comprehensive Plan can be amended only twice per year, the ratio of three was included inasmuch as it exceeds any ordinance that would be adopted and thus avoid having to amend the Comprehensive Plan.

Mr. Herms ascertained that there is not floor area ratio for downtown zoning. Council Member Van Arsdale explained that the actual ratio is defined in whatever development code is adopted by Council and that this bulk ratio is merely to obtain DCA approval of the Comprehensive Plan. Ms. McKim cautioned Council to make the future land use element for this district the limiting factor and, following that, to bring the floor area ratio into compliance.

Council Member Herms noted that Policy 1-7.6, states that if fewer parking spaces will meet the parking demand of the facility, fewer parking spaces would be encouraged thereby increasing green and open space. He asked how this provision would affect new zoning ordinances and Ms. McKim

responded that this was already implemented in the parking needs analysis whereby new construction is required to obtain a conditional use from Council. City Manager Woodruff explained that the burden rests with the petitioner for proving that less parking is required and he emphasized that areas released from parking must be used for open green space. City Attorney Kenneth Cuyler noted also that Council controls the criteria for what constitutes a parking needs analysis.

Council Member Coyle requested the definition of lot coverage and Ms. McKim responded that it is the building footprint, including a parking structure with a roof, but not a parking lot. Mr. Herms then asserted that this was a key component inasmuch as the floor area ratio permitted covering the entire lot with parking garages and buildings up to three floors.

Public Input: None (3:40 p.m.)

MOTION by Nocera to APPROVE Resolution 98-8264; seconded by Van Arsdale and carried 4-3 (Nocera-yes, Tarrant-no, Van Arsdale-yes, Coyle-no, Herms-no, MacKenzie-yes, Barnett-yes).

Following the vote, Vice Mayor MacKenzie said she was interested in passing the resolution in order to begin the process to lower the building heights on Gulf Shore Boulevard. Dr. Woodruff then pointed out that, following adoption of the Comprehensive Plan, a series of up to 25 rezone ordinances would come before Council in order to synchronize zoning with the Comprehensive Plan. Planner Ron Lee said that the first properties to be processed would be those on Gulf Shore Boulevard in Coquina Sands and the Moorings in August.

Council Member Van Arsdale stated for the record that there is nothing in the passing of this resolution regarding the Comprehensive Plan that would permit anyone to create any structure with a floor area ratio of three.

Public Input: None. (3:45 p.m.)

MOTION by Nocera to APPROVE Item 15(b) on First Reading as submitted; seconded by Van Arsdale and carried 4-3 (MacKenzie-yes, Nocera-yes, Tarrant-no, Van Arsdale-yes, Coyle-no, Herms-no, Barnett-yes).

.....ITEM 18
CONSIDER THE PURCHASE OF FOUR CLARIFIER MECHANISMS AS PART OF THE WASTEWATER TREATMENT PLANT CONSTRUCTION PROJECT \ VENDOR: EIMCO, TAMPA, FLORIDA \ PRICE: \$254,760.00 \ FUNDING: SALE OF FIXED ASSETS REVENUE ACCOUNT. (3:45 p.m.)

City Manager Richard Woodruff reported that the purchase was anticipated within the sewer project.

Public Input: None. (3:46 p.m.)

MOTION by Van Arsdale to APPROVE; seconded by MacKenzie and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

**RESOLUTION 98-8265.....ITEM 19
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 read by City Manager Woodruff. (3:46 p.m.)

Vice Mayor MacKenzie observed that although there was a provision for the County to be reimbursed should the contractor fail to perform as agreed, there is no similar provision for the County to then reimburse the City if the work were taking place within the City. City Attorney Kenneth Cuyler said he would add clarification if the County had not yet approved the resolution; he noted, however, that the City would not be without recourse. City Manager Richard Woodruff explained that the agreement would rebuild structures damaged by rising water or wind damage.

Public Input: None. (3:48 p.m.)

MOTION by Van Arsdale to APPROVE Resolution 98-8265; seconded by MacKenzie and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8266.....ITEM 20
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. Title read by City Manager Woodruff. (3:49 p.m.)

Public Input: None (3:49 p.m.)

MOTION by Van Arsdale to APPROVE Resolution 98-8266; seconded by Nocera and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION (Continued to June 17, 1998).....ITEM 21
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.

Public Input: None. (3:51 p.m.)

MOTION by Herms to CONTINUE to June 17 Regular Meeting; seconded by Van Arsdale and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

ORDINANCE (First Reading).....ITEM 22
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.

Title read by City Manager Woodruff. (3:52 p.m.)

City Manager Richard Woodruff explained that adoption of this ordinance would enable the City to force people into Code compliance. City Attorney Kenneth Cuyler said this ordinance would offer either a reduced civil fine or court appeal with the risk of up to \$500 fine. He then commended Legal Assistant Patricia Rambosk for developing the proposed ordinance. Council Member Herms requested an amendment to require that violation notices be issued by police rather than the code enforcement officer, however, Council Member Van Arsdale declined to alter his motion.

Public Input: None. (3:55 p.m.)

MOTION by Van Arsdale to APPROVE this Ordinance on First Reading; seconded by Nocera and carried 5-2 (Van Arsdale-yes, Coyle-yes, Herms-no, MacKenzie-yes, Nocera-yes, Tarrant-no, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 23
AN ORDINANCE ADOPTING THE 1997 EDITION OF THE STANDARD BUILDING CODE CONGRESS INTERNATIONAL INC. WITH ADDITIONS AND DELETIONS AS SET FORTH HEREIN; AMENDING SECTIONS 94-32; 94-33; 94-34; 94-35(a), (b) AND (c); 94-37; 94-39; 94-40; 94-41; AND 94-42(a) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; ADDING NEW SECTION 94-43 ENTITLED "STANDARD FOR FLOODPLAIN MANAGEMENT"; DELETING ARTICLE III OF CHAPTER 114 ENTITLED "FLOODPLAIN MANAGEMENT" OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Woodruff. (3:56 p.m.)

Council Member Herms stated that State Statute allows commercial property owners a to perform work of up to \$25,000, but since the City does not allow similar permission, City policy should be changed. Building Official William Overstreet said former problems had occurred when commercial building owners performed modifications not in compliance with City Code and that the State would omit that provision in a new code. This will allow only single family residences to perform these modifications provided the owner resides in the structure. Nevertheless, Mr. Herms said that compliance with current State Code should be included in the motion approving this resolution.

Council Member Herms then received clarification from Mr. Overstreet responded that the City Code continued to require that on structures that are less than 5,000 square feet, a homeowner may obtain a permit to perform up to \$25,000 of improvements. However, all property located in the coastal building zone requires an approval stamp from either an architect or an engineer. Regarding the codes for stairs, Mr. Overstreet said that the next ordinance amendment will conform to the Life Safety Code which requires risers to be a maximum of seven inches and the tread minimum will be 11 inches. Mr. Herms then inquired about a new provision that prohibited using earth as the forming material for footings, and Mr. Overstreet explained that sandy soil in this area causes the footings to move out of place. Dr. Woodruff suggested that a stipulation could be added stating that soil could be used so long as the builder received written permission from a building official.

Also in response to Mr. Herms, Mr. Overstreet explained that an electrical contractor is now required to install low voltage lighting systems over 100VA (amperes) due to fires that have resulted when unlicensed personnel are used. At Mr. Herms' urging, it was agreed to permit homeowners to install such systems so long as the homeowner owned and resided at the property. Council Member Coyle asked whether the provision applied also to low voltage fire and burglar alarm systems and learned that it would apply only if the system were over 100VA. However, Building Inspector Gunnar Christianson cautioned against combining both systems unless installed by a licensed electrician.

Council Member Herms questioned the provision that the lowest horizontal structural member of the lowest floor must be elevated one foot above the base flood elevation and Mr. Overstreet said this was done in response to Federal Emergency Management Agency's (FEMA) anticipated recommendations since FEMA had recently remapped the City. Mr. Herms suggested that this provision be deleted until FEMA formally sets the new standard.

Public Input: None. (4:25 p.m.)

MOTION by Herms to APPROVE this Ordinance on First Reading with the following amendments:

- *Adopting the State's ruling for commercial buildings allowing permits to be issued to owners for improvements up to \$25,000 so long as the permit is not for structural changes and not above one floor;*
- *Section 440, Section 440-14(c) to reflect that a homeowner may be issued a permit if the owner is going to live in the structure;*
- *Chapter 19, Section 1907-1.1 to include that, though prohibited, exceptions will be given in writing by the building official; and*
- *Chapter 6, Section 601.1 and Chapter 8, Section 801.2 deleted pending FEMA's new elevation determinations.*

This motion was seconded by Van Arsdale and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8268.....ITEM 24
A RESOLUTION APPOINTING A SELECTION COMMITTEE FOR THE PURPOSE
HEREINAFTER SET FORTH, RELATING TO THE SELECTION OF A
CONSTRUCTION MANAGER AT RISK; AND PROVIDING AN EFFECTIVE DATE.

Title not read. (4:27 p.m.)

Public Input: None. (4:27 p.m.)

MOTION by Van Arsdale to CONTINUE this resolution to June 17, 1998; seconded by Coyle and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

Subsequent to the vote to continue this item, it was discussed and approved. See below.

RESOLUTION 98-8267.....ITEM 25
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (4:27 p.m.)

Public Input: None. (4:29 p.m.)

MOTION by Tarrant ***APPOINTING*** Carl J. Kuehner to the Planning Advisory Board for a three-year term; seconded by Nocera and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8269.....ITEM 26
A RESOLUTION AUTHORIZING THE CITY OF NAPLES TO PARTICIPATE IN COLLIER COUNTY'S URBAN COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION FOR FEDERAL FISCAL YEARS 1999, 2000 AND 2001; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Woodruff. (4:30 p.m.)

City Manager Richard Woodruff recommended adoption of the resolution in order to demonstrate the City's cooperation with County government. He explained that since Marco Island had elected not to participate in the program, the County had forfeited \$1 million in Federal grants for low income County residents. Without Marco Island, there was insufficient total population to qualify, he said, and there does not appear to be sufficient time to perform another population count. Planner Susan Golden said it was not known if the most recent census count would be sufficient or whether HUD would accept County or State population numbers. Dr. Woodruff explained that an advantage to the City would have been receipt of \$200,000 from the grant. Vice Mayor MacKenzie reported that Marco Island had indicated that they would qualify for other Federal grants, but Ms. Golden responded that she believed they had been misinformed since they do not have sufficient moderate income residents to qualify for Federal funding, whereas participation with the County would have provided them with an allotment similar to the City's.

Public Input: None. (4:36 p.m.)

MOTION by Van Arsdale to ***APPROVE*** Resolution 98-8269 with the recommendation that staff communicate with the City of Marco Island; seconded by MacKenzie and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

Return to:

RESOLUTION 98-8268.....ITEM 24
(4:37 p.m.)

Public Input: None. (4:37 p.m.)

MOTION by MacKenzie ***APPOINTING*** Council Member Herms to the selection committee for a manager at risk for construction of the new Solid Waste Operations Center; seconded by Nocera and unanimously approved, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

CORRESPONDENCE AND COMMUNICATIONS.....

(4:38 p.m.)

Vice Mayor MacKenzie reported that she had learned the State Attorney's Office would possibly enforce a City Code Of Ethics at City expense. It was determined that City Manager Woodruff would write to the local State Attorney's Office to determine the cost and procedure involved and report to Council at the Workshop Meeting of June 15th.

Council Member Tarrant requested a consensus regarding whether any charter boat operation carrying a specific number of passengers would require a conditional use from City Council since the City cannot control vessel size in Naples Bay.

It was the consensus of Council to pursue this concept with the assistance of the Naples Bay Project Committee.

Council Member Tarrant also requested Council authorization to inform the Naples Airport Authority that Council would not condone flights to Cuba until democratic elections are held there. Council Member Coyle noted, however, that the Airport Authority and the City would be powerless to preventing Cuban flights. Council Member Van Arsdale said that he did not support the US policy toward Cuba which he described as ineffective and, therefore, he could not support Mr. Tarrant's proposal.

Council Member Tarrant then distributed a memorandum regarding Council Member Van Arsdale's request for documentation on a conflict of interest vote that occurred on September 30, 1996 during a Community Redevelopment Agency meeting of the City Council. (A copy of Mr. Tarrant's memorandum is contained in the file for this meeting in the City Clerk's Office.)

Regarding applicability of the proposed ethics code, Mayor Barnett noted that the exchange of gifts with official visitors to the City from other countries had been the custom. However, Council Member Coyle recommended that the \$50 limit be maintained.

OPEN PUBLIC INPUT.....

None.

ADJOURN.....

4:54 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Prepared by:

Molly Reed, Recording Specialist

Minutes Approved: 7/22/98