



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – February 2, 2000 – 9:00 a.m.**

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Mayor Barnett called the meeting to order and presided.

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

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

**Also Present:**

Kevin J. Rambosk, City Manager  
Kenneth B. Cuyler, City Attorney  
Ron Lee, Planning Director  
Richard Gatti, Development Svs. Director  
Tara Norman, City Clerk  
Don Wirth, Community Services Director  
Brenda Blair, Recording Specialist  
Jessica Rosenberg, Recording Specialist  
Tamela Wiseman, Council Member Elect  
Penny Taylor, Council Member Elect  
William MacIlvaine, Council Member El.  
Gary Galleberg, Council Member Elect  
Edward Morton  
Dan Guoan  
Amy Rego

Virginia Corkran  
Joseph Biasella  
James Dean  
Ron Pennington  
Betty Pennington  
Henry Kennedy  
Cheryl Coyle  
Arlene Guckenberger  
Christine Barnett  
Other interested citizens and visitors

**Media:**

AnneElena Foster, Naples Daily News  
Heather Dawson, WINK News

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

Mayor Barnett

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

Mayor Barnett proclaimed February 12<sup>th</sup> as “Greyhound Day.”

Mayor Barnett presented gifts to Council Members Herms and Tarrant.

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

**Item 5-c**      *Authorize funding (in an amount not to exceed \$2,500.00) for expenses of the Collier County Metropolitan Planning Organization - Fiscal Year 2000.*

**Item 5-d**      *Approve an after-the-fact purchase order for modifications to medians involved in the Gordon River Bridge reconstruction project \ Vendor: Archer Western Contractors, Inc. \ Amount: \$29,353.25 \ Funding: CIP #99U10 Gordon River Bridge Lights/Rails.*

**Item 19**      *Consider a 60-day extension to the contract with Ryan Company of Naples, Inc. regarding the sale of 24 +/- acres of City property on Goodlette-Frank Road Extension.*

**Item 20**      *City Attorney report*

*A scrivener's error on the agenda for Item 9 was noted. The correct address is 1001 10<sup>th</sup> Avenue South. Petitioner requests that Item 8 be tabled. (See Page 3.)*

**MOTION** by Herms to **SET THE AGENDA ADDING ITEMS 5-c, 5-d, 19, AND 20;** 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).

*At 3:00 p.m. (pursuant to Notice of Special Meeting Agenda) the new City Council determined that Items 1, 2, 3, Correspondence, and Adjournment of the Special Meeting Agenda would be added to the Regular Meeting Agenda/Herms/MacIlvaine/7-0.*

**CONSENT AGENDA**

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

December 13, 1999 Workshop Meeting.

**..... ITEM 5-b**

**ISSUE A PURCHASE ORDER FOR SURVEY WORK IN ACCORDANCE WITH THE DRAINAGE BASIN III STORMWATER STUDY \ FIRM: JOHNSON ENGINEERING, NAPLES, FLORIDA \ COST: \$16,000.00 (NOT TO EXCEED) \ FUNDING: CIP 99V14.**

**RESOLUTION 00-8769.....ITEM 5-c**

**A RESOLUTION AUTHORIZING PARTICIPATION IN FUNDING OF THE COLLIER COUNTY METROPOLITAN PLANNING ORGANIZATION, IN AN AMOUNT NOT-TO-EXCEED \$2,500 FOR FISCAL YEAR 2000; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

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

**APPROVE AN AFTER-THE-FACT PURCHASE ORDER FOR MODIFICATIONS TO THE MEDIANS TO ALLOW LANDSCAPING ON THE GORDON RIVER BRIDGES \ VENDOR: ARCHER WESTERN CONTRACTORS, INC. \ AMOUNT: \$29,353.25 \ FUNDING: CIP 99U10 GORDON RIVER BRIDGE LIGHTS/RAILS. City Manager Kevin Rambosk confirmed that this modification would result in long linear planters on the bridges.**

**MOTION** by Nocera to **APPROVE CONSENT AGENDA ITEMS 5-a THROUGH 5-d;** 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).

**END CONSENT AGENDA**

**RESOLUTION 00-8770.....ITEM 6-a**

**A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, CANVASSING THE RESULTS OF A BOND REFERENDUM HELD ON FEBRUARY 1, 2000, ON THE QUESTIONS OF THE PROPOSED ISSUANCE BY THE CITY OF NOT EXCEEDING \$9,000,000 GENERAL OBLIGATION BONDS, AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:12 a.m.).

**Public Input:** None. (9:13 a.m.)

**MOTION by Van Arsdale to APPROVE RESOLUTION 00-8770 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 (First Reading)..... ITEM 6-b**  
**AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT EXCEEDING \$9,000,000 GENERAL OBLIGATION BONDS, OF THE CITY OF NAPLES, FLORIDA, FOR THE PURPOSE OF FINANCING THE COST OF THE ACQUISITION OF CERTAIN REAL PROPERTY WITHIN THE CITY FOR OPEN SPACE AND OTHER PUBLIC PURPOSES; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:13 a.m.).

**Public Input:** None. (9:13 a.m.)

**MOTION by Van Arsdale to APPROVE ITEM 6-b ON 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-yes, Barnett-yes).**

Council Members Tarrant and Herms expressed gratitude to Arthur Lee for his efforts relating to the referendum.

**RESOLUTION (Tabled)..... ITEM 8**  
**A RESOLUTION GRANTING PETITION 00-CU1 FOR CONDITIONAL USE APPROVAL FOR A PARKING NEEDS ANALYSIS AT 733 FOURTH AVENUE NORTH, MORE PARTICULARLY DESCRIBED HERERIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**Public Input (on tabling):** None. (9:15 a.m.)

**MOTION by MacKenzie to TABLE ITEM 8; 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 00-8771..... ITEM 9**  
**AN ORDINANCE GRANTING REZONE PETITION 00-R2 IN ORDER TO AMEND THE PLANNED DEVELOPMENT DOCUMENT FOR OLD NAPLES SEAPORT, MORE PARTICULARLY DESCRIBED HEREIN; IN ORDER TO ADD RESIDENTIAL UNITS AS A PERMITTED USE AND MODIFY THE SITE DESIGN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:15 a.m.). City Attorney Kenneth Cuyler requested that Council disclose any ex parte communications. Vice Mayor MacKenzie indicated that she had spoken to Thomas Reed, although regarding an unrelated item. All other Council Members indicated that they had spoken to no one. The City Clerk then administered a voluntary oath to those intending to offer testimony; witnesses responded in the affirmative.

Planning Director Ron Lee provided clarification on both the required and actual front and side yard setbacks for this project. Council Member Herms questioned whether this Planned Development (PD) must meet the setbacks or, conversely, whether it would necessitate variances. City Attorney Cuyler noted that, based on applicable Code, Council may make adjustments to normal setbacks, and confer a type of variance through the PD process, otherwise,

Council must amend Code. Council Member Herms reiterated his concern that granting a PD is essentially granting a variance.

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

**MOTION by Van Arsdale to ADOPT ORDINANCE 00-8771 ON SECOND READING; seconded by Nocera and carried 5-2, all members present and voting (Coyle-yes, Herms-no, MacKenzie-yes, Nocera-yes, Tarrant-no, Van Arsdale-yes, Barnett-yes).**

**ORDINANCE (First Reading) .....ITEM 10  
AN ORDINANCE AMENDING SECTION 50-235(b) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY PROVIDING FOR AN INCREASE IN THE BENEFIT RATE OF TWO AND ONE-HALF PERCENT (2.5%) EFFECTIVE JANUARY 1, 2000; PROVIDING FOR A MONTHLY BENEFIT SUPPLEMENT OF TWENTY-FIVE (\$25.00) FOR EACH RETIRANT; ADDING SECTION 50-256 TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO PROVIDE AN EARLY RETIREMENT INCENTIVE; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:22 a.m.). Mr. Rambosk stated that because the annual actuarial report indicated excess funds, increasing the multiplier, providing a monthly supplement for retirees, and a one-time early retirement incentive with no penalty could be offered. Mr. Rambosk confirmed that eight employees would be eligible for this early retirement option. Council Member Herms noted that he must abstain, as a family member is a City retiree.

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

**MOTION by Van Arsdale to APPROVE ITEM 10 ON FIRST READING; seconded by Nocera and carried 6-0 (Coyle-yes, Herms-abstain, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van Arsdale-yes, Barnett-yes).**

**.....ITEM 11  
CONSIDER A PURCHASE ORDER FOR CONSTRUCTION OF A WATER LINE AND SEWER FORCE MAIN FROM 3RD AVENUE SOUTH TO CENTRAL AVENUE, EAST OF GOODLETTE-FRANK ROAD \ CONTRACTOR: KYLE CONSTRUCTION, INC., NAPLES, FLORIDA \ COST: \$155,893.00 \ FUNDING: CIP #00L02 AND #00N04.** (9:25 a.m.) City Manager Kevin Rambosk noted that the lowest bidder requested withdrawal because of underestimation of project's demands; therefore staff recommends award to the second lowest bidder. Development Services Director Richard Gatti noted that this project, partially funded by Bayfront Marketplace Development, would complete the water and sewer loop and would not only serve Bayfront, but also bring additional capacity to the older areas where small mains exist. Mr. Gatti confirmed that this would provide adequate water and sewer should Council approve the Grand Central Station rezone (Item 7).

**Public Input:** None. (9:28 a.m.)

**MOTION by Nocera to APPROVE ITEM 11 AS SUBMITTED; 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 12-a  
CONSIDER A PURCHASE ORDER TO BONNESS, INC., NAPLES, FLORIDA, IN THE AMOUNT OF \$575,794.00 FOR THE 2000 ANNUAL ROAD OVERLAY PROGRAM \ FUNDING: STREETS/GAS TAX OVERLAY BUDGET.** (9:28 a.m.) Development Services Director Richard Gatti displayed a map depicting those areas scheduled for road improvement, a copy of which is contained in the file for this meeting in the City Clerk's office. He added that, generally, windows of opportunity drive projects; for example, Tenth Street will be resurfaced subsequent to installation of new water mains. Mr. Gatti explained that alley improvements are

considered in the same fashion, depending also upon the condition of the surface. He explained that the other considerations are citizen and Council input, and funding available from gasoline tax, which this year is \$700,000.00. Council Member Herms recommended that the new Council set priorities for both streets and alleys at a future workshop.

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

**MOTION by Van Arsdale to APPROVE ITEM 12-a 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).**

..... **ITEM 12-b**  
**CONSIDER PRE-QUALIFYING THREE FIRMS, BONNESS, INC., APAC-FLORIDA, INC., AND BETTER ROADS, INC., TO PROVIDE ROADWAY CONSTRUCTION SERVICES FOR SPECIAL PROJECTS THROUGHOUT THE CITY.** (9:33 a.m.)

Development Services Director Richard Gatti stated that although Bonness, Inc. was the low bidder, staff recommends selecting all three firms as annual contractors to expedite projects. He then explained the basis for unit pricing, and noted that Bonness' prices are essentially the same as its previous bid. Mr. Gatti also confirmed that the contract includes a provision to repair potholes within 24 hours of notification.

**Public Input:** None. (9:35 a.m.)

**MOTION by Van Arsdale to APPROVE ITEM 12-b 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).**

**RESOLUTION (Failed) .....ITEM 13**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR CONSTRUCTION OF THE WATERFRONT OPERATIONS CENTER AT THE CITY DOCK, IN SUBSTANTIALLY THE FORM ATTACHED HERETO WITH CHANGES AS APPROVED BY THE CITY ATTORNEY, BETWEEN THE CITY OF NAPLES AND F&D CONSTRUCTION, INC., FORT MYERS, IN THE AMOUNT OF \$213,473.00; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:35 a.m.). Vice Mayor MacKenzie requested additional information relating to the expected life of the various building materials with Council Member Herms favoring aluminum over vinyl windows and doors, and Council Member Van Arsdale predicting that the harsh salt-water environment would shorten the life of aluminum. Community Services Director Don Wirth provided construction costs, under air and total, which ranged from \$194.00 per square foot to \$310.00 per square foot. He also noted that staff has yet to secure permitting from the Department of Environmental Protection (DEP).

**Public Input:** None. (9:45 a.m.)

**MOTION by Van Arsdale to APPROVE WITH STAFF RECOMMENDATIONS INCLUDING TRAX DECKING, VINYL CLAD WINDOWS, AND HARADIE PLANK SIDING AND WITH THE UNDERSTANDING THAT THE FASTENERS BE STAINLESS STEEL OR GALVANIZED. This motion failed 3-4, all members present and voting (Coyle-yes, Tarrant-no, Van Arsdale-yes, MacKenzie-no, Nocera-yes, Herms-no, Barnett-no).**

Council Members Tarrant and Herms and Vice Mayor MacKenzie commented that they believed the construction square footage costs to be inappropriately high.

**RESOLUTION 00-8772.....ITEM 19**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO CONTRACT FOR PURCHASE AND SALE REGARDING THE**

**SALE OF 24 +/- ACRES OF CITY PROPERTY ON GOODLETTE-FRANK ROAD EXTENDED BETWEEN THE CITY OF NAPLES AND RYAN COMPANIES OF NAPLES, INC.; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:45 a.m.). Mr. Rambosk noted that Ryan Companies of Naples is requesting a 60-day extension of the sales contract in order to review and possibly amend its plans. He added that the City is also considering the feasibility of using this property to relocate City wells, due to the setback violation that exists between them and the lakes at Calusa Bay. Mr. Rambosk noted several options under consideration; namely, removing approximately two acres from the contract for the relocated wells. He added that the Calusa Bay developer might also enter into an agreement with Ryan Companies to relocate the lakes.

Council Member Herms cautioned that the City may later determine that it needs this land and therefore recommended negotiating a mutually beneficial settlement. City Attorney Kenneth Cuyler however pointed out that the proposed contract stipulates the 60-day extension of the due diligence period and in return the right of the City to place a wellhead easement on the property. Dan Guoan, a Ryan Companies associate, stated that the extension is necessary to determine the proposed location of the City wellheads, and amend its plans accordingly, and confirmed the company's commitment to work with the City. Mr. Guoan also noted that he would expect a reduced price in exchange for the two acres of land the City would use. He further explained that the property would contain a retirement community with multi-family units, and that the company could ensure the development would not contaminate the wells once it knew their location. Mr. Herms questioned whether there was adequate property to provide the required setbacks; however, Mr. Rambosk noted that all the necessary information is not yet available.

Council Member Tarrant requested that staff ensure that Hartman & Associates not collaborate in its research with Missimer International, the developer's hydrologist. In response to Mr. Herms, Mr. Guoan stated that Ryan Companies' engineering firm is Wilson Miller.

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

**MOTION by Van Arsdale to APPROVE RESOLUTION 00-8772 AS SUBMITTED; seconded by Coyle and carried 5-2, all members present and voting (Herms-no, Coyle-yes, Nocera-yes, Van Arsdale-yes, MacKenzie-yes, Tarrant-no, Barnett-yes).**

City Attorney Kenneth Cuyler requested additional direction from Council regarding the filing of a lawsuit in the Calusa Bay lakes issue since staff had believed progress had been made in ongoing negotiations with SFWMD. Although Council had made a previous motion to delay a decision until February 9th, a Special Meeting may be necessary. He said he would provide updates on the proceedings on a two-week basis. Additionally, he noted he would provide written confirmation that his law firm has no conflict of interest on this issue.

**Recess 10:05 a.m. to 10:15 a.m. It is noted for the record that all Council Members were present when the meeting reconvened.**

**ORDINANCE (Withdrawn from Second Reading) .....ITEM 7  
AN ORDINANCE GRANTING REZONE PETITION 00-R1, REZONING THE  
PROPERTY KNOWN AS GRAND CENTRAL STATION, MORE PARTICULARLY  
DESCRIBED HEREIN, FROM PD PLANNED DEVELOPMENT TO PD PLANNED  
DEVELOPMENT IN ORDER TO REVISE THE GRAND CENTRAL STATION PD,  
PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN  
EFFECTIVE DATE. (10:15 a.m.)** Edward Morton, Naples Community Hospital (NCH) Healthcare Systems representative, stated that the proposed Grand Central Station project is in some aspects incongruous with the recently approved charter amendment limiting commercial

building heights. Therefore Mr. Morton stated that additional time is needed to bring the project into compliance and requested that the item be tabled. City Attorney Kenneth Cuyler noted for the record that the item would be withdrawn from Second Reading to allow for future advertisement as necessary.

Council Member Herms stated that he believed it important for the new Council to carefully consider this and future projects in the downtown area, especially in terms of density. He referenced the commercial maintenance code and noted that Grand Central Station is not blighted and merely needs maintenance. He proposed that Code Enforcement cite whatever improvements are necessary to meet the appropriate code.

**Public Input:** None. (10:24 a.m.)

**MOTION by Van Arsdale to WITHDRAW FROM SECOND READING;**  
***seconded by Barnett and unanimously carried, all members present and***  
***voting (Coyle-yes, Herms-yes, MacKenzie-yes, Nocera-yes, Tarrant-yes, Van***  
***Arsdale-yes, Barnett-yes).***

**CORRESPONDENCE & COMMUNICATIONS (10:24 a.m.)** .....

City Manager Kevin Rambosk noted that MediaOne has experienced a cable malfunction and that the proceedings are therefore not airing live; the meeting would nevertheless be re-broadcast. He then recognized and distributed plaques to Council Members Coyle, Nocera, Van Arsdale, Vice Mayor MacKenzie, and Mayor Barnett. Mayor Barnett expressed appreciation to the present Council Members for their work, congratulated all the Council candidates, and urged that the new Council work cooperatively.

**Recess 10:30 a.m. to 11:59 a.m.**

.....**ITEM 14**  
**CANVASS RESULTS OF GENERAL ELECTION OF FEBRUARY 1, 2000 AND**  
**DECLARATION OF RESULTS. (11:59 a.m.)** Mayor Barnett read the Certificate of the City of Naples Canvassing Board into the record (Attachment 1).

.....**ITEM 15**  
**SWEARING IN OF CITY COUNCIL MEMBERS BY THE HONORABLE HUGH D.**  
**HAYES, CIRCUIT COURT JUDGE (12:01 p.m.)** The Honorable Hugh D. Hayes administered the oath of office to newly elected City Council Members Tamela Wiseman, William MacIlvaine, Gary Galleberg, Penny Taylor, and Mayor-Elect Bonnie MacKenzie.

.....**ITEM 16**  
**PASSING OF GAVEL TO MAYOR-ELECT (12:04 p.m.)** Mayor MacKenzie expressed appreciation to former Mayor Barnett, former Council Members and Mayoral opponents, the voting public, and welcomed the new Council Members.

.....**ITEM 17**  
**ELECTION OF VICE MAYOR (12:06 p.m.)**

**MOTION by MacIlvaine to ELECT COUNCIL MEMBER HERMS;**  
***seconded by Tarrant and carried 5-2, all members present and voting***  
***(Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes,***  
***Wiseman-no, MacKenzie-yes)***

Based upon this, a motion by Council Member Wiseman seconded by Mayor MacKenzie to elect Council Member Galleberg was not voted upon. (See below for action on resolution effecting this appointment.)

.....**ITEM 18**  
**SWEARING IN OF VICE MAYOR BY THE HONORABLE HUGH D. HAYES,**  
**CIRCUIT COURT JUDGE (12:08 p.m.)** The Honorable Hugh D. Hayes administered the oath of office to Vice Mayor Herms.

At this point in the meeting, Mayor MacKenzie noted she would use Council Workshops as a forum to fully explore topics and to facilitate consensus. She therefore requested that each Council Member submit to the City Manager a list of topics for Council to prioritize at the next Workshop Meeting. Vice Mayor Herms expressed the belief that citizens equate overdevelopment with a diminution in the quality of life; therefore Council must address commercial density and growth, and he proposed that Council meet with officials and staff of Vero Beach regarding their efforts in preserving the quality of life in that city.

**RESOLUTION 00-8773 (Item 17 continued from above).....**

**A RESOLUTION ELECTING A MEMBER OF THE CITY COUNCIL VICE MAYOR PURSUANT TO SECTION 2.4 OF THE CITY CHARTER; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Kenneth Cuyler (12:12 p.m.).

**Public input:** None. (12:12 p.m.)

***MOTION by Tarrant to ELECT COUNCIL MEMBER HERMS (RESOLUTION 00-8773 AS SUBMITTED); seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

**.....ITEM 20**

**REPORT BY CITY ATTORNEY KENNETH CUYLER (12:14 p.m.)** City Attorney Kenneth Cuyler expressed concern that the approved charter amendment limiting commercial building height may have no effective date. Pursuant to State Statute, he explained, all such amendments are either effective on the date specified therein or as provided in the City's charter. The Naples City charter does not prescribe effective dates of amendments nor does the ballot question itself indicate an effective date. City Attorney Cuyler therefore requested direction, suggesting that Council authorize a filing for a declaratory judgment as soon as possible in Circuit Court in order to determine the effective date. He cautioned that the City might otherwise face litigation should Council inappropriately withhold a building permit for projects in excess of 42 feet in height. Based on a legal precedent, he explained, the Court would find an effective date in the language, find no effective date and render the charter amendment ineffective, or establish an effective date.

Vice Mayor Herms noted that various City charter amendments over the last several years contained no effective date, and since voters had made a decision, Council should honor it. Mr. Herms recommended, however, that Council hold a Special Meeting later that day to enact an ordinance mirroring the charter amendment language. Council Members Tarrant and MacIlvaine agreed.

City Attorney Cuyler further noted that he had not addressed this issue prior to the election to avoid affecting the outcome since Council had specifically directed him to not review the initiative language for legal sufficiency. Mr. Cuyler also pointed out that, unlike a charter amendment that would supercede all zoning codes, the proposed ordinance would create conflict with other zoning regulations. Therefore he recommended first proceeding with the declaratory judgment, and then amending all zoning codes to comply with the charter amendment.

Vice Mayor Herms made a motion, seconded by Council Member Tarrant, to hold a Special Meeting at 3:00 p.m. for First Reading of an ordinance mirroring the building height charter amendment language. City Attorney Cuyler conceded that the proposed ordinance could be used as a backup argument in the event of litigation should the charter amendment be deemed ineffective. Council Member Galleberg also recommended expediting a declaratory judgment and directing staff not to issue any permits for applicable structures. Council Member Wiseman



advocated proceeding with the ordinance on a parallel track with the declaratory judgment.

**Public Input:** None. (12:45 p.m.)

**MOTION by Herms to HOLD A SPECIAL MEETING AT 3:00 PM FOR FIRST READING OF AN ORDINANCE MIRRORING THE BUILDING HEIGHT CHARTER AMENDMENT LANGUAGE;** *seconded by Tarrant and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**MOTION by Wiseman to AUTHORIZE THE CITY ATTORNEY TO FILE A DECLARATORY JUDGEMENT ACTION AS SOON AS POSSIBLE TO DETERMINE THE EFFECTIVE DATE OF THE CHARTER AMENDMENT;** *seconded by Galleberg. This motion failed 3-4, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-no, Tarrant-no, Taylor-no, Wiseman-yes, MacKenzie-yes).*

**RECESS** (12:50 p.m.) / **ADJOURN** (4:40 p.m.).....  
(Editor's note - Please see City Attorney's comments on Page 2 of the February 2, 2000 Special Meeting minutes.)

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Bonnie R. MacKenzie, Mayor

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Tara A. Norman, City Clerk

Prepared by:

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Jessica R. Rosenberg, Recording Specialist

Minutes approved: 3/15/00

Certificate of City of Naples Canvassing Board

STATE OF FLORIDA  
COUNTY OF COLLIER

We, the undersigned Bill Barnett, Charles Rhoades and Tara A. Norman, constituting the City of Naples Canvassing Board, do hereby certify that we initially met on January 6, 2000, to determine the guidelines for the canvass of ballots. We also authorized Tara A. Norman, as representative of the City of Naples Canvassing Board, to conduct a Logic & Accuracy Test of the vote tabulating equipment held on January 25, 2000. On February 1, 2000, we met and proceeded publicly to canvass the votes given for the February 1, 2000, City of Naples General Election. We do hereby certify from said returns as follows:

Total registered voters at book closing on January 3, 2000

Total ballots returned for this election:

Absentee ballots returned for this election

Ballots rejected:

Absentee ballots rejected by Canvassing Board

Total valid votes cast:

For Candidates:

Mayor

Fred Coyle  
Bonnie R. MacKenzie  
John Nocera  
Peter H. Van Arsdale

2,457  
2,495  
1,419  
974

City Council  
(2 year term)

Randy E. Merrill  
Penny Taylor

3,210  
3,803

City Council  
(4 year terms)

Gary Galleberg  
Carol Lynn Kendall  
William MacIlvaine  
Amy Rego  
Clark Russell  
Tom Ryan  
Michael P. Williams  
Tamela Wiseman

3,190  
777  
2,811  
2,647  
2,277  
2,541  
1,618  
3,133

Amendments to the Naples City Charter:

Land Acquisition Bond Referendum


For  
Against

5,460  
4,669

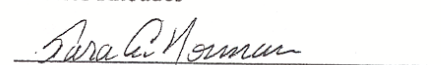
Charter Amendment

For  
Against

4,278  
2,991

  
Bill Barnett, Chairman

  
Charles Rhoades

  
Tara A. Norman

Voter turnout: 56.34%