



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – December 6 2000 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 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
Robert Pritt, City Attorney
Gregory Urbancic, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
Jon Staiger, Natural Resources Manager
Dan Mercer, Public Works Director
Don Wirth, Community Services Director
Robert Middleton, Utilities Director
Janet Mullin, Community Svs. Analyst
Cory Ewing, Planner
Jessica Rosenberg, Recording Specialist
Kelly Espinoza, Admin. Specialist
Sunny Fore, Service Worker
Reverend Jon Culp
John Passidomo

Robert Hall
William Meek
Paul Noeske
Vin DePasquale
Pierce Tyrrell
Lynda Szczepanik
Charles Kessler
Dodie Briskey
Elaine Luckhart
Martha Dykman
Gordon Watson
Kelly Confoy
Other interested citizens and visitors
Media:
Denise Zoldan, Naples Daily News

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

Reverend Jon Culp, The Glades Lutheran Church.

ANNOUNCEMENTSITEM 3

None.

SET AGENDA.....ITEM 4

Item 23 Discussion of modifying the agenda to include open public input at the beginning of meetings

MOTION by Herms to ADD ITEM 23 TO THE AGENDA; seconded by Tarrant and carried 5-2, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-no).

Item 24 Discussion regarding a Naples Preserve brochure.

MOTION by Taylor to ADD ITEM 24 TO THE AGENDA; 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).

MOTION by Herms to ADD DISCUSSION RELATIVE TO CORRESPONDING WITH THE COLLIER COUNTY COMMISSION URGING IT TO INITIATE PERMIT APPLICATION PROCESS FOR FLOW-THROUGH GROINS; seconded by Tarrant and failed 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-no). * 5/7 vote required.

MOTION by Herms to ADD DISCUSSION REGARDING ADDING NAPLES REPORT AND JEFF LYTLER'S PROGRAMMING TO CHANNEL 76; seconded by Tarrant and failed 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-no). * 5/7 vote required.

MOTION by Herms to SET THE AGENDA CONTINUING ITEM 6 UNTIL THE 12/20/00 REGULAR MEETING, CONTINUING ITEM 8 UNTIL THE 1/17/01 REGULAR MEETING, AND WITHDRAWING ITEM 20; 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).

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 7-a

October 18, 2000 Regular, October 30, 2000 Workshop, November 1, 2000 Regular, and November 14, 2000 Town Hall Meetings. Council Member Galleberg requested a change on Page 4 of the October 30, 2000 Workshop Meeting minutes under the second paragraph of Item 8 regarding an exchange between him, Vice Mayor Herms and Planning Director Lee regarding the scope of the conservation charter amendment. He referenced the sentence: "Planning Director Ron Lee confirmed that not all Class II waters or beaches are zoned conservation." He said that he felt the important point missing from the summary of the discussion relating to the way the charter amendment was drafted references conservation vital land on the natural resources map. He called this an important distinction and that in order to approve the minutes, he would want to have this added.

MOTION by Galleberg to APPROVE ITEM 7-a WITH THE PROVISIO THAT THE 10/30/00 WORKSHOP MINUTES WILL BE CONTINUED TO THE 12/20/00 REGULAR MEETING; 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).

APPROVE THE FOLLOWING SPECIAL EVENT ITEM 7-b (2)

Great Dock Canoe Race (Crayton Cove) 5/12/01. (9:21 a.m.)

Vincent DePasquale, Dock Restaurant owner and Great Dock Canoe Race representative, requested co-sponsorship of \$1,000 to offset expenses, and noted that \$5,000 in event proceeds would be donated to the Naples Players Children's Theatre. City Manager Kevin Rambosk stated that although co-sponsorship generally offsets Police & Emergency Services costs, staff cannot recommend it for this event due to the serving of alcoholic beverages, but Council could nevertheless approve it. Council Member Tarrant proffered a motion to approve with the co-sponsorship money to be directed to offset the aforementioned costs; however, further discussion ensued.

Council Member MacIlvaine expressed reservations about the serving of alcohol and about allocating taxpayer money to an organization promoting its own commercial activities. Council Member Wiseman suggested removing from the Consent Agenda any item for which staff recommends disapproval. Council Member Tarrant said he believed many area businesses would benefit from the event, which he said has historically been a success; Mr. DePasquale concurred. Council Member MacIlvaine suggested naming the event the Great Naples Canoe Race or the Great City Dock Canoe Race; however, Mr. DePasquale noted the importance of tradition and of name identification.

Public Input: None (9:36 a.m.)

MOTION by Tarrant to APPROVE ITEM 7-b(2) WITH THE CO-SPONSORSHIP OF \$1,000 TO BE USED TO UNDERWRITE THE EXPENSES OF THE POLICE & EMERGENCY SERVICES DEPARTMENT; seconded by Herms and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

APPROVE THE FOLLOWING SPECIAL EVENTS ITEM 7-b

- (1) Eckert Fine Art Gallery Harry Chapin Benefit (12th Avenue South) 1/18/01.
- (3) 4th of July Parade (Broad Avenue S., 3rd Street S., 5th Avenue S., 8th Street S.) 7/4/01.
- (4) 4th of July Fireworks (Naples Pier) 7/4/01.
- (5) 52nd Swamp Buggy Parade (U.S. 41) 10/27/01.

MOTION by Galleberg to APPROVE ITEM 7-b (1,3,4,5); seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes Tarrant-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

END CONSENT AGENDA

RESOLUTION 00-9028 ITEM 5

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. Title read by City Manager Kevin Rambosk (9:37 a.m.). Mayor MacKenzie noted this was a quasi-judicial proceeding and disclosed a telephone conversation and a faxed letter from Franklin

Starks, President of the Gulf Shore Property Owners Association; Council Members Galleberg and Tarrant each said that they had received the aforementioned faxed letter; Council Member Taylor indicated she had received a voice message from Mr. Starks but had been unable to reach him; Council Member Wiseman said she had received the aforementioned faxed letter and said that since she had received no contact from her Mansion House clients, she intended to vote on this petition; Vice Mayor Herms said he had met with Burt Pohlmann, one of the present owners, and with the proposed developers and architect to discuss building height; and Council Member MacIlvaine registered no contact. Notary Public Jessica Rosenberg administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative. City Attorney Robert Pritt requested that all speakers acknowledge that they have been sworn prior to giving testimony.

Petitioner's attorney John Passidomo indicated that he had been sworn and said that the supplemental materials submitted to staff would provide clarification relative to the concerns raised at the prior hearing. He added that the architect, land planner, and coastal engineer are also available to respond to additional questions. Attorney Passidomo emphasized that the Natural Resources Manager had previously testified that all applicable standards for approving a coastal construction setback line permit had been met. He also expressed appreciation to Vice Mayor Herms for the time he spent working with the project consultants to ensure compliance with City building and zoning regulations. He thereby requested that Council approve the petition and suggested that the resolution incorporate by reference the supplemental submittals as a condition of approval.

Council Member Tarrant noted the noise and vibration caused by pile driving and questioned whether the petitioner would be willing to explore with staff the possibility of alternate pile driving methods; Attorney Passidomo affirmed that the petitioner would cooperate in this regard. Council Member Galleberg requested that staff explain building height measurement and demonstrate how this structure complies with applicable zoning. Vice Mayor Herms concurred and voiced concern regarding the two proposed large cupolas.

Natural Resources Manager Jon Staiger indicated that he had been sworn and explained that since the property is primarily gulfward of the coastal construction control line, it also needs a permit from the Department of Environmental Protection (DEP). He added that the DEP requires that the structure be sufficiently elevated so that a surge from a 100-year storm could safely pass beneath it, and said that the elevation for this particular property is 19 feet 2 inches above NGVD, which is approximately 1½ feet below sea level. Dr. Staiger further stated that in order to accommodate the structure that supports the first habitable floor, Code allows an additional 18 inches above the DEP mandated elevation; building height measurement begins at that point. Planning Director Ron Lee noted that the starting point for this building's height measurement is therefore 20 feet 8 inches. In this zoning district, maximum building height is 75 feet; however, a building is allowed an additional 12 feet if at least 75% of the parking is beneath, which it is in this case. The total is therefore 87 feet, which according to Code, should be measured to the highest point of a flat roof, the deck line of a mansard roof, or to the mean height between the eaves of a gabled hip or gambrel roof. Mr. Lee stated that in this particular building the predominant roof form is flat, and said that the building complies with maximum height. He added that Section 110-39 of the Code allows an additional seven feet for embellishments such as non-habitable cupolas and screening for mechanical equipment, and that the embellishments in this project are within that range. Mr. Lee stated that in his opinion, the vertical requirements of the Code had therefore been met. Referencing Mr. Herms'

aforementioned concern, Mr. Lee explained that the Code does not address cupola width, and said that it would be a subjective interpretation as to whether these particular cupolas would, in fact, be consistent with the Code.

Council Member Galleberg noted that although these explanations are important, Council is at this time actually making a determination on whether construction would be permitted in this coastal setback zone. Vice Mayor Herms pointed out that Council should nevertheless make a determination as to whether the roof structures are actually cupolas and conform to Code. Council Member Taylor voiced the opinion that the building actually has a peaked roof with flat areas, and suggested that staff determine the percentage of the roof dedicated to cupolas. Absent a ratio standard in the Code, Council Member MacIlvaine recommended that Council make a reasonable judgment in defining a cupola. Council Member Galleberg stated that the structures in question may not necessarily be cupolas, there being other allowances to provide screening for mechanical equipment. Vice Mayor Herms however voiced doubt that these structures could actually be described as screens. City Manager Rambosk noted that staff had researched architectural definitions, which he suggested adding to the Code to provide for future criteria; Mayor MacKenzie then read these definitions into the record. (See Attachment 1.) In further response to Council, Attorney Passidomo stated that the building width is 78 feet with 36-foot side yard setbacks.

Council Member Wiseman pointed out that if this project did not involve the coastal construction setback line variance, staff could render approval without Council. She maintained therefore that the only Council determination relates to the setback line accelerating, increasing, or aggravating natural erosion. City Attorney Robert Pritt affirmed this position, but said that the resolution contains a reference to certain drawings which include the aforementioned cupolas, which Council may not want to approve. Vice Mayor Herms questioned how allowing the cupolas would affect the 42-foot height limitation in commercial districts; however Mr. Lee explained that cupolas must in that case be contained within the 42-foot limit. Referencing the City Attorney's statement, Council Member MacIlvaine cautioned that granting the variance would imply approval of the building as presented; however, Council Member Galleberg disagreed saying that Council was not at that time approving the project. Vice Mayor Herms said that he as well as many of the project's neighbors had voiced concern relative to the building height and urged that Council determine whether these cupolas are indeed legal. He suggested that the builder retain the roofs and architectural details, and simply remove a few inches from each floor.

Project architect Robert Hall affirmed that he had been sworn and provided details on what he termed a predominately flat roof. He then estimated that the cupolas comprise 1/10 of the overall size of the roof, and stressed that the cupolas and mansards were actually intended to enhance the project design. He added that there was no rationale for removing several inches from the floors as suggested by Mr. Herms, and took the position that the cupolas meet zoning regulations. Mr. Herms stated that the building is at the maximum height to the mansard roof, and emphasized that the roofs cannot be utilized as a screen. Mr. Hall nevertheless stated that the roof form embellishes the architecture while still providing necessary screening.

Public Input: (10:28 a.m.) **Pierce Tyrrell, 1785 Gulf Shore Boulevard North**, affirmed that he had been sworn and that he resides at the building immediately south of the Tides Inn. He said that neither the proposed lot width nor the proposed side yard setbacks comply with minimum standards, and that the Code does not permit any height in excess of the 87-foot maximum. Mr. Lee clarified however that since the lot is an existing legal non-conformity in terms of its width,

using a Code calculation based upon building height, the building would also meet the setback requirements. Vice Mayor Herms however expressed doubt about this determination due to the embellishments.

Council Member Galleberg suggested amending the third whereas clause in the resolution to reference only Chapter 86-205 (b) of the Comprehensive Plan, which pertains to coastal construction setback variances. He also suggested amending Section 1 to reflect submission of subsequent drawings, plans and other materials provided to Council up to and through December 6, 2000. Mr. Galleberg further stressed that Council was not approving a building variance at that time. City Attorney Pritt suggested adding a new Section 5 and renumbering the current Section 5 to Section 6 to accommodate this amendment. Mr. Galleberg made a motion to approve with the aforementioned amendments seconded by Council Member Wiseman; however, Vice Mayor Herms questioned which of the drawings would be included. After further discussion, it was determined that this would be the site plan dated 9/20/00 and the certification letter dated 12/5/00. Mr. Herms suggested a further amendment to reflect that the maximum height of 87 feet would be measured to the midpoint of the cupola hip roofs; however, Council Member Galleberg said that Council is not determining that aspect of the project at that time. Mr. Herms voiced further concern however that upon this approval, staff would assume that these cupolas are permitted and later issue a building permit. City Manager Rambosk stated that the Building Official would follow the normal process and review the plans, with any questions relative to the Code to be referred to the Planning Director. He added that in the event of non-compliance, the Planning Director would recommend that the petitioner seek a variance. Planning Director Lee however stated that based upon the drawings submitted that day, it is his opinion that the petitioner had met the building height requirement. He also stated that he did not consider the structures in question to be cupolas, but ornamental screening. To clarify that Council is not approving building plans, Council Member Wiseman suggested adding the following language: no variance or approval is hereby granted by this resolution other than the coastal construction setback line variance hereby granted pursuant to Chapter 86-205 (b) of the Comprehensive Development Code. Vice Mayor Herms nevertheless suggested that Council conduct a workshop to make a precise determination as to what constitutes a cupola.

Recess 11:05 a.m. to 11:13 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Attorney Passidomo suggested adding a provision to the resolution indicating that nothing herein shall be construed to authorize any deviation from the existing maximum height requirements in the underlying R3T-18 zoning district. City Attorney Pritt however cautioned that the petitioner may later demand that staff issue a building permit asserting that the aforementioned zoning provision does not however apply to the project. Council then briefly discussed whether this could lead to a vested rights claim. Council Member Galleberg recommended inserting Mr. Passidomo's language into the new Section 5. Council Member MacIlvaine suggested that the aforementioned workshop include a discussion on removing from the Code the additional 12 feet of building height allowed for first floor parking. It was the consensus of Council, however, that any such amendment would not apply to this project; Attorney Passidomo urged that this be so reflected in the resolution. Council Member Galleberg clarified that his motion included all the amendments as discussed.

MOTION by Galleberg to APPROVE RESOLUTION 00-9028 AS AMENDED:
A) third whereas clause to reference chapter 86-205 (b) of the comprehensive development code; b) section 1 (line 8) to read "...in accordance with the site plan dated 9/20/00 (exhibit a) as attached and certification letter dated 12/5/00 (exhibit b)"; deleting the remainder of this section except "for the property

described below" and the description; c) new section 5 to read " no variance or approval is hereby granted by this resolution other than the coastal construction setback line variance hereby granted pursuant to chapter 86-205 (b) of the comprehensive development code, and reflect that "nothing herein shall be construed to authorize any deviation from the existing maximum height requirements in the R3T-18 zoning district"; d) renumber current section 5 to section 6; e) add to resolution "nothing herein shall be construed to reduce the additional 12 feet permitted due to the parking allocated under the building", and f) petitioner would explore with staff the possibility of alternate pile driving methods. This motion was seconded by Wiseman and unanimously carried, all members present and voting (MacIlvaine-yes, Taylor-yes, Tarrant-yes, Galleberg-yes, Herms-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Herms to CONDUCT A WORKSHOP in January to address definitions of cupolas and ornamental screening; seconded by Taylor and carried 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-no).

Council Member Wiseman questioned how such a workshop would affect the Tides Inn petition, and Mayor MacKenzie suggested that staff may need to thoroughly research these issues. City Manager Rambosk stated that staff would be ready to address the additional 12-foot parking incentive issue and related matters in February.

.....**ITEM 13-a**
DISCUSS THE SMITH AND NEPHEW REHABILITATION AS IT RELATES TO THE SPECIAL EVENTS AT THE WILKINSON HOUSE. (11:44 a.m.)

.....**ITEM 13-b**
DISCUSS BIG BROTHERS/BIG SISTERS AS IT RELATES TO THE SPECIAL EVENTS AT WILKINSON HOUSE. (11:44 a.m.)

It is noted for the record that Item 13-a and 13-b were discussed concurrently.

City Manager Kevin Rambosk explained that, per Council's direction, staff had contacted the Collier County Historical Society (CCHS) regarding the disposition of any prepaid deposits for the use of the Wilkinson House, specifically for weddings. An agreement had been reached with the CCHS whereby the deposits (currently escrowed) would be returned to the depositor who would then endorse the check to the City and the event would proceed through a facility use agreement. Mayor MacKenzie noted one depositor's concerns that, without the Designers' Showcase event, the house may not be sufficiently decorated and suggested returning the deposit so it can be used for this purpose, or to allow the depositor to secure another location.

Community Services Analyst Janet Mullin outlined the "Smith and Nephew Rehabilitation" and the "Big Brothers/Big Sisters" events which are scheduled for the Wilkinson House and asked if Council would honor CCHS's commitment to these organizations. She then provided information as to the deposits paid to date. Council Member Galleberg commented that the funds should be returned to the depositors who can then remit an equal amount to the City should they decide to proceed with the event.

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

MOTION by Herms to APPROVE ITEM 13-a; seconded by Tarrant and carried 5-2, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

Public Input: (11:54 a.m.) Lynda Szczepanik, 1943 Maravilla Street, Ft. Myers, Development Director of Big Brothers/Big Sisters, stated that the Collier County chapter had

undergone major changes and is now under the auspices of Big Brothers/Big Sisters of Southwest Florida. She explained that the upcoming fundraiser at the Wilkinson House is needed to proceed with organization plans. In response to Council, Ms. Szczepanik stated that tickets would cost \$150 and that she expected the event to net \$30,000. Council Member Taylor suggested crediting this organization the base rental fee less any City expenses as a donation; Council Member Galleberg recommended proffering a second motion for this purpose.

MOTION by Herms to APPROVE ITEM 13-b; seconded by Taylor and carried 5-2, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

Although calling Big Brothers/Big Sisters a worthy organization, Council Member Galleberg said he believed there to be sufficient time to deal with changed circumstances. Council Member Wiseman agreed, saying the organization could have easily transferred to another location. Ms. Szczepanik noted, however, that although she had been made aware of the difficulties with the Wilkinson House, she had been assured that the City would honor the CCHS's commitments.

Council Member Taylor made a motion to reimburse the base rental fee; however, further discussion ensued. Council Member MacIlvaine commented that although this is a worthy cause, the City should not allocate \$1,750 in taxpayer money to a particular charity. Council Member Galleberg noted that Council sometimes waives fees for use of City property for groups such as for the Naples Concert Band, which he observed is not considered tantamount to making a donation; Council Member MacIlvaine however maintained his prior position.

MOTION by Taylor to REIMBURSE THE BASE RENTAL FEE EXPENSE OF \$1,750 LESS ANY OUT-OF-POCKET EXPENSES INCURRED BY THE CITY; seconded by Herms and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess 12:04 p.m. to 1:34 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**ORDINANCE (First Reading)ITEM 17
AN ORDINANCE AMENDING SECTION 2-44 (b) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO ALLOW ITEMS TO BE ADDED TO THE CITY COUNCIL AGENDA BY A FOUR-SEVENTHS VOTE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

Title read by City Manager Kevin Rambosk (1:34 p.m.). Referring to the City Attorney's opinion, a copy of which is contained in the file for this meeting in the City Clerk's Office, Vice Mayor Herms recommended that the ordinance be amended to reflect the original language in the charter which City voters had approved and that the modifications made by a Council five years before be rescinded. Mr. Herms then explained that although the proposal under consideration is to allow items to be added to the agenda with a 4/7 vote, he would prefer to retain a 5/7 vote for ordinances and to modify the language so that any other item can be added to an agenda with a simple majority.

Mr. Herms then reported that 103 items had been added to agendas as of February, many of which were routine administrative matters not advertised. Mayor MacKenzie stated that a slightly higher standard of a 5/7 vote is important so as to deter the routine addition to the agenda of late unpublished items. Council Member Galleberg described the issue as actually being the level of agreement required to add items extemporaneously and noted that the normal administrative procedure is to have an item placed on the agenda for the next meeting so as to afford the public the opportunity to register input. He added that he had voted against adding

certain items to that day's agenda because he could perceive no deleterious effect in delaying them until the next meeting.

Council Member Wiseman also urged caution in placing late items on the agenda, and asked Council Member Tarrant to clarify remarks he had made recently on the Jeff Lytle television program relative to this issue. Council Member Tarrant explained he believed that items of any importance would in fact not be brought up extemporaneously; however, Mrs. Wiseman maintained concern about adequate protection for residents. Vice Mayor Herms questioned whether this section of the charter could legally be modified by Council; City Attorney Robert Pritt affirmed that it could in fact be so modified, having already been modified on two occasions.

Mayor MacKenzie identified what she described as the public's only safeguards; namely, the published agenda and the requirement of a 5/7 vote to add extemporaneous items. She said that she opposed subverting either. She also said she did not want to fuel the perception that government operates in a crisis mode. Mayor MacKenzie then observed that despite what she termed the cordial relationship between Council Member Tarrant and Vice Mayor Herms, she had been surprised that Mr. Tarrant would support this change, since the hallmark of his career has been open access and communication with the public. Council Member Taylor however characterized Mayor MacKenzie's comments as partisan, and said she was certain that Mr. Tarrant bases his decisions on his extensive experience. Council Member Tarrant rejected the suggestion that he votes in accordance with Mr. Herms, and added that the proposed change would not hinder the public's ability to speak to an issue and express an opinion. Vice Mayor Herms pointed out that if it were important for the public to have every single agenda item published, Council would not have added any of the past items to the agendas. City Clerk Tara Norman confirmed that most of the 103 items cited previously were unanimously added. Council Member Galleberg then pointed out that Council had in fact taken unauthorized action relative to the conservation charter amendment at a prior meeting because an item had not been properly added to the agenda.

City Attorney Pritt then clarified that prior to the 1995 amendment of Section 2-44, it was not possible to add anything to the agenda other than an ordinance with a 5/7 vote. Mayor MacKenzie said she surmised that an ordinance was allowed to be considered because it requires two readings, and would therefore be noticed prior to the second reading. Council Member Tarrant suggested continuing this item to allow for an appropriate review of the meetings wherein the prior Section 2-44 changes occurred. Mayor MacKenzie took the position that allowing other items to be added to agendas by a simple majority would further erode the original Charter language. Council Member Taylor questioned whether there were any items added to the agendas prior to 1995. City Clerk Norman said she recollected that there had been, and said she believed there had been an increasing need by the administration to place items on the agenda to allow work to proceed. She added that the 1995 ordinance was adopted unanimously with one member absent. After briefly addressing the State's policies, City Attorney Pritt stated that the Home Rule Powers Act allows cities and local governments to enact legislation as they determine as long they meet the statutory minimums. Council Member MacIlvaine expressed reluctance to change the 5/7 requirement to a simple majority. Therefore, noting inadequate support for enacting this change, Vice Mayor Herms then withdrew his request; however, Mayor MacKenzie noted the presence of registered speakers. Council Member Tarrant noted for the record that he had never accused Mayor MacKenzie of casting a vote based on friendship, and stressed that he himself would also never vote in this manner.

Public Input: (2:23 p.m.) **Dodie Briskey, 4236 Crayton Road**, representing the Park Shore and Crayton Road Homeowners Association, noted a recent newspaper article on this issue and urged that Council adhere to the current 5/7 requirement in order to afford adequate citizen protection. **Elaine Luckhart, 3500 Crayton Road**, said she was offended by two Council Members who had voiced agreement with a recent letter to the editor concerning the proposed conservation charter amendment, and said she would appreciate an apology. She then voiced approval for Council's decision to retain the current 5/7 requirement. **Martha Dykman, 5040 Seashell Avenue**, Naples Better Government Committee President, expressed appreciation to Council Member MacIlvaine for the position he had taken on this issue, and said the 5/7 requirement gives citizens adequate security. She also registered dismay that Council had recently voted to address the conservation charter amendment without officially adding it to the agenda, thereby limiting citizen input. **Gordon Watson, 2621 Windward Way**, Concerned Citizens for Responsible Government President, voiced approval for retaining the 5/7 requirement to allow the public the opportunity to weigh in on every political issue. **Charles Kessler, 525 Anchor Rode Drive**, said that with the exception of Mrs. Dykman, he seldom sees representatives of the Naples Better Government Committee at Council meetings, and pointed out that surprise items often occur during the Correspondence and Communications portion of meetings. Mr. Kessler noted, for example, that former Council Member Peter Van Arsdale became President of the Old Naples Task Force at such a time without any prior notice to the public. Council Member Galleberg commented that while proper advertisement does not compel public attendance, it allows citizens to decide whether they wish to attend. While conceding no direct knowledge of the incident described by Mr. Kessler, Mr. Galleberg nevertheless stated that if this were the case, the prior Council had indeed acted in error.

Council Member Wiseman proffered a motion to deny Item 17, seconded by Council Member Galleberg; however, further discussion ensued. In countering what he described as statements made by pro-growth members of the public, Vice Mayor Herms said that, theoretically, Council should then ensure that each of the 103 items had been properly added. He pointed out that three members of Council are, at times, then making the determination as to what items will be added to agendas, and noted those items which failed to be added to that meeting's agenda. (See Page 2.) Mayor MacKenzie said that items referred to should simply undergo the normal process in order to allow Council sufficient time to conduct appropriate research. Council Member Tarrant noted an instance during the former Council's tenure wherein his request to place an item on the agenda was refused, and voiced concern this could again occur. Council Member Galleberg however noted that in that scenario, the item could then be added at the next meeting with a 5/7 vote. However, Mr. Tarrant disagreed saying this would not be the case with a pro-growth Council. Mayor MacKenzie took exception to references to anyone who disagrees with this issue as being pro-growth, and asked that Council refrain from making such characterizations.

MOTION by Wiseman to DENY ITEM 17; seconded by Galleberg and carried 5-2, all members present and voting (Wiseman-yes, MacIlvaine-yes, Tarrant-no, Galleberg-yes, Herms-no, Taylor-yes, MacKenzie-yes).

Addressing her comments to Vice Mayor Herms, Elaine Luckhart stated that she and her associates are not pro-growth simply because they opposed the conservation charter amendment. She added that she believed the amendment had been poorly written and would not have served the City. Mr. Herms asked Mrs. Luckhart whether she and her associates had informed the public that the amendment would prevent the second Gordon River bridge, or affect beach renourishment or the docks in the Gordon River; Mrs. Luckhart responded that they had not. Vice Mayor Herms then stated that the amendment would have simply prevented the development of the mangrove areas. Mr. Luckhart however said that there are few such areas

left, and since most are privately owned, she suggested conducting discussions with private enterprise.

ORDINANCE (First Reading)ITEM 9
AN ORDINANCE ADOPTING TEXT AMENDMENT PETITION 00-T17, AMENDING SECTION 102-116 (2) OF THE CODE OF ORDINANCES IN ORDER TO MODIFY SPATIAL PERCEPTION REQUIREMENTS OF THE "R1-15A," RESIDENCE DISTRICT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:48 p.m.). City Manager Rambosk stated that the spatial perception had unintentionally been affected by revising the sideyard setback (from 10 feet to 12.5 feet) without indicating any change to the applicable vertical height. This amendment would allow for correction in order to maintain the original spatial perception, he added.

Public Input: (2:50 p.m.) **Kelly Confoy, 299 13th Avenue South**, Port Royal Property Owners Association Executive Director, said the association would like to see the vertical height of the spatial perception amended to 12.5 feet. Planning Director Ron Lee confirmed that this is simply a remedial action.

MOTION by Herms to APPROVE ITEM 9 AT FIRST READING; 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 10**
DISCUSSION OF A PROCESS FOR REVIEWING VESTED RIGHTS CLAIMS ON HEIGHT LIMITATION. (2:51 p.m.) City Manager Kevin Rambosk noted the increasing number of questions staff has received relative to potential vested rights claims, and said he felt it important to review with Council the original parameters established. Referencing a memo by City Attorney Beverly Grady, a copy of which is contained in the file for this meeting in the City Clerk's office, City Manager Rambosk noted three options: reviewing the vested rights claims through the City's process, establishing an alternative process, or advising owners that any determination of rights may only be sought in the courts.

Council Member Wiseman noted that the City's current position is the third option. Council Member MacIlvaine recommended that Council establish an alternative process, such as the use of a special master or mediator, in order to reach a compromise with affected property owners like the Norins who had previously approached Council. Council Member Taylor stated that she did not feel qualified to undertake the lengthy and complicated processes involved in determining vested rights, and said that these matters should be settled in court. Mayor MacKenzie noted the advantages of using a combination of the first two options with Council making the final decision. Council Member Wiseman however stated that the majority of Council had already decided that the 42-foot height limit is an absolute, and that any vested rights procedure or mediation would prove futile without a reconsideration of this point. She added that Vice Mayor Herms had at the time asserted that the property owner could also choose to redesign a building. She said, however, there are currently several lawsuits pending. Vice Mayor Herms commented that the majority of Council had believed at the time that determining vested rights would be difficult, and stated that former City Attorney Kenneth Cuyler had not provided clear cut standards which Council could apply. He added that the special master could function in some respects as a judge and expedite the process. Mrs. Wiseman stated that Council however must take responsibility for interpreting the charter amendment and making the ultimate decision. Council Member Galleberg concurred and expressed approval for investigating a more complete vested rights policy. Council Member Tarrant voiced concern about using a special

master or mediator, and instead recommended inviting petitioners to work with staff and Council to enhance their projects while conforming to the charter amendment. He then questioned whether a special master could make a ruling that violates the charter amendment; however, City Attorney Pritt recommended that the special master provide only the recommendation with Council retaining the final authority. Council Member MacIlvaine however recommended that the arbitrator's or special master's decision be binding and final, and that Council should simply ratify it; Vice Mayor Herms concurred. Council then discussed conducting a workshop on this issue; however, Council Member Tarrant stated that doing so might suggest to the public that Council does not intend to uphold the charter amendment.

MOTION by Wiseman to INSTRUCT THE CITY ATTORNEY TO EXPLORE VESTED RIGHTS CLAIM PROCEDURES TO BE REVIEWED AT A FUTURE WORKSHOP; *seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Recess 3:40 p.m. to 3:51 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

.....**ITEM 12**
DISCUSSION OF BROADCASTING NAPLES PRESERVE VIDEO ON CITY'S CABLE CHANNEL. (3:51 p.m.) Council Member Taylor stated that since the City's cable channel is now operating 24 hours, it needs programming. She said that Naples High School students had recently produced a video of the Naples Preserve which could be used. City Manager Kevin Rambosk then recognized Naples High School teacher Carol Mitchell and student Derrick Perry who had produced this video. Council expressed appreciation for what they agreed was a high quality project, and voiced support for continued involvement with the school relative to other types of programming.

Public Input: None. (4:01 p.m.)

MOTION by Taylor to PLACE NAPLES PRESERVE VIDEO ON THE CITY'S CABLE CHANNEL AT LEAST ONCE PER DAY; *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 Taylor then suggested coordinating with the school in order to place footage of holiday tree-lighting on the City's channel. She also suggested that student Derrick Perry videotape an upcoming skatepark competition.

MOTION by Herms to PLACE ON THE 12/20/00 AGENDA THE PRODUCTION OF A VIDEO CONCERNING AN UPCOMING SKATEPARK COMPETITION; *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).*

RESOLUTION 00-9029.....ITEM 11
A RESOLUTION APPOINTING A CONSULTANT SELECTION COMMITTEE FOR THE PURPOSE OF ESTABLISHING SELECTION CRITERIA, REVIEWING QUALIFICATIONS SUBMITTED BY PROFESSIONAL ENGINEERING FIRMS AND SETTING UP THE INTERVIEW PROCESS RELATIVE TO THE CITY'S REUSE SYSTEM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:03 p.m.). Public Works Director Dan Mercer stated that this is to formulate the City's first reuse master plan, and predicted that by mid January staff would begin the interview process and later proceed with a proposal. Vice Mayor Herms volunteered to serve on this committee. Council Member Tarrant noted former Council Member Virginia Corkran's efforts relative to Policy

2-1 of the Comprehensive Plan, which involves evaluating water resource needs for determining the impacts of growth. He added that the South Florida Water Management District (SFWMD) has not provided basic information about the water capacity of the aquifer, and has merely indicated that Collier County would have to expend additional monies in the future to purify its water. He therefore urged that the City insist upon more specific information. Mr. Mercer stated that staff would in the near future complete a five-year update on the water master plan (potable water supply), and could ensure that Mr. Tarrant's suggestion is included, noting that the re-use master plan should, in fact, mesh with the water master plan.

Public Input: None. (4:10 p.m.)

MOTION by Herms to APPROVE RESOLUTION 00-9029 (VICE MAYOR HERMS APPOINTED); 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).

City Manager Rambosk noted that staff is currently endeavoring to obtain the aforementioned information from the SFWMD.

OPEN PUBLIC INPUT (4:12 p.m.)

Charles Kessler, 525 Anchor Rode Drive, stated that he had toured the City's water reuse facility and had been favorably impressed. He then said that he recently observed near the outdoor dining areas of McCabe's Irish Pub and Grill and Yabba Island Grill chain and rope barriers blocking citizen access to the public rights-of-way. Based on the square footage in those areas, Mr. Kessler estimated that the establishments are receiving from the City \$70,000 of rent free space. He therefore urged that the City investigate a means to charge for the use of this valuable property. City Manager Rambosk stated that these establishments cannot rope or chain off these areas, and that staff would remedy the situation the following morning. Planning Director Ron Lee noted that staff had several months ago begun drafting an outdoor dining ordinance which would have included a fee schedule for the use of public rights-of-way. After a brief Council discussion, Mr. Lee received direction to move forward and place it on an upcoming workshop agenda.

.....**ITEM 14**
DISCUSSION OF WILKINSON HOUSE OUTSTANDING ISSUES. (4:19 p.m.)

City Manager Kevin Rambosk stated that according to the first appraisal, the adjusted price per front foot of \$40,000 indicates a market value of \$6.4 million. The adjusted price per square foot of \$200 indicates a market value of \$5.6 million; therefore, the market value should fall within that range absent any restrictions. Council briefly discussed the beachfront footage, and Council Member Galleberg noted a recent sale of beachfront property at \$56,000 per beach foot with restrictions which he said he would further research.

City Attorney Robert Pritt asked that Council examine drafts of a provided standard sales contract for residential property and a non-exclusive view easement and a non-exclusive pedestrian pathway easement. He requested direction for any amendments. Council Member Galleberg said he was surprised to encounter a third party easement in this package, and noted that Council had never discussed the granting of such an easement. City Manager Rambosk said this was suggested by the Sibcy interests as an alternative to their pursuing litigation. Mr. Galleberg however stated that the Sibcys do not have legal standing at this stage, and that he would be reluctant to grant them or any other interest an easement over this property. Council Member Wiseman concurred, and added that she believed negotiating the deed restrictions would serve to benefit all involved parties. The majority of Council concurred, and Council Member Taylor said that because of this, the licensing agreement, and the bond issue, she feels that Roetzel & Andress has a conflict and has not properly served the City. She therefore

advocated hiring another attorney to represent the City in this matter. Council Member Tarrant concurred and said that former City Attorney Kenneth Cuyler had failed to submit the required opinion letter on the bond issue to bond counsel. City Attorney Pritt countered that Mr. Tarrant's statement was a very serious charge. Council Member Wiseman noted that Council had previously approved the hiring of a law firm to investigate this matter, and proffered a motion, seconded by Council Member MacIlvaine to retain present counsel on this matter; however, further discussion ensued. Vice Mayor Herms requested clarification on the special warranty deed; however, Council Member Wiseman recommended not discussing it at this time to enable her and the rest of Council to thoroughly review the document. In response to Council, Roetzel & Andress attorney Greg Urbancic affirmed that he had prepared the aforementioned documents and, when requested, briefly detailed his legal experience.

Public Input: None. (4:41 p.m.)

MOTION by Wiseman that COUNCIL UTILIZE THE CITY ATTORNEY THROUGH THE FIRM OF ROETZEL & ANDRESS TO REPRESENT THE CITY IN THE SALE OF THE WILKINSON HOUSE TO A THIRD PARTY AND TO HANDLE THE MATTER OF THE SIBCY CLAIMS; seconded by MacIlvaine and carried 4-3, all members present and voting (Tarrant-no, Galleberg-yes, Herms-no, Wiseman-yes, Taylor-no, MacIlvaine-yes, MacKenzie-yes).

Mayor MacKenzie suggested discussing the aforementioned documents at the next Council meeting. Council Member MacIlvaine noted an internal conflict in the sales contract concerning a garage, and Council Member Wiseman stated that there are certain improvements that should be made to the house such as the removal of a porch. Council Member Taylor suggested that City Attorney Pritt incorporate the same kinds of restrictions as contained within the Sanibel Island historic preservation ordinance.

MOTION by Herms to PLACE SALES CONTRACT AND RELATED DOCUMENTS ON THE 12/18/00 WORKSHOP AND 12/20/00 REGULAR MEETING AGENDAS; 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).

Attorney Urbancic confirmed that since Council is the grantor of the special warranty deed, it would have the power to enforce the restrictive covenants therein. Council Member Wiseman said she would prefer a strict prohibition against changes to the exterior of the house unless protections were otherwise enumerated. Attorney Urbancic affirmed there is a limited time period applicable to deed restrictions.

City Manager Rambosk then explained that staff had researched potential law firms that could assist in resolving questions regarding the bond issue, and that although five had responded, only Holland & Knight had expressed interest in performing this kind of work. Council Member Wiseman stated that Holland & Knight would have to ensure there is no conflict of interest before proceeding to represent the City. She added that very few firms with a bond department would be interested in taking on a claim involving this kind of issue, and suggested searching for firms that concentrate their practice on exploring malpractice claims against other lawyers. Council Member Galleberg said that although the firm should have familiarity with the scope of work bond counsel performs, the work does not necessarily require a bond counsel. Noting the potential expense involved, Council Member MacIlvaine reiterated his previous position not to proceed with this issue. Mrs. Wiseman however voiced concern relative to assigning to taxpayers the ensuing penalties and interest, without being able to identify the responsible party; therefore she recommended pursuing the analysis. Council Member Tarrant proffered a motion

for the City Manager to contact additional firms and to determine the City's exact liability as to the interest and penalties; however, further discussion ensued. Council Member MacIlvaine noted the possibility that the Internal Revenue Service would forgive any penalties; however, Council Member Galleberg said that the City would otherwise be financially liable and urged proceeding with the inquiry.

MOTION by Tarrant to DIRECT THE CITY MANAGER TO CONTACT ADDITIONAL LAW FIRMS TO STUDY CONCERNS REGARDING THE BOND ISSUE AND TO DETERMINE THE CITY'S LIABILITY AS TO INTEREST AND PENALTIES. THIS ITEMS WILL BE DISCUSSED AT THE 12/20/00 REGULAR MEETING; seconded by Herms and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms questioned the determination of the ultimate price for the home; Council Member Wiseman said she assumed this would be the highest offer received. Council Member Taylor recommended retaining Scott Cameron as broker for the sale. City Manager Rambosk stated that there had been significant interest already shown in the house, and suggested that Council establish the sales process to be used. Vice Mayor Herms said a minimum price should be established, a 45 day period for submittals, and a potential broker's commission. He also noted that the exterior trim of the house should be professionally painted, and requested Council's concurrence on obtaining bids. City Manager Rambosk stated that the City's Facilities Maintenance Supervisor could investigate the situation and prepare a request for proposals for painting the trim and for glazing. Council Member MacIlvaine however said that the house is to be sold as is, and recommended not proceeding with painting since it could lead to potential liability. Vice Mayor Herms however said that any crucial information regarding the house would be disclosed upon inspection, and that any unattractive feature could potentially affect the ultimate price. Mayor MacKenzie recommended obtaining additional information before making a decision.

MOTION by Galleberg to DIRECT STAFF TO OBTAIN ESTIMATES ON PAINTING TRIM AND GLAZING; seconded by Herms and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

In response to Council, City Manager Rambosk affirmed that this property is insured under the City's general policy. Council Member Wiseman recommended that the City Attorney and City Manager work together to develop bid specifications.

.....**ITEM 24**
DISCUSSION REGARDING A NAPLES PRESERVE BROCHURE (5:23 p.m.) Mayor MacKenzie questioned whether Council could make corrections and receive an amended version at the next meeting. Friends of the Naples Preserve Committee Chairman William Meek however noted significant time constraints, and offered instead to fax the revisions to Council to demonstrate that they have been done. He added that he would revise the brochure text, as previously directed, to reflect that the building would be removed, not demolished, if the fundraising goal is not met. In response to Council, Mr. Meek stated that the Steering Committee had determined that the two surrounding ficus trees would also be removed in this event because they are not native to the area and because their retention was merely to provide shade to the building and parking lot. Council Member Taylor voiced support for this position; however, the majority of Council said they favored retaining these trees and Vice Mayor Herms further suggested eliminating this entire sentence. Mr. Meek suggested omitting that part of the sentence pertaining to the trees, and offered to omit from the listed uses a meeting place for local nature groups in order to comply with previous Council direction. Council Member Tarrant

however voiced dismay regarding restricting building use, and said that the public should be able to conduct certain types of meetings in the building. Council Member Wiseman recommended indicating in the brochure that as part of the restoration, the building colors are subject to change, and that donations of any amount are welcome.

Public Input: None. (5:36 p.m.)

MOTION by Galleberg to APPROVE WITH THE MAYOR AND CITY MANAGER REVIEWING THE FINAL PROOF FOR CHANGES AND EXTENDING BEST WISHES TO THE STEERING COMMITTEE IN RAISING FUNDS; *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).*

Mr. Meek said that the committee would mail 20,000 brochures as a test market to specific areas in the City, and provided information on the mailing procedures to be used. He added that 1,000 brochures would also be hand-delivered or distributed to Chamber of Commerce members. Council Member Wiseman offered to display brochures in her law office lobby. Council Member Galleberg noted that Council had previously authorized a \$10,000 loan to start this project, and questioned the proposed repayment procedures. Mr. Meek said that the Steering Committee had earmarked \$4,000 for building stabilization and \$6,000 for mailing costs, and that repayment is not necessary because all monies raised for The Community Foundation of Collier County would be redirected to City projects if this effort proves unsuccessful. He also explained that although the Community Foundation would charge a small management fee, its endorsement and services are invaluable to this process.

RESOLUTION 00-9030.....ITEM 19-a
A RESOLUTION ESTABLISHING THE HEART OF NAPLES COMMITTEE FOR THE PURPOSE OF PREPARING A COMPREHENSIVE STUDY OF THE 41-10 AREA; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:39 p.m.).

RESOLUTION (Continued) ITEM 19-b
A RESOLUTION APPOINTING ELEVEN MEMBERS TO THE HEART OF NAPLES COMMITTEE FOR A TERM EXPIRING DECEMBER 31, 2002, TO STUDY VARIOUS ISSUES IN THE 41-10 CORRIDOR; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during the discussions below.

It is noted for the record that Items 19-a and 19-b were considered concurrently.

City Manager Rambosk stated that staff recommends amending language in both the title and in the third whereas clause to include preparation of a comprehensive assessment of and implementation plan for the 41-10 area. He explained that the intent is to assign schedules, time frames, and funding to all of the work previously identified, and suggested soliciting input from area business owners and establishing a test block for a façade improvement program. Council Member Galleberg voiced doubt that the 41-10 plan would spur redevelopment under its current incentives. Council Member MacIlvaine observed that if the previous work had resulted in redevelopment, there would be no issue to be then considered. He further predicted that this area could be as successful as Fifth Avenue South, and recommended proceeding with input from area business owners and demonstrating to developers that this is a profitable area in which to build. Vice Mayor Herms however noted that this property is significantly different from that on Fifth Avenue, and said that the proposed committee could develop appropriate programs to actualize the potential for this area. Council Member Tarrant pointed out that the recommendations for 41-10 are the same as those established for Fifth Avenue South including improving the sidewalks, lighting, and landscaping, and encouraging improvements to building facades. He added that he believed this would be a positive direction in which to proceed in

tandem with working with the property and business owners. Council Member Wiseman expressed the opinion that the 41-10 plan has not succeeded due to a lack of certainty, saying that the 42-foot height charter amendment as well as the current plans to reduce density and eliminate parking garages caused serious effects on proposed development. She noted that the proposed Norins project, now a subject of litigation, would have been a cornerstone for the redevelopment of 41-10. Council Member Galleberg added that on Fifth Avenue the burgeoning redevelopment had funded the streetscape improvements, and that this process may not necessarily work in reverse. Mayor MacKenzie however said that developing schedules and time frames for the improvements as well as investigating grants would be advantageous at this time, and noted that the committee could potentially reenergize this area. Council Member MacIlvaine concurred, noting that area property and business owners had conveyed to him their support for this proposal.

City Manager Rambosk then detailed the proposed composition of the committee, and Council Member Taylor suggested increasing the number of resident members. In that regard, Mr. Rambosk noted that representatives from both the Royal Harbor Homeowners Association and the Oyster Bay Homeowners Association had indicated that they wished to participate. Council Member Wiseman noted that Royal Harbor resident and former Council Member John Nocera had indicated his willingness to serve. Council briefly discussed the importance of having representation from the River Park Neighborhood Association, the Planning Advisory Board, and other groups. Council Member Wiseman recommended requiring CRA Chairman MacIlvaine to serve as this committee's chairman. Mr. MacIlvaine however said that he would prefer that the committee elect its own chairman. He then made a motion to approve Item 19-a; however, further discussion ensued. City Attorney Robert Pritt recommended designating the quorum as simply the majority of the members appointed; however, Mayor MacKenzie said she believed there should be a minimum number, and suggested keeping it as seven. Vice Mayor Herms then voiced concern that the resolution for 19-a contains a clause under scope of work that indicates that the Phase I report shall make recommendations regarding professional services and that he would not be willing to spend for another study for that community. Council Member Tarrant said he could not support this item if it included a provision for the use of consultant services. Council Member MacIlvaine then proffered an amended motion as indicated below.

Public Input: None. (6:15 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 00-9030 (ITEM 19-a) SPECIFYING NO MORE THAN 19 HEART OF NAPLES COMMITTEE MEMBERS; A MAJORITY VOTE OF THE QUORUM PRESENT WITH A MINIMUM OF SEVEN AFFIRMATIVE VOTES; AND DELETING PARAGRAPH 3 UNDER SCOPE OF WORK; seconded by Taylor and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

Council Member Wiseman said she believed 19 members would be an unwieldy number, and that the timing and the climate is wrong for this proposal.

COMMITTEE TO BE COMPOSED OF THE FOLLOWING

3 41-10 BUSINESS ASSOCIATION MEMBERS

2 ARCHITECTS

1 FIFTH AVENUE SOUTH BUSINESS ASSOCIATION MEMBER

2 REPRESENTATIVES OF LAKE PARK HOMEOWNERS ASSOCIATION (ONE VOTE)

2 REPRESENTATIVES OF OLD NAPLES HOMEOWNERS ASSOCIATION (ONE VOTE)

2 REPRESENTATIVES OF THE RIVER PARK NEIGHBORHOOD ASSOCIATION (ONE VOTE)

1 REPRESENTATIVE OF THE ROYAL HARBOR HOMEOWNERS ASSOCIATION

1 REPRESENTATIVE OF THE COQUINA SANDS HOMEOWNERS ASSOCIATION

1 REPRESENTATIVE OF THE OYSTER BAY HOMEOWNERS ASSOCIATION

1 NAPLES COMMUNITY HOSPITAL REPRESENTATIVE

1 CHAIRMAN OF COMMUNITY REDEVELOPMENT AGENCY

1 GATEWAY COMMITTEE MEMBER

1 PLANNING ADVISORY BOARD MEMBER

Mayor MacKenzie recommended approving Item 19-b and adding the representatives' names at a future meeting. Council Member Wiseman however said that should staff find insufficient interest in participating in this committee, Council could then amend the resolution. She therefore advocating continuing this item.

MOTION by Wiseman to CONTINUE ITEM 19-b TO THE 12/20/00 REGULAR MEETING; 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).

Vice Mayor Herms suggested that staff contact Fifth Avenue South business owner Vincent Riciglinao regarding possible participation on the committee. Council Member Wiseman, however, advocated contacting the presidents of each of the various associations for recommendations.

RESOLUTION 00-9031.....ITEM 22
A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A REVISED EMPLOYMENT AGREEMENT WITH KEVIN J. RAMBOSK AS CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk after the discussions below. (6:25 p.m.) City Manager Kevin Rambosk explained that a new option developed would simply allow him to petition the Police Pension Board to collect his pension, but have benefits deferred to a trust fund to which he would have no access while employed by the City. Under this option, he said, he would not be eligible for the managerial pension plan. Mr. Rambosk then affirmed that had he retired in the traditional sense from the police force, he would have been able to draw a monthly stipend. This option, he added, would grant him no extra rights and would in fact impose further restrictions. He further added that the Fraternal Order of Police (FOP) had registered its support for this option. Council Member MacIlvaine questioned the status of the pension plan for the City Manager position. Mr. Rambosk affirmed that he had waived this since his appointment to City Manager, and that he is simply allocating funds into his own personal 401K plan. Council Member MacIlvaine expressed support for using this option. In further response to Council, Mr. Rambosk confirmed that the Police Pension Board has the ultimate authority to approve this proposal although he is not asking the Pension Board to fund more than normally required.

Public Input: (6:30 p.m.) **Paul Noeske, 5811 Memorial Highway S-205, Tampa, FL.** staff representative for the FOP, requested that Council approve the aforementioned option. He noted that City Manager Rambosk has provided exemplary service to the City, and that this proposal would not in any way impact the pension fund.

Council Member MacIlvaine said he believed the City shortchanged Mr. Rambosk by not giving him a pension as City Manager. Mr. Rambosk however pointed out that Council credited him with

25 years of police service, although he had only completed 23. Mr. Noeske commented that other employees also received credited years, and that he believes Mr. Rambosk is entitled to a full pension. Mr. Rambosk then confirmed that, normally, seven percent of his salary would have been allocated to the managerial pension plan, and that he would have contributed three percent himself. Vice Mayor Herms commented that this option would therefore produce savings of approximately \$7,000 per year for at least two years.

MOTION by Wiseman to APPROVE RESOLUTION 00-9031 (THE NEW OPTION) PENDING APPROVAL OF THE PENSION BOARD; 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).

RESOLUTION 00-9032.....ITEM 15
A RESOLUTION APPROVING PURCHASE ORDERS, UNDER STATE CONTRACT, PURSUANT TO SECTION 2-355(d)(2) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO WRITE-LINE, OFFICE IMAGE, AND OFFICE PAVILION FOR THE PURCHASE OF FURNITURE TO BE USED BY THE INFORMATION SERVICES DIVISION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:37 p.m.).

Public Input: None. (6:37 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 00-9032; 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).

RESOLUTION 00-9033.....ITEM 16
A RESOLUTION APPROVING A PURCHASE ORDER, UNDER STATE CONTRACT, PURSUANT TO SECTION 2-355(d)(2) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO SUNBELT OFFICE FURNITURE FOR THE PURCHASE OF FURNITURE TO BE USED BY THE BUILDING AND ZONING DIVISION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:38 p.m.).

Public Input: None. (6:38 p.m.)

MOTION by Herms to APPROVE RESOLUTION 00-9033; 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).

RESOLUTIONITEM 18
A RESOLUTION APPOINTING ONE COMMISSIONER TO THE CITY OF NAPLES AIRPORT AUTHORITY FOR AN UNEXPIRED TERM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:38 p.m.). Council Member Galleberg proffered a motion to approve, seconded by Council Member Taylor. City Clerk Tara Norman confirmed that she would advertise the position, and said she anticipated the interviews could be conducted at the January 16th Workshop with appointment at the January 17th Regular Meeting. She also said that those who had previously applied could be re-interviewed if they so chose. Mrs. Norman further predicted that although the recruitment period would be shorter than normal, there would be significant interest shown due to the publicity and indicated that this particular term would expire November 2001.

Public Input: None. (6:38 p.m.)

MOTION by Galleberg to INSTRUCT THE CITY CLERK TO ADVERTISE THE POSITION, SCHEDULE INTERVIEWS, AND CONTACT THOSE

INTERVIEWED TO RECONFIRM THEIR INTEREST; *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).*

RESOLUTION (Continued).....ITEM 21
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 Kevin Rambosk (6:45 p.m.). Council Member MacIlvaine noted an error in the staff report which should have referred to the incorporated areas of the County. City Manager Rambosk requested removing from the resolution the 0.5721 mill figure and said that he would provide an accurate number at a future date. Council Member Wiseman noted that County Commissioner Tom Henning had requested that Council not submit this request, and instead apply for a jail tax. City Manager Rambosk explained that in about 1978 the City sued the County over dual taxation relative to the sheriff's road patrol. From that lawsuit came the creation of an urban services MSTU for the unincorporated areas of the County which assumed some of those costs and lowered the City's costs for the general fund tax. In 1999, however, several items were taken out of the general millage and reinserted into the sheriff's road patrol budget. On a \$100,000 assessed value, City residents are now paying \$74 more per year than before this change, he added. City Manager Rambosk then noted the issue regarding road patrol for outlying districts, such as Immokalee, which the City is funding but for which it is not receiving a direct benefit. He then stated that staff could also investigate the jail tax and determine which is the better option. Council Member Wiseman noted that Sheriff Don Hunter had indicated that he would not support the City's request, and predicted his continued opposition.

Public Input: None. (6:50 p.m.)

MOTION by Tarrant to CONTINUE TO THE 12/20/00 REGULAR MEETING; *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 23
DISCUSSION OF MODIFYING THE AGENDA TO INCLUDE OPEN PUBLIC INPUT AT THE BEGINNING OF MEETINGS. (6:50 p.m.) Vice Mayor Herms explained that he had received requests from the public to include a set time for public comment at the beginning of meetings for the convenience of residents. He then suggested placing this item immediately following the setting of the agenda. Mayor MacKenzie added that any time certain items would then immediately follow. Council Member Wiseman recommended retaining open public input at the end of meetings as well.

Public Input: None. (6:55 p.m.)

MOTION by Herms to ADD OPEN PUBLIC INPUT SUBSEQUENT TO ITEM 4 (SET AGENDA) IN ADDITION TO THE OPEN PUBLIC INPUT ALLOWED AT MEETING END; *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).*

CORRESPONDENCE & COMMUNICATIONS (6:55 p.m.)
Natural Resources Manager Jon Staiger explained that staff had received from the Collier County Parks and Recreation Department an executive summary (a copy of which is contained in

the file for this meeting in the City Clerk's office) which requests that the County Commission authorize its staff to prepare and advertise an ordinance establishing the Collier County Coastal Advisory Committee. This, he added, would be a nine member committee with a breakdown as follows: three members from unincorporated Collier County, three members from the City, and three members from the City of Marco Island. In response to Council, Dr. Staiger explained that the Beach Renourishment/Maintenance Committee (BRMC) presently has five County members and six City members and that this new committee would basically replace the BRMC and address Tourist Development Tax (TDC) expenditures on beach related issues. He added that he did not have at that time complete information regarding committee membership and responsibility. Vice Mayor Herms voiced concern that this would leave the City little representation even though it has most of the beaches affected by the renourishment. Council Member Taylor made a motion to direct Vice Mayor Herms to represent Council at the December 12th County Commission meeting and urge greater City representation on this committee. Based upon advice by City Attorney Robert Pritt, Miss Taylor however proffered the motion as indicated below. Vice Mayor Herms noted this motion must be approved by a 5/7 vote in order to proceed.

Public Input: None. (7:00 p.m.)

MOTION by Taylor to ADD TO THE AGENDA A DISCUSSION OF COLLIER COUNTY'S PROPOSAL TO RESTRUCTURE ITS BEACH COMMITTEE; *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).*

Mayor MacKenzie suggested that Vice Mayor Herms express Council's grave reservations about this proposal and request that it postpone action until Council had sufficient time to obtain additional information. Vice Mayor Herms also suggested requesting that the County modify the existing committee to enhance Marco Island's representation. Council Member Wiseman recommended that staff research whether the County can actually take this unilateral action based upon the prior resolutions and agreements. After further discussion, she proffered the motion as indicated below. Additionally, Council Member Galleberg recommended requesting that the County Commission remove this item from its consent agenda.

Public Input: None. (7:15 p.m.)

MOTION by Wiseman to INSTRUCT THE CITY MANAGER TO CONTACT THE COUNTY MANAGER TO REQUEST POSTPONEMENT TO ALLOW CITY STAFF TO RESEARCH THE ISSUE; IF DENIED, PERFORM RESEARCH, SEND FORMAL CORRESPONDENCE TO THE COUNTY COMMISSION, AND DIRECT VICE MAYOR HERMS TO ATTEND THE COUNTY COMMISSION MEETING TO DECLARE THAT THE CITY COUNCIL OBJECTS TO ANY CHANGE THAT WOULD DILUTE ITS MEMBERSHIP ON THE BEACH COMMITTEE; *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 Galleberg noted that the Old Naples Association had requested a Town Hall meeting on March 15th; Mayor MacKenzie noted that she had accepted this invitation as well as the one for the Park Shore Homeowners Association on January 12th. Council Member Wiseman requested that the City Manager distribute a memo to staff making clear that all cellular phones and pagers must be set to inaudible when in the Council Chamber. Council Member Taylor suggested that Mayor MacKenzie make an announcement at the beginning of meetings, and

Council Member Galleberg recommended posting a notice on the front doors as well. Mrs. Wiseman then noted that the frequent motions of Council to direct staff to perform some work may actually be in contravention with Section 2-10 of the City Charter which indicates that Council Members must deal directly with the City Manager. City Manager Rambosk said he understood that these motions meant that he was being directed to instruct his staff. Mrs. Wiseman however suggested making the motions clearer in that regard. She then stated that she had requested the City Attorney's opinion regarding the Sunshine Law as it applies to Planning Advisory Board (PAB) or other committee members addressing Council during meetings, but had not as yet received a reply. City Attorney Pritt said he would address this issue promptly. Vice Mayor Herms then made a motion to add an item relative to the City's government access channel to the December 20th Regular Meeting. Mayor MacKenzie requested that the City Attorney research relevant issues to ensure that this channel does not however become a public access channel.

MOTION by Herms to ADD AGENDA ITEM TO THE 12/20/00 REGULAR MEETING RELATIVE TO ADDING THE NAPLES REPORT, THE VERO BEACH PROGRAM, JEFF LYTTLE'S PROGRAM (IN RELATION TO CITY ISSUES) AND OTHER TOPICS TO CITY'S CHANNEL 76; 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).

Vice Mayor Herms then received confirmation that density and parking garage ordinances have been placed on a January Council meeting agenda. Council Member Tarrant voiced concern relative to security issues at all-night establishments, and suggested encouraging the proprietors to take all necessary precautions. City Manager Rambosk said he would investigate this issue. Mayor MacKenzie then noted the favorable citizen comments she had received relative to the recent Town Hall Meetings.

ADJOURN (7:25 p.m.)

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 1/3/01

CUPOLA

- 1. A LIGHT STRUCTURE ON A DOME OR ROOF SERVING AS A BELFRY, LANTERN, OR BELVEDERE.**
- 2. A DOME ON A CIRCULAR OR POLYGONAL BASE CROWNING A ROOF OR TURRET. USUALLY ONLY DECORATIVE IN MODERN HOMES. OLDER CUPOLAS CAN BE REACHED BY STAIRS.**
- 3. ORNAMENTAL STRUCTURE PLACED IN A PROMINENT POSITION, USUALLY AT THE TOP OF A LARGER ROOF OR DOME. THEY OFTEN APPEAR AS SMALL BUILDINGS IN THEIR OWN RIGHT, LIKE DIMINUTIVE TEMPLES PERCHED ON TOP OF A BUILDING.**





