



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – January 6, 1999 – 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
Joseph Herms (Arrived at 9:01 a.m.)
John Nocera
Fred Tarrant
Peter H. Van Arsdale (Arrived at 9:02 a.m.)

Also Present:

Dr. Richard L. Woodruff, City Manager
Kenneth Cuyler, City Attorney
William Harrison, Asst. City Manager
Tara Norman, City Clerk
Duncan Bolhover, Admin. Specialist
Jessica Rosenberg, Recording Specialist
Ron Lee, Interim Planning Director
Ann Walker, Planner II
Cory Ewing, Planner I
Werner Haardt
Arlene Guckenberger
Cheryl Coyle
Kim Kushman
Frank Perrucci
Mike Fernandez
Ted Monty

Andrea Clark Brown
Dwight Nadeau
Lawrence Pivacek

Media

Mike McCormick, Naples Daily News
Denes Husty, Naples Press

Other interested citizens and visitors

**Prior to commencement of the agenda,
the public was notified of procedures to
be followed by speakers and petitioners.**

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

Reverend Arthur Holt, Unity Church of Naples.

It is noted for the record that Council Member Herms arrived at the meeting at 9:01 a.m.

ANNOUNCEMENTSITEM 3

Mayor Barnett sadly noted that former City Manager Vincent Wood and former City Engineer Gerald Gronvold had recently passed away.

ITEMS TO BE ADDEDITEM 4

City Manager Richard Woodruff requested that the following items be added to the agenda:

Item 20 Consider amending Resolution 98-8373, which vacated an easement at 681 Goodlette Road North, in order to correct a scrivener's error.

Item 21 Consider a resolution opposing House Bill 3075 which affects local police and fire pensions.

Item 22 Consider a special event permit application for Campiello Ristorante, 1177 Third Street South, 1/6 – 2/6/99.

MOTION by Herms to SET THE AGENDA AND ADD ITEMS 20,21, AND 22; seconded by Nocera and carried 6-0 (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-absent, Barnett-yes).

It is noted for the record that Council Member Van Arsdale arrived at the meeting at 9:02 a.m.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 5-a

December 2, 1998, Regular Meeting and December 14, 1998, Workshop Meeting.

..... ITEM 5-b

APPROVAL OF THE FOLLOWING SPECIAL EVENT:

Island Club Light Jazz Poolside – January 4th, 11th, 18th, and 25th
(Approval is required pursuant to Council's direction of 12/16/98.)

.....ITEM 5-c

CONSIDER A BUDGET AMENDMENT IN THE AMOUNT OF \$50,000.00 IN ORDER TO PROVIDE FOR LABOR ATTORNEY FEES.

..... ITEM 5-d

AUTHORIZE THE PURCHASE OF 24 TRAFFIC COUNTERS FOR Y2K COMPATIBILITY AND THE COLLECTION OF TRAFFIC DATA \ Vendor: Control Specialists Co., Winter Park, Florida \ Amount: \$26,550.00 \ Funding: CIP #99U05.

MOTION by Nocera to APPROVE CONSENT AGENDA ITEMS 5-a, 5-b, 5-c, and 5-d; 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).

END CONSENT AGENDA

RESOLUTION 99-8439.....ITEM 20

A RESOLUTION AMENDING RESOLUTION 98-8373 GRANTING EASEMENT VACATION PETITION 98-EV1 AT 681 GOODLETTE ROAD NORTH, MORE PARTICULARLY DESCRIBED HEREIN, TO CORRECT A SCRIVENER'S ERROR; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (9:02 a.m.). Dr. Woodruff explained that a language modification was necessary to correct this resolution. The petitioner was to provide the City with signed releases from all affected parties or indemnify and hold the City harmless from any liability which may result from the vacation process. However, the word and was inadvertently used instead compelling the petitioner to do both. Dr. Woodruff stated that the petitioner obtained the releases and as such has fulfilled the intended requirement.

Public Input: None. (9:05 a.m.)

MOTION by Van Arsdale to APPROVE RESOLUTION 99-8439 AS SUBMITTED; 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).

ORDINANCE 98-8425.....ITEM 6-a

AN ORDINANCE AMENDING SECTION 1.2 OF THE CHARTER OF THE CITY OF NAPLES, FLORIDA, IN ORDER TO ANNEX A 5.22 ACRE PARCEL, LOCATED ON THE NORTH SIDE OF DAVIS BOULEVARD IMMEDIATELY EAST OF THE CITY LIMITS, MORE PARTICULARLY DESCRIBED HEREIN, AND TO REDEFINE THE BOUNDARIES OF THE CITY OF NAPLES TO INCLUDE SAID PROPERTY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (9:05 a.m.).

RESOLUTION 99-8440.....ITEM 6-b

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A DEVELOPMENT AGREEMENT, ATTACHED HERETO, WHICH ESTABLISHES THE DEVELOPMENT STANDARDS FOR A 5.22 ACRE PARCEL, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Manager Richard Woodruff (9:05 a.m.).

It is noted for the record that Items 6-a and 6-b were considered concurrently.

City Attorney Kenneth Cuyler stated that he had met with the attorney for the petitioner and that the requested changes had now been incorporated into the Development Agreement. Council Member Tarrant asked for assurance that the current developer would not transfer the property to some other party prior to development.

Public Input: (9:12 a.m.)

Frank Perrucci, 1848 Harbor Place, a neighboring property owner, stated that he had met with petitioner's agent Fernandez and that he had addressed all his concerns including the landscaping, a buffer zone, a possible boat dock, lighting, and the replacement of the mangroves. He thanked Mr. Fernandez for his efforts and said he and his neighbors fully support the hotel.

Mr. Fernandez also explained that he would soon submit the General Development Site Plan and that within three months of this submittal, the client expects to have South Florida Water Management approval. Construction is scheduled to start immediately thereafter and should be completed in nine months.

MOTION by Van Arsdale to ADOPT ORDINANCE 98-8425 AS SUBMITTED; seconded by Nocera and carried 5-2, all members present and voting (Nocera-yes, MacKenzie-yes, Coyle-no, Herms-no, Van Arsdale-yes, Tarrant-yes, Barnett-yes).

Council Member Herms requested a workshop on the 100-foot commercial building heights allowed by County regulations. Also, Attorney Cuyler indicated he would develop a provision in the agreement to stipulate that it is non-assignable except to similar entities.

MOTION by Van Arsdale to APPROVE RESOLUTION 99-8440 AMENDED TO REQUIRE PROVISION IN DEVELOPMENT AGREEMENT THAT PROJECT IS A NON-ASSIGNABLE ENTITY; *seconded by Nocera and carried 5-2, all members present and voting (Herms-no, Coyle-no, Tarrant-yes, MacKenzie-yes, Nocera-yes, Van Arsdale-yes, Barnett-yes).*

RESOLUTION 99-8441.....ITEM 7
A RESOLUTION GRANTING CONDITIONAL USE PETITION 98-CU24, TO ALLOW EXPANSION OF CHURCH FACILITIES AND A CHILDCARE PROGRAM IN THE “PS,” PUBLIC SERVICE ZONING DISTRICT IN ACCORDANCE WITH SECTION 102-743 OF THE CODE OF ORDINANCES, AT 1789 MANDARIN ROAD, 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 Richard Woodruff (9:20 a.m.). Architect Andrea Clark Brown explained her design of the project which includes both renovations and a 4,500 square-foot, one-story addition to the First Christian Church. The reason for this enhancement is to provide new classrooms for an expanded childcare program. She utilized a scale model to display various details of the church along with the proposed site for the new addition. (Photographs of this scale model are contained in the file for this meeting in the City Clerk’s office.) Ms. Brown said the new wing would provide an attractive feature to the neighborhood and would complement the existing church structures. She further indicated there would be parking on site. Council Member Herms questioned whether there would be trees on the west side of the property, the site for the new wing. Ms. Clark responded that the landscape plan is conceptual, and that the exact location and type of trees in this area has not yet been determined.

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

MOTION by Herms to APPROVE RESOLUTION 99-8441 AMENDED TO INCLUDE STIPULATION THAT TREES ARE PLANTED ON THE WEST SIDE OF THE PROPERTY IN COMPLIANCE WITH THE CITY’S STREET TREE MASTER PLAN; *seconded by Nocera and unanimously carried (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).*

ORDINANCE (First Reading).....ITEM 8-a
AN ORDINANCE ADOPTING SMALL SCALE COMPREHENSIVE PLAN AMENDMENT 98-CPASS3, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN FROM PUBLIC, SEMI-PUBLIC INSTITUTIONAL TO LOW-DENSITY RESIDENTIAL FOR PROPERTY LOCATED AT 669 NINTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (9:33 a.m.).

ORDINANCE (First Reading).....ITEM 8-b
AN ORDINANCE GRANTING REZONE PETITION 98-R10 IN ORDER TO REZONE PROPERTY AT 669 NINTH AVENUE SOUTH FROM “PS,” PUBLIC SERVICE TO “R1-7.5,” RESIDENCE DISTRICT, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (9:33 a.m.).

It is noted for the record that Items 8-a and 8-b were considered concurrently.

Dr. Woodruff referred to the staff report and noted that the Collier County Chapter of the American Red Cross intends to relocate to new facilities. Subsequent to the requested land use change and accompanying rezoning, the petitioner plans to subdivide the property into three single-family lots. Dwight Nadeau of McAnly Engineering and Design, Inc., representing the petitioners, assured Council that with approval, all the proposed improvements to the lots would conform to the Comprehensive Plan. Council Members asked various questions regarding lot sizes and frontages however, Ron Lee, Interim Planning Director, reminded Council that it is not approving a subdivision at this time, merely a change in zoning and in the Comprehensive Plan. The petitioner must return at a later time with a separate subdivision application which Council could then evaluate relative to configurations and lot widths, nevertheless, Mr. Nadeau stated he would appreciate any direction Council wished to convey. Mr. Nadeau also said that his clients would most likely sell two lots and occupy the existing Red Cross structure after remodeling. To provide Council with specifics on past development, City Manager Richard Woodruff indicated he would research the building department records; therefore, discussion of this item was postponed. (See Page 6.)

RESOLUTION 99-8442.....ITEM 9

A RESOLUTION APPROVING A PRIVATE VEHICULAR ACCESS EASEMENT TO SERVE AS THE PRIMARY ACCESS TO A LOT TO BE CREATED BY THE SPLIT OF THE PROPERTY LOCATED AT 3505 GORDON DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (9:45 a.m.). Dr. Woodruff explained that the City Code indicates that if a lot is created without road frontage, it must be approved by City Council. Attorney Dennis Cronin, agent for the petitioner, provided an aerial photograph and a survey that depicts the condition of the property and the site of the proposed easement. (A copy of this material is contained in the file for this meeting in the City Clerk's office.) Council briefly discussed the presence of a few flag lots in the City (lots which are accessed only via an easement). Dr. Woodruff stated that since only two lots are being created, no additional action would be required by City Council other than the issuance of a building permit.

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

MOTION by Van Arsdale to APPROVE RESOLUTION 99-8442 AS SUBMITTED; seconded by Nocera and unanimously carried, all members present and voting (Nocera-yes, MacKenzie-yes, Coyle-yes, Herms-yes, Van Arsdale-yes, Tarrant-yes, Barnett-yes).

RESOLUTION 99-8443.....ITEM 10

A RESOLUTION GRANTING A WAIVER FROM DISTANCE REQUIREMENTS BETWEEN LIQUOR LICENSEES IN ORDER TO PERMIT THE SALE OF LIQUOR WITHIN 500 FEET OF AN EXISTING LICENSEE AT HEAVEN, LOCATED AT 2950 NINTH STREET NORTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (9:50 a.m.). Ted Monty, representing The Heaven Group, stated that this establishment is primarily a cigar lounge that has been in Naples for three years. He explained that Heaven also offers wines, beers, coffees, caviar, etc. Recently, many patrons have asked that hard liquor also be available for purchase. However Michael's Café, the restaurant directly above Heaven, holds a liquor license therefore Heaven needs a waiver. Council briefly discussed the 500-foot standard, and Dr. Woodruff confirmed that the Fifth Avenue Overlay District is exempt from this requirement. Council Member Van Arsdale said that he felt Heaven was substantially different from Michael's Café, and that the main feature of this establishment would continue to be the cigars. Vice Mayor MacKenzie asked about complaints from neighboring properties regarding noise. Mr.

Monty maintained that it did not emanate from Heaven and that it may have been Michael's Café who had been removing garbage including bottles to the dumpster at night.

Public Input: None. (10: 00 a.m.)

MOTION by Van Arsdale to **APPROVE RESOLUTION 99-8443 AS SUBMITTED**; seconded by Nocera and carried 5-2, all members present and voting (Nocera-yes, Herms-yes, Van Arsdale-yes, Tarrant-yes, Coyle-no, MacKenzie-no, Barnett-yes).

Discussion of Item 8 continued from Page 4.

Dr. Woodruff indicated that he had received the needed information on this item. There are two 7,500 square-foot lots (Lots 6 and 7) on the corner of Ninth Avenue and Seventh Street South; there are also two 7,500 square-foot lots (Lots 1 and 2) on the corner of Ninth Avenue and Eighth Street South. The interior lots (Lots 3, 4 and 5) are roughly 10,050 square-feet each. Dr. Woodruff further explained that Lots 1 and 2 contain attached single-family homes, Lots 3 and 7 are vacant, and Lots 4, 5, and 6 contain freestanding independent single-family homes. Council then discussed the proposed lot width changes and Council Member Van Arsdale recommended that the petitioners retain the original lot orientations while relating his concerns regarding elevation. He proposed that the final grade not exceed one and one-half feet above the crown of the road.

Public Input: None. (10:13 a.m.)

MOTION by Van Arsdale to **APPROVE THIS ORDINANCE (ITEM 8-a) AT FIRST READING**; seconded by MacKenzie and unanimously carried, all members present and voting (Coyle-yes, Tarrant-yes, MacKenzie-yes, Herms-yes, Van Arsdale-yes, Nocera-yes, Barnett-yes).

MOTION by Van Arsdale to **APPROVE THIS ORDINANCE (ITEM 8-b) AT FIRST READING**; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-absent, Barnett-yes).

After the vote was taken, it was determined that the petitioner would provide alternate plat plans when the actual subdivision petition is presented.

RESOLUTION 99-8444.....ITEM 11
A RESOLUTION APPROVING SAC WAIVER 99-1 FROM SECTION 102-1095(c)(2) OF THE CODE OF ORDINANCES WHICH REQUIRES THAT THIRD STORIES BE LIMITED TO TRANSIENT LODGING OR RESIDENTIAL USE ONLY WITHIN THE FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT, IN ORDER TO PERMIT A BEAUTY SALON OF 450 SQUARE FEET ON THE THIRD FLOOR OF THE INN ON FIFTH, 699 5TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (10:14 a.m.).

Public Input: None. (10:17 a.m.)

MOTION by Nocera to **APPROVE RESOLUTION 99-8444 AS SUBMITTED**; seconded by Herms and carried 5-2 (Coyle-no, Tarrant-yes, MacKenzie-no, Herms-yes, Van Arsdale-yes, Nocera-yes, Barnett-yes).

RESOLUTION (Denied)ITEM 12
A RESOLUTION APPROVING SAC WAIVER 99-2 FROM SECTION 102-1095(b)(4) OF THE CODE OF ORDINANCES WHICH REQUIRES A REAR YARD SETBACK OF 50 FEET FROM THE CENTER OF THE ALLEY FOR PROPERTIES WITHIN THE FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT, IN ORDER TO PERMIT A STORAGE SHED TO BE LOCATED 33 FEET FROM THE CENTER OF THE ALLEY AT 457 5TH

AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (10:17 a.m.). Lawrence Pivacek, agent for the petitioner, stated that additional storage capacity is needed and proposed to construct an outdoor shed in the alley behind the premises. It would be used for an ice machine, cases of alcoholic beverages, and other supplies. He said the proposed design conforms to the applicable code. Council Member Herms stated his concern regarding what he described as expansion of business space without a corresponding increased parking requirement in that the shed would be not unlike any other type structure which might be added to the business.

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

MOTION by Herms to DENY THE RESOLUTION AS SUBMITTED; seconded by Van Arsdale and carried 6-1, all members present and voting (MacKenzie-yes, Tarrant-no, Nocera-yes, Coyle-yes, Herms-yes, Van Arsdale-yes, Barnett-yes).

Recess 10:32 a.m. - 10:43 a.m. It is noted for the record that Council Member Van Arsdale was not present when the meeting reconvened, but returned at 10:44 a.m.

ORDINANCE (First Reading)ITEM 13
AN ORDINANCE AMENDING SECTION 102-538, “MAXIMUM HEIGHT,” OF THE CODE OF ORDINANCES IN ORDER TO MODIFY HOW BOAT STORAGE BUILDINGS ARE MEASURED; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (10:43 a.m.). Dr. Woodruff reminded Council that several months ago, the staff was asked to research modifying the maximum height allowed for boat storage facilities and therefore had developed a plan to alter the way the present allowable limit of 48 feet is measured. Dr. Woodruff explained that if the proposal were adopted, the true building height would be reduced about five feet. The current code requires that the height be measured from the 100-year flood elevation. The new plan proposes that the height be measured from the finished first floor or 8 feet NGVD, whichever is less. Council Member Van Arsdale suggested linking the height to that of the roadway. Interim Planning Director Ron Lee stated, however, that due to variation in elevation, this would not be advisable; moreover NGVD ties to the flood elevation thereby producing a more consistent application. Council Member Coyle stated that a mere 5-foot reduction in the requirement would not be meaningful and that, instead, the heights of these types of buildings should conform to the other commercial development in the City. A future workshop was planned to review building heights of existing facilities and setbacks in the “C-2A” Waterfront Commercial Zoning District.

Public Input: (10:55 a.m.)

Duke Turner, of Turner Marine, 899 10th Street South, stated that he has been in the boating industry for 45 years and an advocate for the maintenance of the waterfront. He expressed his dismay that the waterfront contains development that could have occurred anywhere else. Mr. Turner expressed concern that changing the measurement standard to lower height could diminish storage capacity and thus adversely affect his business viability.

MOTION by Nocera to APPROVE THIS ORDINANCE AT FIRST READING; seconded by MacKenzie and carried 6-1, all members present and voting (MacKenzie-yes, Van Arsdale-yes, Tarrant-yes, Coyle-no, Herms-yes, Nocera-yes, Barnett-yes).

ORDINANCE (First Reading)ITEM 14
AN ORDINANCE AMENDING SECTION 106-39 OF THE CODE OF ORDINANCES, “EXEMPTIONS FROM PERMIT REQUIREMENT,” BY AMENDING SUBSECTIONS (b)(1) a. AND (b)(2) TO CORRECT A WORDING ERROR; AND BY ADDING SUBSECTION (b)(2) g., IN ORDER TO DEFINE ADDITIONAL STANDARDS FOR SIGNS

THAT ARE EXEMPT FROM PERMIT REQUIREMENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Manager Richard Woodruff (11:09 a.m.). Dr. Woodruff reminded Council that approximately five years prior, new real estate sign regulations had been adopted; however it has been discovered that a scrivener's error in the codification of the ordinance had inadvertently omitted the words "single-faced". Dr. Woodruff indicated that City Attorney Cuyler had advised that an ordinance be drafted to correct this error.

Public Input: None. (11:13 a.m.)

MOTION by Nocera to APPROVE ORDINANCE AT 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).

ORDINANCE (First Reading)ITEM 15
AN ORDINANCE AMENDING SECTION 78-170, "DEFINITIONS," OF THE CODE OF ORDINANCES IN ORDER TO PERMIT FERRYBOATS AND TO PROVIDE A DEFINITION OF WATER TAXI; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager (11:13 a.m.). Dr. Woodruff explained that this ordinance adds to the Code the following definition: "Water taxi means a vessel offered for hire with a capacity of 12 persons or less designed to transport passengers to and from properties adjacent to the local waterways." Also, the ordinance identifies ferryboats as part of the charter boat definition. Council Member Herms suggested that water taxis be regarded in the same manner as automotive taxis requiring City Council approval. The possibility of establishing water taxi parking requirements in the future was also noted.

Public Input: None. (11:18 a.m.)

MOTION by Herms to APPROVE THIS ORDINANCE AT FIRST READING AS AMENDED, WITH STIPULATION THAT WATER TAXIS ARE TO BE DEFINED AS EQUIVALENT TO AUTOMOTIVE TAXIS AND, AS SUCH, ALSO REQUIRE COUNCIL APPROVAL; 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).

ORDINANCE (First Reading)ITEM 16
AN ORDINANCE AMENDING SECTION 86-201.1(b), 86-203(c)(6), 86-205(c)(1), 106-103 (e)(2), 106-107 (c) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO REQUIRE AN AFFIRMATIVE VOTE OF FIVE MEMBERS OF THE CITY COUNCIL FOR ZONING DISTRICT TEXT AMENDMENTS, REZONES, CONDITIONAL USES, AND VARIANCES WHICH HAVE THE EFFECT OF INCREASING PERMITTED BUILDING HEIGHTS OR PERMITTED DENSITY ABOVE OR BEYOND THAT PERMITTED BY THE EXISTING ZONING DESIGNATION OR DISTRICT, OR WHICH HAVE THE EFFECT OF REDUCING PARKING REQUIREMENTS AS COMPARED TO THE EXISTING ZONING DESIGNATION OR DISTRICT; AMENDING SAID SECTIONS, AS APPLICABLE, IN ORDER TO REQUIRE AN AFFIRMATIVE VOTE OF FIVE MEMBERS OF THE CITY COUNCIL FOR ZONING DISTRICT TEXT AMENDMENTS, REZONES, AND CONDITIONAL USES WHICH HAVE THE EFFECT OF DECREASING PERMITTED BUILDING HEIGHTS OR PERMITTED DENSITY BELOW THAT PERMITTED BY THE EXISTING ZONING DESIGNATION OR DISTRICT, OR WHICH HAVE THE EFFECT OF INCREASING PARKING REQUIREMENTS AS COMPARED TO THE EXISTING ZONING DESIGNATION OR DISTRICT; TO REQUIRE AN

AFFIRMATIVE VOTE OF FIVE MEMBERS OF THE CITY COUNCIL TO APPROVE A VALET PARKING PLAN AND A PARKING NEEDS ANALYSIS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER PROVISION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (11:19 a.m.). Dr. Woodruff alluded to the 1991-1998 voting summary, which had been prepared at the request of Council (A copy of this material is contained in the file for this meeting in the City Clerk's office). He explained that if a supermajority vote had been required at the time of the 139 votes on density, height and parking, 12 (or roughly nine percent) would have been affected. Council briefly discussed which situations would require such a vote; however, Attorney Cuyler clarified that if Council was going to make impositions on people that restrict their rights, it is then that a supermajority vote is required. Council confirmed that setback variances, even though they might from a certain standpoint affect building height within that envelope, would not be included in this ordinance. Council Member Van Arsdale said that with the passage of this ordinance, all votes would not be equal which defies a fundamental tenet of government. Vice Mayor MacKenzie, however, pointed out that the provision would bring forward a broader consensus and that all government bodies require a higher standard than a simple majority under some circumstances.

Public Input: (11:43 a.m.)

Charles Kessler, 415 Tenth Avenue South #8, Vice-President of the Old Naples Association, stated that his association members fully support the supermajority initiative.

Dr. Woodruff, speaking as a citizen, said he felt that no one vote was as important than the one for elected officials, noting that election to office does not require a supermajority.

MOTION by Herms to APPROVE ORDINANCE AT FIRST READING; seconded by MacKenzie and carried 6-1 (Nocera-yes, Herms-yes, Van Arsdale-no, Tarrant-yes, Coyle-yes, MacKenzie-yes, Barnett-yes).

RESOLUTION 99-8445.....ITEM 17
A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE FOR THOMAS G. SEPANSKI, IN THE AMOUNT OF TWENTY-EIGHT THOUSAND DOLLARS (\$28,000.00), WITHOUT ADMISSION OF LIABILITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (11:52 a.m.).

It is noted for the record that Mayor Barnett left the meeting at 11:52 a.m.

Council concurred with Council Member Nocera who said he felt there was no choice but to approve the settlement, as it was not feasible to contest it.

Public Input: None. (11:53 a.m.)

MOTION by Herms to APPROVE RESOLUTION 99-8445 AS SUBMITTED; seconded by Coyle and carried 6-0 (Coyle-yes, Tarrant-yes, MacKenzie-yes, Herms-yes, Van Arsdale-yes, Nocera-yes, Barnett-absent).

RESOLUTION 99-8446.....ITEM 18
A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE CITY OF NAPLES AND SUSAN A. WALSH (CIRCUIT COURT CASE 97-430-CIV-FtM-26D), IN THE TOTAL AMOUNT OF SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00); AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (11:56 a.m.).

Public Input: None. (11:56 a.m.)

MOTION by Herms to APPROVE RESOLUTION 99-8446 AS SUBMITTED; seconded by Tarrant and carried 6-0 (Herms-yes, Coyle-yes, Nocera-yes, Van Arsdale-yes, Mackenzie-yes, Tarrant-yes, Barnett-absent).

After the vote was taken, Dr. Woodruff read a press release regarding this matter into the record. (Attachment One)

It is noted for the record that Mayor Barnett returned to the meeting at 12:00 p.m.

.....ITEM 19
RECONSIDERATION OF THE PORT ROYAL UNDERGROUND UTILITY PROJECT

City Manager Richard Woodruff reminded Council that it had voted to indefinitely continue this item. Council Member Tarrant, however, explained that he proposed that this matter be reconsidered so that Council may explore action to recover monies paid to Florida Power & Light Company for a preliminary study. He said that when Council approved the project, neither FPL nor the consultants noted that additional easements from the property owners were needed. Attorney Cuyler pointed out that in the contract for the study, FPL made it clear that the acquisition of the easements would be the responsibility of the City. He predicted that a claim on the \$65,000.00 spent by the City for the study would be very weak and that negligent misrepresentation could probably not be proven. Mr. Tarrant, nevertheless, stated Council was never advised of a potential easement problem and that there was therefore misrepresentation by omission. Council Member Van Arsdale noted, however, that many property owners still favor the project and that it still may proceed.

Public Input: None. (12:29 p.m.)

MOTION by Tarrant to DIRECT CITY ATTORNEY CUYLER TO DRAFT LETTER TO FLORIDA POWER & LIGHT REQUESTING RETURN OF \$65,000.00 REMITTED FOR ENGINEERING STUDY WITH THE UNDERSTANDING THAT IF PROJECT LATER GOES FORWARD, THE CITY WILL REPAY THIS FEE; seconded by Herms and carried 5-2, all members present and voting (Nocera-yes, Tarrant-yes, Mackenzie-yes, Coyle-yes, Van Arsdale-no, Herms-yes, Barnett-no).

RESOLUTION 99-8447.....ITEM 21

A RESOLUTION OPPOSING HOUSE BILL 3075 AFFECTING LOCAL POLICE AND FIRE PENSIONS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Richard Woodruff (12:29 p.m.). Dr. Woodruff explained this resolution encourages the House of Representatives not to override the Governor's veto on this matter.

Public Input: None. (12:29 p.m.)

MOTION by Herms to APPROVE RESOLUTION 99-8447; seconded by Nocera and unanimously carried, all members present and voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-absent, Barnett-yes).

.....ITEM 22
CONSIDERATION OF A SPECIAL EVENT PERMIT AT CAMPIELLO RISTORANTE

City Manager Richard Woodruff explained that this restaurant would soon be filing for a conditional use; in the meantime, however, it is requesting a special event permit for the dates between January 6th to February 6th. There will be amplified music. Dr. Woodruff confirmed that Tommy Bahama's, the restaurant across the street, had received a conditional use approval. (Vice Mayor MacKenzie asked that the item be continued in order to determine the hours for Tommy Bahama's. However, she withdrew her motion when it was determined that a speaker was present to answer questions.) John Tarrangelo, representing Campiello's, stated that the amplified music at Tommy Bahama's ends at 1:00 a.m. Council discussed the noise level, and staff was directed to take decibel readings at both establishments.

Public Input: None. (12:36 p.m.)

MOTION by Van Arsdale to ***APPROVE*** Item 22; seconded by Nocera and unanimously carried, all members present and voting (MacKenzie-yes, Van Arsdale-yes, Tarrant-yes, Coyle-yes, Herms-yes, Nocera-yes, Barnett-yes).

CORRESPONDENCE AND COMMUNICATIONS (12:36 p.m.).....

It was the consensus of Council (as proposed by Council Member Van Arsdale and seconded by Council Member Nocera) to accept the noise modifications instituted and allow the Naples Depot to continue its daily noon air whistle. (Council Member Herms dissented.) City Manager Woodruff relayed that a joint meeting with the Board of County Commissioners is slated for February 1st at 2:00 p.m., pending County approval. It was the consensus of Council to retain Kim Boyd as Chairman of the Naples Bay Project Committee even though she has relocated her business outside city limits (Council Members Coyle, Tarrant, and Herms dissenting). It was determined that a future workshop would be scheduled to review building heights of existing facilities and setbacks in the “C-2A” Zoning District. Council Member Coyle proposed that Council develop a zoning code to comply with a State Statute banning the construction of schools and churches in airport landing paths. Council Member Nocera stated that he would address the local legislative delegation on January 13th in an attempt to amend State law relative to prohibiting children from riding in the back of pickup trucks. Council Member Herms asked that the President’s Council receive a copy of the tree planting program status at its January 25th meeting.

OPEN PUBLIC INPUT

None. (12:53 p.m.)

ADJOURN

12:53 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 2/3/99.



