



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – September 16, 1998 - 9:00 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 (left the meeting at 11:43 a.m.)
Joseph Herms
John Nocera
Fred Tarrant
Peter H. Van Arsdale

Also Present:

Richard L. Woodruff, City Manager
Kenneth B Cuyler, City Attorney
William Harrison, Assistant City Mgr.
Ron Lee, Senior Planner
Kevin Rambosk, Chief of Police &
Emergency Services
James Byrne, Deputy Chief
Police & Emergency Services
Dr. Jon Staiger,
Natural Resources Manager
Dan Mercer, Utilities Director
Lori Burke, Human Resources Analyst
Ralph LaCivita, Comptroller
Ann Walker, Planner
Cory Ewing, Planner
Tara Norman, City Clerk

Virginia Neet, Deputy City Clerk
Duncan Bolhover, Admin. Specialist
Marilynn Galvaire
Reverend Susan Diamond
Werner "Duke" Haardt
Cheryl Coyle
Alfred French
Mary Reeve
Gene Luciano
Other interested citizens and visitors

Media:

David Taylor, MediaOne
Eric Staats, Naples Daily News

INVOCATION and PLEDGE OF ALLEGIANCE (8:59 a.m.)ITEM 2
Reverend Susan Diamond, First Christian Church.

ANNOUNCEMENTS (9:03 a.m.).....ITEM 3
Mayor Barnett read proclamations designating September 15-19, 1998, "Industry Appreciation Week" and September 23, 1998, "Walk Our Children to School Day".

Police and Emergency Services Chief Kevin Rambosk presented a plaque to retiring Deputy Chief Jim Byrne in recognition of his 21 years of service to the City.

ITEMS TO BE ADDEDITEM 4
City Manager Richard Woodruff requested that the following items be added to the agenda:

Item 14 Consider the purchase of 1 new vehicle, under a Collier County bid, for use by the Building & Zoning Department \ Vendor: Tamiami Ford, Naples, Florida \ Price: \$15,722.65 \ Funding: Building Division Revenue Reserves.

Item 15 Consider the purchase of tile for the Utilities Office Building \ Contractor: Steve Locke Classic Tile & Marble, Inc. \ Price (including installation): \$50,930.00 \ Funding: Utilities Office Building Project.

Item 16 Consider a request from Paul Jacobson regarding the purchase of City property on Gulf Shore Blvd. North.

MOTION by Herms to SET AGENDA and ADD ITEMS 14, 15, and 16; 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).

CONSENT AGENDA

APPROVAL OF MINUTESITEM 5-a
August 31, 1998, Workshop Meeting; September 2, 1998, Special Meeting; September 2, 1998, Regular Meeting; and September 3, 1998, Special Meeting.

APPROVE THE FOLLOWING SPECIAL EVENTS..... ITEM 5-b

- (1) Naples Artcrafters at Cambier Park - 10/24, 12/19, 1/16/99, 4/24/99
- (2) 5th Avenue South Association Oktoberfest & Sidewalk Sale - 10/30-11/1
- (3) Ridge Lakes Neighborhood Party - 10/31
- (4) Naples Daily News/U.S. Navy Band Concert - 11/13
- (5) K-Mart Kids Race Against Drugs - 11/7-8
- (6) Youth Sailing Regatta (Diamond Jubilee November Event) - 11/14-15
- (7) 3rd Street South Festival of Lights - 11/23
- (8) Santa's Village in Cambier Park - 11/28
- (9) 5th Avenue South Association Thanksgiving Weekend Festival - 11/28-29
- (10) 5th Avenue South Association Evening on 5th - 10/6, 10/9, 12/11

.....ITEM 5-c
**AWARD A 2-YEAR BID FOR ROUTINE ELECTRICAL REPAIRS/PROJECTS AND PRE-APPROVE 2 ALTERNATE CONTRACTORS ** Principal Contractor: Bentley Electric, Co., Inc., Naples, Florida \ Est. Annual Expenditure: \$50,000.00 \ Funding: Various Department Budgets (repairs & maintenance). Alternate Contractors: Collier Electric Company, Naples, Florida, and Electrical Services by Phillips, Naples, Florida.

RESOLUTION 98-8352..... ITEM 5-d
A RESOLUTION APPROVING CHANGE ORDER NUMBER ONE IN THE AMOUNT OF TWENTY-TWO THOUSAND SEVEN HUNDRED DOLLARS (\$22,700.00) TO D. GARRETT CONSTRUCTION, INC. FOR THE CONSTRUCTION OF THE CITY PARKING GARAGE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 98-8352-AITEM 5-e
A RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, BETWEEN THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY AND THE CITY OF NAPLES, FOR THE USE OF COUNTY SCHOOL BUSES TO TRANSPORT SCHOOL-AGED CHILDREN ON FIELD TRIPS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

.....ITEM 5-g
**AUTHORIZE A PURCHASE ORDER FOR INTERSECTION IMPROVEMENTS AT U.S. 41 AND GOLDEN GATE PARKWAY ** Contractor: Bonness, Inc., Naples, Florida \ Amount: \$33,676.51 \ Funding: CIP #96U03.

RESOLUTION 98-8353..... ITEM 5-h
A RESOLUTION ACCEPTING A UTILITY EASEMENT, FOR THE MAINTENANCE OF SANITARY SEWER FORCE MAIN, ON A PARCEL OF LAND AS DESCRIBED ON EXHIBIT "A" FROM NAPLES HOSPITALITY LIMITED PARTNERSHIP; AND PROVIDING AN EFFECTIVE DATE. Title not read.

City Manager Richard Woodruff noted prior concerns regarding the special events under Item 5-b(10) and confirmed that the Fifth Avenue Association event would have non-amplified music. Vice Mayor MacKenzie noted that this request did not estimate crowd size, particularly as it applies to the 11/13/98 event, which coincides with the U.S. Navy Band Concert in Cambier Park. It was then determined that consideration of the 11/13/98 event, contained in Item 5-b(10), would be continued in order to obtain additional information.

MOTION by Van Arsdale to APPROVE THE CONSENT AGENDA WITH THE EXCEPTION OF ITEM 5-b(10)(relating to 11/13/98 event) AND ITEM 5-f WHICH WERE REMOVED FOR SEPARATE ACTION; 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).

RESOLUTION 98-8354..... ITEM 5-f
A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR LIGHTING AND HANDRAIL UPGRADES, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF, FOR THE U.S. 41/GORDON RIVER PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title not read. (9:12 a.m.)

City Manager Richard Woodruff referred to prior Workshop discussions and noted that Paragraph 6 of the agreement had been revised to address Council's concerns. Further, Dr. Woodruff provided information regarding the City's responsibility in maintaining these facilities.

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

MOTION by MacKenzie to APPROVE RESOLUTION 98-8354 amended in Paragraph 6 of the agreement as follows: "The City and the Department agree that the equipment of the lighting system shall be the property of the City and the Department and it is understood and agreed that neither party shall under any condition remove or change the equipment, which is the subject matter of this agreement, for any reason without the prior written consent of the other party." This motion was 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).

.....ITEM 5-b(10)
APPROVE THE FOLLOWING SPECIAL EVENT:

5th Avenue South Association Evening on 5th - 11/13

Public Input: (on continuance) None. (9:16 a.m.)

MOTION by Van Arsdale to CONTINUE THIS ITEM TO 10/798 REGULAR MEETING; seconded by Coyle and unanimously carried, all members present and voting. (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

RESOLUTION 98-8355..... ITEM 6(a)
A RESOLUTION ESTABLISHING THE VALUE OF AVAILABLE SPACES IN THE CITY PARKING GARAGE AT NINETEEN THOUSAND THREE HUNDRED DOLLARS (\$19,300); ESTABLISHING A POLICY FOR ALL FUTURE SALES OF AVAILABLE PARKING SPACES; AND ESTABLISHING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (9:16 a.m.)

City Manager Richard Woodruff requested that Council's action include automatic price increases each January 1st based upon the prior year's Consumer Price Index. In response to Vice Mayor MacKenzie, Assistant City Manager William Harrison provided additional information regarding the bond issue that finances construction of the parking garage and noted how annual tax increment financing revenues are sufficient to pay related debt service. He also verified that selling or leasing the spaces would not impact this financing.

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

MOTION by Van Arsdale to APPROVE RESOLUTION 98-8355 amended as follows: 1) require notice to surrounding property owners within 500 feet; 2) price will automatically escalate each January 1st based upon prior year's Consumer Price Index; and, 3) a map defining eligible properties will be attached to the resolution; seconded by Nocera and carried 4-3. (It is noted for the record that this motion contains amendments that are a result of the subsequent discussion outlined below) (MacKenzie-yes, Nocera-yes, Tarrant-no, Van Arsdale-yes, Coyle-no, Herms-no, Barnett-yes).

In response to Council Member Herms, Dr. Woodruff confirmed that Council must approve any project involving the purchase/allocation of the 87 surplus parking spaces in the garage. Mr. Herms then suggested requiring all property owners within 500 feet to be notified when parking spaces are requested. Council Member Van Arsdale agreed to amend his motion accordingly but pointed out that any project proposed for Fifth Avenue South would have already been well noticed by the time a request for additional parking is made. The proposed policy regarding the sale of available parking spaces was discussed and it was noted that, in keeping with Council's decision to encourage residential development, spaces requested to meet parking requirements for residential construction would be allocated free of charge. The fair market rate of \$19,300.00 per parking space would only be charged for commercial development. Mr. Herms stated that he opposed further growth in this portion of Fifth Avenue South and referred to what he described as the potential development of a 22-unit residential condominium project on Fifth Avenue that could possibly qualify for 22 free parking spaces. Council noted that sale or allocation of these parking spaces would be limited to redevelopment within a specified area and it was determined that the resolution would include a map delineating the eligible properties. Council Member Tarrant said he was not comfortable with only requiring commercial development to pay for spaces and suggested charging the same rate for residential development. Vice Mayor MacKenzie and Council Member Van Arsdale responded that residential development in this district should be encouraged. Council Member Herms, however, argued that market forces have not justified a mix of residential and commercial uses on Fifth Avenue and predicted public outrage at this potential windfall available to residential developers. Council Member Van Arsdale then asserted that Fifth Avenue's success is partially due to the introduction of residential development. In response to Vice Mayor MacKenzie, City Attorney Cuyler clarified that this policy would also apply to owner/developers. In their dissenting votes, Council Member Coyle stated that the parking spaces should be used to reduce existing parking lots and alley parking and Council Member Herms reiterated that this would unduly benefit developers by providing free land for additional and unwarranted residential development.

**RESOLUTION 98-8356.....ITEM 6(b)
A RESOLUTION AUTHORIZING THE SALE OF SIX (6) AVAILABLE PARKING SPACES IN THE CITY PARKING GARAGE TO PROPERTY LOCATED AT 837-841 FIFTH AVENUE SOUTH, AT THE ESTABLISHED PRICE OF NINETEEN THOUSAND THREE HUNDRED DOLLARS (\$19,300) PER SPACE; REDUCING THE AVAILABLE REMAINING SPACES FROM EIGHTY-SEVEN (87) TO EIGHTY-ONE (81); AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (9:37 a.m.)**

City Manager Richard Woodruff noted that this development has no residential component and that when the former City Council approved this plan, the developer agreed to purchase the six additional parking spaces, as required by the development criteria, when the City established a per space value. Dr. Woodruff further indicated that this would be the only project, involving allocation of the surplus parking spaces, without a residential component. Council Member Tarrant questioned the legality of selling spaces that will not be set aside for exclusive use of the purchaser.

Public Input: None. (9:46 a.m.)

MOTION by Van Arsdale to APPROVE RESOLUTION 98-8356 as submitted; seconded by Nocera. After the discussion that appears below, this motion carried 6-1. (Coyle-yes, Nocera-yes, MacKenzie-yes, Herms-yes, Tarrant-no, Van Arsdale-yes, Barnett-yes).

Council discussed possible impacts to the project if this item is denied; however, Dr. Woodruff indicated that it should not impede the developer's ability to obtain a Certificate of Occupancy. Council Member Herms noted what he described as the disparity between the cost of commercial and residential parking; however, City Attorney Cuyler explained that a municipality has the right to direct development as it sees fit. Mr. Cuyler further noted that, in this instance, the City is not refusing to allocate parking for commercial development. Council Member Coyle also pointed out that Council's denial would only cost the City revenue and provide six more parking spaces for future development.

RESOLUTION 98-8357.....ITEM 10-a
A RESOLUTION GRANTING SAC WAIVER PETITION 98-7 FOR A WAIVER FROM SECTION 102-1095(b)(2) OF THE CODE OF ORDINANCES, FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT, IN ORDER TO PERMIT A DRIVEWAY OPENING GREATER THAN 25 FEET WITHOUT THE REQUIRED STREETWALL, AT 711-745 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (9:49 a.m.)

RESOLUTION 98-8358.....ITEM 10-b
A RESOLUTION GRANTING SAC WAIVER PETITION 98-8 FOR A WAIVER FROM SECTION 102-1095(e)(6) OF THE CODE OF ORDINANCES, FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT, IN ORDER TO PERMIT SLIDING DOORS ON THE WEST AND SOUTH FACADES OF THE SECOND FLOOR OF A NEW BUILDING TO BE CONSTRUCTED AT 711 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (9:49 a.m.)

It is noted for the record that Items 10-a and 10-b were discussed concurrently.

Architect Alfred French explained that the proposal involves replacing the building currently occupied by Kepps with a two-story structure, the second story of which will cover the adjacent parking lot. A small addition would also be built at the adjacent Wynn's Market. Mr. French responded to Staff Action Committee concerns regarding Item 10-a by noting safety hazards associated with the required 30-42-inch streetwall, particularly since it could block cars backing out of the lot. Mr. French then used architectural renderings to provide additional detail and

confirmed that the columns supporting the new second floor would afford a 32-foot vehicle entrance (comparable to the existing parking lot entry). Council Member Van Arsdale; however, pointed out that a streetwall is appropriate in this instance since it would define the edge of the sidewalk.

Public Input: None. (9:58 a.m.)

MOTION by Van Arsdale to APPROVE RESOLUTION 98-8357 AND 98-8358 as submitted; seconded by Nocera and carried 6-1. (Tarrant-yes, Van Arsdale-yes, Coyle-no, Herms-yes, MacKenzie-yes, Nocera-yes, Barnett-yes). Prior to the vote, it was noted that the east elevation was incorrectly marked as the west elevation. In his dissenting vote, Mr. Coyle stated that he supported the Staff Action Committee's recommendation for denial.

RESOLUTION 98-8359.....ITEM 7
A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A USE AGREEMENT BETWEEN THE CITY OF NAPLES AND THE GIRL SCOUTS OF GULF COAST FLORIDA, INC. RELATING TO THE CONSTRUCTION AND OPERATION OF A NEW FACILITY IN CAMBIER PARK; DIRECTING THAT THE CITY CLERK RECORD SAID AGREEMENT IN THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff.

Assistant City Manager William Harrison referred to Council's prior authorization to replace the existing Girl Scout House in Cambier Park with a new facility on the same site and explained that the Use Agreement includes approval of the proposed elevation and color selection. Architect Victor Latavish noted that the design had been modified to address concerns of the Staff Action Committee. (A copy of the rendering referenced by Mr. Latavish is contained in the file for this meeting in the City Clerk's Office.) Mr. Latavish provided additional information regarding the new building's construction and indicated that only a few palm trees would be removed during demolition and reconstruction.

Public Input: None. (10:12: a.m.)

MOTION by Barnett to APPROVE RESOLUTION 98-8359 as submitted; seconded by MacKenzie. After the discussion that appears below, this motion was unanimously carried, all members present and voting. (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

Council Member Tarrant asked the City Attorney to research whether the serving of alcoholic beverages at the adjacent Art Center conflicts with State law since classes will be held in the Girl Scout House. Later in the discussion, Council learned that the new facility would be complete by October 1999, and also available for public use. City Attorney Cuyler verified applicability of Council's policy pertaining to use of public lands (Resolution 98-8340) and its requirement for a super-majority vote. City Manager Woodruff then pointed out that the Girls Scouts' current lease, which expires in 2004, encumbers approximately 10,000 square feet of Cambier Park, whereas the new Use Agreement reduces this square footage to the actual footprint of the building or approximately 2,000 square feet. The Use Agreement also states that the City will waive the building permit fee and all City impact fees associated with construction of the building. Council Member Tarrant complimented staff for their assistance in this project.

ORDINANCE 98-8360.....ITEM 8
AN ORDINANCE AMENDING SECTIONS 110-87 AND 110-123 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO ESTABLISH MAXIMUM DENSITY STANDARDS FOR TRANSIENT LODGING FACILITIES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Manager Richard Woodruff. (10:17 a.m.)

Vice Mayor MacKenzie contrasted the maximum residential density in C1, C1-A, and C2-A Commercial Zoning Districts of eight units per net acre with the proposed 26-unit maximum density for transient lodging. Council Member Herms noted that C1-A is the underlying zoning in the Fifth Avenue South Special Overlay District and should likewise control residential density. After further discussion, it was determined that staff would research the application of the C1-A standards in the Fifth Avenue South Special Overlay District.

Vice Mayor MacKenzie moved to continue Item 8 to the next Regular Meeting.

This motion, however, failed for lack of second.

Council Member Coyle then noted that the 41-10 Special Committee had recommended more stringent standards within the 41-10 Redevelopment District and Planner Ron Lee confirmed that the more restrictive limitations, when adopted, would apply. In the interim, however, the densities contained in the proposed ordinance would govern. Council Member Herms then suggested that Council consider further use of overlay districts in order to modify zoning requirements while leaving the underlying zoning district in place.

Public Input: None. (10:25 a.m.)

MOTION by Herms to ADOPT ORDINANCE 98-8360; seconded by Nocera and carried 6-1. (Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-no, Coyle-yes, Barnett-yes).

ORDINANCE 98-8361.....ITEM 9-a
AN ORDINANCE ADDING A NEW DIVISION 6.5 TO CHAPTER 102 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES ESTABLISHING A NEW ZONING DISTRICT TITLED “R1-10A, RESIDENCE DISTRICT” AND RENUMBERING THE REMAINING DIVISIONS OF CHAPTER 102.7; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (10:28 a.m.)

ORDINANCE 98-8362.....ITEM 9-b
AN ORDINANCE GRANTING REZONE PETITION 98-R6 IN ORDER TO REZONE PORTIONS OF PARK SHORE UNITS 1, 3 AND 4, MORE PARTICULARLY DESCRIBED HEREIN, TO R1-10A, RESIDENCE DISTRICT; PROVIDING A SEVERABILITY CLAUSE; A REPEALER PROVISION; AND AN EFFECTIVE DATE.
Title read by City Manager Richard Woodruff. (10:28 a.m.)

It is noted for the record the Items 9-a and 9-b were discussed concurrently.

Public Input: (9-a and 9-b). None. (10:28 a.m.)

MOTION by MacKenzie to ADOPT ORDINANCE 98-8361; seconded by Nocera. After the discussion that appears below, this motion was unanimously

carried, all members present and voting. (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

Council Member Coyle questioned the method by which maximum building heights are measured under the new ordinance and whether the existing Code is consistent in defining the upper elevation limit. Planner Ron Lee noted that the proposed requirements are consistent with the existing "R1-10, Residence District" and Dr. Woodruff later explained that single-family districts measure from the tallest point of the roof. After further discussion, Council requested workshop discussions pertaining to possible establishment of a uniform measurement of building height throughout the Code.

MOTION by Van Arsdale to **ADOPT ORDINANCE 98-8362**; 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: 10:34 a.m. - 10:43 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

.....**ITEM 11**
CONSIDER AN ANNUAL CONTRACT FOR THE PURCHASE OF GASOLINE/DIESEL FUEL \ Vendor (unleaded gasoline): Mansfield Oil Company, Inc., Atlanta, Georgia \ Est. Annual Expenditure: \$100,000.00 \ Vendor (diesel fuel): Streicher Mobile Fueling, Inc., Fort Lauderdale, Florida \ Est. Annual Expenditure: \$100,000.00 \ Funding: Equipment Services (Fuel Account). (10:43 a.m.)

City Manager Richard Woodruff explained that this award is based on a joint bid with the School Board and Collier County and noted that there are plans to include the Naples Airport Authority in future bidding.

Public Input: None. (10:43 a.m.)

MOTION by Van Arsdale to **APPROVE ITEM 11** as submitted; 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).

RESOLUTION 98-8363.....ITEM 12
A RESOLUTION GRANTING VARIANCE PETITION 98-V19 FROM SECTION 110-37 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH LIMITS MAXIMUM FENCE HEIGHT TO THREE FEET IN FRONT YARD SETBACK AREAS, IN ORDER TO PERMIT A SIX FOOT HIGH FENCE IN A FRONT YARD SETBACK AREA AT 5164 SEAHORSE AVENUE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff. (10:44 a.m.)

City Manager Richard Woodruff explained that the fence on the adjacent property to the west was permitted by the County and does not meet City Code requirements since it exceeds three feet in the front setback. It was, however, grandfathered in during annexation into the City. Planner Cory Ewing used a colored-coded graphic to illustrate the location and width of the platted right-of-way in front of the properties and Council discussed potential effects of vacating

this right-of-way. Dr. Woodruff, however, noted that staff was not recommending such action at this time. Attorney Edmond Koester, representing the petitioners, noted their request to install a concrete stucco wall to match the height of the neighbor's wall, running the full length of the west property line. A dispute arose with the property owner to the west when the petitioners attempted to remove old landscaping and paint the east side of the existing wall facing their property. Mr. Koester explained that since this wall does not exactly follow the property line, a small strip of the adjacent property owner's lot is on the Smith's side of the wall. When the Smiths made improvements to this area, the adjacent property owner sued for civil theft.

Council Member Coyle suggested using landscaping as an alternative to another concrete wall but Mr. Koester explained that this would not sufficiently mask the existing chain link fence and wood fence also installed by the adjacent property owner. He predicted, however, that these additional fences would eventually be removed after installation of the concrete wall on the Smith's property. Dr. Woodruff then noted that the City Code pertaining to fences applies to height and setbacks and does not limit the number of fences per property.

Petitioner Hyrum Smith reminded Council that the 30-foot front yard setback, into which the requested six-foot fence would extend, is 60 feet from the road. He further maintained that the adjacent property owners had violated the terms of a settlement agreement when they removed landscaping which he planted on the east side of the existing wall. They also installed additional fencing and refused to maintain their property east of the concrete wall. Mr. Smith further contended that the proposed fence would provide a consistent appearance for the properties. Vice Mayor MacKenzie noted that since the Code does not limit hedge height, landscaping could be used to separate the properties and mask existing fences.

Public Input: None. (11:04 a.m.)

MOTION by Coyle to APPROVE RESOLUTION 98-8363 amended to grant the variance but hold construction of the fence (wall) in abeyance until such time at the civil court case is decided. In the event the court rules in favor of the petitioner (Smiths), the petitioner agrees to use landscaping instead and the wall will not be built (variance approval is nullified). If the court rules against the petitioner, construction of the wall is permitted; seconded by Barnett and carried 6-1. (Nocera-yes, Tarrant-yes, Van Arsdale-yes, Coyle-yes, Herms-yes, MacKenzie-no, Barnett-yes). In her dissenting vote, Vice Mayor MacKenzie stated that there are other remedies available to the petitioner which do not require a variance or right-of-way vacation.

Staff was directed to research the petitioner's claims that the adjacent property owner has not maintained a portion of the property on the petitioner's side of the fence, as required by Code.

At this point in the meeting, Mayor Barnett requested discussions under the Correspondence and Communications section of the agenda.

CORRESPONDENCE and COMMUNICATIONS.....

Mayor Barnett noted what he described as a change in circumstances since Council's August 5, 1998, approval of a variance for 545 Central Avenue (Resolution 98-8305). He explained that after the variance was granted, it was learned that the petitioners, Stephen and Karin Rossi, had contracted to sell the property. Mayor Barnett asked Council to therefore reconsider this petition that permitted this property to be divided into two 50-foot lots. Council Member Tarrant, however, noted that the established time period for reconsideration had lapsed. City Attorney Cuyler explained that the reconsideration policy should not preclude Council from deciding, by a majority vote, to review the variance petition again, provided the record shows that the decision was based on substantially inaccurate or false information. He further stated that this reconsideration would be based upon the information presented on August 5th and any contrary evidence or information to substantiate that Council's decision was based on incorrect information.

Council Member Van Arsdale took that position that Council cannot base a land use decision on an owner's promise to retain ownership of the property. City Manager Richard Woodruff concurred but added that information submitted by the petitioner, either accurate or inaccurate, can influence the Council's vote. The question, he stated, is whether Council would have voted to reconsider the item if the petitioners' decision to sell the property had been known within the time period set forth in Council's reconsideration policy. City Attorney Cuyler, however, cautioned that Council might not have the right to amend its decision, particularly if third parties are subsequently involved. Council Member Tarrant maintained that petitioners should be able to rely on Council's approval. Council Member Coyle, however, stated that Council must consider what is good for the community as well as possible impact on the neighborhood, particularly since neighbors did not appear to object to this subdivision when the intentions were modest homes for the petitioners and their relatives. Referring to the September 15, 1998 letter from adjacent property Mary Reeve, Mr. Coyle said there is indication that most of the contiguous property owners were mislead as to how the property would be redeveloped. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Mr. Coyle also expressed concerns regarding the potential for two mega-houses on this property and said Council should be able to re-evaluate the petition. Dr. Woodruff, likewise, requested a delay in signing Resolution 98-8305 and City Attorney Cuyler clarified that although Council could not overturn its decision based solely on the petitioners' change of plans, it has a right to review the new information.

MOTION by Barnett BASED ON PRIMA FACIA INFORMATION, TO WAIVE THE CITY'S RECONSIDERATION POLICY (RESOLUTION 98-8218) AND RECONSIDER VARIANCE PETITION 98-V17 AT THE 10/7/98 REGULAR MEETING. MAYOR IS AUTHORIZED TO DELAY SIGNING AND FINALIZING RESOLUTION 98-8305 PENDING A FINAL DETERMINATION. This motion was seconded by MacKenzie and, after the discussion that appears below, carried 5-2. (Coyle-yes, Nocera-yes, MacKenzie-yes, Herms-yes, Tarrant-no, Van Arsdale-no, Barnett-yes).

(Staff was directed to notify all adjacent property owners of the reconsideration)

Council Member Tarrant expressed concern that this action would render the reconsideration policy meaningless. City Attorney Cuyler, however, explained that Council has the ability to go outside the scope of its reconsideration resolution when it involves a major policy decision and when a decision was based on improper or untrue information.

Karin Rossi, of 545 Central Avenue, questioned why her neighbors had not voiced their opposition when Council considered her petition on August 5th. She also maintained that when she presented her petition to Council, she conveyed that she only hoped to have the choice not to have to develop the property. Mrs. Rossi further claimed that her petition considered the impact to the neighborhood and although she had hoped to keep the property and build a new home, she was only recently informed that her application for financing, submitted prior to August 5th, would be declined. Mrs. Rossi concluded by stating that she did not intend to deceive the Council.

Mary M. Reeve, of 49 6th Street North, stated that she represented several of the neighbors in the vicinity of the Rossi property who are requesting Council's reconsideration of this issue. Ms. Reeve explained that she would have attended the August 5th meeting had she been notified of the petition and also relayed that the Rossi's had attempted to market this property in January 1997 using the potential for subdivision as a selling point. **Gene Luciano, of 10 5th Street South**, stated that when Mrs. Rossi asked him to sign the petition, she had represented that she would be building a home for her father. But, the day after Council's approval, the property was under contract for sale at over \$400,000.00, up from a prior \$280,000.00 asking price. Mr. Luciano said he learned of plans to build a garage on the property, located behind his home, which would house two to four automobiles with two apartments on the second floor. With the two homes contemplated for the property, this could result in as many as four families living on this lot, he added.

It is noted for the record that Council Member Coyle left the meeting at 11:43 a.m. after the vote was taken.

Council also discussed the process by which adjacent property owners are notified of upcoming land use petitions and Planner Ron Lee confirmed that property owners within 500 feet of the subject property had been notified by mail of the initial variance petition. Council Member Van Arsdale then requested a clear outline from the City Attorney pertaining to the criteria to be considered by Council in this variance request and other land use issues.

.....**ITEM 13**
CONSIDER AWARDDING A BID (PURSUANT TO 9/10/98 BID OPENING) FOR
ROADWAY AND SIDEWALK IMPROVEMENTS IN THE 4TH AVENUE NORTH
SPECIAL ASSESSMENT DISTRICT \ Funding: Tax Increment Financing/Special
Assessment. (11:46 a.m.)

In response to Council Member Herms, City Manager Richard Woodruff confirmed that the bid was indeed below the estimate for this project.

Public Input: None. (11:47 a.m.)

MOTION by Van Arsdale to APPROVE Item 13 as submitted; seconded by Herms and carried 4-1. (Coyle-absent, Herms-yes, MacKenzie-yes, Nocera-abstain (Attachment 1), Tarrant-no, Van Arsdale-yes, Barnett-yes).

.....ITEM 14
**CONSIDER THE PURCHASE OF 1 NEW VEHICLE, UNDER A COLLIER COUNTY
BID, FOR USE BY THE BUILDING & ZONING DEPARTMENT \ Vendor: Tamiami
Ford, Naples, Florida \ Price: \$15,722.65 \ Funding: Building Division Revenue Reserves.**
(11:47 a.m.)

In response to Council Member Herms, City Manager Richard Woodruff provided additional information regarding this purchase and noted that the price was competitive with the State contract price.

Public Input: None. (11:47 a.m.)

***MOTION by Van Arsdale to APPROVE Item 14 as submitted, seconded by
Nocera and carried 6-0. (Coyle-absent, Herms-yes, MacKenzie-yes, Nocera-yes,
Tarrant-yes, Van Arsdale-yes, Barnett-yes).***

.....ITEM 15
**CONSIDER THE PURCHASE OF TILE FOR THE UTILITIES OFFICE BUILDING \
CONTRACTOR: STEVE LOCKE CLASSIC TILE & MARBLE, INC. \ Contract Price
(including installation): \$50,930.00 \ Funding: Utilities Office Building Project.** (11:49 a.m.)

City Manager Richard Woodruff explained that this component of the new Utilities Office Building was omitted from the original construction contract in order to save the general contractor mark-up and sales tax.

Public Input: None. (11:52 a.m.)

***MOTION by Nocera to APPROVE Item 15 as submitted; seconded by Van
Arsdale and carried 6-0. (Coyle-absent, Herms-yes, MacKenzie-yes, Nocera-
yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).***

.....ITEM 16
**CONSIDER A REQUEST FROM PAUL JACOBSON REGARDING THE PURCHASE
OF CITY PROPERTY ON GULF SHORE BOULEVARD NORTH.** (11:52 a.m.)

City Manager Richard Woodruff provided background information regarding this request to purchase City property on Gulf Shore Boulevard North at Alligator Lake and referred to the staff report which, he said, outlined conditions set forth by Council at the prior Workshop Meeting. (Attachment 2) Mayor Barnett noted that Collier County had informed Mr. Jacobson that they owned the property and he asked the City Attorney to assist in verifying the ownership. Potential benefits to the City as a result of this action were discussed and Vice Mayor MacKenzie suggested that landscape plans be submitted to the neighbors. Additionally, Dr. Woodruff noted Natural Resources Manager Jon Staiger's observations regarding the property, which are delineated in his September 16, 1998 memorandum. (Attachment 3)

Public Input: None. (11:57 a.m.)

***MOTION by Van Arsdale to APPROVE Item 16 with the conditions set forth in
the 9/15/98 staff report, the comments contained in the 9/16/98 memorandum
from the Natural Resources Manager, and the additional requirement that a
landscape plan be provided to the adjacent property owners; seconded by***

Nocera and carried 6-0. (Coyle-absent, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).

At this point in the meeting, Council returned to the Correspondence and Communications.

CORRESPONDENCE and COMMUNICATIONS (See also Page 11).....

Council reviewed a proposed schedule and format for Town Hall Meetings (pursuant to 9/14/98 Workshop discussions) and it was suggested that these meetings take place on 1/18/99, 2/15/99, 3/15/99. Vice Mayor MacKenzie also requested that the River Park Community be included in the areas involved.

Mayor Barnett informed Council of voluntary donations of labor and material made by American Express Corp. representatives to the Fun Time Nursery.

Council Member Herms relayed a request by the Old Naples Association to have all meeting agendas and the City Council annotated agendas sent to the public.

It was the consensus of Council to make the annotated agendas available on the City web-site and authorize the City Clerk to establish subscription fee for distribution of the annotated agendas. It was also determined that the annotated agendas would be provided to the property owners' associations free of charge.

At the request of Vice Mayor MacKenzie, Council agreed to modify the schedule for the upcoming 30-minute City television program in order to address the 41-10 Redevelopment District in the first broadcast and delay discussion of the ethics ordinance to the second show.

City Manager Richard Woodruff reminded the public of the Special Meeting scheduled for 5:05 p.m. that day.

OPEN PUBLIC INPUT

None. (12:13 p.m.)

ADJOURN

12:13 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Prepared by:

Virginia A. Neet, Deputy City Clerk

Minutes Approved: 10/7/98.