



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – November 15, 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 R. MacKenzie, Mayor  
Joseph Herms, Vice Mayor  
Council Members:  
Gary Galleberg  
William MacIlvaine  
Fred Tarrant  
Penny Taylor  
Tamela Wiseman

**Also Present:**

Kevin Rambosk, City Manager  
Beverly Grady, City Attorney  
Ron Lee, Planning Director  
Jon Staiger, Natural Resources Manager  
Tara Norman, City Clerk  
William Harrison, Asst. City Manager  
Don Wirth, Community Services Director  
Dan Mercer, Public Works Director  
Virginia Neet, Deputy City Clerk  
Keeth Kipp, Utility/ Solid Waste Coord.  
Janet Mullin, Community Svs. Analyst  
Jessica Rosenberg, Recording Specialist  
Kelly Espinoza, Admin. Specialist  
Sunny Fore, Service Worker  
Arlene Guckenberger  
Betty Pennington

Father Richard Mueller  
Lani Overton  
Brett Moore  
John Passidomo  
Donald Pickworth  
Other interested citizens and visitors

**Media:**

Eric Staats, Naples Daily News

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

Father Richard Peter Mueller, St. Peter's Catholic Church.

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

Proclamation for the Retired Educators of Florida.

Pier reopening ceremony to be held at noon.

**SET AGENDA..... ITEM 4**

Item 18 – Roll-on/roll-off truck purchase.

**MOTION by Galleberg to ADD ITEM 18 TO THE AGENDA; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Item 19 – Florida Power & Light easement at the Naples Airport.

**MOTION by Galleberg to ADD ITEM 19 TO THE AGENDA; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Item 20 – Authorize City Manager to hire attorney for Code Enforcement Board case.

**MOTION by Galleberg to ADD ITEM 20 TO THE AGENDA; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Item 21 – Discussion of County buses and routing.

**MOTION by Galleberg to ADD ITEM 21 TO THE AGENDA; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Item 22 – Discussion of Wilkinson House (operations, management, and finance).

**MOTION by Galleberg to ADD ITEM 22 TO THE AGENDA; 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 23 – Discussion with City Attorney relative to Code of Ordinances Section 2-44.

**MOTION by Wiseman to ADD ITEM 23 TO THE AGENDA; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Item 24 – Naples Preserve: a) uses of the building; b) appoint new member; c) membership on Steering Committee.

**MOTION by Wiseman to ADD ITEM 24 TO THE AGENDA; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Item 25 – Discussion of the City Manager's pension (pursuant to previous meeting).

**MOTION by Wiseman to ADD ITEM 25 TO THE AGENDA; seconded by Galleberg 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 SET THE AGENDA WITH THE AFOREMENTIONED ADDITIONS, WITHDRAWING ITEM 11, AND CONTINUING ITEM 14 TO THE DECEMBER 6, 2000 REGULAR MEETING; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**CONSENT AGENDA**

**APPROVAL OF MINUTES.....ITEM 5-a**  
October 16, 2000 Special Workshop, October 16, 2000 Workshop, and October 25, 2000 Town Hall Meeting.

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

- (1) Salvation Army Red Kettle Kickoff (Sugden Plaza) 11/24/00.
- (2) Eckert Fine Art Gallery (12<sup>th</sup> Avenue South) 12/2/00.
- (3) Native American Demonstration (Seagate Elementary School) 12/11/00.
- (4) Naples Black Heritage Cultural Celebration (River Park) 2/3/01.
- (5) ~~22(b)~~ Falconer Jones III Wedding (Wilkinson House) 2/10/01.

**RESOLUTION 00-9017.....ITEM 5-c**

**A RESOLUTION AWARDED A BID RECEIVED BY ST. LUCIE COUNTY PURSUANT TO SECTION 2-355 (d) (3) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO WESCO TURF, INC. IN ORDER TO PURCHASE A TORO MOWING TRACTOR USING THE PRICES, TERMS AND CONDITIONS OF ST. LUCIE COUNTY'S BID; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 00-9018..... ITEM 5-d**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS FROM THE POLICE CONFISCATION TRUST FUNDS FOR A DONATION TO TRIAD IN THE AMOUNT OF \$1,500.00; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**MOTION by MacIlvaine to APPROVE CONSENT AGENDA EXCEPT ITEM 5-b(5) WHICH WAS RENUMBERED AS ITEM 22-b FOR INCLUSION WITH THE WILKINSON HOUSE DISCUSSION; seconded by Galleberg 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**

**RESOLUTION 00-9019.....ITEM 6**

**A RESOLUTION GRANTING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO REMODEL PART OF AN EXISTING SINGLE-FAMILY RESIDENCE AND TO CONSTRUCT A STRUCTURALLY INDEPENDENT LANDWARD ADDITION, SWIMMING POOL, GARAGE, DRIVEWAY, RETAINING WALLS, FILL PLACEMENT, BURIED REVETMENT, AND LANDSCAPING GULFWARD OF THE COASTAL CONSTRUCTION SETBACK LINE AT 2 GULF SHORE BOULEVARD SOUTH; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE. (9:27 a.m.) Title read by City Manager Kevin Rambosk during the discussion below. Mayor MacKenzie noted that this is a quasi-judicial proceeding. City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative. Mayor MacKenzie disclosed that she had reviewed recordings of the Planning Advisory Board (PAB) meeting and had viewed the property. The remaining members of Council registered no contact. Council Member Galleberg requested an overview of the City's coastal construction setback line (CCSL) policy.**

Natural Resources Manager Jon Staiger stated that CCSL variances are not true variances, but actually permits. Prior to establishing a City CCSL in 1974, only the State's coastal construction

control line existed. Dr. Staiger further explained that in 1989 the City had however adopted the State's control line which was as much as 700 feet inland, thereby requiring significantly more permitting activity. If staff finds that the criteria relative to preserving the beach and dune system and preventing erosion have been met, it recommends approval. Dr. Staiger further explained that as long as the proposed structure fits within the zoning ordinance, as it is in this case and of agenda Items 7 and 8, no actual variance is involved since certain activities are exempted from review such as interior remodeling, superficial architectural changes, routine dune maintenance, and landscaping. Staff permits garages and swimming pools, and Council retains review and approval of significant changes to habitable structures or new habitable structures, Dr. Staiger added, and further noted that the State also scrutinizes these activities through its own permitting process which dictates structure elevation in order to protect against storm surges.

In response to Council, Dr. Staiger stated that the State would permit no new structure seaward of the City's 1974 line which is measured from a State established line and which varies throughout the City. In response to Mayor MacKenzie, Dr. Staiger indicated that the height to the top of the roof would be 30 feet from the top of the slab, or approximately 48 feet; he provided further information regarding various features of the house. Additionally, Dr. Staiger noted that staff had determined that all relevant criteria have been met and recommends approval.

**Public Input:** None. (9:54 a.m.)

**MOTION by Wiseman to APPROVE RESOLUTION 00-9019; 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 (Continued) .....ITEM 7**  
**A RESOLUTION GRANTING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO DEMOLISH AN EXISTING TRANSIENT LODGING FACILITY AND TO CONSTRUCT A NEW MULTIFAMILY RESIDENTIAL CONDOMINIUM OVER PARKING, A SWIMMING POOL, A DRIVEWAY, AND LANDSCAPING GULFWARD OF THE COASTAL CONSTRUCTION SETBACK LINE AT 1801 GULF SHORE BOULEVARD NORTH; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.** (9:54 a.m.) Title read by City Manager Kevin Rambosk during the discussion below. City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative. Mayor MacKenzie disclosed that she had viewed the property and had conversations with several neighbors regarding the height and appearance of the structure; Vice Mayor Herms and Council Members MacIlvaine and Tarrant each disclosed a conversation with a neighbor; Council Member Taylor said she had attended a neighborhood informational meeting concerning the structure's height, and Council Members Galleberg and Wiseman registered no contact.

Natural Resources Manager Jon Staiger stated that the proposal is to demolish the existing two-story Tides Inn Motel and construct a nine-story building. Although the existing structure occupies approximately 80% of the lot width, Dr. Staiger explained, the State requires new structures to have sufficient area to allow a storm surge to pass safely without causing erosion to neighboring properties and therefore favors projects that encompass less than 60% of the total site width. This project complies with that criterion, he said. He then provided information on the existing and proposed elevations and explained that the petitioner would begin the lowest habitable floor at 19.75 feet and with the 75 feet allowed by the Code and an additional 12 feet also allowed due to the use of underground parking, the proposed building height of 106.75 feet is therefore permitted.

Vice Mayor Herms however said that he calculated the total to be approximately 98 feet, but Planning Director Ron Lee clarified that the 106.25 figure is from NGVD, which is zero, but that the height from existing grade would be 98.25 feet. Mr. Herms however said that the City typically starts measurement at ground level, and that neighbors mistakenly believe the structure would be almost 107 feet tall. Dr. Staiger compared the building heights of neighboring properties, and Mayor MacKenzie suggested that in the future Council consider eliminating the extra 12 feet allowed for underground parking. In response to Council, Dr. Staiger stated that the structure was not expected to impact neighbors' Gulf views. Mr. Lee provided further clarification on permitted building heights noting that a flat roof is allowed to have an additional seven feet for embellishments. Dr. Staiger however noted that the petitioner had earlier that day submitted an elevation of a pitched roof.

Petitioner's agent Brett Moore stated that the flat roof cross section had been submitted to demonstrate compliance with zoning requirements, but that the final plans had not as yet been provided. Vice Mayor Herms said that the neighbors deserve to know the actual building height, and that he would not approve without a definitive answer. Mr. Moore stated that the submission to staff thus far depicts a height of 107 feet to the top of a flat roof from NGVD. Although saying he had determined this to be 98 feet from the ground, Mr. Herms voiced concern it may now actually be higher. Council Member MacIlvaine questioned how high the roof is above the top of the slab. Mr. Moore stated he was under the impression that the building is in compliance with the zoning, although in his capacity he was prepared to address only the CCSL issues. Council Member Galleberg cautioned that Council may in fact have inadequate information from which to make the required determination that the project actually conforms to all zoning requirements. City Attorney Beverly Grady confirmed that the petitioner is responsible for providing information which demonstrates compliance with all zoning requirements.

Mr. Moore noted that when the State provides confirmation of the structure elevation, the petitioner would then submit the final plans for building permit review, and stressed that the petitioner fully intends to comply with zoning regulations. In response to Council Member Tarrant, he explained that there would be 15 building units but that he was uncertain whether any would be used for transient lodging.

**Public Input:** (10:39 a.m.) **Franklin Starks, 1717 Gulf Shore Boulevard, North**, President of the Gulf Shore Property Owners Association, urged that Council not approve until neighboring property owners have had the opportunity to review final the plans and sketches. He also said that the preliminary plans indicate that additional on-site parking is necessary. Mr. Starks also suggested amending Code to delete the additional 12 feet allowed for parking in order to lower building heights. Vice Mayor Herms calculated that the height may actually be 121 feet to the peak of the roof, which would not comply with Code. **James Munro, 1851 Gulf Shore Boulevard, North** representing LaTour Rivage, abutting the Tides Inn Motel to the north, requested that Council delay its decision for 60 days to allow for the return of seasonal residents. **Chris Loop, 1785 Gulf Shore Boulevard North**, representing the Gulf Shore Colony Club, directly south of the Tides Inn Motel, urged that residents review the final plans. He added that board members of the Mansion House have also expressed concern regarding the project, and requested that Council delay its decision until it receives answers to any unresolved questions. Council Member Wiseman disclosed that she is the Mansion House attorney, but that no one had approached her regarding this issue. City Attorney Grady explained that if this decision produced no financial gain or loss, Council Member Wiseman would be obligated to vote. Mrs. Wiseman said she would further investigate the conflict issue but would not feel constrained from voting on continuance. **John Passidomo, 821 Fifth Avenue South**, representing the Tides Inn Acquisition Company, stated that his client has a contract to purchase this

property and that upon Council approval, would begin the Department of Environmental Protection (DEP) permitting process, and submit an application for a building permit. He said the proposal is to convert the 36 existing motel units to 15 luxury condominiums, and that his client would fully abide by the building and zoning Code. In response to Council Member Tarrant, he confirmed there would be no transient lodging facilities. He then stated that the standards for approval as defined in the Code include a finding that the proposed construction line shall not adversely affect or alter the natural state of the beach area protected by the present setback line; that it shall not accelerate, increase, or aggravate natural erosion, that it shall not endanger upland properties, that beach and sand dune erosion shall be controlled, and that it shall not adversely affect public health, safety, and welfare. Attorney Passidomo then asked Dr. Staiger whether he had found by clear and convincing evidence that the proposed construction line meets each of the aforementioned criteria; Dr. Staiger responded in the affirmative. Council Member Tarrant suggested that a parking overflow may actually be a matter of public safety and welfare; Attorney Passidomo stated that there will be adequate parking on site both to comply with Code and to meet the requirements of the market. Mayor MacKenzie said that although this appears to be a high quality project, the petitioner must nevertheless provide Council with sufficient information to allow it to make a reasoned decision on compliance. Council Member MacIlvaine pointed out that Council was precluded from approving future actions; Attorney Passidomo, however, asked that Council simply apply the Code fairly, and that the evidence presented clearly favors approval of the petition. City Attorney Grady took the position that it is fair for Council to have a thorough understanding of the lot coverage and height so that it may determine whether the application complies with the City's building and zoning requirements. Attorney Passidomo however countered that the only consideration at that time was the impact on beach erosion and the dune system and that the site plan submitted to staff addresses the other issues.

City Manager Rambosk suggested continuing the item. Vice Mayor Herms voiced concern that granting approval to the resolution would also confer approval to the drawings. City Attorney Grady recommended not conditioning approval on a future General Development and Site Plan (GDSP), and stated that Council should act on this application when it has complete information. Council Member Tarrant made a motion to continue for 60 days; however, Mayor MacKenzie cautioned that this may be too long a delay; he subsequently withdrew his motion. Vice Mayor Herms then proffered a motion to continue for 30 days; however, further discussion ensued. Attorney Passidomo said he assumed Council would review the drawings to be submitted for compliance with Code. Council Member Galleberg stated that although detailed building plans will not be needed, there are issues requiring clarification. Vice Mayor Herms urged that the submittal clearly show compliance with building height requirements in this zoning district.

**MOTION by Herms to CONTINUE ITEM 7 TO THE 12/6/00 REGULAR MEETING AT 9:30 a.m.; 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).**

Council Member Wiseman said that should one of her Mansion House clients take an official position relative to this project, she would abstain from voting.

**RESOLUTION 00-9020.....ITEM 8**  
**A RESOLUTION GRANTING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE, A SWIMMING POOL AND POOL DECK, FILL PLACEMENT, AND LANDSCAPING GULFWARD OF THE COASTAL CONSTRUCTION SETBACK LINE AT 649 GULF SHORE BOULEVARD NORTH; PROVIDING FINDINGS. AND PROVIDING AN EFFECTIVE DATE. Title read by City**

Manager Kevin Rambosk (11:35 a.m.). City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative. Mayor MacKenzie disclosed that she had viewed the property.

Natural Resources Manager Jon Staiger stated that this petition is for a property in the Vista del Mar subdivision, and that the proposal is to demolish the house currently on Lot 4 and to construct a new one in its place with a pool at grade in the area between the house and the lot line. In response to Council, petitioner's agent Brett Moore explained that the height to the peak of the roof would be 49.6 feet, and that the first floor is not habitable. Dr. Staiger noted that the State does allow a garage and an entryway to the habitable floor in that area, and Mr. Moore affirmed there would be breakaway walls. Dr. Staiger further stated that the beach access easement is solely for the four lots, and that the public access is at North Lake Drive and Sixth Avenue North. Vice Mayor Herms received confirmation that the petition meets all zoning requirements.

**Public Input:** None. (11:54 a.m.)

***MOTION by Herms to APPROVE RESOLUTION 00-9020; seconded by Tarrant and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

Council Member MacIlvaine voiced concern relative to hurricane safety; Dr. Staiger however said that the Building Department scrutinizes building permits to ensure that these walls are, in fact, breakaway.

Council briefly discussed the order it would consider the remaining agenda items. Council Member Wiseman recommended that Council consider the Wilkinson House discussion (Item 22) after those items with registered public speakers because of the attorney present which the City is paying on an hourly basis.

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**RESOLUTION (Continued ).....ITEM 9-a  
A RESOLUTION APPROVING INSTALLATION OF A WEATHER SENSOR AND  
LIGHTNING DETECTOR UNIT ON THE NAPLES PIER; AND PROVIDING AN  
EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:55 a.m.).

**RESOLUTION (Continued) .....ITEM 9-b  
A RESOLUTION APPROVING INSTALLATION OF A WEBSITE-LINKED TELEVISION  
CAMERA ON THE NAPLES PIER; AND PROVIDING AN EFFECTIVE DATE.** Title read by  
City Manager Kevin Rambosk (11:55 a.m.).

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**It is noted for the record that Items 9-a and 9-b were considered concurrently.**

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Mayor MacKenzie expressed reservations that the resolutions did not provide for any conditions or limitations. Council Member MacIlvaine also noted the use of public property for private purposes, and that the City should therefore receive some form of compensation. Council Member Galleberg said that installations such as these should have a true public or civic purpose, and therefore suggested linking the weather sensor to Police & Emergency Services and the camera to the City's television channel.

Natural Resources Manager Jon Staiger detailed the components of the weather sensor/lightning detector, and noted that it can register lightning strikes as far as 15 miles away. He also addressed the possibility of integrating weather data or the website-linked television camera with the City's web site. Council Member Tarrant questioned whether the City actually needs advertisement, and pointed out that simply hearing thunder should be an adequate incentive to vacate the fishing pier. Council Member Wiseman voiced concern relative to liability in case of equipment malfunction; Dr. Staiger said that although the lightning detector cannot guarantee safety, it may nevertheless benefit pier visitors and fishermen. Despite potential benefits, Mayor MacKenzie said she could not support

either request. Council Member Taylor also expressed concern about privacy issues of a web camera that would be unknown to pier visitors; however, Council Member Galleberg suggested continuance in order to obtain additional information. Council Member MacIlvaine requested definitive information on advantages to the City and urged that the City be relieved of any cost. Vice Mayor Herms pointed out that the weather sensor/lightning detector could be valuable to the City, and suggested it be connected to City Hall or the emergency management center. He added that he would not, however, support the television camera. Council Member Wiseman said she believed that these items would look out of place on the pier as the City's signature landmark and suggested placing the weather sensor/lighting detector at another City facility.

**Public Input:** None. (12:15 p.m.)

**MOTION by Galleberg to CONTINUE ITEMS 9-a AND 9-b TO THE 12/6/00 REGULAR MEETING OR UNTIL SUCH TIME AS FULL INFORMATION IS AVAILABLE; seconded by MacIlvaine and carried 6-1, all members present and voting (Wiseman-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-no, Galleberg-yes, MacKenzie-yes).**

**Recess 12:15 p.m. to 1:38 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

**RESOLUTION 00-9021.....ITEM 10**  
**A RESOLUTION AMENDING THE COASTLAND CENTER DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER APPROVED THROUGH RESOLUTION NO. 92-6809, AS AMENDED BY RESOLUTION NO. 93-6882 AND RESOLUTION NO. 94-7254, BY EXTENDING THE BUILDOUT DATE FOR THE DEVELOPMENT TO OCTOBER 31, 2002; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (1:38 p.m.). Mayor MacKenzie noted that this is a quasi-judicial proceeding and disclosed that she had spoken briefly with an agent for the petitioner, in person and by telephone, and had visited the property; Council Member Galleberg said he had received a voice message from petitioner's agent Attorney Donald Pickworth but was unable to reach him; Council Members Taylor and Tarrant each said they had had a telephone conversation with Attorney Pickworth; Council Member Wiseman said she had spoken to Attorney Pickworth on the telephone and had visited the property, and Council Member MacIlvaine and Vice Mayor Herms disclosed no contact with any of the parties. City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative.

Coastland Center representative Attorney Pickworth affirmed that he had filed an application to extend the buildout period in the Development of Regional Impact (DRI) order for two years, from October 31, 2000 to October 31, 2002. He added that the mall is approved for 995,000 gross leasable square feet, and that 933,918 square feet had been built to date; this extension would allow the additional 61,082 square feet to be constructed, although no particular tenant or building program had yet been identified. Council Member Galleberg made a motion to approve seconded by Council Member Wiseman; however, further discussion ensued.

In response to Vice Mayor Herms, Attorney Pickworth stated that he believed the maximum height allowed in the Planned Development (PD) is 44 feet. Mr. Herms therefore suggested amending the motion to specify a maximum height of 42 feet to comply with the commercial building height charter restriction. Planning Director Ron Lee explained that the 61,082 feet yet to be built must comply with the site plan accompanying the PD document and that Council must approve any modification of the site plan in excess of the 10% variation allowed by Code. Council Member Galleberg suggested addressing the height limitation upon receiving a proposal, but Vice Mayor Herms declined his support without this stipulation; Council Member MacIlvaine concurred.



Attorney Pickworth voiced concern regarding amending the development parameters in the PD at that time, although Vice Mayor Herms said that amending the resolution accordingly would avert potential future litigation. City Attorney Beverly Grady stated that it would be appropriate for the petitioner to recognize the new height limitation, which she affirmed would apply to the DRI, and suggested amended resolution language. Mr. Pickworth expressed willingness to comply with the terms of the City charter, and Mr. Galleberg amended his motion accordingly.

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

**MOTION by Galleberg to APPROVE RESOLUTION 00-9021 AS AMENDED TO ADD SECTION 1-b THAT ANY BUILDING PERMIT ISSUED AFTER 11/15/00 SHALL NOT EXCEED THE HEIGHT LIMITATION IN THE CHARTER, SEC. 14.1; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**It is noted for the record that Item 22-a and 22-b were discussed concurrently.**

.....**ITEM 22-a**  
**DISCUSSION OF WILKINSON HOUSE (OPERATIONS, MANAGEMENT, AND FINANCE)**

.....**ITEM 22-b**  
**FALCONER JONES III WEDDING (WILKINSON HOUSE) 2/10/01.** (1:57 p.m.) Bond attorney Jack McWilliams provided the following synopsis. In accordance with the City's decision to purchase the Wilkinson House property in 1998, Mr. McWilliams explained, City staff had contacted him relative to issuing a bond pursuant to a bank loan. Mr. McWilliams further stated that he had reviewed a draft of a request for proposal (RFP) to be sent to banks for the purpose of soliciting bids. He said he then prepared a bond ordinance authorizing issuance of the bond and pledging the proceeds of the public services tax thereto. Upon closing, Mr. McWilliams stated, he had rendered an opinion indicating that the bond had been lawfully issued and that the requirements for a tax-exempt status for a political body for a governmental purpose had been met. Mr. McWilliams added that both the Blomquist agreement and the licensing agreement with the Collier County Historical Society (CCHS) were unknown to him until just a few days before he had received a fax on November 2nd. Referring to his November 8<sup>th</sup> letter to the City (Attachment #1) he said he had reluctantly concluded that, because of the licensing agreement in particular, the bonds are actually private activity bonds with no attendant tax-exemption. As a result, interest on the bond must be included for federal income tax purposes in the gross income of the bank handling the issue.

In discussions with Council, Mr. McWilliams estimated that over \$130,000 in taxes, penalties, and interest must be remitted to NationsBank before January 1, 2001. He further explained that it is the CCHS's agreement in the licensing agreement to make matching payments of principle and interest to the City which makes the bond taxable. Assistant City Manager William Harrison concurred with Mr. McWilliams' explanations and opinions. He added that Mr. McWilliams had provided exemplary service over the years, and termed this present controversy a classic failure in communication. Mr. Harrison further stated that the First Reading of the bond issue had been ill-timed, having been placed on the same Council agenda as the approval of the agreement with the CCHS. He nevertheless emphasized that there was no failure on the part of Mr. McWilliams's who had performed his work as instructed. He and Mr. McWilliams briefly discussed the differences between the Wilkinson House bonds and bonds issued by the City for the Naples Community Hospital (NCH).

Mr. McWilliams said that the necessary action would be to notify the bank, determine the gross-up interest and penalties, and achieve a re-issuance of the bond; the City could also, however, pay the

debt. Council Member Taylor asked Mr. McWilliams to identify who should have conveyed to him the appropriate information; Mr. McWilliams said this was for him difficult to address, but that had he known, he could have acted to revise the licensing agreement to retain the tax exempt status of the bonds. He noted, however, that the former Council, the former City Attorney, the former City Manager, and Assistant City Manager Harrison all knew of the proposed financing plan, although they may not have known the import of that information relative to the bond. Mr. Harrison reiterated that because of the timing, this matter was not given the type of review and consideration it required; he said he would take full responsibility as head of the City's Finance Department.

Council Member MacIlvaine questioned how the City's selling the property would affect the bond issue. Mr. McWilliams said that using the proceeds of the sale to retire the bond would resolve the issue from that time on; however, the City would still be faced with taxability problems from the date the bond was issued. Council Member Tarrant said it was unacceptable to him for Mr. McWilliams to indicate he was unaware of relevant information because he should have performed due diligence; Mr. Tarrant stressed that the City should not have to pay any of the aforementioned costs. Mayor MacKenzie, however, pointed out that Attorney McWilliams had no reason to believe that City staff would deliberately or inadvertently distort information. Council Member Wiseman asked Mr. McWilliams how he believed the amount secured by the bond would be repaid. Mr. McWilliams responded that he understood that the City was issuing the bond secured from the public service tax for the purpose of acquiring the Wilkinson House to keep it from being demolished. He then provided details on bond re-issuance.

In response to Council, Mr. Harrison stated that selling the property and paying the issuing bank would not affect the City's triple A bond rating. Vice Mayor Herms questioned whether there were any conditions on use of the proceeds from the sale of the home; Mr. McWilliams said that the funds must first retire the debt and then resolve all outstanding debt contingencies. He, however, said there may also be a requirement for the balance to be used for capital projects.

Council Member Taylor inquired about the timeframe for implementing a small-scale Comprehensive Plan amendment to change the zoning and to then to sell the property as a historic site with deed restrictions. City Manager Rambosk predicted that the amendment would take approximately eight weeks. Mr. McWilliams affirmed that the City would pay 6.8% gross-up from the date of the issuance of the bond until it is refinanced or retired. Council Member Tarrant questioned whether Mr. McWilliams would be willing to forego his commissions or fees; Mr. McWilliams said he would not. Mr. McWilliams further explained that in any attorney-client relationship, the attorney must rely on the information given by the client. He added that the bond ordinance he prepared was reviewed by the former City Attorney, Mr. Harrison, and the City's financial advisor and was approved by Council.

City Attorney Beverly Grady stated that in bond issues such as these, the bond counsel represents the City as well as the transaction and must determine all factors necessary for the issuance of an opinion, and perform due diligence to ensure the debt is enforceable and the interest tax-free. To determine liability, she suggested retaining a law firm in the field of public law to perform an independent analysis; Council Member Tarrant concurred. Because of the penalties, however, Council Member Galleberg recommended first notifying the bond holders; then the Council can make determinations relating to bond re-issuance, and, at a later time, perform an internal investigation into how this problem occurred.

City Manager Rambosk reported that Mayor MacKenzie, City Attorney Grady, and he had met with CCHS representatives who had expressed the hope that the Wilkinson House would be preserved and operated as a museum. He added that he had also met with the Sibcy interests, who had inquired about the City's plans and expressed interest in preservation. Council Member Taylor urged that the Wilkinson House be preserved as a historic site, noting that she knew of two potential buyers. Citing Council Member MacIlvaine's November 14<sup>th</sup> memorandum to Council, a copy of which is contained in the file for this meeting in the City Clerk's office, Vice Mayor Herms urged that Council obtain appraisals and sell the house with deed restrictions. Council Member MacIlvaine however noted the possibility of obtaining a higher price without deed restrictions. Council Member Galleberg recommended having the house appraised without restrictions and then determining in the negotiation process what the potential buyers would be willing to volunteer in the way of restrictions. Mayor MacKenzie voiced concern that successfully operating the house as a museum may lead to an intensification in a residential neighborhood. Council Member Wiseman emphasized that Council should not consider selling the property without deed restrictions; however, she said that instead of operating the Wilkinson House as a museum, it should simply be preserved as a historic house. Further, she expressed confidence that the City could obtain a significant return from the sale even with a number of deed restrictions. Vice Mayor Herms made a motion to obtain two appraisals, place the Wilkinson House on the market as a single-family home, and impose deed restrictions that require exterior maintenance (except with the addition of a widow's walk and the removal of a porch). Council Member MacIlvaine nevertheless recommended obtaining the appraisals without restrictions to maximize income and to save taxpayer money; Council Member Galleberg agreed and Vice Mayor Herms amended his motion accordingly.

**Public Input:** None.

**MOTION by Herms to SELL THE PROPERTY AND DIRECT STAFF TO OBTAIN TWO APPRAISALS, 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).**

(Later in the discussion, staff was directed to seek the services of Carroll & Carroll, a firm used on the previous appraisal. See Page 12.)

Vice Mayor Herms made a motion seconded by Council Member MacIlvaine, to notify the bank to address the gross-up issues relative to the bond. Council Member Wiseman questioned the funding source for the taxes and penalties. Mr. Harrison stated that although the outside attorney yet to be retained to review this matter would guide Council, there are sufficient funds in the unrestricted reserves in the utility tax fund, and there should also be excess funds from the sale of the property.

**MOTION by Herms to NOTIFY THE BANK TO MODIFY THE BOND (NO LONGER TAX-EXEMPT) AND HAVE THE CITY DEAL WITH GROSS-UP ISSUES AS OUTLINED IN THE LETTER FROM BOND COUNSEL MCWILLIAMS; 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).**

**MOTION by Herms to DIRECT STAFF TO INITIATE A SMALL SCALE COMPREHENSIVE PLAN AMENDMENT TO REZONE THE PROPERTY FROM PS PUBLIC SERVICE TO R1-15 SINGLE FAMILY RESIDENTIAL; 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).**

Council Member Taylor made a motion, seconded by Council Member Wiseman, to instruct the City Attorney to prepare a sales contract and related documents with deed restrictions for Council review. Upon further discussion, Council Member Taylor amended her motion to instruct the City Attorney to begin to draft the aforementioned items. City Attorney Grady suggested that alternate counsel draft these deed restrictions because another attorney at her firm (Roetzel & Andress) had reviewed the closing documents pertaining to the sale of the Blomquist property to the Sibcys. However, because no one at the firm is currently representing the Sibcys, Council determined to continue Roetzel & Andress representation.

**MOTION by Taylor to INSTRUCT CITY ATTORNEY GRADY TO BEGIN DRAFTING A SALES CONTRACT AND RELATED DOCUMENTS, INCLUDING DEED RESTRICTIONS (TO PRESERVE AS A HISTORIC SITE) FOR COUNCIL REVIEW; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Council Member Wiseman suggested using Carroll & Carroll for one of the appraisals since this firm had performed the original appraisal of the property resulting in less time which would reduce cost.

Mayor MacKenzie then noted that two weddings and a month-long designer showcase are now scheduled for the Wilkinson House. Council Member Taylor suggested Palm Cottage for the Falconer Jones wedding on February 10, 2001 because the Wilkinson House may have already been sold by that time. Council Member MacIlvaine concurred, noting that retaining the house until that time would expend significant taxpayer money. Council Member Wiseman alternately suggested including a contingency in the sales contract stipulating use on February 10<sup>th</sup> for the wedding. Vice Mayor Herms however predicted the house would not have been sold by that time. Community Services Director Don Wirth explained there are two other reservations for which the CCHS has received \$3,500 deposits; namely, a January 20<sup>th</sup> rehabilitation center dinner and a January 27<sup>th</sup> Big Brother/Big Sister fundraising dinner. Council Member Galleberg said he could not however recommend proceeding with the designer showcase; Council Member Wiseman concurred.

Community Services Analyst Janet Mullin stated that staff had conveyed to the CCHS the City's intent to continue with all scheduled events, and said that the designers have expended a significant amount of money for preparation for the showcase. Council Member Taylor voiced concern that these events would be labor intensive for City staff, but Vice Mayor Herms suggested the event may bring in potential buyers. Mayor MacKenzie recommended that the City share in the proceeds of the designer tour. Vice Mayor Herms made a motion to proceed with the designer showcase along with all other scheduled events; however, Council Member Taylor recommended separating action on the functions. Mayor MacKenzie suggested leasing the Wilkinson House to the CCHS for a flat fee; the CCHS would then be responsible for providing for all the arrangements with the City merely opening and closing the premises and providing on-site monitoring. City Attorney Grady however urged that the City maintain control and that it specify all arrangements in writing. Mrs. Mullin then stated that the CCHS has offered volunteers to staff the showcase, and is fully committed to proceed. She however stated that at least one City staff member should be available to accept admittance fees. Council Member Taylor requested that the CCHS provide a list of the volunteers for each day of the showcase, and Council Member Wiseman stressed that the designers not make any permanent changes to any of the rooms. Although saying she personally did not favor conducting the showcase at the Wilkinson House, Mrs. Wiseman proffered a motion that Council negotiate an arrangement with the CCHS whereby it commits to fully staffing and insuring the event, that it provides a list of daily volunteers, that it not have access other than the hours of operation, and that City staff open,

close, and oversee the house. City Manager Rambosk received authorization from Council to discuss these issues with the CCHS and Council discussed conducting a Special Meeting in which to review the agreement. The majority of Council later determined, however, that the City Manager or Mayor could sign the agreement if deemed to be proper. After a discussion regarding permitted house renovations, Council Member Wiseman withdrew her motion, indicating that she believed the numerous requirements render it unwieldy. Council Member Taylor then proffered a similar motion adding that the designers must respect the construction on the house and the integrity of the tabby.

**MOTION by Taylor TO ALLOW THE COLLIER COUNTY HISTORICAL SOCIETY TO HOLD THE DESIGNER SHOWCASE WITH THE FOLLOWING CONDITIONS: A) DESIGNERS MUST RESPECT THE CONSTRUCTION OF THE HOME AND INTEGRITY OF THE TABBY WALLS; B) LEASE PAYMENT FROM CCHS FOR THIS ACTIVITY WILL BE \$500; C) CCHS MUST SUBMIT A DAILY LIST OF VOLUNTEERS SIGNED BY THE VOLUNTEERS; D) CITY STAFF WILL ONLY OPEN, CLOSE AND MONITOR DURING TIME OF CCHS USE WITH ONE STAFF MEMBER ASSIGNED; E) SHOULD SUFFICIENT CCHS VOLUNTEERS NOT ARRIVE WITHIN ½ HOUR OF CITY STAFF OPENING HOME, STAFF WILL CLOSE HOME AND NOT REOPEN THAT DAY; F) CCHS TO PROVIDE CITY WITH INDEMNIFICATION AND INSURANCE; G) CCHS WILL BE RESPONSIBLE FOR CLEANUP (IF CLEANUP NOT ACCOMPLISHED, CITY WILL BILL CCHS); H) CITY MANAGER AUTHORIZED TO PROPOSE ABOVE CONDITIONS TO CCHS; AND I) CITY MANAGER AND MAYOR AUTHORIZED TO WITHDRAW PROPOSAL IF ISSUES ARISE WHICH CANNOT BE RESOLVED; seconded by Tarrant and carried 5-2, all members present and voting (Taylor-yes, Tarrant-yes, Wiseman-no, Galleberg-no, MacIlvaine-yes, Herms-yes, MacKenzie-yes).**

Council Member Wiseman said she did not believe the CCHS could meet all these conditions; however, Council Member MacIlvaine said that the CCHS should be afforded the opportunity to respond.

Council Member Taylor proffered a motion to honor the commitment for the two weddings and the two dinners. Vice Mayor Herms seconded the motion but suggested amending it to include the stipulation that the CCHS remit to the City the \$3500 deposits. Council Member Wiseman however recommended honoring the commitments regardless of whether the City receives this money because the parties had remitted in good faith. Mayor MacKenzie suggested making two separate motions. Council Member Galleberg suggested approving the weddings and then addressing the dinners at a later time. Council Member Taylor withdrew her prior motion and proffered another motion as indicated below.

**MOTION by Taylor to HONOR THE COMMITMENT FOR THE TWO WEDDINGS (ONE OF WHICH WAS SHOWN AS ITEM 5-b (5) SCHEDULED AT THE WILKINSON HOUSE; seconded by Herms and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

Vice Mayor Herms proffered a motion to approve the dinners; however, Council decided to consider these events at a later time and there was therefore no second to this motion.

**MOTION by Taylor to DIRECT STAFF TO CONTACT THE CCHS RELATIVE TO ITS REMITTING THE RENTAL FEES AND ANCILLARY FEES COLLECTED FOR EVENTS WHICH ARE SCHEDULED TO TAKE**

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**PLACE AFTER THE CCHS IS NO LONGER IN CHARGE OF THE HOME**; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Tarrant made a motion to seek an attorney to determine the responsibility for the bond issue dilemma, and suggested that the City Attorney also review this matter. Council Member Wiseman however said that Roetzel & Andress is a party to this issue, and could potentially be considered responsible.

**MOTION by Tarrant to DIRECT THE CITY MANAGER TO SEEK AN ATTORNEY TO LOOK INTO WHO MAY HAVE BEEN RESPONSIBLE FOR THE WILKINSON HOUSE BOND ISSUE HAVING BEEN INCORRECTLY SOLD AS A TAX FREE MUNICIPAL BOND; CITY MANAGER TO RETURN TO COUNCIL WITH RECOMMENDATION ON ATTORNEY**; seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Tarrant-yes, MacIlvaine-no, Wiseman-yes, Taylor-yes, Herms-yes, MacKenzie-yes)

Council Member MacIlvaine indicated he believed this to be a needless expense.

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**Recess 5:08 p.m. to 5:20 p.m.** It is noted for the record that the same Council Members were present when the meeting reconvened.

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**RESOLUTION 00-9022.....ITEM 12**  
**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DAVIDSON ENGINEERING TO DESIGN WATER LINE IMPROVEMENTS ON RUM ROW FROM TREASURE LANE TO NORTH OF NELSON’S WALK AS PART OF THE PORT ROYAL WATER SYSTEM IMPROVEMENTS PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT THEREFORE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk who indicated that the staff had planned a future update to Council on the water reuse system. Public Works Director Dan Mercer indicated that the engineer on this project would evaluate the suggestion by Port Royal resident James Lennane that the City implement a dual potable/reuse water system, and also to assure that the dual potable water lines now proposed for Port Royal would continue to be useful should this occur. Nevertheless this project is needed as an adjunct to the improvements to the Port Royal water storage tank, Mr. Mercer noted. In response to Council Member Tarrant, Mr. Mercer explained that currently there is an insufficient supply of reuse water to meet the golf course demand during the dry season; however, it was noted that the various use agreements with the aforementioned golf courses would expire in 2002, the end of the first five-year renewal period.

**MOTION by Wiseman to APPROVE RESOLUTION 00-9022**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION 00-9023.....ITEM 18**  
**A RESOLUTION AWARDDING A BID RECEIVED BY THE CITY OF LEESBURG PURSUANT TO SECTION 2-355(d)(3) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO STEELE TRUCK CENTER, INC. IN ORDER TO PURCHASE A 2001 MACK TRUCK USING THE PRICES, TERMS AND CONDITIONS OF THE CITY OF LEESBURG’S BID; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk. Vice Mayor Herms suggested that selling the used vehicle by sealed bid would derive a better return than auction. Staff further explained that the vehicle being proposed for purchase would enable the City to haul mulch rather than using a private contractor, and would also fill other heavy transport needs within the department.

**MOTION by Wiseman to APPROVE RESOLUTION 00-9023; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 00-9024.....ITEM 15**  
**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERLOCAL AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, BETWEEN THE CITY OF NAPLES, COLLIER COUNTY, AND THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY REGARDING THE USE OF ACCESS CHANNELS ON MEDIAONE CABLE SYSTEMS; AND PROVIDING AN EFFECTIVE DATE.** Title Read by City Manager Kevin Rambosk who noted that this is a cross-jurisdictional system whereby programming is shared and allotted to various sections of the viewing area.

**MOTION by Galleberg to APPROVE RESOLUTION 00-9024; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).**

..... **ITEM 16**  
**CONSIDER A BUDGET AMENDMENT FOR UNCOMPLETED CAPITAL PROJECTS FOR FISCAL YEAR 2000.** Assistant City Manager William Harrison stated that this process is undertaken annually to carry forward into fiscal year 2001 those uncompleted projects which were authorized and funded the prior year.

**MOTION by MacIlvaine to APPROVE ITEM 16; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).**

..... **ITEM 24-a**  
**DISCUSSION OF USES OF FORMER CHAMBER OF COMMERCE BUILDING ON NAPLES PRESERVE SITE.** Council Member Taylor explained that in order for the Friends of Naples Preserve to begin fund-raising via printed materials, City Council was being asked to ratify the proposed uses of the former Chamber of Commerce building (Attachment 2). Mayor MacKenzie, however, expressed the view that the uses proposed were more intense than had been previously visualized and cited a letter to the editor by Steering Committee Chairman Robert Geroy putting forth proposals for what she described as a far more active use of the building. While Council Member Taylor indicated that this letter had been preliminary to the final list of activities, there was nevertheless a need to use the structure for visitors to gather prior to touring the park, as well as a place for educational exhibits, restrooms, and the possible dissemination of information on other natural history areas. Miss Taylor then reviewed the report relative to the condition of the former Chamber of Commerce building (a copy of which is contained in the file for this meeting in the City Clerk's Office), stating that the structure was much more sound than had been anticipated.

Council Member Galleberg commended the Steering Committee for its dedication, but he, too, expressed concern that the proposed uses were more intense and contrary to his prior recollection. He said that an area which people toured via boardwalk with signs to identify various plant species had been anticipated and initially it had been assumed that the Naples Preserve would not contain a structure. Vice Mayor Herms, however, supported the list of activities submitted; Council Member Tarrant agreed. (Vice Mayor Herms then moved to approve items 1, 2, and 3 on Attachment 2; however, further discussion ensued.) Mayor MacKenzie cautioned that voters had been told that a very low intensity use was contemplated which she said was directly contradicted by the aforementioned list. She said she would support only exhibits and temporary displays of habitat of the Naples Preserve, occasional interpretive natural history lectures, and restrooms. Council

Members Wiseman and MacIlvaine expressed the view that the structure should not be a destination but a support facility. However, Natural Resources Manager Jon Staiger noted the importance of being able to hold an interpretative presentation to introduce people to the park, an activity which would be more difficult to accomplish outside on a boardwalk.

**MOTION** by Herms to **APPROVE**: 1) exhibits and temporary displays representative of local natural history areas; 2) interpretive naturalist lectures and related educational classes; and 3) restroom facilities. This motion was seconded by Tarrant and carried 4-3, all members present and voting (Taylor-yes, Wiseman-no, Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, MacKenzie-no).

It is noted for the record that Item 24-c was considered before Item 24-b.

**RESOLUTION 00-0925.....ITEM 24-c**  
**A RESOLUTION AMENDING RESOLUTION 00-8981, WHICH ADOPTED THE STATEMENT OF ORGANIZATION OF THE NAPLES PRESERVE STEERING COMMITTEE, IN ORDER TO ADD ONE CITIZEN MEMBER THERETO; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk.

**MOTION** by Herms to **APPROVE RESOLUTION 00-0925**, seconded by Tarrant and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION 00-0925.....ITEM 24-b**  
**A RESOLUTION APPOINTING ONE MEMBER TO THE NAPLES PRESERVE STEERING COMMITTEE FOR A TERM EXPIRING DECEMBER 31, 2001; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk. Mayor MacKenzie questioned a proposal that had been made to conduct a contest to design a logo for the Naples Preserve. It was the consensus of Council that the present City logo would also apply to the Naples Preserve. Mayor MacKenzie said she had received complaints from several groups that the strident language of the “no trespassing” signs on the Naples Preserve convey a message which offends the people who voted to fund acquisition. It was noted, however, by staff that in order for the sign to comply with legal requirements, certain wording must be present. Nevertheless, it was the consensus of Council to in some manner soften or add to the signage so as not to offend citizens.

**MOTION** by Herms to **SCHEDULE A DETAILED PRESENTATION OF PROPOSALS FOR USE OF THE FORMER CHAMBER OF COMMERCE BUILDING ON THE DECEMBER 18, 2000, WORKSHOP AT 8:30 A.M.** This motion was seconded by Tarrant and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION (Continued) .....ITEM 13**  
**A RESOLUTION REQUESTING THAT THE BOARD OF COUNTY COMMISSIONERS REENACT THE UNINCORPORATED MSTU TO PARTIALLY FUND THE SHERIFF’S BUDGET WHILE REDUCING THE COUNTY GENERAL FUND MILLAGE RATE WITHIN THE INCORPORATED AREAS OF THE COUNTY BY AT LEAST 0.5721 MILLS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Rambosk.

**MOTION** by MacIlvaine to **CONTINUE TO THE DECEMBER 6, 2000, REGULAR MEETING**; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).



**DISCUSSION OF CITY MANAGER'S PENSION .....ITEM 25**

**MOTION by Galleberg to CONTINUE ITEM 25 TO THE DECEMBER 6, 2000, REGULAR MEETING; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).**

**.....ITEM 17  
DISCUSSION OF AN EMPLOYEE RETIREMENT SETTLEMENT AGREEMENT.**

City Manager Kevin Rambosk explained that this item relates to an earlier approval given by the City Council relative to the settlement of claimed termination pay by former Mayor and Council Secretary Mae Davis. At that time, Mr. Rambosk said, of the three options were offered, Ms. Davis chose to receive a monthly installment for the remainder of her life. Since then, however, the attorney representing the City in this matter had indicated that any such payment must be made over a period not exceeding 24 months. Based on actuarial assumptions, therefore, the present value of this benefit, Mr. Rambosk said, had been computed at \$60,716.11; due to tax considerations, Ms. Davis had nevertheless not yet indicated how the sum would be remitted over the aforementioned 24 months. Council Member Galleberg received assurance from City Manager Rambosk that an attendant agreement would be signed by Ms. Davis relative to settlement of her claim.

**MOTION by Wiseman to APPROVE THIS PAYMENT PERIOD; seconded by Herms and carried 5-2, all member present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-no).**

**RESOLUTION 00-9027.....ITEM 19**

**A RESOLUTION GRANTING A TEN FOOT WIDE NON-EXCLUSIVE EASEMENT TO FLORIDA POWER & LIGHT COMPANY FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF UNDERGROUND ELECTRIC UTILITY FACILITIES FOR THE VON LIEBERG AIRCRAFT HANGER AT THE NAPLES AIRPORT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk.

**MOTION by Galleberg to APPROVE ITEM 19; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).**

**.....ITEM 20  
AUTHORIZE HIRING OF ATTORNEY TO REPRESENT CITY STAFF RELATIVE TO CODE ENFORCEMENT BOARD CASE.**

City Manager Kevin Rambosk noted that approval of this item would allow him to engage the services of an attorney up to \$5,000, with the concurrence of the City Attorney, whose firm is not able to represent the staff in this regard. He confirmed that it was unknown whether the anticipated matter involving Kyle Lorenzen would actually come before the Code Enforcement Board; however, pursuant to additional site inspection, a code violation different from previous violations was anticipated. Council Member Galleberg moved approval, however, additional discussion ensued. Vice Mayor Herms recommended however that the specific attorney to be hired be approved by the Council, citing division of power issues that require the City Council to hire the City Manager, City Clerk and City Attorney. Council Member Wiseman, however, seconded the above motion and stated that the attorney under discussion would not be considered the City Attorney. Mayor MacKenzie expressed the view that the City Manager should be able to hire needed staff which is controlled through the dollar limit. She also disputed Vice Mayor Herms' assertion that this attorney would be included under Charter Section 3.3 since legal services had been contracted out and there being no legal department at that time.

**MOTION by Galleberg to APPROVE THE CITY MANAGER HIRING AN ATTORNEY TO REPRESENT THE STAFF RELATIVE TO A CODE ENFORCEMENT BOARD CASE; seconded by Wiseman (see above). This**

*motion failed 3-4, all members present and voting (Galleberg-yes, Taylor-no, Tarrant-no, Wiseman-yes, Herms-no, MacIlvaine-no, MacKenzie-yes).*

**MOTION by HERMS FOR CITY MANAGER AND CITY ATTORNEY TO WORK TOGETHER TO DETERMINE A RECOMMENDATION OF AN ATTORNEY FOR THE CITY COUNCIL TO HIRE AT A FUTURE MEETING; seconded by Tarrant and carried 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-no, MacKenzie-no).**

During the vote on the motion immediately above, Council Member Galleberg described requiring Council approval as an unwarranted procedure; in response to Vice Mayor Herms, City Attorney Beverly Grady opined that it was proper for the City Attorney to make a recommendation on an attorney to represent staff in this matter. Council Member Wiseman called the action micromanaging and inconsistent.

**DISCUSSION OF COUNTY BUSES AND ROUTING..... ITEM 21**

City Manager Kevin Rambosk indicated that this item had been added to the agenda for direction to staff so as to provide input at an upcoming County meeting regarding bus routes or other concerns. Mayor MacKenzie questioned the applicability of the Sunshine Law (Chapter 286, Fla. Stat.) to more than one member of the City Council attending such a meeting. After further discussion with City Attorney Beverly Grady, it was recommended that in an abundance of caution Council Members should avoid attending meetings where one or more of them are expressing positions. This, she said, could be a risk of a procedural allegation that the Sunshine Law was not complied with. Following the request for a legal opinion which appears below, it was determined that the Mayor would represent the City at the County bus system meeting and that other City Council Members would not attend.

Council Member Wiseman requested that the City Attorney render an opinion relative to Sunshine Law implications of two or more members of one collegial body attending and participating in the meeting of another group which was not noticed as to their attendance. The example cited by Mrs. Wiseman involved Planning Advisory Board Members Charles Kessler and William Boggess attending a Council meeting and speaking on issues which could conceivably go before the Planning Advisory Board. She said, for example, they had spoken to Council recently relative to the Charter Club petition. City Attorney Grady noted, however, that service on boards like the PAB does not affect individual members' rights.

**MOTION by Wiseman FOR THE CITY ATTORNEY TO RENDER A LEGAL OPINION RELATIVE TO SUNSHINE LAW IMPLICATIONS OF TWO OR MORE MEMBERS OF ONE COLLEGIAL BODY ATTENDING AND PARTICIPATING IN THE MEETING OF ANOTHER GROUP WHOSE MEETING WAS NOT NOTICED AS TO THEIR ATTENDANCE. This motion was seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes).**

**.....ITEM 23  
DISCUSSION WITH CITY ATTORNEY RELATIVE TO CODE OF ORDINANCES SECTION 2-44.**

Council Member Galleberg cited responses from the City Attorney to questions raised regarding the proposed charter amendment and pointed out that the City Council had clarified its intent thereon at the November 1 Regular meeting. Although the core issue had been rendered moot with defeat of the charter amendment, he said, the issue remained as to whether the procedure for adding items to the agenda had been followed. He said that he believed Mrs. Grady had now

acknowledged that the Council discussion on November 1 should have been added to the agenda by a 5/7 vote required in order to transact business not on the agenda. Council Member Wiseman said she was satisfied with Mrs. Grady's response to a memorandum she had written on this subject (City Attorney's memorandum Attachment 3) but pointed out an error in that the direction of Council to answer questions on the charter amendment had in fact not been unanimous. Mr. Galleberg expressed the view that in the future Council Members would depend on the City Attorney to remind them that certain procedures are required to add items to the agenda in order to afford the public the ability to interact with Council on these matters.

Vice Mayor Herms, however, cited what he described as a larger issue; namely, that the 5/7 requirement has not functioned well. He therefore made the motion which appears below to amend the Code to require a 4/7 vote to add to the City Council agenda; Council Member Tarrant seconded the motion and further discussion ensued. Mayor MacKenzie said that she was appalled that the Council would contemplate such action. Council Member Galleberg said that he believed there to be a substantive reason for the 5/7 requirement, although the Council had fallen to a routine of adding items to agenda, citing the eight items which had been added that day. He described the action proposed by Vice Mayor Herms as extreme because if immediate action is required, it is presumed that five Council Members would support adding it to the agenda, he noted, and said that the proposal was an improper means of conducting City business. Council Member Wiseman took the position that the cumulative effect of Vice Mayor Herms' proposal was to foreclose the public's ability to be present and to be heard; therefore, the 5/7 requirement should be respected for the integrity it brings to the process. Mayor MacKenzie agreed that the 5/7 requirement had historically been adhered to for the purpose of public notice, and criticized proponents of a 4/7 requirement for introducing the topic late in the meeting with no public notice. She described the proposed action as beyond astonishing and that it amounts to a Charter amendment. Mr. Herms, however, contended that the action he was proposing was merely to schedule the issue on the next meeting's agenda where there would be sufficient public notice. Mayor MacKenzie countered that no media representative was then present, therefore, the only public notice of the proposed action would be the classified ad where the City Council agenda is printed. She said she was dismayed that the Council either disregards the rules they don't like, or changes them.

Vice Mayor Herms confirmed with the City Attorney that the change requested constituted an ordinance amendment which the Council could enact in two readings. Mrs. Grady also noted that Subsection (b) had already been amended by ordinance, its original language having applied to adding ordinances only to the agenda by 5/7 vote; a 1995 amendment allowed business items to be added to the agenda as well.

**MOTION by Herms to DIRECT STAFF TO DRAFT AN ORDINANCE FOR CONSIDERATION AT THE DECEMBER 6 REGULAR MEETING WHICH WOULD AMEND SECTION 2-44(1)(B) TO PROVIDE FOR ADDING ITEMS TO THE AGENDA BY A 4/7 VOTE OF CITY COUNCIL. This motion was seconded by Council Member Tarrant and carried 4-3 (Taylor-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Galleberg-no, Wiseman-no, MacKenzie-no).**

During the vote Council Member Galleberg described this action the tyranny of the majority; Council Member Wiseman agreed.

**CORRESPONDENCE and COMMUNICATION .....**  
Council Member Wiseman noted that although most agendas state that a lunch recess will occur between noon to 1:30 p.m., this schedule had not been adhered to and is misleading to the public when the Council continues to operate during its published recess period. She suggested that agenda items not commence when it is known that a particular item would continue past the time advertised

to recess. She also noted that Council meetings are increasing in length and that workshops are now frequently day-long sessions. Mayor MacKenzie acknowledged Mrs. Wiseman's comments.

Council Member Taylor expressed the desire that the Council Members individually review the video production regarding Naples Preserve.

**MOTION by Herms that AN ITEM BE PLACED ON THE DECEMBER 6 AGENDA TO DETERMINE WHETHER TO BROADCAST THE NAPLES PRESERVE VIDEO ON THE CITY'S CABLE CHANNEL AND, IF SO, ON WHAT SCHEDULE.** This motion was seconded by Council Member Tarrant and carried 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-no, MacKenzie-no).

Vice Mayor Herms noted the anticipated resignation of Airport Authority Member Leonard Thornton and made the motion that appears below. He said that his concern centered around the possibility of there not being a full complement of members to act on the proposed State II jet ban which could result in the ban being deferred for another year. City Clerk Tara Norman clarified that the Council is by ordinance permitted to waive the interview process should it deem appropriate.

**MOTION by Herms to PLACE ON THE DECEMBER 6 AGENDA THE APPOINTMENT OF AN AIRPORT AUTHORITY MEMBER, SHOULD A VACANCY OCCUR, SELECTING FROM THE CANDIDATES PREVIOUSLY INTERVIEWED (OR ANY APPLICANT NOT YET INTERVIEWED IN THAT APPOINTMENT CYCLE).** The motion was seconded by Tarrant and carried 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Wiseman-no, MacKenzie-no).

Vice Mayor Herms further noted that should the Airport Authority ratify the Stage II jet ban at its meeting the following day, there would be no need to consider the above agenda item; however, adding it to the agenda on December 6 would require five favorable votes. Council Member MacIlvaine expressed agreement with the critical nature of ratifying the Stage II jet ban by December 31, but said that he also felt that conducting the normal recruitment process was important.

Vice Mayor Herms then noted a memorandum received from City Clerk Tara Norman regarding inclusion of a filing date on ordinances and resolutions (Attachment 4), Vice Mayor Herms sought clarification that, regardless of this dating, zoning ordinances are not in effect for 30 days, pursuant to the Code of Ordinances. City Attorney Beverly Grady indicated that the purpose of the dating was to provide a measure from which a challenge of a land use petition can be filed; nevertheless, she said she would look into Mr. Herms' question. (Editor's note: See Code of Ordinance Sections 2-1 Effective date of ordinances and 2-445(4) Suspension of effect of ordinances upon filing referendum petition.)

Council Member Tarrant requested that the City Attorney indicate whether his intended comments were inappropriate from a legal standpoint. He said that relative Dr. Leslie Norrins' project (Norrins/Lorcar), there may be a possibility, after further discussion, that an understanding could be reached in order to avoid litigation. Council Member Galleberg disagreed, pointing out that the Council majority had repeatedly declined dialog on this issue over a period of six months. City Attorney Grady recommended that, since the matter is in litigation, the Council not discuss it at that point in the meeting.

**PUBLIC INPUT** .....  
None.

**ADJOURN** .....  
6:57 p.m.

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Bonnie R. MacKenzie, Mayor

---

Tara A. Norman, City Clerk

Minutes prepared by Tara Norman and

---

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 12/20/00

11/15/00 City Council Regular Meeting  
Attachment 1, Page 1 of 2.

Livermore, Freeman & McWilliams, P.A.

Attorneys at Law

Daniel U. Livermore, Jr.  
Judson Freeman, Jr.  
John L. McWilliams, III

November 8, 2000

1301 Riverplace Boulevard - Suite 1825  
Jacksonville, Florida 32207-9047  
Telephone: (904) 399-0500  
Facsimile: (904) 398-0500  
E-Mail: lkfm@lkfm.com

RECEIVED

NOV 10 2000

Mr. Kevin Rambosk  
City Manager  
735 Eighth Street South  
Naples, Florida 34102

CITY MANAGER'S OFFICE

Re: City of Naples, Florida, Public Service Tax Revenue  
Bond, Series 1998

Dear Kevin:

As we have discussed earlier, I have reviewed the transcript pertaining to the above captioned bond issue, including Ordinance No. 98-8335, enacted on September 2, 1998; Resolution No. 98-8336, adopted on September 2, 1998 (the "Resolution"); the tax compliance certificate; the approving opinion of Squire, Sanders & Dempsey, L.L.P., dated September 14, 1998, executed by me as a member of that firm; the Specimen Bond, and the other documents, certificates and opinions therein. In addition, I have also reviewed (1) that certain License For Access and Use of Property, dated August 19, 1998 (the "License Agreement"), between the City and Collier County Historical Society, Inc. a Florida not-for-profit corporation ("Society"), and (2) that certain Agreement Regarding Use of Historical Property, dated August 31, 1998, between Society and the Bloomquists (the "Bloomquist Agreement").

Both the License Agreement and the Bloomquist Agreement were faxed to me on November 2, 2000, at my request after learning of their existence earlier last week. It was the first time that I had seen the agreements and I was unaware of any facts that might have suggested the existence of such agreements at the time of the issuance of the Bond and up until the day I received them. As is the usual practice with bond counsel when bonds are issued, I relied upon the statements made in the tax compliance certificate of the City that was executed and delivered in connection with the delivery of the Bond to the purchaser, and I had no reason to believe that such statements were not accurate.

Based upon my review of the License Agreement particularly, it is my reluctant conclusion that the Bonds are private activity bonds under the Internal Revenue Code of 1986, as amended (the "Code"), for which no tax-exemption is available and, further, that the Bond is not a qualified tax-exempt obligation under Section 265(b) of the Code. As a result, interest on the Bond is includable for federal income tax purposes in the gross income of the registered owner.

The Bonds are deemed private activity bonds rather than governmental bonds because the bond financed property is used by the Society, a private not-for profit corporation, under the License Agreement and the City receives payments from such corporation in respect of its use of the property. Under the Code, the private activity bond test is two pronged: private use for which an exemption is not available and private

**City Council Regular Meeting – November 15, 2000 – 9:00 a.m.**

11/15/00 City Council Regular Meeting  
Attachment 1, Page 2 of 2.

Livermore, Freeman & McWilliams, P.A.  
Attorneys at Law

Mr. Kevin Rambosk  
November 8, 2000  
Page 2

payment in respect of such use. It does not matter that the City had legal title to the property or that the payments that the City received were not pledged to the payment of the Bonds. In addition, private activity bonds cannot be qualified tax-exempt obligations.

Both the Bond itself and the Resolution contain provisions regarding a "gross up" of interest if for any reason the interest on the Bonds becomes includable for federal income tax purposes in the gross income of the registered owner. Application of the formula indicates that approximately \$130,959.50 is due to NationsBank, N.A., now Bank of America, as registered owner on January 1, 2001, plus any penalty, interest or addition to tax imposed upon the Bank as a result of the Bank's failure to include interest received on the Bond in its gross income for federal tax purposes.

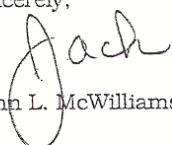
It is indeed unfortunate that I was not made aware of the existence of the License Agreement or the relevant facts underlying it because it is entirely possible that changes could have been made to the License Agreement in connection with the proposed use of the bond financed property or the payments to the City that would have enabled the City to issue the bond on a tax-exempt basis.

I should add, however, that since the City has now terminated the License Agreement, interest on the Bond can become tax-exempt if the Bond is either refinanced or its terms are modified in certain ways provided under the Code. Also, future private use of the property and future receipt of any payments received in respect of such use must be fully analyzed and considered prior to the authorization of any additional agreements with respect to the property.

I sincerely regret the unfortunate situation in which the City now finds itself, and I look forward to assisting you with a prompt resolution of the matter.

With best regards, I am

Sincerely,

  
John L. McWilliams, III

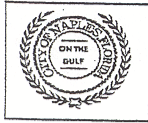
JLMcW,III/vlj  
c: Mr. William P. Harrison  
Ms. Beverly Grady

3914-L-Rambosk



**City Council Regular Meeting – November 15, 2000 – 9:00 a.m.**

11/15/00 City Council Regular Meeting  
Attachment 2, Page 1 of 1.



Staff Report to Honorable Mayor and Members of City Council  
Subject: Recommendation by Naples Preserve Steering Committee  
From: Kevin Rambosk, City Manager  
Prepared by: Donald J. Wirth, Community Services Director  
Date: November 10, 2000  
Recommend approval \_\_\_\_\_

**BACKGROUND**

In an earlier action the City Council authorized The Friends of the Naples Preserve to conduct a fundraising program for purposes of renovating the old Chamber of Commerce building. The Friends have indicated the need to officially represent the intended future use (program) for the building during the fundraising campaign.

**ANALYSIS**

The Naples Preserve Steering Committee appointed a sub-committee to study the potential building use (program) and make recommendations to the Steering Committee. The Steering Committee received the recommendations and is unanimously recommending that the building program be as follows:

- 1.) Exhibits and temporary displays representative of local natural history areas.
- 2.) Interpretive naturalist lectures and related educational classes.
- 3.) Restroom facilities.
- 4.) Plant and animal cataloguing, preparation, curative, and final depository.
- 5.) Reference and research library relating to local natural sciences.
- 6.) Center for ongoing research of the habitat representative of the Naples Preserve.

It is expected that The Friends will be presenting a proposed preliminary plan (floor plan and elevation drawing) to the City Council at the December 18<sup>th</sup> workshop. If approved this plan will be used in the fundraising effort. It is understood that the Steering Committee would return to the City Council for final plan approval at a future date, if the fundraising campaign by The Friends is successful.

**RECOMMENDATION**

The staff is requesting that the City Council consider the building program for the Chamber of Commerce building in the Naples Preserve, as the program plan was approved unanimously by the Naples Preserve Steering Committee at its 11/10/00 meeting.

Z:\don\STAFFMEMO\staffmemo-Recommendation Naples Preserve Steering Committee.doc



11/15/00 City Council Regular Meeting  
Attachment 3, Page 1 of 3.

MEMORANDUM

TO: Tamela Wiseman-Council Member; Members of City Council

FROM: Beverly Grady-City Attorney

DATE: November 14, 2000

RE: Council Procedures

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This memo is in response to your memo of November 8, 2000 in which you raise questions and concerns regarding the Council discussion and vote taken on November 1, 2000 interpreting the scope of the proposed charter amendment.

To the extent that an error was made on my part, I can only assure you and the rest of Council that it was inadvertent and in no way an indication of a position on the issue. I am acutely aware that the role of the city attorney is to provide guidance, in a neutral manner, on the legal aspects of policy that is set by the Council.

I will respond to your questions in the order in which they were raised.

Question 1. How could you advise Council that it was proper to adopt a resolution setting forth an expression of legislative intent for a Charter Amendment before the election but after absentee ballots had been mailed and at least some already cast?

Answer:

- a. The issue was first brought up by Council at the October 18, 2000, Council meeting. The staff and the city attorney were directed by a 7-0 vote of the Council to review and provide answers to questions containing an interpretation or guidance concerning the scope of the charter question.
- b. It was assumed by staff and by me that the Council was directing that an answer be provided right away, since the meeting of November 1 was the last regular meeting prior to the general election.
- c. The answers to questions posed were discussed at the October 30 workshop. Additional information was necessary. Staff and I conferred, after which I conducted research and responded with the memo of October 31. In that memo, I recommended that the Council, as the "Framers" of the Charter amendment ordinance, be the entity to give its interpretation of its own ordinance. This was not meant to say that Council must give an interpretation, but only that, rather than having others speculate as to Council's intent, Council could make its own expression.
- d. The expression of intent by the Council was not by a resolution but by a motion after discussion. The memo had been reviewed and approved by the Planning Director and the City Manager on the morning of November 1. At that time I thought it was being distributed to Council that

MEMORANDUM

( PAGE 2 OF 3 )

- morning prior to the meeting. But it had not been distributed in the morning. During the lunch break, the City Manager and I decided to bring it up under correspondence and communications.
- e. The City Council has the power to express its intent and even to take a position on an issue that is before the voter. (see e.g., *PATRM v. Leon County*, 583 So.2d1373 (Fla. 1991) on latter clause.) Whether or when Council should make such an expression was up to Council. I believed in good faith that Council wanted the research done and guidance provided in a timely manner.

Question 2: How could you advise Council to consider such a resolution without first properly adding the item to the agenda pursuant to Section 2-44?

Answer:

- a. It did not occur to me at the time that this topic was brought up that it was transaction of business. If it had, I would have recommended that there be a vote before deciding whether to discuss the item. I also would have been assertive in stopping the discussion for a vote on whether to take up the matter. In the future I will be.
- b. The matter that came to the Council was a memo recommending that the Council give its expression of intent concerning an interpretation of an ordinance. I don't think that the bringing of a memo to Council is itself the transaction of business. Council routinely receives correspondence and even discusses it at length. Sometimes Council advises the staff or the Mayor to provide a response. Council responds to public input in the same manner. However, taking action on it via a motion and vote, was likely the transaction of business for which a 5/7<sup>th</sup> vote should have been taken beforehand.
- c. This was not a new matter, but (I perceived it as) the continuation on an item that had been discussed by Council at two meetings. It was being brought back to the Council because the item required additional clarification.. However, since it was not shown on the agenda as an item, it should have been put on the agenda by a 5/7<sup>th</sup> vote (if obtainable) at the time of setting the agenda, or before discussion and vote.

At my request on Friday, November 10, staff, on Monday, November 13, looked for any prior interpretations of 2-44 (formerly Charter section 2.2). Two opinions were located. However, neither were on point.

Since nothing to the contrary has been located, it would be a fair interpretation that discussion resulting in a motion and vote would be subject to the 5/7<sup>th</sup> requirement.

Question 3. If it was your opinion that the resolution did not constitute the "transaction of business" pursuant to Section 2-44, explain your rationale and give an example of a situation where the 5/7<sup>th</sup> vote would apply.

Answer:

- a. I agree with that interpretation.
- b. Other examples where it would apply would be the adoption of an ordinance or resolution.

11/15/00 City Council Regular Meeting  
Attachment 3, Page 3 of 3.

MEMORANDUM

( PAGE 3 OF 3 )

Question/Statement. Are you saying that the objection was waived because it was not raised prior to the discussion or the vote? If so, please state. . . Please respond directly as to whether you agree or disagree with my opinion.

Answer: No. I agree that it was likely not waived. However, it is probably not subject to challenge at this time due to mootness. Lack of standing also sometimes prevents challenge of defective action (See, e.g., Kern, v. Miami-Dade County, 25 Fla. L. Weekly D1602 (7/5/00). Being entitled to notice does not of itself create standing, *Town of Bay Harbor Islands v. Driggs*, 522 So2d 912 (3d DCA 1988), rev den.531 So2d 1352 (Fla. 1988).

I do agree with your statement that this has ramifications for the future, and seek Council direction.

Respectfully submitted,

Beverly Grady

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rpritt@ralaw.com

MEMORANDUM

**TO:** Tara Norman, Naples City Clerk

**FROM:** Robert D. Pritt, Attorney

**DATE:** October 27, 2000

**RE:** Endorsement- Date Filed with City Clerk

It is recommended that the Office of the City Clerk keep track of the date that each resolution, ordinance or order of the City Council is filed with the City Clerk.

Most resolutions and ordinances are effective on the date set forth in the document. Usually, it is immediately upon adoption. However, some resolutions and ordinances are also in the nature of orders, in the sense that they constitute final agency action in quasi-judicial proceedings. Examples include resolutions approving/denying variances or other requests, ordinances and resolutions acting upon rezones or other land use petitions, and similar actions.

The Florida Rules of Appellate Procedure provide a means of challenging, either by appeal or by a petition for a writ of certiorari, the final administrative action of the agency. For most purposes in the City of Naples the City Council renders the final agency decision.

The Rules provide that the challenge must be made within thirty (30) days after the date of rendition (of an order). The Rules further define "rendition (of an order)," as the date that the signed, written order is filed with the Clerk.

Therefore, in order to determine whether an appeal or petition for writ of certiorari (or other challenge to agency action) is timely, it is necessary to determine the date that the signed, written "order" (administrative agency action) was filed with the City Clerk.

The actions taken by the City Council, whether by resolution or ordinance, are authenticated by signature of the Mayor (or Vice Mayor in the absence of the Mayor) and attestation by the City Clerk.

It is the custom of the City of Naples to have the City Attorney review resolutions and ordinances for form and sufficiency and, in certain types of legislation, to have department heads sign-off as well. While the endorsement by the City Attorney and/or other department heads is not critical to the validity and finality of the Council action, it is recommended that the City Clerk continue to secure those endorsements prior to authentication. When all of this has been completed, and the Mayor (Vice-mayor) has signed, the Clerk would attest, place the date of filing with the City Clerk on the document, and file the document.

CLEVELAND TOLEDO AKRON COLUMBUS CINCINNATI FORT MYERS BONITA SPRINGS NAPLES

www.ralaw.com



11/15/00 City Council Regular Meeting  
Attachment 4, Page 2 of 2.

## MEMORANDUM

As we have discussed, there is a certain type of resolution that is sent out to the applicant for endorsement prior to being returned to the City Clerk. Sometimes the endorsement has not been forthcoming for several months. There is an Ordinance requiring this procedure. This memo is not intended to recommend a change to that process, since it would take an amendment to the Ordinance by the City Council to make such a change. In that type of legislation, it is recommended that the Office of the City Clerk continue to secure all of the signatures, including that of the applicant, and then when all signatures are obtained, stamp or endorse the date of filing with the City Clerk.

If you have any questions or comments, please do not hesitate to call.

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