



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – February 21, 2001 – 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
Beverly Grady, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
William Harrison, Asst. City Manager
Don Wirth, Community Services Director
David Lykins, Recreation Manager
Sunny Fore, Service Worker
Reverend James Hervey
William Boggess
Joseph Biasella
Henry Kennedy
Kevin Bill
Allen Walburn
Laura Puckett
Alex Engelsted

Elizabeth Bloch
Marlena Brackebusch
Charles Kessler
Fred Hardt

Other interested citizens and visitors

Media:

Denise Zoldan, Naples Daily News

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

Reverend James Hervey

ANNOUNCEMENTSITEM 3

None.

SET AGENDA.....ITEM 4

Council Member Taylor recommending adding to the agenda a discussion of City appointments to the Collier County Coastal Advisory Committee. Mayor MacKenzie however stated that the City can only recommend candidates, but that the County Commission makes the ultimate decisions. Council decided to postpone this issue for two weeks to give Council and the City Attorney sufficient time to review the County's ordinance. Vice Mayor Herms questioned the fate of the City's Beach Renourishment/Maintenance Committee. Mayor MacKenzie suggested discussing this under Correspondence and Communications.

Item 22 – Direction to attorney on Warm Weather lawsuit.

MOTION by Galleberg ADD ITEM 22; 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).

Item 23 – Executive session on aquifer, storage, and recovery (ASR) test well agreement.

MOTION by Herms to ADD ITEM 23; 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 – Preliminary design approval of Park Shore and Harbour Drive bridges.

MOTION by Herms to ADD ITEM 24; 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 – Broadcast of Heart of Naples Committee meetings.

MOTION by Galleberg to ADD ITEM 25; 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).

City Manager Rambosk stated that the petitioners had requested withdrawal of Item 7 and 8-c(3).

MOTION by Herms to WITHDRAW ITEMS 7 AND 8-c (3); 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).

MOTION by Galleberg TO SET THE AGENDA (as amended above) REMOVING ITEM 8-c(1) FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION; 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 briefly discussed continuing Items 6-a and 6-b (charter boats). It was the consensus of Council, however, to not vote on the ordinance (6-a), but to choose alternatives that would guide the staff in creating various provisions.

PUBLIC COMMENT.....ITEM 5

Bill Boggess, 1100 Eighth Avenue South, read into the record his letter of resignation from both the Planning Advisory Board and the Beach Renourishment/Maintenance Committee. (See Attachment 1.)

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

ORDINANCE.....ITEM 6-a
AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 78 OF THE CODE OF ORDINANCES IN ORDER TO CLARIFY THE LANDSIDE FACILITY DEFINITION, ADD NEW OPPORTUNITIES FOR CHARTER BOATS TO MEET PARKING REQUIREMENTS, AND ELIMINATE RESTRICTED CHARTER BOAT STATUS BY 2005; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title not read. (See Page 2)

RESOLUTION..... ITEM 6-b
A RESOLUTION APPROVING AN AMENDED OPERATING PLAN FOR A LANDSIDE FACILITY RESTRICTED TO CHARTER BOAT OPERATIONS AT THE CITY DOCK, LOCATED AT 880 12TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read. City Manager Kevin Rambosk suggested that Council continue to explore options in order to determine a consensus and to direct staff to prepare Code of Ordinances amendments. He then reviewed the current parking requirements as well as the proposed options for restricted charter boat operators such as utilizing storefront parking, leasing a parking area, and allowing permitted off-site parking at a distance of 1,000 rather than 600 feet. (A copy of the aforementioned material and all subsequent referenced material is contained in the file for this meeting in the City Clerk's Office.) City Manager Rambosk then explained that unrestricted licenses would comport with the new criteria for the proposed single license, as they already meet all the parameters; he also detailed options for reconciling restricted and temporary unrestricted licenses.

Council Member Taylor urged Council to adopt one license for all Coast Guard certified boats offered for charter. She said this could be accomplished on September 30th, the date current occupational licenses expire. Mayor MacKenzie clarified that the City would cease issuing new restricted licenses as of the date it adopts the new ordinance, then upon expiration, the operators must qualify under the new licensing criteria in order to remain in business. Council Member Tarrant questioned whether displaced charter boat operators would be given priority over those already awaiting slips at the City Dock. Although noting that it is the Council's determination, City Manager Rambosk nevertheless suggested allowing all displaced operators the same opportunity extended to those displaced from the Turner Marine docks, which was to continue operating until at least 2006. He clarified that under the temporary unrestricted status, a charter boat's slip would automatically meet the parking requirements.

In response to an inquiry from Council Member Galleberg, Kevin Bill of Day Star Charters stated there are currently eight captains with restricted boats and one operator who rents boats and jet skis at Boat Haven. Captain Bill also said that he is 24th on the City Dock commercial waiting list although he did not know the status of the other captains. He affirmed that he would prefer renting a slip at the City Dock, although he indicated that he could also use it as a pick-up and drop-off site, mooring his boats elsewhere. Captain Bill then expressed support for the ordinance as currently written, saying it would afford him five years in which to secure a slip.

Vice Mayor Herms voiced support for the proposed parking options, such as the proposed 1000 feet off-site parking allowance and/or parking within City limits, noting that there are some properties in the east U.S. 41 area near Bayshore Drive with reasonable rents. Council Members Taylor and MacIlvaine expressed support for allowing acquisition of parking County-wide; however, Mayor MacKenzie said that restricting parking to the City would facilitate

enforcement. Council Member Galleberg said that he did not believe charter boats should be treated differently from other businesses relative to parking regulations and, further, the City should not expend resources to assure adequate parking at the various leased locations. Council Member Galleberg also suggested, if Council deems it appropriate, to extend the proposed 1000-foot off-site parking requirement to all commercial establishments. He also termed the proposed regulations a means of not requiring any parking. Council Member Taylor however noted that the charter boat operators would be required to verify parking in order to obtain a license. Council Member MacIlvaine stated that charter boats do in fact require unique parking regulations since they are concentrated in only one area of the City. Council Member Wiseman predicted that the added layers of regulation would not succeed, and she instead suggested an analysis of unused or underused parking currently at the City Dock; City Manager Rambosk provided a breakdown of the 569 private and public parking spaces.

Council Member Taylor stated that she, however, believed the problem to be privatization of the waterfront, and that the City must provide parking for residents, tourists, and hotels. She also supported allowing parking outside the City with appropriate procedures and enforcement. Mayor MacKenzie reiterated her concern that the City could not enforce regulations beyond its jurisdiction and added that if City regulations seem onerous, charter boat operators could relocate to other areas such Goodland or Marco Island. Council Member Taylor however maintained that the City Dock is the premier location for the charter boat business and said the City could hire additional enforcement personnel and institute appropriate penalties. Miss Taylor also noted stated that Fifth Avenue restaurants use the parking garage, and suggested another at the City Dock in order to alleviate the parking problem. Mayor MacKenzie however stated that she expects the charter boat industry to provide parking within 600 feet, as is required of others. Council Member Tarrant suggested that a hotel located in the County could reserve parking at a hotel or motel in the City for this purpose; Council Member Taylor, however, voiced doubt that this would occur because of the shortage of City parking spaces. Vice Mayor Herms cautioned against constructing more parking garages because it would increase density. He added that the community is not designed to accommodate great numbers of County residents, and said increased commercialization would destroy the City's charm.

City Manager Rambosk then requested Council direction on whether to increase the distance limitations for permitted off-site parking from 600 to 1,000 feet. Council Member Wiseman questioned whether the additional 400 feet would actually free up significant parking; City Manager Rambosk affirmed this would be the case at such locations as Tin City. Mrs. Wiseman predicted that customers would still use closer spaces. City Manger Rambosk agreed but added that it would nevertheless be incumbent upon the charter boat operators to ensure that their passengers park in designated areas. Council Member Taylor suggested an interlocal agreement for utilization of Countywide parking. Council Member Wiseman however disagreed, noting increased coststo the City. Council Member MacIlvaine recommended increasing the off-site parking distance to 1,000 feet in order to assist the industry; however, it was the consensus of Council to retain the current 600 foot requirement. Council Member Galleberg observed that a charter boat industry is in existence, but that the issue is whether the City should open it to an unlimited numbers of operators.

City Manager Rambosk then noted that staff had recommended a maximum of 18 passengers for use of the storefronts and leased parking spaces, but that Council had discussed increasing this to 30. Mayor MacKenzie however questioned whether allowing a 30 passenger capacity would represent a disadvantage for boats at the City Dock if the City did not allocate additional parking

to them; City Manager Rambosk affirmed this possibility. Mayor MacKenzie pointed out that restricted boats are limited to six passengers while unrestricted are limited by Coast Guard certification; nevertheless, the majority operating from the City Dock are six passenger, with only a few 18 passenger docks. Vice Mayor Herms however questioned the origin of the larger boats, noting that some of the six passenger boats have a larger capacity. In a discussion of passenger capacity, City Manager Rambosk explained that the City Dock is regulated by a previous landside facility petition, although some boats had been grandfathered. Mr. Herms suggested limiting boats to six-person capacity (“six packs”); however, Council Member Taylor noted that this would not apply to the growing sailboat industry. Mayor MacKenzie pointed out that operators could identify adequate parking elsewhere in the City for the maximum number of passengers that the Coast Guard will certify, which is up to 30. Council Member Taylor however reiterated her concern as to the shortage of City parking. City Manager Rambosk suggested that 30 passengers would be an appropriate concession between the proposed 18 and the much larger boats which can accommodate over 100. Planning Director Ron Lee explained that shortly after a proposal to station a large passenger vessel on the Bay, Council enacted a text amendment specifying that any vessel greater than 149 passenger would require a conditional use. This threshold, he added, was based upon an evaluation of the carrying capacity of the vessels in the Naples Bay at the time, 149 passengers being the largest vessel. In further discussion it was noted that a 30-passenger maximum would be affected since it would relate to storefront use only. Storefronts would require one parking space per four passengers, Mr. Lee noted, or eight parking spaces for 30 passengers although an operator could satisfy this requirement with a combination of on-site/off-site parking; total passengers could not exceed 149 without a conditional use. In response to Mayor MacKenzie, City Attorney Grady said that Council could establish separate standards for various sizes of boat if it can be determined that a rational basis for such a distinction exists. Council Member Tarrant called such parking formulas impractical and recommended establishing reserved parking spaces for passenger drop off/pick up along with adequate enforcement and other spaces for longer-term parking. Council Member MacIlvaine recommended allowing parking in the County in order to alleviate City congestion; Council Member Taylor concurred and noted that the majority of Council now seems to favor County-wide parking. Additionally, Mr. Tarrant pointed out that the County has adequate enforcement personnel, and recommended that charter boat operators determine their own parking arrangements so long as they adhere to City parking regulations. Mayor MacKenzie disagreed with abandoning parking standards, but Council Member MacIlvaine said that relaxation of parking requirements could help all local merchants. Absent a consensus to remove the requirement for adequate parking when a charter boat operator applies for an occupational license, City Manager Rambosk recommended retaining both the restricted and unrestricted license categories, and providing enhanced enforcement; Council Member Taylor, however, disagreed. City Attorney Grady cautioned that no conditions can be attached to occupational licenses and stressed that there must be either definitive parking standards or none at all. City Manager Rambosk then suggested broadening the existing ordinance by allowing some off-site parking, or by increasing the number of pick-up/drop-off spaces under the landside facility petition process.

Public Comment: (10:47 a.m.) **Joe Biasella, 860 12th Avenue South**, criticized the tenor of the current proceedings and expressed doubt that the staff could present a solution that Council could accept. Mr. Biasella also observed that the City is currently unable to enforce its waterfront regulations and would likewise be unable to enforce the aforementioned proposals. **Henry Kennedy, 2178 Tarpon Road**, urged Council to represent City residents only, and concurred that allowing parking in the County would be unenforceable. He also stated that a majority of

the part-time business people do not rely on the charter boat business for their income, and should not receive slips allotted for recreational boats. **Kevin Bill, 1535 Chesapeake Avenue**, recommended that operators be allowed rent reasonable storefront parking along U.S. 41 East to Bayshore Drive, and that the City revoke their licenses in the event of any violations. Captain Bill further recommended that Council retain the current City Dock waiting list, increase the number of commercial slips at that facility, and affirm the 2006 deadline for any displaced charter boats.

Mr. Kennedy then returned to the podium and expressed dismay that Council Member Taylor had stepped away from the dais to meet with a County resident and the City Attorney instead of listening to the citizens' comment. Council Member Taylor however asserted that she had in fact heard the entire discussion.

Allen Walburn, 925 Eighth Avenue South, noted the uniqueness of the charter boat industry and asserted that Council is asking people unfamiliar with the profession to develop the criteria. He therefore recommended forming a committee with charter boat professionals. Captain Walburn also agreed with Mr. Kennedy's comments and voiced doubt that any of the restricted charter boat operators derive even 50% of their revenue from their vessels. Additionally, he suggested involving the County in the decision-making process. **Laura Puckett, 1259 Woodridge Avenue**, recommended that Council approve the revised ordinance, and affirmed the need for additional sailboat and commercial moorings. She added that she would willingly pick up her passengers off-site and transport them to the City Dock, and she urged Council to establish only one charter boat classification. **Alex Engelsted, 225 Cove Lane**, received confirmation that all charter boat operators would be allowed to advertise under Council Member Taylor's proposal. She however said there would still be a need to identify those boats using the pick-up/drop off slip; as such, there would still be two classes of boats regardless of whether there is one license. Miss Taylor said she would further discuss this concept along with appropriate enforcement with the City Attorney. Ms. Engelsted then recommended that the occupational licenses be in the name of the owner instead of the boat. Mayor MacKenzie recommended that Council ask the City Manager to draft the ordinance with the standards, the license category, the facility operations, the dock operations, and the enforcement plan, and bring it back for Council approval. **Elizabeth Bloch, 5920 Golden Gate Parkway and 860 12th Avenue South**, said she had invested heavily in her business with a specific plan to operate charters, although when obtaining an occupational license, she had been informed that she could operate through a broker only. She maintained that she should be able to operate independently and indicated that she had been blacklisted, not having been engaged for an event charter for months. She further noted that because she has no commercial slip, she does not have the convenience of on-site parking, signage, and walk-up traffic, although her expenses are generally the same as others. Mayor MacKenzie questioned whether this same situation would occur with commercial slips in the County. Captain Bloch stated that the sailboats cannot use County harbors because of shallowness and that the City Dock is a prime location for the charter industry because of walk-up business. Captain Bloch added that event charters are predominately for conventions, and that there would be insufficient time for buses to transport passengers to distant locations. She then indicated her support for the regulations proposed by Council Member Taylor stating that they would simplify the ordinance by creating one class of vessel, and would allow small boat operators to operate without a broker or agent. She also expressed support for creating additional pick-up/drop off parking at the City Dock, saying it would benefit all, including the displaced vessels. Council Member Tarrant said he strongly supported Miss Taylor's proposal for one classification; however, he also advocated eliminating all requirements

tying the charter boat industry to parking. **Marlena Brackebusch, 860 12th Avenue South**, said there are several restricted boats operating out of the City Dock which already have some parking with their slips, and suggested that they be allowed to use the parking on a more regular basis. She then suggested requiring that marinas, when sold, make available some of their slips for charter boats.

Mayor MacKenzie recommended that Council afford staff the opportunity to draft what they believe to be the most workable and fairest version of the ordinance. Council Member Tarrant disagreed with public speakers, affirming that Council does in fact respect and value the significant efforts put forth by staff. He explained that all Council Members are elected to apply their best efforts to solving problems, and that he remains convinced that parking standards and formulas are an incorrect way to control development within the community or in the charter boat industry. City Manager Rambosk then requested direction as to whether Council desires the charter boat industry to follow all the regulations required of other businesses; if not, staff could craft amendments to allow for charter operations within appropriate parameters, or incorporate all of Council's suggestions and craft an entirely new ordinance.

Vice Mayor Herms said he believed this to be one of the most difficult situations he had encountered during his tenure on Council, noting that it is so complex that efforts to simplify it produce a number of ramifications that many find discomfiting. Observing that no Council consensus exists on the key parking issue, Mr. Herms said that he believed the major premise to be the 1995 creation of the restricted charter boat license, which would be unfair to now eliminate. Nevertheless, he said that Council must develop workable rules to allow these businesses to continue to meet any parking requirements. He suggested that Council consider a type of charter boat license that does not specify parking provided that the operators understand that they must use public conveyance.

Council Member Wiseman, however expressed the view that returning this issue to the staff would result in further wasted time and effort, and that if Council intends to regulate this business differently from others, it needs to involve charter boat operators in the process. Mrs. Wiseman therefore recommended that Council begin anew by assembling a small group of charter boat professionals, and carefully consider their input. Council Member Taylor however disagreed, pointing out what she described as a considerable number of meetings and public dialog which had already occurred on this issue. She further asserted that she believed Council to be close to a solution, and agreed with Mayor MacKenzie's suggestion to allow the staff to formulate an ordinance. Council Member Galleberg said he believed the question to be whether the staff would be able to formulate a better proposal, and urged them to recognize that the dock is a City facility and that the City is not responsible for the County not having provided similar facilities. He added that he would judge staff's proposal as a whole and render support if he believes it represents a step forward. Council Member MacIlvaine stated that this is a legislative process and that the difficulty is partly due to the significant monetary interests on both sides of the issue. He added that Council has a responsibility to those already in full-time business as well as those who are trying to engage in the charter business, and reiterated his support for relaxation of parking requirements. In conclusion, he recommended allowing staff additional time to present a completed ordinance. Council Member Tarrant however said that Council itself should spend the necessary time to determine how it wants the parking issue handled.

City Manager Rambosk estimated that staff would require at least one month to formulate the ordinance, although his initial recommendation is to either retain the present regulations or

accept staff's current proposal. Staff, he said, could simply add more opportunities for operators to meet standards, and require better enforcement while agreeing that parking is the key issue. He also stressed the need to understand how a new proposal would affect current charter boat operators, specifically those on Naples Bay. Although Council Member Taylor suggested conducting a parking workshop and Council Member Wiseman suggested conducting a roundtable discussion with charter boat operators, City Manager Rambosk recommended such a session after staff has had the opportunity to develop a rough outline of the finished ordinance.

MOTION by Herms to WITHDRAW ITEMS 6-a and 6-b; 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).

Mayor MacKenzie said she would call a Special Meeting if Council deems appropriate, but that it seems that a workshop would be the favored way to proceed at that juncture.

Recess 12:03 p.m. to 1:30 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

.....**ITEM 23**
EXECUTIVE SESSION ON ASR TEST WELL AGREEMENT (1:30 p.m.) Mayor MacKenzie announced that the City Council would then conduct an attorney/client session (Regular Meeting on Wednesday, February 21, 2001 at 1:30 p.m. in the City Council Chamber, 735 Eighth Street South, Naples Florida). The purpose of the session is to discuss settlement negotiations and strategy related to litigation expenditures in the administrative case of the City of Naples vs. Collier County Water Sewer District and the State of Florida Department of Environmental Protection, OGC File # 00-1366. The following persons may or will be present: Mayor Bonnie R. MacKenzie, Vice Mayor Joseph Herms, Council Members Gary Galleberg, William MacIlvaine, Fred Tarrant, Penny Taylor, and Tamela Wiseman, City Manager Kevin Rambosk, City Attorney Roetzel & Andress, legal professional association by Beverly Grady and Robert Pritt, and Pamela Arsenault, a certified court reporter. At the conclusion of the session, the meeting shall be re-opened, Mayor MacKenzie said, and added that the estimated duration of the session is one hour and that it had been duly called and the notice duly posted.

Executive session 1:32 p.m. to 2: 31 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Mayor MacKenzie announced that Council had terminated the executive session and is re-opening the Regular Meeting.

MOTION by Wiseman to ACCEPT THE SETTLEMENT AGREEMENT WITH THE COUNTY ATTORNEY'S SUGGESTED CHANGES WITH ADDITION OF NOTICE PARAGRAPH (#15) AND IN PARAGRAPH #5 RETAIN 30 DAY DISCLOSURE PERIOD; seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Tarrant said he believed this to be a profoundly dangerous decision. Vice Mayor Herms proffered a motion to obtain feedback from the City's water and sewer customers relative to their position on this issue. Council Member Wiseman however pointed out that this added agenda item was relative to the ASR settlement agreement only, and questioned whether Council could therefore consider such a motion. City Attorney Robert Pritt recommended placing the issue on the agenda. Vice Mayor Herms therefore modified his motion, seconded by Council Member Tarrant, to reflect that as part of the settlement agreement, Council would send correspondence to all the City's utility customers requesting their position on the ASR wells. Council Member Galleberg however pointed out this, too, was not part of the settlement agreement, which had already been accepted. City Attorney Pritt opined that Council had

already voted on the settlement, and the issue of surveying utility customers is actually a separate item, which could be placed on the agenda only with a vote of the Council. Vice Mayor Herms said he would therefore request that this item be placed on the agenda at the next Regular Meeting.

RESOLUTION 00-9091.....ITEM 12
A RESOLUTION GRANTING FENCE AND WALL WAIVER PETITION 01-FWW1 FOR A WAIVER FROM FENCE AND WALL REQUIREMENTS IN ACCORDANCE WITH SECTION 110-37(a)(2.1)f. OF THE CODE OF ORDINANCES IN ORDER TO ALLOW A WALL TO SIX FEET, TEN AND ONE-FOURTH INCHES IN HEIGHT IN THE FRONT YARD SETBACK FOR PROPERTY LOCATED AT 225 GULF SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:50 p.m.). Petitioner's agent Gary Carlson said that the request before Council is to place 10¼ inch brick architectural column caps on the wall along the south side of their property. In response to Council, he affirmed the wall would otherwise be six feet in height, which complies with Code. Mr. Carlson then displayed images of neighboring properties with similarly embellished walls, copies of which are contained in the file for this meeting in the City Clerk's Office. Vice Mayor Herms questioned whether these other property owners had been granted variances; however, Planning Director Ron Lee said he had only now become aware of this situation. Mr. Lee then explained that the Code requires an 18-inch separation between the sidewalk and wall for landscaping. Mayor MacKenzie said she would favor a hedge as depicted in one of the photographs to soften the effect of the wall. Property owner David Smith affirmed his commitment to appropriate landscaping. He then stated that absent Council's approval for the proposed variation, the entire wall must be reduced 10 inches which would reduce the privacy of the pool area.

This being a quasi-judicial proceeding, ex parte disclosures were then made. Each Council Member indicated no contact although Mayor MacKenzie stated that she had driven past the property. City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative. There was also discussion as to the circumstances leading up to the fence and wall waiver ordinance, and Mr. Lee affirmed that the petitioner had met all other Code requirements.

Public Comment: None. (2:57 p.m.)

MOTION by Tarrant to APPROVE RESOLUTION 01-9091; seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

At this point in the meeting, Acting Chief of Police & Emergency Services Steven Moore recognized Robert Kirsch for his 15 years of service in the City's Volunteer Program.

.....**ITEM 8-c (1)**
ST PATRICK'S DAY ENTERTAINMENT (INN ON FIFTH) (2:59 p.m.) Council Member Galleberg said he had requested separate discussion in order to obtain information relative to any access issues or problems that had occurred in conjunction with the prior year's event. City Manager Kevin Rambosk however stated there had been no difficulties, and that the Sugden Theater had actually expressed support of this request. He added that a 15-foot wide walkway would be maintained and that he would work with the owner to ensure sufficient pedestrian space around the nearby planters. In response to Council Member Taylor, City Manager Rambosk said there would be amplified music from noon until 7 p.m.

Public Input: None. (3:02 p.m.)

MOTION by Galleberg to APPROVE ITEM 8-c (1); seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

Although acknowledging this to be a worthwhile event, Council Member Taylor expressed concern about the amplified music.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 8-a

February 5, 2001 Workshop Meeting minutes.

RESOLUTION 01-9092..... ITEM 8-b

A RESOLUTION APPROVING A CONTRACT WITH ENVIROSCAPE OF NAPLES, INC. TO PERFORM WATERWAY CLEAN UP; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT THEREFOR; AND PROVIDING AN EFFECTIVE DATE. Title not read.

APPROVE THE FOLLOWING SPECIAL EVENTS.....ITEM 8-c

2) Eckert Fine Art Gallery Reception (12th Avenue South between 3rd and 4th Streets) – 3/1/01.

3) Moorings Presbyterian Church Concert – (Cambier Park Bandshell) – 3/14/01. (Withdrawn)

4) Conservancy of Southwest Florida Bay Days & Bike Fest – 4/7/01 and 4/21/01.

5) First United Methodist Church Easter Service (Naples Pier) – 4/15/01.

(City Manager Rambosk affirmed that this event has been ongoing for at least five years, and that the organizers will use a small self-contained amplifier as in the prior years.)

6) Naples Beach Hotel & Golf Club Summerjazz Series – 6/16/01, 7/21/01, 8/25/01, 9/15/01.

(Council Member Taylor relayed citizen concerns relative to parking. City Manager Rambosk stated that staff would work with the hotel to determine alternate parking arrangements.)

RESOLUTION 01-9093..... ITEM 8-d

A RESOLUTION WAIVING THE COMPETITIVE BID PROCESS AND AUTHORIZING A PURCHASE ORDER TO BE ISSUED TO KOMLINE SANDERSON FOR THE INSTALLATION OF AN ELECTRICAL CONTROL PANEL FOR BELT FILTER PRESS NUMBER TWO AT THE WASTEWATER TREATMENT PLANT; AND PROVIDING AN EFFECTIVE DATE. (Title not read.)

RESOLUTION 01-9094.....ITEM 8-e

A RESOLUTION WAIVING COMPETITIVE BIDS; AWARDING A CONTRACT TO WILLIAM J. VARIAN CONSTRUCTION COMPANY TO INSTALL TWO CONCRETE BAY FLOORS; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT THEREFOR; AND PROVIDING AN EFFECTIVE DATE. (Title not read.)

..... ITEM 8-f

AWARD A BID FOR THE PURCHASE OF A 30" ELECTRIC BUTTERFLY VALVE FOR USE BY THE WASTEWATER TREATMENT PLANT \ VENDOR: SUNSTATE METER & SUPPLY, INC., NEWBERRY, FLORIDA \ COST: \$11,874.00 \ FUNDING: CIP#01M24.

MOTION by Herms to APPROVE ITEMS 8-a, 8-b, 8-c (2, 4, 5, 6), 8-d, 8-e, and 8-f; 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).

END CONSENT AGENDA

RESOLUTION 01-9095.....ITEM 17

A RESOLUTION APPOINTING A COMMITTEE TO RECOMMEND SELECTION OF A CONSULTANT TO CONDUCT ENGINEERING STUDIES TO DETERMINE THE FEASIBILITY OF ESTABLISHING THE WEST NAPLES BAY SPECIAL TAXING DISTRICT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin

Rambosk (3:09 p.m.). City Manager Rambosk noted prior meetings between staff and representatives of the Aqualane Shores Association regarding possible canal dredging to be funded by way of a special taxing district. The next steps in this process include the selection of an engineer to determine the extent of the dredging needed, investigating the dredge spoil disposal options, determining the information needed to obtain the Environmental Resource Permit, and providing an accurate cost estimate. In response to Council, Natural Resources Manager Jon Staiger explained that when the Moorings Bay Special Taxing District was formed, the City funded the initial engineering to provide cost estimates and preliminary project design; thereafter the taxing districts themselves were responsible for engineering costs. He noted however that the current proposed dredging is more complicated because of a lack of reasonable spoil sites, and significantly higher costs (mechanical) of approximately \$20 per cubic yard. Dr. Staiger therefore recommended performing the project hydraulically, and seeking a permit to create spoil banks on Naples Bay mud flats where staff could plant marsh grass and allow mangroves to grow. He estimated the cost of this method to be \$5.00 per cubic yard, depending upon the engineer's estimate of material to be dredged. Staff recommends dredging the northern canals in Aqualane Shores to a depth of five feet and the southern canals to six feet. Dr. Staiger further stated that the proposed taxing district would include Aqualane Shores and the northern canal in Port Royal (Jamaica Channel) which is between Aqualane Shores and Port Royal, and would encompass all Aqualane Shores residents as well as those residents on Galleon Drive in Port Royal.

In response to Council Member Tarrant, Dr. Staiger explained that these canals were originally six feet deep but are now inconsistent as some were dredged to obtain fill; some of the channels in Naples Bay also require dredging to facilitate navigation and flushing. Dr. Staiger then confirmed that Coastal Engineering Consultants had performed the initial engineering for the other taxing district projects, although one of these projects had resulted in a significant amount of embedded rock later removed by another company. In response to Vice Mayor Herms, Aqualane Shores Association member Michael Keeler relayed that the Association had indicated virtually unanimous approval to proceed at its recent annual meeting. City Manager Rambosk requested amending the resolution to add Mr. Keeler and Jack Pickett of the Association to the selection committee.

Public Comment: None. (3:24 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9095 ADDING MICHAEL KEELER AND JACK PICKETT AS REPRESENTATIVES OF THE AQUALANE SHORES ASSOCIATION; *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 01-9096.....ITEM 18
A RESOLUTION APPROVING AN AMENDMENT TO A CONTRACT WITH HUMISTON & MOORE ENGINEERS TO FACILITATE PERMIT-REQUIRED MONITORING OF THE SOUTH GORDON DRIVE T-GROIN PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:24 p.m.).

Public Comment: None. (3:25 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9096; *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).*

DIRECTION TO ATTORNEY ON WARM WEATHER LAWSUIT (3:25 p.m.) Attorney Fred Hardt, representing the City in this action, explained that the Warm Weather lawsuit was actually a Bert J. Harris claim arising from a Comprehensive Plan amendment and the rezone of Bayshore Villas located on Gulf Shore Boulevard. He noted that Judge Hayes had referred the case to non-binding arbitration, and on January 31st a decision was rendered in favor of the City. Attorney Hardt explained that under the rules applicable to non-binding arbitration, a party may request a trial de novo in which the trial would proceed as though the arbitration decision had not occurred. If not, the arbitration decision becomes binding, and the court may issue orders or judgments based upon that decision. He added, however, that shortly after the decision, Warm Weather proposed a settlement offer agreeing to dismiss their complaint with prejudice in exchange for the City agreeing to waive its claim for attorneys' fees and litigation expenses. Attorney Hardt suggested that Warm Weather's offer is based on statutory requirements (Bert J. Harris) that attorney's fees and litigation expenses be awarded to the City if the City prevails and the court finds that the City's pre-suit settlement offer was reasonable, bona fide, and should have been accepted by Warm Weather. He noted that last May, Council had approved a proposal essentially stipulating no change; he said he felt this was a good faith proposal since Warm Weather purchased the subject units knowing that the Comprehensive Plan amendment had downzoned the property. He indicated that Warm Weather's claim was weak, and that the City would likely prevail at trial. If the City accepted Warm Weather's offer, he added, it would be waiving attorneys' fees to date of \$20,000 and litigation expenses (appraiser's fees) of \$14,511.

In response to Council Member MacIlvaine, Attorney Hardt stated that most of the work in terms of the pre-suit matters has been completed; however, he estimated \$15,000 to \$25,000 of additional expense for the trial preparation and the trial itself. He further confirmed that the City could recover a judgment for attorneys' fees because the property is located in the City and is therefore subject to judgment liens. Attorney Hardt then explained that the City can also make a counter proposal asking Warm Weather to pay a portion or all of the fees at this time. In response to Council Member Galleberg, Attorney Hardt clarified that the two grounds for an award of attorneys' fees in this case are: 1) provisions under the Bert J. Harris act; and 2) the City (likely) prevailing at the trial de novo. Attorney Hardt then stated that the defendant has 20 days from the date of the decision to file for a trial de novo, and in fact had already filed this request. Mayor MacKenzie said she is reluctant to absorb the approximately \$35,000 of attorneys' fees and litigation expenses and pointed out that although the downzoning had not actually occurred until a few months after the purchase, the rezoning and Comprehensive Plan process had been ongoing for two years. Attorney Hardt stated that under Florida law, once the Comprehensive Plan is adopted, any inconsistent zoning must follow the Comprehensive Plan amendment; Warm Weather had failed to file the Bert J. Harris act claim within the one-year statute of limitations, he added. Mayor MacKenzie said that she believed this to be a frivolous case, and that it is important to send the message to future litigants that the City, when in a strong position, will stand firm. She however said she could support a slight reduction in the City's claim for attorneys' fees and litigation expenses in order to obtain a settlement. Council Member MacIlvaine nevertheless said that the City should be reimbursed for the full amount. In response to Council Member Wiseman, Attorney Hardt said that if the defendant were to extend another counter offer to response to Council's offer, the Council could conduct an executive session.

Public Comment: None. (3:44 p.m.)

MOTION by Wiseman to REJECT WARM WEATHER PROPOSAL AND REQUIRE PAYMENT OF 100% OF LEGAL AND OTHER EXPENSES (APPRAISAL COST) AS SETTLEMENT; 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).

Recess 3:44 p.m. to 3:56 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

ORDINANCE 01-9097.....ITEM 9

AN ORDINANCE GRANTING REZONE PETITION 01-R1 IN ORDER TO REZONE THE PROPERTY AT 120 GOODLETTE ROAD NORTH FROM "PD" PLANNED DEVELOPMENT TO "D," DOWNTOWN, SAID PROPERTY MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:56 p.m.). This being a quasi-judicial proceeding, Council Members made ex-parte disclosures. Mayor MacKenzie and all other Council Members registered no contact with any of the parties with the exception of Council Member Taylor who said she had had some contact two weeks prior. City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative.

Public Comment: None. (3:58 p.m.)

MOTION by Wiseman to ADOPT ORDINANCE 01-9097; 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).

ORDINANCE 01-9098.....ITEM 10

AN ORDINANCE GRANTING REZONE PETITION 00-R14 IN ORDER TO AMEND THE PLANNED DEVELOPMENT DOCUMENT FOR THE GATEWAY SHOPPING CENTER, 2100-2184 9TH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:58 p.m.). This being a quasi-judicial proceeding, Council Members made ex-parte disclosures. Mayor MacKenzie said that although she had had no contact with any of the parties, she had driven past the site in the last two weeks; other Council Members registered no contact. City Clerk Tara Norman administered a voluntary oath to those intending to offer testimony on this issue; witnesses responded in the affirmative. City Manager Rambosk stated that the petitioner's representative was unable to be present and had requested continuance in the event of any Council questions. In response to Council Member Galleberg, Planning Director Ron Lee stated that the requirement for uniform lettering would be included in the Planned Development document. He also confirmed that the only change is that the petitioner can add three additional tenant names to the existing sign.

Public Comment: None. (4:00 p.m.)

MOTION by Taylor to ADOPT ORDINANCE 01-9098; 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).

ORDINANCE 01-9099.....ITEM 11

AN ORDINANCE ADOPTING A REVISED INVESTMENT POLICY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:00 p.m.). City Manager Rambosk explained this revision is a result of new legislation, which requires continuing education and ranges for investment decisions. Mayor MacKenzie added that this would result in compliance with the State statutes.

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

MOTION by Galleberg to ADOPT ORDINANCE 01-9099; 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 01-9100.....ITEM 13
A RESOLUTION CREATING A PUBLIC ART ADVISORY COMMITTEE (PAAC) FOR THE CITY OF NAPLES, PROVIDING FOR IMPLEMENTATION GUIDELINES, ARTWORK SELECTION PROCEDURES, AND ORGANIZATIONAL POLICIES FOR THE ACQUISITION, DONATION, AND LOAN OF ARTWORK TO THE CITY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:01 p.m.). Assistant City Manager William Harrison noted the resolution had been revised to reflect changes previously directed by Council.

Public Comment: None. (4:02 p.m.)

MOTION by Herms to APPROVE RESOLUTION 01-9100 AS AMENDED;
seconded by Wiseman and carried 6-1, all members present and voting
(Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9101.....ITEM 14-a
A RESOLUTION RANKING THE THREE FIRMS IN ORDER OF PREFERENCE TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE EXPANSION AND RENOVATION OF THE PURCHASING WAREHOUSE, UPGRADE AND EXPANSION OF THE LOWDERMILK PARK PAVILION, IMPROVEMENTS TO THE COMMUNITY SERVICES/PURCHASING OFFICE BUILDING, AND EXPANSION OF THE WASTEWATER LABORATORY BUILDING; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:02 p.m.).

RESOLUTION 01-9102.....ITEM 14-b
A RESOLUTION APPROVING A CONTRACT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO WITH CHANGES APPROVED BY THE CITY ATTORNEY, BETWEEN THE CITY OF NAPLES AND O-A-K/ FLORIDA, INC., D/B/A OWEN-AMES-KIMBALL COMPANY TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE EXPANSION AND RENOVATION OF THE PURCHASING WAREHOUSE, IMPROVEMENTS TO THE COMMUNITY SERVICES/PURCHASING OFFICE BUILDING, AND EXPANSION OF THE WASTEWATER LABORATORY BUILDING IN AN AMOUNT NOT-TO-EXCEED \$763,000; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:02 p.m.).

It is noted for the record that Items 14-a and 14-b were considered concurrently.

Vice Mayor Herms pointed out that Owens-Ames-Kimball has successfully performed a number of projects for the City and Assistant City Manager William Harrison added that this firm had been the contractor for the Police & Emergency Services Building expansion as well as the nearly completed Development Services Building. Therefore, Mr. Harrison said, the company's construction trailer is already on site, and the project superintendent is ready to proceed to the next City project. Nevertheless, Mr. Harrison explained that although the selection committee has ranked Owens-Ames-Kimball first, it is not yet ready to recommend a contract for the Lowdermilk Park Pavilion. Vice Mayor Herms received clarification that the approximate \$115 per square foot cost for the previous City buildings is not comparable since the proposed projects are not actually new office square footage and do not equate to the previous jobs. He nevertheless said he would provide a cost breakdown. Mr. Harrison then pointed out that the

beneficial aspect of construction management at risk is that the contractor takes bids and hires sub-contractors, which staff must review and approve prior to the award of the contract.

Public Comment: None. (4:08 p.m.)

MOTION by Herms to APPROVE RESOLUTION 01-9101 (ITEM 14-a);
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 Herms to APPROVE RESOLUTION 01-9102 (ITEM 14-b);
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).

ORDINANCE (First Reading)ITEM 15
AN ORDINANCE ADDING ARTICLE III, NAPLES TELECOMMUNICATIONS
RIGHTS-OF-WAY FEE ORDINANCE, TO CHAPTER 22 OF THE CODE OF
ORDINANCES OF THE CITY OF NAPLES, FLORIDA, FOR THE PURPOSE OF
ASSESSING A FEE ON TELECOMMUNICATIONS COMPANIES THAT OCCUPY
MUNICIPAL RIGHTS-OF-WAY FOR TELECOMMUNICATIONS FACILITIES;
PROVIDING FOR WHEN PAYMENTS ARE DUE; PROVIDING FOR INTEREST;
PROVIDING FOR REVIEW OF RECORDS; PROVIDING FOR CONFLICTS;
PROVIDING FOR SEVERANCE; AND PROVIDING FOR AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (4:08 p.m.). Assistant City Manager William Harrison explained that effective January 1st the City can no longer grant new franchises for telecommunications services and must therefore have in place an ordinance that establishes a fee, equivalent to the former franchise fee of 1%, for any new telephone company that requests to enter the local market. He added that the City would nevertheless retain its ordinances dealing with the use of the City's rights-of-way, permitting and inspection requirements, and the appropriate separation of utilities. In response to Council, Mr. Harrison explained that the City had lost the mechanism of periodic renewal, transfer, or negotiation with a franchisee in order to achieve concessions for the public good. Mayor MacKenzie also pointed out that the City had lost its ability to audit. Mr. Harrison noted for the record that the ordinance was prepared by the City's cable franchise attorney Adrian Herbst.

Public Comment: None. (4:13 p.m.)

MOTION by Herms to APPROVE ITEM 15 AT FIRST READING;
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 01-9103ITEM 16
A RESOLUTION CHANGING THE NAME OF 13TH STREET NORTH TO RIVERSIDE
DRIVE AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:13 p.m.). City Manager Rambosk reported that the Post Office had registered no concern regarding the four street names proposed by Council; however, the Collier County emergency 911 coordinator had indicated that although there is a Riverside Drive in Bonita Springs, there is none in the City or County's response jurisdiction. He then said that Communications Manager Adolfo Martinez had recommended not using Government Square or Plaza to avoid confusion among citizens seeking the County's government center. City Manager Rambosk also noted there already is a Haldeman Avenue, which may also lead to confusion with a Haldeman Drive or Way. He added that the numbered streets do not align with anything beyond the canals off Fifth Avenue North. Council Member MacIlvaine proffered a motion, seconded by Council

Member Wiseman, to select Riverside Drive; however, further discussion ensued. Council Member Taylor said she still favored Administration Avenue. Council briefly discussed the numbering system used on City streets.

Public Comment: None. (4:21 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 01-9103 SELECTING RIVERSIDE DRIVE; *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 01-9104ITEM 19

A RESOLUTION AFFIXING THE SALARY OF THE CITY CLERK; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:21 p.m.). Noting a comparison of the salaries of various department heads, a copy of which is contained in the file for this meeting in the City Clerk's office, Mayor MacKenzie said it is clear that City Clerk Tara Norman is at a disadvantage. She added that she believed the Council is pleased with the quality of Mrs. Norman's work and that Mrs. Norman had not received an increase in salary in a number of years, not receiving cost of living adjustments or other salary increases apart from the initiative of Council. She suggested either a \$5,000 or \$10,000 increase. Vice Mayor Herms proffered a motion, seconded by Council Member Wiseman, to set the City Clerk's salary at \$60,000; however, further discussion ensued. Mayor MacKenzie also asked that Council consider an expenditure of approximately \$200 for equipment in the City Clerk's Office that would allow copying of paper records onto compact disks. In response to Vice Mayor Herms, Mrs. Norman confirmed that she would present a request for an additional Recording Specialist position in the Clerk's Office at an upcoming Regular Meeting.

Public Comment: None. (4:25 p.m.)

MOTION by Herms to APPROVE RESOLUTION 01-9104 SETTING THE CITY CLERK'S SALARY AT \$60,000; *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

DISCUSSION OF PROPOSED ORDINANCES PERTAINING TO COMMERCIAL DENSITY AND RESTRICTIONS ON PARKING GARAGES (REQUESTED BY COUNCIL MEMBER MACILVAINE). (4:25 p.m.) Council Member MacIlvaine noted his January 21, 2001 memo to Council, a copy of which is contained in the file for this meeting in the City Clerk's Office. He stated that the Planning Department had presented a 41 page document relative to the proposed parking garage and density ordinances to the Planning Advisory Board (PAB) which had however voiced concern about formulating the amendments without clear Council direction. Council Member MacIlvaine therefore recommended that the process instead start with the PAB and then proceed to Council and that Council consider directing the PAB to work in tandem with the Planning Department if possible.

Council Member Taylor recommended that the PAB proceed, calling its recent discussions on these issues productive. Council Member Galleberg however said that he did not feel it useful for the PAB to continue inasmuch as Council is uncertain whether it actually wants to address these issues. He also pointed out that if the ordinances would primarily affect the 41-10 District, the Heart of Naples Committee should provide input and guidance. Council Member MacIlvaine said that he felt it inappropriate to exempt the 41-10 area from these ordinances, and observed that the majority of Council may not wish to proceed. Council Member Galleberg further noted that parking garage approval would require a supermajority, and that a parking garage ordinance would therefore not be beneficial. Mayor MacKenzie said she could not support establishing

different rules for different areas of the City, and recommended standardization to the extent possible. Vice Mayor Herms reported, however, that at a recent Gulf Shore Property Owners Association meeting, residents had expressed amazement at what the potential zoning in the 41-10 district would allow, and voiced support for the charter amendments limiting lot coverage to 45% and allowing parking garages on ground floors only. He stressed that the commercial interests, not the residents, want intense development and predicted that if this or a future Council were to allow parking garages, massive buildings with 80-90% lot coverage would result.

In response to Council, Planning Director Ron Lee explained that the two areas in the City without lot coverage standards are the Fifth Avenue Overlay District and the “D” Downtown district. Vice Mayor Herms suggested asking for citizen input relative to proposed charter amendments limiting all commercial zoning districts to 45% lot coverage and parking garages to the ground floors. Council Member Galleberg, however, commented that these two measures had not garnered sufficient Council support when considered previously, and Mayor MacKenzie observed that while these measures sound seem simple, implementation might be complex. She stressed the importance of dealing with these issues comprehensively by considering the ramifications and potential economic results in each of the zoning districts. Council Member Taylor reiterated that she believed the PAB is considering this comprehensively, and that she had never intended to omit the 41-10 district. Council Member MacIlvaine stated that any report produced by the Heart of Naples Committee would not necessarily apply to all areas, but may clarify why redevelopment is sometimes discouraged and how to address it. He added that proceeding at this point may indeed be premature, and advocated conducting individual Town Meetings on the issues. Vice Mayor Herms commented that redevelopment would indeed occur in the 41-10 district with increased density and heights, but questioned whether it would be attractive.

Council Member Taylor stated that Edward Morton of Naples Community Hospital had contended that the new hospital addition would be a model for other buildings and the beginning of the renewal. Mr. Lee stated the PAB had reviewed the hospital's plans, which are scheduled for Council review at the March 7th Regular Meeting. In response to Council, Mr. Lee explained that the entire hospital block in question, including the parking garage, would have approximately 45% lot coverage. Council Member MacIlvaine, however, pointed out that the buildable lot itself accrued to significantly greater lot coverage and, if the parking garage were built to a height of 42-feet, the entire block would in fact be covered. Council Member Taylor however reminded Council that the parking garage is for the entire hospital and Mr. MacIlvaine noted that parking garages can actually be attractive and useful additions. Vice Mayor Herms however explained that 1000 square feet of commercial development is allowed for every three spaces in a parking garage. Council Member MacIlvaine nevertheless stated that a small parking garage near the City Dock would allow more people to use Naples Bay; Mr. Herms said however that this would also increase traffic.

Mayor MacKenzie then noted that PAB Vice Chairman Charles Kessler had registered to address Council. City Attorney Beverly Grady stated that there is no prohibition under state law for a PAB member to address Council, although under City ordinance, Council Members are prohibited from appearing before the PAB or at a public meeting where there are individual PAB members present. This, she said with the concurrence of Council, would not preclude any PAB member from speaking on a matter advertised for a Council Meeting.

Public Comment: (4:59 p.m.) **Charles Kessler, 525 Anchor Rode Drive**, clarified that because the PAB had not asked him to address Council, he was therefore not speaking as PAB Vice Chairman. He said nevertheless that when the PAB had begun reviewing the 41-page staff submittal, it had determined that it should first cover the issues conceptually and ask Council for direction on proceeding. Mr. Kessler then confirmed that the PAB and the Heart of Naples committee had both discussed whether the “D” Downtown district and the 41-10 area should be considered separately.

Council Member MacIlvaine expressed concern that the proposed limit of eight residences per acre in a mixed district may halt redevelopment activity in the 41-10 area. Vice Mayor Herms pointed out, however, that the residential success of some of these areas has not been significant, noting the low occupancy rate at the Bayfront Marketplace. He said he surmised that this was due to citizens becoming reluctant to live in a commercial area with such noise and heavy traffic. Mr. Herms questioned whether Council would be willing to direct the City Attorney to craft language on charter amendments dealing with lot coverage and/or parking garages so that Council could obtain public comment. Mayor MacKenzie however suggested waiting until the Heart of Naples Committee could provide concrete recommendations; Council Member MacIlvaine concurred. Council Member Tarrant predicted that County residents would soon feel the impacts of intense development and he said he did not perceive a conflict in proceeding on parallel tracks with ordinances in order to protect the City. Council Member MacIlvaine however said that since the Heart of Naples Committee is required to make a report within 90 days of its first meeting, these issues would be only slightly delayed.

MOTION by Wiseman to DEFER FURTHER PAB CONSIDERATION OF THE PROPOSED ORDINANCES UNTIL AFTER THE HEART OF NAPLES COMMITTEE REPORT; *seconded by Galleberg and carried 4-3, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-no, Wiseman-yes, MacKenzie-yes).*

.....**ITEM 24**
PRELIMINARY DESIGN APPROVAL OF PARK SHORE AND HARBOUR DRIVE BRIDGES (5:15 p.m.) Traffic Engineer George Archibald stated that the concept design report submitted to Council provides a summary of the bridge design, the intent of which is to identify any issues before the final design stage. (A copy of the aforementioned report is contained in the file for this meeting in the City Clerk’s Office.) He further stated that staff had been able to obtain most of the permits from South Florida Water Management District (SFWMD) as well as most of the releases relative to the land lease requirements and predicted that the bidding process would begin in May with construction slated for summer. Mr. Archibald pointed out that a key element involves relocating water and sewer lines and that the consultant is currently obtaining information relative to all affected utilities. He noted that the only real issue from staff’s perspective is the railing, and noted that the report outlines five different railings for Council to consider. Rail Alternative One is the most economical at \$130 per square foot and is a standard Texas-type railing that incorporates a window design in a concrete wall. This would provide some texture relief and character to the bridge. Mr. Archibald added, however, that staff also favors Rail Alternative Five which is a combination of concrete, steel, and aluminum, noting that it is attractive and would open the bridge substantially to the waterfront. In response to Mayor MacKenzie, Mr. Archibald explained that while the Lutgert Companies and some of the area homeowners associations had not commented, others had concurred with staff’s goal.

Mr. Archibald however warned that choosing Alternative Five would increase costs. City Manager Rambosk confirmed that this would add approximately \$140,000 to the projected cost

for the Park Shore Bridge of \$787,000 to \$944,000. Mr. Rambosk nevertheless suggested that Council select Rail Alternative Five due to its aesthetic appeal, and recommended approaching the Lutgert Companies for possible funding assistance. Council Member MacIlvaine concurred, expressing his support for this design. In further response to Council, City Manager Rambosk recommended that both bridges incorporate this type railing.

Public Comment: None. (5:30 p.m.)

MOTION by Herms to ACCEPT DESIGN REPORT; PROCEED TO FINAL DESIGN STAGE, SELECT RAILING #5 AND APPROACH THE LUTGERT COMPANIES FOR FUNDING ASSISTANCE WITH RAILINGS; 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 25

BROADCAST OF HEART OF NAPLES COMMITTEE MEETINGS (5:30 p.m.)

Public Comment: None. (5:31 p.m.)

MOTION by MacIlvaine to AUTHORIZE LIVE BROADCAST AND REBROADCAST; 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).

.....ITEM 21

CONSIDER CHANGES IN THE MEMBERSHIP OF THE PLANNING ADVISORY BOARD PURSUANT TO SECTION 2-271, CITY OF NAPLES CODE OF ORDINANCES. (REQUESTED BY COUNCIL MEMBER WISEMAN) (5:31 p.m.)

Council Member Wiseman commended City volunteers for contributing their time, experience, and efforts but noted that when citizens espouse positions in their capacity as representatives of the City, they assume certain responsibilities in connection with their behavior. Mrs. Wiseman then specified comments made by Amy Rego, a member of the Planning Advisory Board (PAB), at the end of the January 26, 2001 PAB Special Meeting. She said she believed these comments to be problematic because they were clearly outside Mrs. Rego's purview as a PAB member, and due to the content of the discussion, beyond the context of the PAB meeting. Mrs. Wiseman also noted that based on the other comments made by Mrs. Rego, she could deduce that this was not merely a sudden lapse of judgment but actually contemplated in advance of the meeting. She reminded Council that Mrs. Rego had no authority to censure PAB Chairman Stanley Hole for alleged illegal behavior. Additionally, Mrs. Wiseman explained that Mrs. Rego used a newspaper editorial and documents compiled by an advocate for parties suing the City as a basis for her allegations, which, she noted, also reflects poor judgment. Council Member Wiseman then pointed out that PAB Chairman Hole has not been charged with any wrongdoing on either a civil or criminal level relating to the Royal Poinciana Golf Club (RPGC) development agreement, and added that she would personally research the relevant facts. Mrs. Wiseman also said she believed it significant that Mrs. Rego's comments received no support from the other PAB members and contended that Mrs. Rego has a history of bad judgment and had in fact been removed from another City committee. She therefore proffered a motion requesting Council support in censuring Mrs. Rego or removing her from her position on the PAB.

Council Member Tarrant called Council Member Wiseman's request outrageous and said Mrs. Rego had served the City diligently and well. He also stated that he did not feel her comments at the PAB meeting were inappropriate. Mr. Tarrant further contended that the leadership at RPGC had declared in writing that the voluntary annexation and development agreement were defective and that Mr. Hole would receive certain benefits from this agreement. Council Member

Wiseman however asserted that any opinions regarding the annexation were irrelevant at that time and that Mrs. Rego's comments show a lack of respect for Mr. Hole and for the City Council. Council Member Galleberg expressed the view that the incident is not only troubling but also symbolizes an attitude of tolerating factual misstatements. He stressed that the PAB is an advisory board appointed by Council and serves at Council's pleasure; he said that if Mrs. Rego is concerned by what she alleges to have occurred, she could choose to resign. Mayor MacKenzie then stated that although she had found recent comments made by PAB member William Boggess to be distasteful, he had made them as a private individual. She added, however, that appointed representatives of the City must use appropriate discretion when making comments while in the performance of their duties.

City Attorney Beverly Grady provided a historical background on this issue, and explained that there is currently a provision in the Code of Ordinances, which provides for the removal of a PAB member by a majority vote of Council. In response to Council Member Tarrant, City Attorney Grady explained that Council could adopt a motion finding that a basis for removal has been articulated; Council would then provide the member with notice and an opportunity to respond before it actually votes for removal at the next Regular Meeting, she said. Council Member Wiseman therefore modified her motion appropriately.

Council Member MacIlvaine said he agreed that Mrs. Rego had committed a grave error, and that she has a tendency to speak inappropriately. He however added that she had exercised good judgment in matters of business, and that this error should not cause her removal.

Public Comment: None. (6:10 p.m.)

MOTION by Wiseman to CONSIDER REMOVAL OR CENSURE OF PAN MEMBER AMY REGO AT THE MARCH 7, 2001 CITY COUNCIL MEETING, AND TO NOTIFY MEMBER REGO; seconded by Galleberg and failed 3-4, all members present and voting (Galleberg-yes, Tarrant-no, MacIlvaine-no, Wiseman-yes, Taylor-no, Herms-no, MacKenzie-yes).

During the vote, Council Member Tarrant said he found the motion utterly wrong and repugnant. Council Member Taylor stated the Constitution guarantees free speech and that Council should not censor Mrs. Rego because it does not agree with her comments. Vice Mayor Herms said Mrs. Rego had been an outstanding leader in the community who has worked on many important community issues and has consistently taken a conservative position on the growth issues. He also noted her support for the recent charter amendments to help preserve the character of the City. Mr. Herms further stated that if she is guilty of making remarks about the PAB Chairman, so too are at least three Council Members. He added that he believed Mr. Hole had indeed violated the City's ethics law, and that the RPGC annexation agreement would continue to be an issue. Mayor MacKenzie said she could not approve of the forum in which Mrs. Rego chose to make her comments, and that Mrs. Rego deserves the opportunity to explain her rationale.

Council Member MacIlvaine pointed out that because of the recent letter written by PAB Member William Boggess, he would be happy to accept Mr. Boggess' resignation. (See Attachment 2, see also Page 2.) He added that he believed the letter to be disgusting, and that Mr. Boggess has lost his ability to exercise good judgment.

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

MOTION by MacIlvaine to ACCEPT RESIGNATION OF WILLIAM BOGGESS FROM PLANNING ADVISORY BOARD AND BEACH RENOURISHMENT/MAINTENANCE COMMITTEE WITHOUT REGRET; seconded by MacKenzie and unanimously carried, all members present and

voting (Galleberg-yes, Tarrant-yes, Wiseman-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, MacKenzie-yes).

CORRESPONDENCE & COMMUNICATIONS (6:15 p.m.)

City Manager Kevin Rambosk stated that a representative group of elected officials and managerial staff had recently met to discuss the new County ordinance which created the **Collier County Coastal Advisory Committee (CCCAC)**. Although the City staff made several requests, the County had opted to proceed while deciding to accept staff's recommendation to allow the City to select its own members. The City staff, he said, had raised issues relative to determining the makeup of the committee and splitting of the financial assessments among the various communities and municipalities as well as other issues regarding linear feet of beach, parking spaces, and beach renourishment.

Mayor MacKenzie observed that if this information had been provided to the other Council Members, they too might have chosen to attend the meeting. In response to Council, Natural Resources Manager Jon Staiger noted that the City formed the Beach Renourishment/Maintenance Committee (BRMC) in 1991. The new County ordinance states that the CCCAC will be composed of nine members, three representatives each from the unincorporated area of Collier County, the City of Naples, and the City of Marco Island. Dr. Staiger then provided additional information on the membership qualifications, a copy of which is contained in the file for this meeting in the City Clerk's Office, and added that the County Commission is seeking a committee that will work specifically with beach and inlet management related issues.

City Manager Rambosk then identified three issues to be decided at a future Council meeting; namely, the fate of the existing BRMC, the process of selecting CCCAC members, and the actual appointments. Council Member Wiseman clarified that the City would make recommendations to the County, and that as long as those applicants meet the County's committee standards, they would be appointed. The County Commission, however, would retain the right to remove these members at any time. Mrs. Wiseman however recommended deferring further discussion on this issue until Council has had the opportunity to review the ordinance. City Manager Rambosk said staff would present information on various options, and Mayor MacKenzie recommended providing each Council Member with a copy of the ordinance. It was the consensus of Council to place this item on the March 7, 2001 Regular Meeting Agenda. Dr. Staiger noted that the BRMC would meet on March 1st and said he presumed this would be the last meeting as presently configured. He also stated that the present chairman is a County resident whose term expires February 28th. Dr. Staiger then commented that if this committee were to continue, he would suggest enacting a resolution re-establishing it. Mayor MacKenzie suggested that he draft options for Council to consider on the fate of this committee and how it could function most effectively.

Council Member Tarrant stated that he had learned a citizen had recently fallen on some uneven **sidewalk** in the City. He suggested that staff patrol the sidewalks to identify any dangerous areas and repair them as soon as possible. Mr. Tarrant also said that City Manager Rambosk had suggested establishing such a program using college students during the summer; however, he questioned whether Council believed this matter should instead proceed expeditiously. City Manager Rambosk said he had already contacted the Engineering Department to assess methods to proceed on this matter at once, and said he would provide an update to Council.

Council Member Tarrant then requested additional information on the railing contract for the Gordon River Bridges. City Manager Rambosk explained that Mr. Tarrant had recently articulated several concerns involving the financial stability of Mid-Continent Electric and questioned whether it should in fact be installing railings and whether the project should have been bid. He then explained that Mid-Continent had filed for Chapter 11 protection during reorganization, and that it had in fact installed guardrail and decorative railing throughout the state. Mr. Rambosk added that the company has agreed to honor the original bid price, and that it has currently completed 50% of the contract responsibilities on time and under budget. Additionally, he explained that although the linear footage had been increased, the closest bid was \$100,000 above Mid-Continents' price. As such, he did not recommend rebidding the project. Council Member Tarrant said that in light of this information, he would recommend proceeding with Mid-Continent.

Council Member Tarrant then stated that a citizen had recently voiced concern about the new **Home Depot** being constructed in the County saying it would negatively impact traffic as well as the City's small hardware and lumber stores. He questioned whether Council would want to investigate this; however, Vice Mayor Herms said it is beyond the City's purview. Council Member Wiseman stated that with Mr. Boggess' resignation, the City Clerk is advertising for open positions including the **PAB**. She therefore said Council needs to make an adjustment in the number of vacancies. City Clerk Tara Norman however said Mr. Boggess' term was expiring in April. Council Member MacIlvaine said he was discouraged to hear Vice Mayor Herms' discourse on the **Royal Poinciana Golf Club** matter, indicating that he is misstating the importance of the issue.

Referring to complaints regarding the **Naples Beach Hotel**, City Manager Rambosk stated that staff had formulated a temporary parking solution for the event slated for February 23rd and explained that employees would park on the driving range; anyone violating parking regulations will be cited. City Manager Rambosk then said that he had recently prepared a memo on the Fifth Avenue Overlay District with regard to **open air dining**. He added that staff had received a request through the Oyster Bay Homeowners Association relative to **parking on Chesapeake Avenue** and that staff had authorized signs and would work with the homeowners on beautification efforts for the neighborhood.

PUBLIC COMMENT (6:39 p.m.).....
None.

ADJOURN (6:39 p.m.).....

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 4/18/01

City Council Regular Meeting – February 21, 2001 – 9:00 a.m.

2/21/01 City Council Regular Meeting
Attachment 1, Page 1 of 1.

From: **william-boggess@webtv.net (William S. Boggess--Naples, FL)**
Date sent: **Wed, 21 Feb 2001 03:21:18 -0500 (EST)**
To: **CityCouncil@NaplesGov.com**
Copies to: **DCZoldan@NaplesNews.com**
Subject: **+ + RESIGNATION + +**

FEBRUARY 21, 2001

Mayor and City Council

I herein tender my immediate resignation to you as a member of both,
City Planning Advisory Board, and the City/County Beach Committee.

This should please each, Tamaela Wiseman, Gary Galberger and Mayor
Bonnie, and apparently other council members.

I now am free to speak uncensored, as I so see fit, when I so see fit
about any subject that I so see needed.

Enjoy yourselves,
Bill Boggess(Electronically signed)
William (Bill) S. Boggess
1100 8th Av.S. ----- #109
Naples,Florida ----- 34102
Phone - 941-261-Bill (2455)
William-Boggess@webtv.net

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Wed, 21 Feb 2001 08:14:52

City Council Regular Meeting – February 21, 2001 – 9:00 a.m.

2/21/01 City Council Regular Meeting
Attachment 2, Page 1 of 1.

Item #1

From: **william-boguess@webtv.net (William S. Boguess--Naples, FL)**
Date sent: **Tue, 20 Feb 2001 05:15:53 -0500 (EST)**
To: **JFLytle@NaplesNews.com**
Copies to: **CityCouncil@NaplesGov.com**
Subject: **++DESPICABLE ACTION BY WEISMAN++**

Jeff:
Would this qualify for "letters to the editor"
Bill

THE PUBLIC IS BECOMING COMPLETELY AWARE OF THE WEIRED MIND SET OF COUNCILWOMEN WISEMAN, AS SHE CONTINUES TO REVEAL HER TRUE SELF, AT EACH ENSUING PUBLIC COUNCIL MEETING.

PERHAPS THERE WILL BE A RECALL PETITION FOR HER AND GARY GALBERG, HER 'LOCK IN STEP VOTING PARTNER' WHO "BOUGHT" HIS SEAT WITH MORE THAN \$50,000 SO THAT HE COULD, -- AS HE STATED AT A PUBLIC MEETING, -- 'WHIP JOE HERMS ASS', WHILE SWEET LITTLE 'OLE MAYOR BONNIE, WITH HER 38 VOTE MARGIN, SAT SILENTLY BY, WIGGELING IN HER CUSHIONED CHAIR, HER FACE GLOWING WITH ADMIRATION, AND SO MUCH JOY,--- SHE PROBABLY WETTED HER PANTIES!

WE CITIZENS OF NAPLES DESERVE BETTER THAN THESE THREE!

BILL BOGGESS/CITY OF NAPLES
SAVE OUR "SANDY" BEACH

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Tue, 20 Feb 2001 08:52:33