



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – April 19, 2000 – 9:00 a.m.**

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Mayor MacKenzie called the meeting to order and presided.

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

**Present:** Bonnie MacKenzie, Mayor  
Joseph Herms, Vice Mayor  
Council Members:  
Gary Galleberg  
William MacIlvaine  
Fred Tarrant  
Penny Taylor  
Tamela Wiseman

**Also Present:**

Kevin J. Rambosk, City Manager  
Kenneth Cuyler, City Attorney  
Tara Norman, City Clerk  
William Harrison, Assistant City Manager  
Dan Mercer, Public Works Director  
Jon Staiger, Natural Resources Manager  
Robert Egan, Waterfront Operations Supv.  
Steven Moore, Police Commander  
Ann Walker, Planner  
Keeth Kipp, Utility/Solid Waste Coord.  
Jessica Rosenberg, Recording Specialist  
Kelly Espinoza, Admin. Specialist  
Reverend Larry Simms  
William Boggess  
Arlene Guckenberger  
Charles Kessler

David Trowbridge  
Jim Boula  
Russ Reddick  
Joseph Biasella  
George Williams  
John DeBaun  
Other interested citizens and visitors

**Media:**

AnneElena Foster, Naples Daily News

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

Reverend Larry Simms, Faith Apostolic Church

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

None.

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

Item 13 Consider approval of Addendum #4 to the contract with Architectural Network, Inc., for the Cambier Park Bandshell Renovation and Expansion design, in the amount of \$58,917.00.

Item 14 Consider waiving competitive bidding for purchase of a Fire Safety House Trailer/ Vendor: Mobile Concepts by Scotty / Cost: \$36,960.00 / Funding: private donations.

Item 15-a Consider re-appointing Robert Geroy to the Board of Appeals.

Item 15-b Consider appointing Council Member Galleberg to the Beach Renourishment/ Maintenance Committee.

Item 16 Consider a proposal from Semper Development, Ltd., regarding the development of a Walgreens store on the newly acquired Fleischmann property.

Item 17 Discussion regarding a motion to dismiss relative to the Naples Landing Park commercial loading dock litigation.

Item 18 Discussion of Workshop issues.

In addition, City Manager Kevin Rambosk requested that Items 6 and 12 be continued until the May 3<sup>rd</sup> Regular Meeting.

**MOTION by Herms to SET THE AGENDA ADDING ITEMS 13 THROUGH 18, AND CONTINUING ITEMS 6 AND 12; 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).**

At this point in the meeting, Mayor MacKenzie stated that each Council Member was given a copy of a wetlands protection ordinance proposed by the Conservancy of Southwest Florida for Martin County. She noted that Council had discussed reviewing its content for possible application to the City's proposed charter amendment. She added that backup material is available in the Council Office, and that Conservancy representative Michael Simonik would be present at the April 24<sup>th</sup> Special Workshop to provide additional information.

**OPEN PUBLIC INPUT (9:11 a.m.) .....**

**John DeBaun, 1300 Curlew Avenue**, stated that the Naples Sailing and Yacht Club has built over 150 feet of dock space directly in front of this home and is planning more, which he said would significantly impede his view of Naples Bay. He added that this would also change the river flow, alter the channel, and require the removal of an oyster bar. He requested that Council intervene to stop this encroachment. Natural Resources Manager Jon Staiger explained that the Club is planning to expand its docks, and is undergoing preliminary depth measurements necessary for permitting. He voiced doubt, however, that the Department of Environmental Protection (DEP) or the Army Corps of Engineers (ACOE) would actually grant the permits due to the required dredging. **Bill Boggess, 1100 Eighth Avenue South**, stated that he had previously filed a formal complaint with the City and the DEP when the Club had expanded its existing facilities, explaining that the Club has taken over the channel with its large boats forcing boaters north of that area into shallow water. Vice Mayor Herms asked staff to verify the additional number of docks allowed under the existing Planned Development, and Council Member Taylor requested an overhead view of the area.

CONSENT AGENDA

APPROVAL OF MINUTES .....ITEM 5-a  
February 28, 2000 Workshop Meeting.

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

- (1) P.O.L.O. Club Tropicool Street Dance (Coastland Mall) - 4/28
- (2) National Night of Prayer (Naples High School) - 5/4
- (3) Gulfcoast Runners Tropicool 5K Run - 5/7
- (4) Vorkapic Wedding (Lowdermilk Park) - 5/13
- (5) American Cancer Society Relay for Life (Gulfview Middle School) 5/19-20

.....ITEM 5-c  
ISSUE A \$27,607.00 CHANGE ORDER TO EMERGENCY ONE, INC., OCALA, FLORIDA, FOR ADDITIONAL REPAIRS TO LADDER TRUCK 2 \ FUNDING: CIP #00E07.

..... ITEM 5-d  
WAIVE COMPETITIVE BIDS AND ISSUE A PURCHASE ORDER FOR TELEVISION EQUIPMENT USED BY THE WASTEWATER COLLECTION DIVISION TO INSPECT STORMWATER LINES \ VENDOR: BVC, PETALUMA, CALIFORNIA \ COST: \$13,830.00 \ FUNDING: CIP #99V07.

RESOLUTION 00-8815.....ITEM 5-e  
A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN URBAN AND COMMUNITY FORESTRY (U&CF) GRANT MEMORANDUM OF AGREEMENT; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER IN THE AMOUNT OF \$22,750 AS THE CITY'S MATCH TO THE GRANT AWARD FROM THE URBAN AND COMMUNITY FORESTRY GRANT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

..... ITEM 5-f  
AWARD A BID FOR A TRAILER-MOUNTED DEWATERING WELLPOINT PUMP FOR USE BY THE UTILITIES DEPARTMENT \ VENDOR: COMPLETE DEWATERING PUMPS AND WELLPOINTS, INC. \ PRICE: \$14,797.00 \ FUNDING: CIP #00N38.

.....ITEM 5-g  
ISSUE A PURCHASE ORDER FOR SIDEWALK REPLACEMENT ON 10TH STREET NORTH, BETWEEN 7TH AND 10TH AVENUES \ CONTRACTOR: N.S. MARINE & INDUSTRIAL SERVICES CORP., ORLANDO, FLORIDA \ COST (NOT TO EXCEED): \$27,770.00 \ FUNDING: CIP #00U29.

**MOTION by Herms to APPROVE CONSENT AGENDA ITEMS 5-a THROUGH 5-g; 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).**

**END CONSENT AGENDA**

(Continued) .....ITEM 6-a  
CONSIDER A 2-YEAR RENEWAL OF THE CONTRACT WITH WASTE MANAGEMENT OF COLLIER COUNTY (UNDER BID #93-41) FOR RECYCLING SERVICES WHICH WILL INCLUDE ADDITIONAL RECYCLABLES.

RESOLUTION (Continued)..... ITEM 6-b  
A RESOLUTION AMENDING APPENDIX "A", "FEE SCHEDULE", WITH REFERENCE TO SECTION 54-71 (1) (a) AND (b) OF THE CODE OF ORDINANCES

**OF THE CITY OF NAPLES, TO REVISE THE RATES TO COLLECT ADDITIONAL RECYCLABLES; AND PROVIDE AN EFFECTIVE DATE FOR IMPLEMENTATION.**

**ORDINANCE (First Reading) .....ITEM 7**  
**AN ORDINANCE AMENDING SECTION 54, SOLID WASTE, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, BY AMENDING SECTION 54-31 (b) AND ADDING SECTION 54-31 (c), COMMERCIAL CART SERVICE IN ORDER TO ESTABLISH COMMERCIAL CART SERVICE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:23 a.m.).

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

**MOTION by Galleberg to APPROVE AT FIRST READING; seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-abstain, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Vice Mayor Herms explained that he abstained due to a possible conflict of interest because he might actually use this particular service. (See Attachment 1, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.) City Attorney Kenneth Cuyler stated this is prudent because fewer than 100 people may be using this service, and because it may generate a cost savings for him.

**ORDINANCE (Continued at Second Reading) .....ITEM 8**  
**AN ORDINANCE AMENDING CHAPTER 78 OF THE CODE OF ORDINANCES, ADDING DIVISION 5, CITY DOCK/CRAYTON COVE ANCHORAGE, AND ESTABLISHING RULES AND REGULATIONS FOR MANAGING THE ANCHORAGE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:26 a.m.).

**Public Input:** 9:27 a.m. **Bill Boggess, 1100 Eighth Avenue South**, stated that he has enjoyed using the moorings in other cities, and voiced approval for the ordinance. **Joe Biasella, 860 12<sup>th</sup> Avenue South**, a Naples Bay Project Committee member, recommended this ordinance saying that although the mooring balls are working well, this would give the harbormaster the authority to take any action necessary to manage them. He further recommended adding four additional mooring balls on the south side of the Naples Sailing and Yacht Club. He clarified that the anchors consists of diamond shaped 2,000 lb. concrete blocks, and that each mooring could accommodate a 46-foot boat. He added they are placed at a depth of between eight and 16 feet of water, and are inspected every six months.

Dr. Staiger stated the intent of the ordinance is to keep the moorings transient, and therefore bar the permanent storage of boats. He added that Council could later establish additional anchorage between the Coast Guard Auxiliary and Naples Landing Park by amending the ordinance. In a discussion of the mooring rental fee, Dr. Staiger stated that Council would later consider a resolution setting the rate. City Manager Kevin Rambosk noted that the average slips at the City Dock cost \$350.00 per month, or \$12.00 per day, depending upon the size of the boat. Mr. MacIlvaine recommended that there be a correlation between City Dock rates and the mooring ball fees.

**Public Input:** 9:38 a.m. **James Boula, 702 Broad Avenue**, a leaseholder at the City Dock, voiced concern in regard to the anchorage on the south side of the Naples Sailing and Yacht Club dock extension. He urged the City to fill that area with moorings in an effort to control it and to prohibit anchorage. Mr. Boula agreed that mooring fees should not exceed \$12.00 per day.

Council Member Galleberg stated that since the intent of the ordinance is that every mooring would be transient, this should be clearly indicated in the ordinance. Dr. Staiger clarified that the

ordinance applies to all the sovereign submerged land between the City Dock and the Naples Sailing and Yacht Club, and to the Crayton Cove area south of the yacht club. The only areas not covered are dedicated channels and privately owned submerged land. Waterfront Operations Supervisor Robert Egan stated that when the boaters rent the mooring balls, they would be apprised of all the regulations, including the 14-day maximum stay. Dr. Staiger explained that enforcement would consist of a verbal warning then a notice of violation and, lastly, a notice to appear in court to terminate the mooring agreement. Mr. Egan stated that staff also has the ability to tow a vessel from its mooring after a 24-hour notice; however, he stated this is not specifically indicated in the ordinance. Council also briefly discussed significantly increasing the daily dockage fee; therefore, City Attorney Kenneth Cuyler recommended incorporating these enforcement mechanisms into the ordinance. He stated that these changes would not normally require two readings because they are not substantive, but nevertheless recommended continuing this ordinance to accommodate them.

**MOTION by Herms to CONTINUE TO THE MAY 3<sup>RD</sup> REGULAR MEETING ALTERING THE PENALTY SYSTEM TO INCLUDE THE TOWING OF BOATS, ELIMINATING THE REFERENCE TO THE \$5.00 PER DAY MOORING FEE, AND CLARIFYING THAT ALL MOORINGS SHALL BE TRANSIENT;** *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).*

**ORDINANCE 00-8816.....ITEM 9**  
**AN ORDINANCE AMENDING SECTION 50-337, REQUIREMENTS FOR RETIREMENT, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY PROVIDING FOR THE ADDITION OF TWENTY-FIVE (25) YEARS OF SERVICE AS ELIGIBILITY FOR NORMAL RETIREMENT BENEFITS; ADDING SUBSECTION (9) TO SECTION 50-337 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO PROVIDE FOR A TWO AND ONE-QUARTER PERCENT (2.25%) ANNUAL COST OF LIVING INCREASE UPON THE ATTAINMENT OF AGE FIFTY-FIVE (55); PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:51 a.m.).

**Public Input:** None. (9:52 a.m.).

**MOTION by Herms to ADOPT ORDINANCE 00-8816;** *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).*

**ORDINANCE (First Reading) .....ITEM 10**  
**AN ORDINANCE AMENDING SECTION 110-39, "HEIGHT REQUIREMENTS, EXCEPTIONS THERETO" OF THE CODE OF ORDINANCES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:53 a.m.). See Page 6.

**OPEN PUBLIC INPUT (9:53 a.m.) .....**

**George E. Williams, 1325 Seventh Street South,** congratulated Council on the recent repeal of Hamilton Harbor; however, he indicated that he could not finish his intended statements in the allotted time period. He therefore stated that he believes that Council owes its primary allegiance to City residents, and urged that it would, in all matters, consider their vested rights that zoning is designed to protect, especially in regards to maintaining the present character of the City.

(Item 10 – Continued from Page 5.) .....  
**Public Input:** 9:58 a.m. **Russ Reddick, 4031 Gulf Shore Boulevard North**, stated that removing the height exemptions would, in all zones, prohibit chimneys, roof insulation, elevators and mechanical equipment on three story buildings. He therefore requested that Council remove the exemptions for the commercial districts only, and explained the necessity for a 5-foot roof exemption in residential districts.

Vice Mayor Herms suggested that the solution might be to review the single and multi-family zoning districts, and allow specific exemptions. Planner Ann Walker cautioned that multi-family districts would be harmed without these exemptions, noting that the buildings could not be floodproofed. She clarified for Mr. Reddick that the proposal under consideration would be to require a variance in single-family districts for any extension that exceeds the maximum height. Mr. Reddick voiced dismay at this, and suggested allowing staff some latitude in making decisions. Ms. Walker therefore suggested changing the proposal to allow five-foot height exemptions in residential districts for particular specified items. She indicated she was unconcerned about the actual elimination of Section A as long as both multi-family and single family were addressed, and stated that staff could draft a revision to Section B (applicable to single family residence districts) to indicate that it applies to all residential districts. Mayor MacKenzie therefore recommended continuance to facilitate the Planning Advisory Board (PAB) review process. Council discussed the allowance of various height exemptions. Vice Mayor Herms made a motion to approve the ordinance with amendments to Section B; however, Ms. Walker confirmed that the only allowed action at this time is the repeal of Section A. Mayor MacKenzie stated that proceeding in this manner is haphazard, and urged continuance to allow staff time to prepare appropriate revisions. Mr. Herms however stressed the importance of eliminating Section A because it imposes absolutely no maximum height requirements for certain embellishments. City Attorney Kenneth Cuyler however advised continuing First Reading, and City Manager Rambosk confirmed that the PAB would have to review the proposed new language. Mr. Herms amended his motion to approve the ordinance as presented, noting that he would make a secondary motion that addresses residential district issues. Although City Manager Rambosk indicated that staff has not issued any commercial building permits based on the exemptions specified in Section A, Mr. Herms predicted that any challenges would be upheld in the event of litigation. City Manager Rambosk suggested that Council review at a future workshop the proposed language prior to PAB review.

**MOTION by Herms to APPROVE ORDINANCE AT FIRST READING;**  
**seconded by MacIlvaine and carried 4-3, all members present and voting**  
**(Taylor-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Galleberg-no,**  
**Wiseman-no, MacKenzie-no).**

**MOTION by Herms to INSTRUCT STAFF TO PROCEED WITH**  
**REVISIONS IN RESIDENTIAL DISTRICTS ADDING A SECTION**  
**RELATIVE TO MAXIMUM HEIGHT TO ALLOW A 5-FOOT**  
**EXEMPTION FOR ELEVATORS, HVAC, INSULATION, AND**  
**CHIMNEYS, AND TO PRESENT THEM AT A COUNCIL WORKSHOP**  
**PRIOR TO PAB REVIEW;** **seconded by Tarrant and carried 4-3, all**  
**members present and voting (Tarrant-yes, Galleberg-no, Herms-yes,**  
**Wiseman-no, Taylor-yes, MacIlvaine-yes, MacKenzie-no).**

Council discussed the proposed language in Section B that would serve to change current exemptions into variances. Council Member Galleberg voiced concern that every chimney extending five feet in single-family residential districts would require a variance. City Attorney

Cuyler clarified that an exemption is a variance as a matter of right, and would not require Council review. It was the consensus of Council that anything actually exceeding the five-foot exemption would require a variance.

.....ITEM 11  
**CONSIDER REJECTING SINGLE BID RECEIVED, WAIVE FURTHER COMPETITIVE BIDS, AND ISSUE A PURCHASE ORDER FOR A 23-FOOT POLICE BOAT \ VENDOR: ROYAL PALM MARINA, ENGLEWOOD, FLORIDA \ PRICE \$28,281.00 \ FUNDING: CIP #00H02.** (10:56 a.m.) Acting Police Chief Steven Moore provided background information and noted that after conducting studies, the Marine Unit officers indicated they preferred vessels 23 feet to 25 feet in length with closed transoms to render them more sea-worthy in bad weather. He added that the City received only one bid, which was for a Boston Whaler at a cost of \$33,364.00. Staff then inquired as to what type of patrol boats other agencies in the County had purchased, and discovered the Sheriff's Department uses as the mainstay of its fleet a number of Parker Industries vessels. After a thorough review, the Marine Unit found that they had met their required specifications. He clarified that the 23-foot model has a single engine, and the 25-foot model is recommended for a twin engine. Acting Police Chief Moore stated that the Marine Unit ultimately chose the 23-foot model, because they believed it would serve the purpose of daily operations as well as any emergency situations that arise.

**Public Input:** 11:04 a.m. **Joe Biasella, 860 12<sup>th</sup> Avenue South**, stated that with no intent to be critical of the Police & Emergency Services Department, he believes that the Marine Unit needs better equipment than what it currently has, because the City's area of the beach is among the roughest due to its shallow areas. Mr. Biasella therefore advocated purchasing the 25-foot boat with a twin engine to ensure safety at sea. He also recommended purchasing a better fireboat. Council Member Tarrant suggested asking the City Manager to review the current marine fire equipment status completely, and to present Council with recommendations.

**It is noted for the record that Council Member Galleberg left the meeting at 11:18 a.m.**

Acting Police Chief Moore stated that cost was not an issue, as the Finance Department had affirmed adequate funds available for the larger model. Council Member MacIlvaine suggested that Council rely upon the expertise of the staff using the boat, and therefore endorsed the current proposal. Noting significant budget surpluses, Vice Mayor Herms stressed his support for the purchases of any needed equipment. Acting Police Chief Moore confirmed that the fleet normally contains four vessels, but currently has only three, two of which are 25-foot vessels and the other a 21-foot vessel. He also briefly discussed mono and cat hulls, and stated that although the County has reported positive results using Parker Industries vessels in as high as five-foot seas, each Marine Unit officer would have to make a determination with regard to the ability to safely respond to each offshore emergency situation.

***MOTION by MacIlvaine to APPROVE ITEM 11; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

City Manager Kevin Rambosk noted he would review the status of current fireboat equipment.

**It is noted for the record that Council Member Galleberg returned to the meeting at 11:23 a.m. Recess: 11:23 a.m. to 11:39 a.m. All Council Members except Council Member Taylor were present when the meeting reconvened.**

.....ITEM 13  
**CONSIDER APPROVAL OF ADDENDUM #4 TO THE CONTRACT WITH ARCHITECTURAL NETWORK, INC. FOR THE CAMBIER PARK BANDSHELL RENOVATION AND EXPANSION DESIGN, IN THE AMOUNT OF \$58,917.00.** (11:39 a.m.) Assistant City Manager William Harrison stated that Council had previously approved the

final design of the bandshell expansion and renovation, as well as the newly redesigned roof structure. He added that although this contract would allow for construction drawings of the new roof, staff would not move forward with it until after community fundraising efforts. Mr. Harrison also indicated that he hoped both phases of the project could be performed concurrently so that the facility would be ready prior to the start of the next concert season.

**Public Input:** None. (11:42 a.m.)

**MOTION by Herms to APPROVE ITEM 13; seconded by MacIlvaine and carried 6-0, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**It is noted for the record that Council Member Taylor returned to the meeting at 11:42 a.m.**

.....**ITEM 14**  
**CONSIDER WAIVING COMPETITIVE BIDDING FOR PURCHASE OF A FIRE SAFETY HOUSE TRAILER / VENDOR: MOBILE CONCEPTS BY SCOTTY / COST: \$36,960.00 / FUNDING: PRIVATE DONATIONS.** (11:42 a.m.) Acting Police Chief Steven Moore explained that the fire safety house trailer would be used mainly for school presentations and community events. He explained that the trailer is a full training facility fabricated to resemble an actual house with separate rooms, and contains a smoke machine and a heating element in order to teach children appropriate safety procedures. Acting Police Chief Moore stated that it also would contain police safety features in order to produce fingerprints that would then be turned over to the children's parents. Acting Police Chief Moore stated that Allen Systems Group, Inc., has fully funded the trailer, but that the Fire Prevention Bureau would seek additional donors to accommodate graphic detailing and light systems, as well as a truck to tow the trailer. Council Member Tarrant expressed appreciation to Allen Systems for its generosity.

**Public Input:** None. (11:48 a.m.)

**MOTION by Herms to APPROVE ITEM 14; 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).**

**RESOLUTION 00-8817.....ITEM 15-a**  
**A RESOLUTION APPOINTING ONE CITY RESIDENT TO THE BOARD OF APPEALS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:48 a.m.).

**Public Input:** None. (11:48 a.m.)

**MOTION by Wiseman to APPROVE RESOLUTION 00-8817 (TO APPOINT ROBERT GEROY); seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Vice Mayor Herms questioned whether the dates of his term would correlate with dates established by Code. City Clerk Tara Norman indicated this was unlikely because when Council had revised advisory board ordinances, it had set a start date so that the terms would stagger; however, because of vacancies and other occurrences, those dates are no longer applicable. Mr. Herms therefore recommended researching the issue, noting that an ordinance relative to the Planning Advisory Board mandates a May 1<sup>st</sup> start date for its terms of office.

**RESOLUTION (not enacted).....ITEM 15-b**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE BEACH RENOURISHMENT/MAINTENANCE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** (11:55 a.m.) Council Member Taylor indicated that she would be willing to allow Council Member Galleberg to fill in for her on certain occasions, if he did not want to



replace her on the committee. Mr. Galleberg stated he would prefer to assume the responsibility rather than sporadically substitute, noting the importance of continuity. Vice Mayor Herms voiced concern as to Mr. Galleberg's level of knowledge regarding issues affecting the beach, such as the quality of sand as well as the pending rock removal at Vanderbilt Beach. Council Member Taylor then stated that although she had a scheduling conflict, she believed she could resolve it and continue serving.

**Public Input:** None. (11:58 a.m.)

**MOTION by Herms that COUNCIL MEMBER TAYLOR WOULD CONTINUE TO SERVE IN THIS CAPACITY AND EXPRESSING APPRECIATION TO COUNCIL MEMBER GALLEBERG; 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 16  
**CONSIDER A PROPOSAL FROM SEMPER DEVELOPMENT, LTD. REGARDING THE DEVELOPMENT OF A WALGREENS STORE ON THE NEWLY ACQUIRED FLEISCHMANN PROPERTY.** (11:58 a.m.) Assistant City Manager William Harrison stated that the City was presented with a \$4 million offer for a portion of the newly acquired Fleischmann property, which is now being presented to Council for direction. He then read the correspondence from Semper Development of Naples, Inc., into the record. (See Attachment 2.) Mr. Harrison confirmed that the City now owns the tract, which it purchased through bond proceeds, but that staff had not as yet reviewed this offer with bond counsel. Vice Mayor Herms however stated that the residents had voted to use this property for the preservation of green space only, and recommended sustaining this position. Semper Development of Naples representative Louis Brenner stated that his company developed this idea prior to the City's acquisition, but could not negotiate a deal with the Fleischmann family. He recommended conferring with bond counsel about this issue, indicating that it would substantially reduce the cost of this property to the City. He said the project would use 60,000 square feet or approximately 1 and 1/3 acres of the northerly portion near the Coastland Mall entrance. Noting the environmentally sensitive area in the northeast portion of the parcel, Mayor MacKenzie questioned whether the offer could be applied to the southern portion. Mr. Brenner however said that Natural Resources Manager Jon Staiger had recommended the northern portion explaining that the southern area does not have adequate light. Council Member Taylor voiced appreciation for the offer, but stressed that she hoped Council would agree that the City's green space is not for sale at any price. Council Member MacIlvaine agreed, urging adherence to the will of the voters.

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

**MOTION by Herms to NOT CONSIDER SALE; 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 17  
**DISCUSSION REGARDING A MOTION TO DISMISS RELATIVE TO THE NAPLES LANDING PARK COMMERCIAL LOADING DOCK.** (12:12 p.m.) Charter Club Resort President David Trowbridge stated that he recently discovered that the City's attorney, Steven Hartsell, had filed a motion to dismiss, a copy of which is contained in the file for this meeting in the City Clerk's office. He said that he as well as several Council Members had been unaware that he would take this action. Mr. Trowbridge added that the Hamilton Harbor issue affects the litigation, because if its proposed commercial loading dock facility were built, there would be no

need for one at Naples Landing. He further explained that approximately one year ago, both parties had agreed to hold the litigation in abeyance until further notice.

City Attorney Kenneth Cuyler explained that normally Council would not have to give direction to its attorney to file such a motion, because it is done in the normal course of defense. He added that Mr. Hartsell is basically attempting to dismiss a lawsuit against the City, which is his function, but that Council as his client may give other direction. He then clarified that this motion is proper, saying that a defendant may, according to law, file a motion to dismiss due to the lack of prosecution. City Attorney Cuyler confirmed there would be a hearing in which Mr. Hartsell and the plaintiffs would argue their positions. Council Member Tarrant stated that Mr. Hartsell should have first conferred with Council, indicating he did not approve of his action. Although conceding there was no written agreement, Vice Mayor Herms stated that he also believed that all parties had agreed to hold the matter in abeyance.

**Public Input:** None. (12:22 p.m.)

**MOTION by Herms to INSTRUCT MR. HARTSELL TO WITHDRAW MOTION TO DISMISS; A STIPULATION WILL BE DRAFTED TO HOLD ALL CASES RELATING TO THIS MATTER IN ABEYANCE UNTIL OTHERWISE DIRECTED BY COUNCIL; seconded by Tarrant and unanimously carried, all members present and voting (Wiseman-yes, Tarrant-yes, Taylor-yes, Galleberg-yes, Herms-yes, MacIlvaine-yes, MacKenzie-yes).**

City Attorney Cuyler confirmed this action would not affect the merits of the case.

At this point in the meeting, Council agreed to hear Open Public Input, recess the meeting, conduct the Community Redevelopment Agency meeting, and then reconvene the Council Meeting.

**OPEN PUBLIC INPUT (12:22 p.m.).....**

**Bill Boggess, 1100 Eighth Avenue South**, distributed to Council three bags of beach material he obtained from various locations. He stated that the County specifications do not meet the minimum requirements for this incremental sand or for the stockpiling of emergency sand, and that the County is presently in conflict with the Department of Environmental Protection (DEP) over the placement of additional such material on the beach. Mr. Boggess added that Dr. Michael Stephen of Coastal Engineering had assured a previous Council of the quality of the sand. Mr. Boggess then detailed the many screenings the County had performed; however, it later found rock 165 feet seaward of the mean high tide line, where he said the County Commissioners had ordered that the rock be buried and covered. He added that the material is still washing in, and displayed several large rocks he had found. Mr. Boggess requested that the Council draft a letter to State officials supporting its investigation and stressing that the City wants nothing less than state-approved beach quality sand.

Council Member Tarrant voiced support for Mr. Boggess' request. He added that aside from the buried rocks, the City is now receiving an inferior quality of sand, and questioned whether retaining a City inspector to examine it would be appropriate. Mr. Boggess suggested using Natural Resources Manager Jon Staiger for this function. Mr. Tarrant however stated he could not prevent the placement of rocks on the beach, and voiced dismay that other governmental bodies and agencies apparently control the quality of sand on Naples Beach.

Vice Mayor Herms provided a brief history of the problem, explaining that when the County discovered it had rocks on the beach from 3rd to 15<sup>th</sup> Avenue South, it hired a contractor to dig up small parts of this area, which proved to be ineffective. The City got involved in 1998 and hired a contractor to rid the beach of all rocks. Coastal Engineering Consultants, the company that placed the rocks on the beach, told the contractor where to dig; however, whole sections of beach were not addressed and the rocks are washing back to shore. He added that the inland sand samples he has seen are not representative of the material the contractor had previously shown him, and apologized to the Naples Beach Club for its quality of sand. Mr. Herms then explained that the inland sand is inferior because it is not screened or washed, and stated that he had asked staff to obtain samples from the various pits for Council review. He urged identifying an inland sand source that guarantees a high quality of material, and demanding that this sand be placed on the beach.

*Direction to staff to draft a letter to State officials supporting its investigation and agreeing that the City is in support of maintaining the original specifications as outlined in the original contract (copy to County Commission).*

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**Recess 12:59 p.m. to 1:35 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.**

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**CORRESPONDENCE & COMMUNICATIONS (1:35 p.m.) .....**

Council briefly discussed establishing a date to interview for an interim City Attorney; Council confirmed that this firm would also be eligible for the permanent position. City Attorney Kenneth Cuyler provided clarification on Council's contract with Roetzel & Andress and indicated his last day would be April 28<sup>th</sup>. **Motion (Herms/MacIlvaine/6-1, Galleberg dissenting) for Council to accept requests for interviews for candidate firms to fill the City Attorney position on a temporary basis up until 4/26, schedule them 4/27, and interview attorneys 4/28 (4 or fewer beginning in the afternoon, or 5 or more beginning in the morning).** / Video services concept to be presented at an upcoming meeting; consensus of Council to allow City Manager to make emergency purchase for digital cameras. / City Manager researching parking complaints registered by Oyster Bay Association. / Consensus of Council to draft correspondence to South Florida Water Management District affirming Council's position that the lakes at Calusa Bay should be filled or the City wells relocated. / Concern expressed by Council Member Tarrant regarding abandoned underground tanks of bottled gas / **Motion (Herms/MacIlvaine/4-3, Galleberg, Wiseman, MacKenzie dissenting) to submit charter amendment ordinances for PAB review between May 5<sup>th</sup> and May 10<sup>th</sup> and to conduct First Reading on May 17<sup>th</sup> and Second Reading (with corresponding resolutions for placement on the ballot) on May 24th. / Motion (MacIlvaine/Herms/7-0) to continue Item 18 (Discussion of Workshop Issues) until the May 1<sup>st</sup> Workshop Meeting.** / City Attorney Cuyler bid Council farewell and good wishes.

**ADJOURN** (2:16 p.m.) .....

\_\_\_\_\_  
Bonnie R. MacKenzie, Mayor

\_\_\_\_\_  
Tara A. Norman, City Clerk

Prepared by:

\_\_\_\_\_  
Jessica R. Rosenberg, Recording Specialist

Minutes approved: 6/7/00

<b>FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS</b>	
LAST NAME FIRST NAME MIDDLE NAME <i>Herns Joseph</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Naples City Council</i>
MAILING ADDRESS <i>690 Bougainvillea Rd.</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Naples</i> COUNTY	NAME OF POLITICAL SUBDIVISION: <i>City of Naples</i>
DATE ON WHICH VOTE OCCURRED <i>April 17/2000</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE

#### WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

#### INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

##### ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

##### APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Joseph Heras, hereby disclose that on April 17, 2000

(a) A measure came or will come before my agency which (check one)

☒ inured to my special private gain; or

☐ inured to the special gain of \_\_\_\_\_, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows:

*I may use this Commercial car service*

Date Filed

April 17 2000

Signature

Joseph Heras

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.



The Honorable Bonnie MacKenzie  
Mayor  
City of Naples  
City Hall  
Naples, FL 34102

4-18-00

RE: Fleischmann Property

Dear Mayor MacKenzie,

Semper Development of Naples, Inc., is the Florida office of Semper Development, Ltd., a nationwide developer of retail stores for national tenants. Our client, Walgreens Co., has expressed a strong interest in having a free standing, approximately 14,000 square foot drug store near the Coastland Mall in Naples. Our company is one of the major developers for Walgreens stores across the country and, accordingly, they have asked us to assist them in this project.

We understand that the City of Naples has recently closed on the purchase of the Fleischmann property lying between US Hwy 41 North and 10<sup>th</sup> Street, and 14<sup>th</sup> and 17<sup>th</sup> Avenues in Naples for the sum of eight million dollars. We would propose to pay the City one-half that amount for the northerly half of the property, redevelop the far north end of the property and then donate the balance of the land back to the City of Naples for conservation purposes.

Since Semper only needs the northerly 240 feet on US 41 North for the development of a Walgreens store (see attached sketches), Semper would then donate the excess land it received in the purchase to the Naples Land Conservation Trust Fund. This parcel would be approximately the same size as the parcel for the store (250'-270') and could be further landscaped to buffer the natural areas of the remaining land for the perpetual use of the residents and visitors of the City.

The northerly end of the Fleischmann property is the least attractive from a natural setting point of view (abutting main entrance to Coastland Mall on the North and the Water

941-430-9299 ☎ 941-430-9298 fax

Semper Development of Naples, Inc. ☎ 5150 Tamiami Trail North, Suite 504 ☎ Naples, FL 34103



treatment facility on the East,) is the least sensitive environmentally (preserving the large scrub area in the center of the property) and has for many years been in use for commercial purposes (e.g., the Chamber of Commerce Building.)

With proper building design and appropriate buffering and landscaping, our proposal substantially reduces the cost of preserving the bulk of the Fleischmann property (approx. 8 acres) for use by the residents and visitors of Naples while at the same time, provides a necessary transitional buffer to the heavy commercial uses to the north and east. The amount of money which we are offering is considerably more than we could offer for a similar Walgreens site but is offset, in part, by the scarcity of sites on the North Trail and, of course, the charitable deduction for the excess land dedication.

We would be happy to prepare and furnish for your use further sketches, drawings, rendering or other visual aids that might be of assistance in your efforts to obtain the consent of the City council and the Citizens of Naples.

Please do not hesitate to contact us with questions, or further assistance at any time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Louis W. Brenner", written in a cursive style.

Louis W. Brenner  
President  
Semper Development of Naples, Inc.