



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – August 15, 2001 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALL (9:02 a.m.) ITEM 1

Present:

Bonnie R. MacKenzie, Mayor
Joseph Herms, Vice Mayor

Council Members:

Gary Galleberg
William MacIlvaine
Fred Tarrant
Penny Taylor
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Beverly Grady, City Attorney
Tara Norman, City Clerk
William Harrison, Assistant City Manager
Ron Lee, Planning Director
Jon Staiger, Natural Resources Manager
Don Wirth, Community Services Director
Dan Mercer, Public Works Director
Lori Burke, Human Resources Director
Karen Kateley, Administrative Specialist
Joe Biasella
William Boggess
Colin Kelly
Barbara Walker

Richard Grant
Jim Gunderson
Eric West
Russ Reddick
Tom Morgan
Mildred Morgan
Kevin Smith
Jim Badger
Stuart Shelton
Tony Sheppard
William Pattison
Karen Pattison
Stephen Lawster
Pastor Susan Diamond
Bruce Wade
David Corbin

Media:

Eric Staats, Naples Daily News
Kathy Zolo, Naples Daily News
Denes Husty, Ft. Myers News-Press

Other citizens and visitors

Mayor MacKenzie announced a Special Meeting on August 27th at 1:30 p.m. regarding the City Dock, and that Item 17-a, from this agenda, would be considered at that time.

INVOCATION AND PLEDGE OF ALLEGIANCEITEM 2

Pastor Susan Diamond, First Christian Church

ANNOUNCEMENTSITEM 3

Employee Recognition Awards – Human Resources Director Lori Burke recognized employees who had completed 5, 10, 15 and 25 years of service.

Recognition of Planning Department Staff – Planners Laura Spurgeon and Cory Ewing for receiving the American Institute of Certified Planners Award.

Presentation of an award for the Cambier Park Bandshell design – Bruce Wade and David Corbin presented the Council with a plaque expressing appreciation for the opportunity to design this project, which had garnered an award for excellence in design from the Florida Association of the American Institute of Architects.

SET AGENDA (add or remove items)ITEM 4

City Manager Rambosk requested that Council remove Item 17-a from the agenda and continue Items 7-f and 23; he noted that Council Member Taylor had previously requested removing Items 7-b(2), 7-b(4), 7-c and 7-e from the Consent Agenda for separate discussion. Mayor MacKenzie noted that a public speaker had registered to speak on Consent Agenda Item 7-h.

MOTION by Herms to ADD ITEM 7-b (5) (private party at Annabelle's Restaurant) TO THE AGENDA; 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 REMOVING ITEM 17-a, CONTINUING ITEMS 7-f AND 23, AND REMOVING ITEMS 7-b(2), 7-b(4), 7-c, 7-e AND 7-h FROM THE CONSENT 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).

City Manager Rambosk said he had received requests to consider Item 8 in the afternoon and Item 16 in the morning.

PUBLIC COMMENT.....ITEM 5

William Pattison, 860 12th Avenue South, Slip #3, said he believed his situation had been the catalyst for controversy at the City Dock regarding the extortion charges filed against charter boat captain Allen Walburn. He explained that he had taken legal action when Mr. Walburn had refused to pay medical bills he had incurred when Mr. Walburn's dog had bitten him at the City Dock; Mr. Pattison said Mr. Walburn subsequently harassed, insulted and threatened him and other residents at the (Fleischmann) live-aboard dock where he resides. Mr. Pattison requested Council's assistance in ensuring that Mr. Walburn and his wife, April Meffert, are not allowed to continue to conduct their business at the City Dock. **Karen Pattison, 860 12th Avenue South, Slip #3,** stated that Mr. Walburn had also made unfounded reports to various governmental agencies alleging violations by her and her husband and had threatened further action if they did not dismiss the civil suit. Mrs. Pattison requested the revocation of the Walburn lease at the City Dock.

In response to Council, City Manager Kevin Rambosk confirmed that the City Dock leases do in fact contain guidelines on specific violations and criminal offenses with associated penalties. Council Member MacIlvaine asked Mr. Rambosk to determine whether the lease had been

violated, and to present a recommendation to Council. Council Members Tarrant and Taylor concurred; however, Council Member Galleberg pointed out that the City should not revoke a lease based on pending charges. Council Member Wiseman concurred and noted that despite a previous statement made relative to Mr. Walburn's treatment of City staff and public officials, neither he nor his wife had ever threatened her or exerted undue influence upon her. Vice Mayor Herms nevertheless said that City Dock leases do not permit the keeping of dogs, and that the staff should investigate in order to determine whether this tenant should remain. In an effort to resolve outstanding issues at the City Dock, Mr. Rambosk said that staff would meet with the tenants in both the Fleischmann and City Docks, stressing the need for compliance with all state, local, and federal laws and policies as well as develop a tenant association and code of conduct at the City Dock. **Joe Biasella, 860 12th Avenue South**, asserted that Allen Walburn often makes anonymous, unfounded complaints about tenants at the Fleischmann dock, and recommended that the City therefore institute a written complaint process. Regarding a clean-up operation after a boathouse fire in Port Royal, Mr. Biasella said he would submit to the City Clerk the report he had previously submitted to former City Manager Richard Woodruff and would also supply a copy of the original agreement he had made with the City, emphasizing that insurance fully reimbursed the City with interest. While affirming a business relationship with the Mayor MacKenzie's late husband, Mr. Biasella reiterated that Mayor MacKenzie had not done anything to promote his business and that neither he nor his business had paid her any royalties or gifts. Mayor MacKenzie clarified for the record that there had been a prior Council motion to investigate Mr. Biasella and his relationship to the City. Council Member Tarrant, however, explained that he had supported the motion in error in the belief that it was to investigate a number of issues involving the City Dock in recent years. **William Boggess, 1100 Eighth Avenue South**, stated that he too had experienced difficulties with Allen Walburn at the City Dock some 17 years before relative to excessive noise emanating from Mr. Walburn's vessel. He then stated that the Department of Environmental Protection (DEP) had found the City's beach rock removal project to be in compliance with State requirements and that it would remove the notice of permit violation. Mr. Boggess added that the DEP had filed a consent order against Coastal Engineering, and asked whether the Council would also consider a petition for an administrative hearing.

RESOLUTION 01-9265 ITEM 7-h
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE MAYOR TO EXECUTE A SOVEREIGN SUBMERGED LANDS MANAGEMENT AGREEMENT WITH THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA; AND PROVIDING AN EFFECTIVE DATE. Title not read. (9:54 a.m.)

Public Comment: (9:54 a.m.) **Colin Kelly, 2811 64th Street SW, representing Parker Beach Restoration**, commended the Council for its efforts and dedication, and said he would be glad to help the City obtain State restoration funds for future projects. Mayor MacKenzie said that the City has previously applied for grants from that funding source, but that the more populated east coast tends to receive most of those funds.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 7-a
March 15, 2001 Town Hall, April 16, 2001 Workshop, April 16, 2001 Special, April 30, 2001 Workshop, May 2, 2001 Special, May 2, 2001 Regular, May 15, 2001 Town Hall, June 4, 2001 Workshop, June 6, 2001 Regular, and June 20, 2001 Regular Meetings.

Council Member Taylor noted that on Page 6 of the April 30, 2001 Workshop minutes she had merely asked whether the City had commented to the newspaper relative to the River Park shooting. She also said that the word "public" should be added prior to the words parking and

boat launching in the third paragraph on Page 10. Council Member Wiseman said she would submit several typographical errors to the City Clerk. She added that on Page 5 of the June 20, 2001 Regular Meeting minutes, it appeared that a motion has been duplicated. Mayor MacKenzie commented that on Page 4 of the June 4, 2001 Workshop meeting minutes, the text should reflect that the spending for the Naples Preserve building restoration should be first from the state, and then from private donations.

APPROVE THE FOLLOWING SPECIAL EVENTS: ITEM 7-b

(1) Gulf Coast Runners 20K Run – 9/9/01

(3) Naples Concert Ban (Cambier Park Bandshell) - 10/21/01, 11/11/01, 12/2/01, 1/20/02, 2/10/02, 3/3/02, 3/24/02

(5) Annabelle's Restaurant (private party) 9/1/01

RESOLUTION 01-9263 ITEM 7-d

A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO CONTRACT WITH KEENE ENGINEERING IN AN AMOUNT NOT-TO-EXCEED \$7,400.00 FOR THE PURPOSE OF DESIGNING THE REPLACEMENT OF 2,200 FEET OF 12-INCH WATER LINE ON GULF SHORE BOULEVARD NORTH; AND PROVIDING AN EFFECTIVE DATE. Title not read.

COMMUNITY SERVICES (Continued, See Page 2) ITEM 7-f

AWARD A BID FOR LUMBER TO BE USED FOR THE NAPLES PRESERVE BOARDWALK \ VENDOR: MARINE LUMBER SUPPLY, NAPLES, FLORIDA (IPE WOOD MATERIAL) \ COST: \$47,718.16 \ FUNDING: NAPLES PRESERVE ACCOUNT.

RESOLUTION 01-9264 ITEM 7-g

A RESOLUTION ACKNOWLEDGING AND CONFIRMING APPOINTMENT BY THE FIFTH AVENUE SOUTH ASSOCIATION OF ONE MEMBER TO THE STAFF ACTION COMMITTEE, PURSUANT TO SECTION 102-1093 (1) (A) (3), FOR THE BALANCE OF A TERM EXPIRING MANY 31, 2002; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE ITEMS 7-a AS AMENDED, 7-b(1), 7-b(3), 7-b(5), 7-d, 7-g and 7-h; 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

..... ITEM 7-b(2)
TEDDY BEAR MUSEUM ANNUAL FAIR (CAMBIER PARK) – 10/20/01 (10:00 a.m.)

..... ITEM 7-b(4)
NAPLES ARTCRAFTERS ART SHOWS: (CAMBIER PARK) 10/27/01, 1/12/02, 4/13/02 (FLEISCHMANN PARK) 11/10/01, 12/08/01, 2/16/02, 3/16/02 (10:00 a.m.) Council Member Taylor questioned whether there would be adequate parking for both the Teddy Bear Museum Annual Fair and Oktoberfest. She then asked for clarification on the request for music for the Naples Artcrafters Shows; City Manager Rambosk said it would feature musical performances, including amplified sound and a public address system. He further said that Police & Emergency Services (PESD) reviewed this event along with the Swamp Buggy Parade and found no adverse impact. Mayor MacKenzie pointed out that although Oktoberfest, the Teddy Bear Museum Annual Fair, and the Naples Concert Band performance would occur during one weekend, the participants had not registered concern and declined to revise dates. Council Member Galleberg questioned how requests for outdoor amplified entertainment would be affected by the ordinance Council would later consider relative to prohibiting it. City Attorney Beverly Grady said Council could continue any pending item until action on legislation. She added that although the ordinance takes effect immediately, it does recognize certain approvals that may have already been given

which must come into compliance upon their renewal. Mayor MacKenzie noted that special events are specifically exempted from the proposed ordinance.

Public Comment: None. (10:03 a.m.)

MOTION by Taylor to APPROVE ITEMS 7-b(2) and 7-b(4); 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 01-9266ITEM 7-c
A RESOLUTION CONSIDERING RENEWAL OF LIVE ENTERTAINMENT PERMIT APPROVAL FOR PADDY MURPHY’S IRISH PUB, LOCATED AT 457 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read. (10:03 a.m.) Council Member Taylor noted that there had been no complaints and that she had no further concerns.

Public Comment: None. (10:03 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9266 AS SUBMITTED; 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 01-9267ITEM 7-e
A RESOLUTION APPROVING A CONTRACT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, WITH CHANGES APPROVED BY THE CITY ATTORNEY BETWEEN THE CITY OF NAPLES AND COMCAST CABLEVISION OF THE SOUTH, INC. TO CONSTRUCT AN INSTITUTIONAL NETWORK FOR THE CITY WITH A CAPITAL CONTRIBUTION FROM THE CITY IN THE AMOUNT OF \$50,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read. (10:04 a.m.) City Manager Kevin Rambosk explained that the City’s master franchise agreement provides an opportunity to negotiate an institutional network (I-net) for City services. This would allow the City to extend the current computer network to City facilities not serviced by fiber-optic cable. These facilities include Fire Stations #2 and #3, Fleischmann and River Park Community Centers, as well as a fiber connection to Collier County. The I-net also includes a redundant service line between Information Services and City Hall, allowing the network to continue in service should a line be severed. To date telephone lines had been used but precluded interactive capability between outlying sites. City Manager Rambosk explained that while a prior estimate to extend a fiber optic line from just City Hall to the Utilities Complex had been \$42,000, the City would now be able to connect all its facilities for \$50,500. In response to Council Member MacIlvaine, City Manager Rambosk said that the franchise agreement requires Comcast to allow the City some use of its system, but believed the best course of action was for Comcast to assist the City in installing its own lines.

Public Comment: None. (10:08 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 01-9267 AS SUBMITTED; 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).

Council Member Taylor expressed concern about the cost and questioned the need for this service.

RESOLUTION (Continued)ITEM 10-a
A RESOLUTION DETERMINING SUBDIVISION PETITION 01-SD12, TO BE KNOWN
AS CENTER CITY PLAZA, FOR PROPERTY LOCATED ON THE WEST SIDE OF U.S.
41 BETWEEN FIFTH AVENUE NORTH AND SIXTH AVENUE NORTH, MORE
PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk during discussions below. (10:08 a.m.)

RESOLUTION (Continued) ITEM 10-b
A RESOLUTION DETERMINING PETITION 01-AV2 FOR VACATION OF THE 20
FOOT EAST/WEST ALLEY WITHIN THE BLOCK BOUNDED BY U.S. 41, FIFTH
AVENUE NORTH, 8TH STREET, AND SIXTH AVENUE NORTH, SAID ALLEY MORE
PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk during discussions below. (10:08 a.m.) It is noted for the record that Items 10-a and 10-b were considered concurrently. Planning Director Ron Lee stated that the plat now contained a corrected signature page received earlier that day and explained that Council could either proceed and allow the City Attorney to ensure its legally sufficiency, or continue the item until September 5. City Attorney Beverly Grady suggested deferring the item until later in the day to allow review of the document, noting that in one section the plat indicates no mortgages while another section provides a signature line for the mortgage holder. Council determined that it would take testimony and discuss the petition but delay formal action until later in the day.

Mr. Lee stated that items under consideration would implement the Planned Development (PD) previously approved by Council conditioned on the property being subdivided. Although an even earlier approval had required that the alley be reinstated if the property were subdivided, the petitioner now requests that the alley be vacated in conjunction with the platting of the complete block. City Attorney Grady recommended that the Council first vacate the alley on the older plat. George Hermanson of Hole, Montes said that the alley would be replaced by a City utility easement, which would generally run from east to west, and would provide another easement along Eighth Street to allow a sidewalk to move around mahogany trees. Vice Mayor Herms questioned whether there would be guaranteed access for property owners in Tract A, C or D, noting that the alley vacation under consideration would transfer all the land to Tract B. Planning Director Lee explained that the PD reflects cross parking and cross access agreements so that all property owners in the project would have appropriate access. Council Member Tarrant questioned whether the alley vacation could be granted with conditions. Council Member Galleberg said that he believed Council had been correct in deciding that the alley should not be vacated if the property is subdivided due to property access issues as well as access to City services. Council Member Wiseman noted dedication language on the proposed plat referring to the lands being subject to a declaration of protective covenants, restrictions, and easements and asked whether staff had reviewed it. Mr. Lee affirmed that he had done so but City Attorney Grady said that she had not. Mr. Hermanson said that the access easements are covered in a separate agreement and noted that a plat would depict issues that relate to the general public and to the public agencies, but that agreements between the various tract owners are not usually included. Mr. Hermanson offered to stipulate City Attorney review of accompanying covenants prior to recording the plat. City Attorney Grady recommended against placing conditions on vacations but said that she would review the declaration if Council wished to provide for access down the center of the parcels. Vice Mayor Herms reiterated his concern that one property owner could later decline to give access to another property owner whose land did not border the street. Council Member Galleberg said that as long as the PD is not subdivided and the alleys remain, individual parcels could not be disposed of without further

action; however, if it is subdivided, the condominium can be sold and all the burden of public service could be transferred to the street. Council Member MacIlvaine suggested denial; however, Mr. Hermanson requested a continuance offering to include a dedication on the plat relative to the access agreements and then resubmit the petition. Vice Mayor Herms asked that a site plan showing the alley be provided so that Council could see the effects.

Public Comment: None. (10:14 a.m.)

MOTION by MacIlvaine to CONTINUE ITEMS 10-a and 10-b TO THE SEPTEMBER 5, 2001 REGULAR MEETING; seconded by Tarrant and carried 6-1 (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Galleberg said he however believed that Council had the information necessary in order to act.

**RESOLUTION 01-9268ITEM 11-a
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 01-LE7 FOR TOMMY BAHAMA CAFÉ AND STORE LOCATED AT 1220 THIRD STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 01-9269 ITEM 11-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 01-RIS12 FOR TOMMY BAHAMA CAFÉ AND STORE LOCATED AT 1220 THIRD STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** It is noted for the record that Items 11-a and 11-b were considered concurrently. Titles were read by City Manager Kevin Rambosk (10:14 a.m.). This being a quasi-judicial proceeding, Council made ex parte disclosures. MacKenzie, Taylor, Wiseman / no contact regarding the petition, but have in the past dined at the restaurant; other Council Members registered no contact. Council Member Tarrant disclosed that his son is employed at the restaurant as a musician, but City Attorney Beverly Grady said that conflict of interest provisions relate only if there is a special private gain or loss to the Council Member on the basis of the decision to be made. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

General Manager Dawn Skiera stated that Tommy Bahama has been operating for over five years with a single amplified entertainer, and that the City had received no complaints. Mayor MacKenzie however noted a letter to the editor and Vice Mayor Herms said that he had personally received complaints. Planning Director Ron Lee explained that the request is for live amplified entertainment until 11 p.m. and for approval of a residential impact statement. He added that staff recommends approval with the condition that the music be non-amplified. Mayor MacKenzie pointed out that this approval would allow Tommy Bahama the same entertainment hours as nearby Campiello's (7 p.m. to 11 p.m. nightly and Saturday and Sunday 2 p.m. to 5 p.m.). In response to Council Member Wiseman, Mr. Lee said that staff recommendation for non-amplification had been based upon previous Council action. Mayor MacKenzie however noted that Council had in fact been inconsistent in granting amplified music, but Council Member MacIlvaine took the position that each case should be viewed individually, especially in light of the neighboring property owner reactions and other conditions. Council Member Taylor concurred and noted that the City's noise monitoring equipment would render accurate readings. Noting the prohibition of amplified outdoor live entertainment to be considered later that day (Item 6), Council Member Galleberg recommended that Council first establish an overall direction before undertaking a case-by-case analysis. Ms. Skiera stated that her petition had been scheduled prior to Council's decision to consider the aforementioned

ordinance. In response to Vice Mayor Herms, City Manager Rambosk said that staff has not yet measured the sound level at Tommy Bahama; however, Council Member Wiseman expressed concern that the City would use this noise meter to eliminate all entertainment. Council Member Tarrant said he had voted against using the noise meter because of what he termed establishing the noise police, and said that unless music is having a negative impact on the neighboring residents, it should be allowed. Mayor MacKenzie noted that although the aforementioned proposed ordinance would require two readings, she believed it to be flawed and that it failed to address the problems. Therefore, she recommended that Council consider this particular petition on its own merits.

Public Comment: (10:43 a.m.) **Barbara Walker, 255 13th Avenue South, Suite 202, representing the estate of Dorette Fleischmann,** stated that Ms. Fleischmann is the landlord and owner of the building in which Tommy Bahama is located as well as most of the surrounding real estate. As the individual responsible for managing the many Fleischmann residential units on Third Street, Ms. Walker said that she had never received a complaint regarding the amplified music at Tommy Bahama; therefore, she registered her support for allowing the music to continue.

Council Member Wiseman proffered a motion to approve Item 11-a with staff recommendations, except that the music be amplified through either a single keyboard or a guitar with a not-to-exceed 200W amplifier with two 10-inch speakers which, she said is the equipment currently in place. Vice Mayor Herms however proffered a motion to continue the item until after Council considers the noise ordinance amendment (Item 6). Council Member Taylor seconded Mrs. Wiseman's motion.

MOTION by Wiseman to APPROVE RESOLUTION 01-9268 (ITEM 11-a) WITH STAFF RECOMMENDATIONS, AND THAT AMPLIFIED MUSIC BE ALLOWED THROUGH EITHER A SINGLE KEYBOARD OR GUITAR WITH A NOT-TO-EXCEED 200W AMPLIFIER WITH TWO 10-INCH SPEAKERS; seconded by Taylor and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms said while he is not opposed to the petition, it should have been heard after Item 6. Council Member Wiseman then proffered a motion to approve 11-b. In response to Council Member MacIlvaine, Planning Director Lee said that staff had mailed notices of this hearing to all surrounding residents within 500 feet approximately two weeks before the Council Meeting, but had not received any responses.

MOTION by Wiseman to APPROVE RESOLUTION 01-9269 (ITEM 11-b) WITH THE SAME CONDITIONS (as Item 11-a); 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).

Recess 10:47 a.m. to 11:01 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**ORDINANCE (First Reading)ITEM 12-a
AN ORDINANCE AMENDING SECTIONS 82-10 AND 110-39 OF THE CODE OF ORDINANCES IN ORDER TO REGULATE ROOFTOP ARCHITECTURAL EMBELLISHMENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. ORDINANCE (First Reading) ITEM 12-b
AN ORDINANCE AMENDING SECTIONS 102-328, 102-358, 102-388 AND 110-40 (b) AND 110-40 (c) (1) AND (2) OF THE CODE OF ORDINANCES IN ORDER TO ELIMINATE HEIGHT AND LOT COVERAGE ALLOWANCES FOR GROUND FLOOR**

PARKING IN MULTIFAMILY BUILDINGS WHICH ARE SUBJECT TO THE COASTAL CONSTRUCTION CONTROL LINE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. It is noted for the record that Items 12-a and 12-b were considered concurrently. Title read by City Manager Kevin Rambosk (11:01 a.m.). Council Member Wiseman disclosed a voting conflict on Item 12-b because her law firm represents The Naples Golf and Beach Club. Mayor MacKenzie noted that she had previously asked that Council consider taking into account the effect on this hotel as well as the Edgewater Beach Hotel and the condominiums and cooperatives between South Golf Drive and Doctors Pass. She added that if Council deletes the references to R3T-18 zoning, it could vote on the remainder of the proposal without causing an adverse effect on any property owners, and then proceed with a change in zoning for the aforementioned condominiums and cooperatives to delete transient zoning. Vice Mayor Herms said that while he concurred with creating proper zoning, he remained concerned about allowing the hotels an additional 12-foot height allowance. He said he had spoken to Naples Golf and Beach Hotel owner Mike Watkins regarding the impact on the value of the hotel particularly due to reduction in lot coverage maximums. Planning Director Ron Lee explained that placing parking beneath a structure affords an additional 5 per cent lot coverage, and providing separate garages affords an extra 10 per cent, although the two allowances cannot be combined. Council Member Galleberg commented that he believed the proposed ordinance would cause the Naples Golf and Beach Hotel to be nonconforming as to lot coverage. Mayor MacKenzie said the surrounding residents are however concerned that if the hotels find the changes detrimental and file lawsuits, there would be a delay in instituting the changes for their own properties. Mr. Herms however said that by reducing the buildings by 12 feet, the City will be negatively affecting the amount of available square footage, and therefore suggested having staff work with the petitioners to reach a compromise. Mayor MacKenzie nevertheless maintained that by separating R3T-18 from R3-18 zoning, this negotiation could proceed separately while the condominiums and cooperatives achieve their goals. She reiterated that these property owners want to delete the transient designation from their zoning district because they do not want their own or the neighboring buildings to be excessively tall. Council Member MacIlvaine concurred with excluding the hotels and with retaining the 12-foot reduction. Council Member Galleberg questioned whether there was a remaining incentive to elevate the buildings in the R3T-18 district. Mr. Lee explained that Federal Emergency Management Agency (FEMA) regulations allow the floodproofing of a commercial building, and require that all habitable first floors be at the FEMA elevation. In addition, he said the Department of Environmental Protection (DEP) requires that habitable first floors meet the first floor elevation requirement, which is between 18 and 20 feet. Natural Resources Manager Jon Staiger added that habitable commercial in a DEP zone must be elevated to the required level; non-habitable commercial can be at grade as long as it complies with FEMA, even within the coastal construction control line. Council Member Galleberg observed therefore that Council could still promote parking beneath a building in the R3T-18 district. Council briefly discussed floodproofing and elevation issues.

Mayor MacKenzie proffered a motion to approve Item 12-b with the deletion of Section 2, which refers to R3T-18 zoning district, and the deletion of the reference to R3T-18 in Section 4-c (2). Vice Mayor Herms however pointed out there would then be no maximum height for R3T-18 zoning. City Attorney Grady recommended amending Section 4-c(2) into 4-c(2)-a and 4-c(2)-b. She explained that 4-c(2)-a would be the language in the ordinance as printed with the deletion of R3T-18 and that 4-c(2)-b would apply only to R3T-18. Mrs. Grady then read the revised title into the record.

AN ORDINANCE AMENDING SECTIONS 102-328, 102-388 AND 110-40 (b) AND 110-40 (c) (1) AND (2) OF THE CODE OF ORDINANCES IN ORDER TO ELIMINATE HEIGHT AND LOT COVERAGE ALLOWANCES FOR GROUND FLOOR PARKING IN MULTIFAMILY BUILDINGS WHICH ARE SUBJECT TO THE COASTAL CONSTRUCTION CONTROL LINE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AN EFFECTIVE DATE.

Council Member MacIlvaine seconded the motion with these revisions. In response to Vice Mayor Herms, Mrs. Grady explained that eliminating Section 2 from the ordinance would leave Section 102-358 (Maximum height) as it presently exists in the Code. She added that the sections would be renumbered appropriately upon Second Reading. In regard to R3-18, Mr. Lee explained that if a building is affected by FEMA and not DEP regulations, it would be allowed the additional 12 feet; if however it is seaward of the Coastal Construction Control Line and impacted by DEP regulations, it would not. Mr. Herms voiced concern that even with this language change, some properties could still be 87 feet in height with an additional 6 to 8 feet allowed by FEMA. Council Member Galleberg pointed out that these structures would nevertheless have to be sufficiently inland so as not to be in the Coastal Construction setback zone. Mr. Herms however said that every property on the west side of Gulf Shore Boulevard would qualify.

Public Comment: None. (11:24 a.m.)

MOTION by MacKenzie to APPROVE ITEM 12-b AS AMENDED; seconded by MacIlvaine and carried 5-1-1 (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-abstain, (See Attachment 1, Form 8B Memorandum of Voting Conflict For County, Municipal, and Other Local Public Officers), MacKenzie-yes).

Vice Mayor Herms expressed doubt that this would accomplish Council's goals and suggested first rezoning the properties, and then reducing the heights in the R3-18 districts making sure this applies to the all the condominiums.

MOTION by MacKenzie to DIRECT STAFF TO PREPARE A ZONING CHANGE TO DELETE TRANSIENT LODGING IN THE R3T-18 ZONING DISTRICT AND CONTINUE DIALOG WITH TWO COMMERCIAL PROPERTIES IN R3T-18 IN ORDER TO PROVIDE AN ANALYSIS OF SUGGESTED ZONING CHANGES; seconded by MacIlvaine and carried 6-0-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-abstain (See Attachment 1), MacKenzie-yes).

Vice Mayor Herms recommended notifying property owners around the Naples Golf and Beach Hotel and Edgewater Beach Hotel. Mayor MacKenzie said staff would send the required letter to each affected unit owner, and that the Gulf Shore Property Owners Board of Directors would send its own letter. Mr. Herms noted that although Council had told its citizens it would reduce heights, it had not actually done so. Mayor MacKenzie, however, affirmed this goal could not be accomplished in one step but that this is, in fact, Council's ultimate intent.

MOTION by Herms to APPROVE ITEM 12-a; 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).

**ORDINANCE (First Reading)ITEM 13
AN ORDINANCE ADOPTING LARGE SCALE COMPREHENSIVE PLAN
AMENDMENT PETITION 01-CPA1, AMENDING THE 2005 FUTURE LAND USE MAP
TO UPDATE THE BOUNDARY OF THE HIGH NOISE IMPACT AREA; ADDING
POLICY 1-12.1 TO THE PARKS, RECREATION AND OPEN SPACE ELEMENT**

REGARDING FLEISCHMANN PARK RENOVATION; AND AMENDING POLICY 1-1 OF THE FUTURE LAND USE ELEMENT TO ELIMINATE REFERENCES TO COMMERCIAL BUILDING HEIGHTS OVER 42 FEET; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:31 a.m.). Planning Director Ron Lee stated this is a three-part request to amend the Comprehensive Plan, the first of which is to change the Future Land Use Map to update the boundary of the High Noise Impact Area. He explained that when the Comprehensive Plan was approved in 1998, Council had decided to use the 60 Day-Night Average Sound Level (DNL) line as the area to establish regulations related to noise. The Part 150 Study prepared by the Naples Airport Authority (NAA) has adjusted that line, and staff is simply modifying the Future Land Use Map to reflect that new line. Mr. Lee further said that this amendment would be transmitted to the Department of Community Affairs (DCA), and would be finalized in approximately three months. He added that staff is in the process of developing airport regulations for that specific area, and predicted that they should be in place and ready in time for Second Reading of the adopted boundary line. In response to Vice Mayor Herms, Mr. Lee said the area covered by the 60 DNL has become slightly larger and the configuration has extended to the southwest. He said this was primarily a reflection of the operations and the increased use of Runway 523. Mr. Lee said the next change to add Policy 1-12.1 to the Parks, Recreation and Open Space Element, is being done to facilitate a grant application by Community Services. The third part is to amend Policy 1-1 of the Future Land Use Element in order to eliminate references to commercial heights over 42 feet. In addition, Mr. Lee explained that the Mayor had requested in Policy 1-1 adding 0-6 dwelling units per acre for low density residential which City Attorney Beverly Grady had deemed to be a correction of a scrivener's error. Mr. Lee said and that staff would forward this as part of the Comprehensive Plan amendment. Vice Mayor Herms suggested a similar change under high-density residential mid-rise. Also in response to Mr. Herms, Planning Director Lee said 50 per cent building lot coverage in limited commercial is the maximum but that it would be further restricted by the zoning.

NAA Chairman Eric West registered support for staff's recommendation on the Future Land Use Map change, explaining that the NAA believes this is a routine update triggered by new data. He further said the aforementioned Part 150 study was done as a foundation for the Part 161 Study that recommended the 24-hour Stage 2 jet ban at the Naples Airport. Mr. West stated that the updated noise contour results from an integrated noise model that was jointly designed by the Federal Environmental Protection Agency and the Federal Aviation Administration (FAA). He added that the proposed contour has been approved by the FAA and Florida Statute Chapter 333, which requires the NAA and the City to execute the airport zoning interlocal agreement, which is based in part on FAA noise regulations and includes the requirement to use the latest available data. In addition, he noted the importance of Council's support for this part of the Comprehensive Plan process particularly in connection with the FAA proceedings on the Stage 2 jet ban. He further expressed appreciation to the Mayor and Council Member MacIlvaine for their comments and support on this subject at last January's Regular NAA Meeting.

Council Member MacIlvaine asked whether a condominium advertised for vacant property near Joe's Crab Shack would require a variance. Mr. Lee said that the Comprehensive Plan requires the builders to undergo a General Development and Site Plan (GDSP) review and the Code requires them to rezone to a PD to ensure compatibility. Therefore, any project to be built on that property would require Council review. Mr. Lee added that staff would draft new standards for land uses within the high noise impact area. Mayor MacKenzie suggested discussing this subject further during a workshop or when that particular property is on the agenda.

Public Comment: (11:50 a.m.) **Bob Azman, 800 River Point Drive, Naples Bay Club Condominium Association President**, questioned how the overlay would affect his condominium. Mr. Lee stated that unless redeveloped, there would be no change although the impact for redevelopment would be understood when staff develops standards for the new overlay district. Mayor MacKenzie asked that staff invite affected property owners to participate in the development of these regulations. Noting the importance of controlling the zoning around the airport, Council Member MacIlvaine pointed out that this action has an effect on the relationship between the FAA, the NAA, and the Stage 2 jet ban. Council Member Tarrant asked that Council and staff not use acronyms for the benefit of understanding by the citizens. Council Member Galleberg proffered a motion to approve amending the scrivener's error in Low Density Residential. City Attorney Grady then read the revised title into the record.

AN ORDINANCE ADOPTING LARGE SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 01-CPA1, AMENDING THE 2005 FUTURE LAND USE MAP TO UPDATE THE BOUNDARY OF THE HIGH NOISE IMPACT AREA; ADDING POLICY 1-12.1 TO THE PARKS, RECREATION AND OPEN SPACE ELEMENT REGARDING FLEISCHMANN PARK RENOVATION; AND AMENDING POLICY 1-1 OF THE FUTURE LAND USE ELEMENT TO ELIMINATE REFERENCES TO COMMERCIAL BUILDING HEIGHTS OVER 42 FEET; AND CLARIFYING THE SCRIVENER'S ERROR OF PERMITTED INTENSITY OF LOW DENSITY RESIDENTIAL AS 0-6 DWELLING UNITS PER ACRE; AND PROVIDING AN EFFECTIVE DATE.

Mrs. Grady stated the scrivener's error in Low Density Residential would also be corrected in Section 3 of the ordinance. Vice Mayor Herms questioned whether there should also be a correction for High Density Residential Mid-Rise, but Mrs. Grady recommended that staff perform additional research before enacting this change.

MOTION by Galleberg to APPROVE AS AMENDED TO CORRECT SCRIVENER'S ERROR IN LOW DENSITY RESIDENTIAL TO 0-6 DWELLING UNITS PER ACRE; 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 many potentially affected property owners are not available due to the time of year, and Vice Mayor Herms maintained that High Density Residential Mid-Rise should have also been corrected.

RESOLUTION (Continued)ITEM 15-a
A RESOLUTION ESTABLISHING THE AIRPORT ZONING COMMISSION FOR THE PURPOSE OF RECOMMENDING AIRPORT ZONING REGULATIONS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:53 a.m.).

RESOLUTION (Continued) ITEM 15-b
A RESOLUTION APPOINTING FIVE MEMBERS TO THE AIRPORT ZONING COMMISSION FOR A TERM EXPIRING DECEMBER 31, 2002; AND PROVIDING AN EFFECTIVE DATE. It is noted for the record that Items 15-a and 15-b were considered concurrently. Title read by City Manager Kevin Rambosk (11:53 a.m.) who stated that in March the City and the Naples Airport Authority (NAA) had entered into an interlocal agreement for the adoption, administration, and enforcement of airport zoning regulations, and that this resolution is the mechanism. In response to Vice Mayor Herms, Planning Director Ron Lee explained that while the airport area has an overlay zoning, the interlocal agreement stipulates that any modification requires a commission to make recommendations to the Planning Advisory

Board (PAB) and Council. Mayor MacKenzie explained this has actually been a statutory requirement for some 20 years, and that this proposal would bring the City into compliance. In response to Council Member Tarrant, she commented that because the NAA wants to enact a Stage 2 ban, it must not be vulnerable in any area and must therefore comply with the statute. City Attorney Beverly Grady stated that Council could actually make the PAB the airport zoning commission; Council Member Tarrant concurred with this suggestion in order to avoid forming an additional committee. Mayor MacKenzie however said that the PAB does not yet have familiarity with airport rules and regulations. Council Member Galleberg observed that this is essentially adding a responsibility to the existing Airport Noise Committee (ANC). Mayor MacKenzie said the goal is to bring an objective approach to resolving issues with regard to the adoption of airport zoning. Council Member Wiseman requested clarification on the restrictions on dual office holding. City Attorney Grady stated that the ANC is a committee of the NAA, not the City, but that she would nevertheless research this issue.

Public Comment: None. (12:06 p.m.)

MOTION by Tarrant to CONTINUE ITEMS 15-a AND 15-b to THE SEPTEMBER 5, 2001 REGULAR MEETING; 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).

Vice Mayor Herms recommended that the City Attorney also research the enabling act and the legislation, noting that there was a decision approximately 20 years ago that gave the City the right to govern all zoning issues. He suggested that this NAA committee might actually violate this decision.

ORDINANCE 01-9270ITEM 16

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC PLACES OF THE CITY OF NAPLES, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (12:07 p.m.). In response to Council Member Tarrant, TECO Peoples Gas (TECO) General Manager Steven Jarboe stated that the gas lines would be placed 36 inches below ground, and that they would range from one-half inch to six inches with no set distance for the shut-off valves. Mr. Tarrant then questioned the City's safety precautions. City Manager Rambosk stated that all gas line plans must be submitted to the Engineering Department for approval, and then inspected as they are progressing. He added that Police & Emergency Services would take charge in the event of an accident until TECO responds, but that the City would not have any ongoing inspection responsibility once the system is in place. In response to an inquiry by Vice Mayor Herms, Mr. Jarboe said TECO had established training programs with local fire departments but would have staff available on a 24-hour basis to shut off any valves if necessary. TECO representative Don Mestus also explained that, under the agreement, the City has the right under emergency conditions to operate the facilities without liability; TECO would then restore the system at its own expense. Mr. Jarboe also pointed out that TECO would respond to a gas leak within one hour. Council Member Tarrant said he believed there to be unanswered questions with regard to public safety, and recommended a continuance to allow the staff to work with TECO. Vice Mayor Herms however pointed out the lines are already in the ground on U.S. 41. In response to City Manager Rambosk, Mr. Mestus affirmed that TECO would provide the same training to City staff as that given to the fire departments. Council Member MacIlvaine reiterated that the City would have the authority to turn off the system if necessary without liability, and that both TECO and the City are both committed to safety.

Public Comment: None. (12:19 p.m.)

MOTION by MacIlvaine to ADOPT ORDINANCE 01-9270 AS SUBMITTED; seconded by Wiseman and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess 12:19 to 1:33 p.m. It is noted for the record that Council Member MacIlvaine returned at 1:34 p.m., and Vice Mayor Herms returned at 1:35 p.m.

ORDINANCE 01-9270 ITEM 6
AN ORDINANCE AMENDING SECTION 82-10 AND 110-128 (a) OF THE CODE OF ORDINANCES IN ORDER TO PROHIBIT AMPLIFICATION OF OUTDOOR LIVE ENTERTAINMENT EXCEPT FOR SINGULAR COMMUNITY EVENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title not read. (1:33 p.m.) Mayor MacKenzie expressed appreciation to all those attending, but said this item had been placed on the agenda because of a misunderstanding because Council had not been clear in its direction to staff, and expressed regret for the concern, fear, and confusion that it may have caused. Additionally, she said she believed it to have never been Council's intent to eliminate amplified music altogether, and said that Council is simply seeking a balance between the needs of the entertainment industry with those of the residents. Therefore, she suggested withdrawing the item and recommended that staff meet with all affected and interested parties and draft a fair, reasonable, and balanced proposal.

Public Comment: (1:37 p.m.) **Tom Morgan, 615 West Lake Drive**, stated that he could hear music from one restaurant over a mile way, and said he hoped Council would be careful and considerate in working out an answer. **Kevin Smith, 2500 S. Airport Road, Suite 303**, stated that there is a difference between noise and music, and said he would be happy to serve on a committee. **Jim Badger, 215 Huntington Drive**, said he would air his concerns when Council is ready to address this issue. **Stuart Shelton, 4565 Beechwood Lake Drive**, expressed approval for Council's decision, and recommended making the existing ordinance enforceable, consistent, and fair to all parties. **Tony Sheppard, 3200 La Costa Circle**, also expressed appreciation for Council's decision, and said that CODA (Citizens Organized to Defend the Arts) believes there is a flaw in the permitting process, which should be addressed. He requested that CODA address Council at the earliest opportunity to present information that he said would help to resolve the situation. **Stephen Lawster, 785 10th Street North**, declined to speak when called.

MOTION by MacIlvaine to WITHDRAW ITEM 6; 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 01-9271 ITEM 8
A RESOLUTION DETERMINING VARIANCE PETITION 01-V3 FROM SECTION 102-506 (1) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES A TEN-FOOT FRONT YARD SETBACK, AND FROM SECTION 110-54 (a) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES STRUCTURES TO BE 30 INCHES OR LESS IN HEIGHT WITHIN REQUIRED SETBACK AREAS, IN ORDER TO PERMIT STEP WALLS ABOVE 30 INCHES IN HEIGHT WITHIN A REQUIRED FRONT YARD SETBACK AREA AT 849 7TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:47 p.m.). This being a quasi-judicial proceeding Council made the following ex parte disclosures: MacKenzie / view of the property, view of the applicable Planning Advisory Board (PAB) meeting, and a telephone call from the petitioner's attorney which she was unable to return; MacIlvaine / no contact; Galleberg / familiarity with site, view of a portion of the PAB meeting, brief conversation with the petitioner's Attorney Yovanovich;

Taylor/ telephone call from Attorney Yovanovich's office which she was unable to return; Wiseman / familiarity with site and conversation with Attorney Yovanovich about the merits of the petition; Herms / no contact; Tarrant / no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Attorney Richard Yovanovich stated that this petition is a request for a variance from a side yard encroachment. He explained that the petitioner had proceeded under what he believed to be a valid permit, and had constructed steps with sidewalls and a handrail at the entrance to an existing building, all of which had later been inspected by staff. Prior to receiving the final certificate of occupancy, however, it had been discovered that the sidewall encroaches into the setback. He said there are unusual and special circumstances involved in this variance, and that errors had certainly been made. Attorney Yovanovich stated that the building is attractive and that the encroachment would not allow the petitioner to increase square footage above that allowed. He added that the sidewalk is sufficiently wide to accommodate pedestrians as well as ingress and egress, and that the sidewall should not reduce the protections in the zoning ordinance. Attorney Yovanovich therefore requested that Council follow the PAB recommendation for approval and grant this variance.

In response to Council, Attorney Yovanovich confirmed that the stairs and the railing are in compliance with Code. Planning Director Ron Lee however pointed out that the sidewalls should be a maximum of 30 inches in height, and are actually 18 inches too tall. Attorney Yovanovich affirmed that the petitioner could reduce the height, but said he believed this would be expensive and unnecessary. Council Member Galleberg said he felt the effect was insignificant, and proffered a motion to approve. In further discussion, Mr. Lee stated that the plans submitted show a south elevation without the wall, which is most likely the evidence that the Building Department reviewed when it issued the permit. Vice Mayor Herms therefore said this was not a staff error, and that the plans submitted were different from what was actually built. Attorney Yovanovich, however, took the position that a floor plan submitted with the building plans should however have brought the problem to the City's attention. He however added that it was the petitioner's mistake in not making this clear enough. In response to Council Member MacIlvaine, Mr. Lee said staff recommended denial because it could not determine a hardship or an unusual circumstance, and reiterated that the elevations submitted with the building plans do not show the walls. Although saying he did not wish to set a precedent, Council Member MacIlvaine agreed that the effect was insignificant and said he would vote for approval.

Public Comment: None. (2:02 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9271 AS SUBMITTED; seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

ORDINANCE (First Reading) ITEM 9
AN ORDINANCE AMENDING SECTION 110-142 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, IN ORDER TO MODIFY THE DURATION OF WAIVERS FOR RELIEF FROM RESIDENTIAL IMPACT STATEMENT RESTRICTIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (2:02 p.m.) who said that Council had previously discussed the potential of modifying the 30-day waivers from residential impact statement requirements when it had considered the Hess Gas Station on U.S. 41. Council Member Wiseman proffered a motion to approve; however, further discussion ensued. In response to Vice Mayor

Hermes, Planning Director Ron Lee confirmed that the only change would be that the time limitation for the waiver would be specified in the approving resolution. He added that the Hess Station, which wants a 24-hour operation, would otherwise have to apply for a permanent waiver from the time restrictions. City Attorney Robert Pritt confirmed that if no time limitation were specified, the waiver would be limited to 30 days.

Public Comment: None. (2:07 p.m.)

MOTION by Wiseman to APPROVE ITEM 9; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Hermes-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

ORDINANCE (First Reading)ITEM 14
AN ORDINANCE ADOPTING LARGE SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 01-CPA2, AMENDING THE DOWNTOWN MIXED USE DISTRICT WITHIN THE FUTURE LAND USE ELEMENT TO ELIMINATE THE REQUIREMENT THAT THE GROUND FLOOR OF BUILDINGS BE COMMERCIAL, OFFICE, OR RETAIL; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:07 p.m.) who identified this as one of the changes recommended by the Heart of Naples Committee (HONC). While saying that he had voted to place this item on the agenda for discussion, Council Member Galleberg said he nevertheless did not favor it. Council Member and HONC Chairman MacIlvaine said that the HONC does not believe there would be any adverse economic or visual effects from eliminating the requirement that the ground floor of buildings be commercial. Council Member Galleberg however said that it would be detrimental to planning and would cause variations in Federal Emergency Management Agency (FEMA) elevations as well as density, and traffic concerns. He also questioned the proposed height allowed for the residential structures. Vice Mayor Hermes indicated that residential structures could be as high as can be approved with a Planned Development (PD), and Mayor MacKenzie suggested enacting appropriate standards. Planning Director Ron Lee said this would be the purview of the HONC and that this proposal is the first step in that process and, if approved, the committee would compile regulations to address the fill, stem wall, height, and design issues related to residential. Council Member Wiseman expressed economic concerns relative to the proposal, noting that just as multi-family has largely replaced single family in Old Naples, it could also replace commercial in the area in question. Council Member MacIlvaine however said the business people feel this would be a boon to business. Mrs. Wiseman suggested mandating a certain percentage of commercial and residential; however, Council Member Galleberg expressed doubt this would be possible. Council Member Taylor also emphasized what she described as a clear trend and market for residential. Council Member Tarrant and Mayor MacKenzie however recommended allowing the committee to proceed, pointing out that the committee has a balance of conservative and enthusiastic members who are thoughtful and deliberate. Council Member Wiseman noted that it is unclear whether a majority of Council supports this, and suggested that Council give the committee appropriate direction.

Public Comment: (2:22 p.m.) Russ Reddick, 888 10th Street South, stated that the committee had sought to remove major obstacles that it felt prevented development in that area, one of which being the proposal under consideration. He said that the committee would later recommend a mixed-use program. Mayor MacKenzie said she believed Council could enact safeguards that would prevent this area from becoming a large multi-family corridor. In response to Council, Planning Director Lee stated that large-scale Comprehensive Plan amendments are limited to twice per year and that in early 2002, staff would establish the two cycles, the first of which would likely be in May. Mr. Lee further explained that Council could

continue this particular amendment until the first cycle in 2002, but that there would only be one additional cycle remaining that year.

Council Member Taylor suggested incorporating spot zoning within the district, and Vice Mayor Herms pointed out that Council could establish various standards it wanted on every street. Mr. Lee said the committee was looking into buffers for the Lake Park single-family neighborhood, and said that multi-family could serve as a buffer or transitional use from the single family to the commercial.

MOTION by MacIlvaine to APPROVE ITEM 14; seconded by Tarrant and carried 5-1-1 (Wiseman-no, MacIlvaine-yes, Tarrant-yes, Galleberg-yes, Herms-abstain {See Attachment 2, Form 8B Memorandum of Voting Conflict For County, Municipal, and Other Local Public Officers}, Taylor-yes, MacKenzie-yes).

Vice Mayor Herms said he owns property within the “D” Downtown zoning district and would abstain. Council Member Taylor urged that because the committee would be changing the configuration of an entire neighborhood an urban planner be sought; Council Member Tarrant however disagreed.

Mayor MacKenzie proffered a second motion to hold a joint workshop with the HONC in October. In response to Council inquiry, City Attorney Pritt clarified that while the Council and the HONC members could suggest to the City Manager topics to be covered, a Council Member cannot utilize the City Manager as a means of responding to the committee or the rest of Council.

MOTION by MacKenzie to HOLD A WORKSHOP WITH THE HEART OF NAPLES COMMITTEE ON OCTOBER 15, 2001 WITH SUGGESTED TOPICS TO BE PROVIDED TO THE CITY MANAGER BY OCTOBER 1; 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).

Regarding Vice Mayor Herms’ abstention, Council Member Galleberg said that he too owns property in the district but that he believed this does not constitute a conflict. City Attorney Pritt said in this case, there is a potential Comprehensive Plan Amendment as opposed to a property zoning, and questioned whether there could be a special private gain. Council Member Tarrant noted that former Council Member John Nocera had to vote on an item concerning the 41-10 District because the percentage of the property he owned there was not sufficient to constitute a conflict. Mr. Herms however said that changing the zoning in an area could increase the value of the property and clearly produce a benefit. Council Member Galleberg said that it is a special pecuniary interest that creates a conflict, and proffered a motion to reconsider. City Attorney Pritt stated that state law requires Council Members to vote unless there is a conflict such as a matter inuring to their special private gain or loss, or if there is the appearance of a conflict. Mayor MacKenzie said a second is not required or specified under the reconsideration policy.

MOTION by Galleberg to RECONSIDER ITEM 14. This item was not seconded, and was carried 6-1 (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by MacIlvaine to APPROVE ITEM 14; seconded by MacKenzie and carried 5-1-1 (Tarrant-yes, Galleberg-yes, Herms-abstain (See Attachment 2), Wiseman-no, Taylor-yes, MacIlvaine-yes, MacKenzie-yes).

RESOLUTION (Withdrawn – See Page 2).....ITEM 17-a
A RESOLUTION APPOINTING A SELECTION COMMITTEE RELATING TO THE
SELECTION OF A FIRM OR FIRMS TO PROVIDE MARINA FACILITIES
ARCHITECTURAL AND ENGINEERING SERVICES FOR THE REHABILITATION
AND POSSIBLE EXPANSION OF THE NAPLES CITY DOCK AND DEVELOPMENT
OF MARINA ACTIVITIES AT THE PULLING PROPERTY; AND PROVIDING AN
EFFECTIVE DATE. Title not read.

RESOLUTION 01-9272 ITEM 17-b
A RESOLUTION APPOINTING A SELECTION COMMITTEE RELATING TO THE
SELECTION OF A FIRM TO PROVIDE MARINE FIRST RESPONDER SPILL
CONTAINMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:59 p.m.) who said that in 1999 Council had established a committee to review proposals for spill containment and clean-up services. From this process, the City chose a vendor and began using the services, although a contract was not actually negotiated. City Manager Rambosk therefore requested Council's authorization to assemble a committee to develop a request for proposals (RFP) and later submit a recommendation and contract. In response to Council Member MacIlvaine, Assistant City Manager William Harrison indicated that staff had followed the established procedures but had neglected to bring the contract back to the Council. Council Member Taylor added that staff did not bring the finalists to Council, and had actually selected the contractor on its own without utilizing the proper rating system. Mr. Harrison said he did not recall using a grading sheet but explained that these services are for emergency response with no firm definition of services needed. Mr. Harrison said that the consensus of the committee was to maintain the status quo with the present vendor, especially since this firm is located on Naples Bay and is immediately available. Council Member Taylor said this vendor did not have first responder certification, and was subcontracting equipment from one of the other applicants, resulting in a cost markup. Council Member Tarrant suggested eliminating the committee, and then allowing the firms to present their credentials directly to Council. Council Member MacIlvaine however recommended against what he described as micromanaging this process and urged moving ahead.

Natural Resources Manager Jon Staiger said he recalled reviewing the credentials of the various firms, and said he believed the aforementioned vendor, Del Rey Marine, had all the requisite qualifications. He added that a disastrous fire at the south end of Gordon Drive followed by a boat that exploded on the Moorings Bay system triggered staff's desire to have someone available for immediate response. Dr. Staiger further explained that normally one firm will respond immediately to contain the event, and then colleagues or other companies would arrive to deal with the cleanup. One of the applicants is in Fort Myers and therefore would not have been immediately available. Council Member Taylor stated that this was not one of the criteria set forth and was not included in the requests for qualifications (RFQ). She added that she believed Seaspill had been located in Royal Harbor at the time; however, Dr. Staiger said that the boat was in Royal Harbor but the nearest operators were located in the Isles of Capri. Vice Mayor Herms pointed out that this firm had however done a significant amount of the cleanup in the Port Royal fire.

Council Member Wiseman pointed out that staff had recognized that the proper procedures were not followed, and is bringing a method to correct this. Council Member Taylor said that the firms had to be available within one hour, and that the seven responding firms to the RFQ were able to meet that guideline. She added that for the last two years, Del Rey Marine has been working on Naples Bay being paid \$250,000 without a contract, according to the Naples Daily News. Mr. Harrison explained that from the date staff had issued the RFQ, it had used Del Rey

Marine on one occasion, a \$31,000 fuel spill cleanup in Royal Harbor. Because the source of the fuel could not be ascertained, the City was forced to underwrite the cost. Mr. Harrison however said the Port Royal fire, which predated the aforementioned process, had cost \$166,000 but had been reimbursed by insurance companies along with the City's attorney's fees. In further discussion, Mr. Harrison reported that at the time of the Port Royal fire, the City had no contractual relationship in place or any standard operating procedure. The Dockmaster therefore made a decision to call an emergency provider, Del Rey Marine, because he knew this vendor had the ability to do the initial containment of the environmental damage. Council then briefly discussed an allegation that the firm Seaspill had a contract with the City.

Council Member Taylor then noted the payments to Del Rey Marine for the cleanups were never discussed or approved by Council. Mr. Harrison said that, historically, expenditures from the risk management fund do not go through the elected officials, but that Council can change this process if it so chooses. He added that the City's auditors have found no exception to his actions. Council Member MacIlvaine said he took issue with the insinuation that the Assistant City Manager is making up his rules. Council Member Taylor however said that according to the Code of Ordinances, the Mayor or Vice Mayor must approve emergency payments. Both Vice Mayor Herms and Mayor MacKenzie said they had not approved the \$31,000 payment to Del Rey Marine. In further discussion, Mr. Harrison however pointed out that Council had recently indicated that a contract for bond counsel was unnecessary. Dr. Staiger explained that there was a requirement for a backup response capability that could arrive on the scene within a certain number of hours with more containment and spill cleanup equipment and that in order to comply with new State rules for an oil spill contingency plan for the City Dock, several staff members had attended first responder school. Dr. Staiger added that staff had listed Seaspill as the backup responder, and said he did not recall whether there was a contract or simply an understanding with the Dockmaster. He further said that Seaspill had indeed been utilized in that manner on several occasions.

Public Comment: (3:28 p.m.) **Joe Biasella, 860 12th Avenue South**, said he was insulted by the preceding discussion, and said he and his staff endured dangerous conditions putting in over 100 hours of overtime in order to contain the Port Royal fire. He added that he has all appropriate licenses, and that he has many satisfied customers. Council Member Taylor said that Mr. Biasella himself had reportedly boasted that he works for the City without a contract. Mr. Biasella took the position that Seaspill does not have adequate staff to appropriately respond to a crisis, and that Del Rey Marine is the only firm in the City that has equipment and divers immediately available. He added that even though Del Rey Marine had been serving the City in good faith for 10 years, he had never received a contract and had not been paid for various difficult and dangerous tasks. Mr. Biasella further said he felt his firm is being maligned for political reasons.

Council Member Tarrant said he believed it appropriate to express appreciation to Del Rey Marine. Council Member Wiseman said that Council as a whole is in no way responsible for items printed in the newspapers and recommended proceeding, proffering a motion to approve Item 17-b seconded by Council Member MacIlvaine. Council Member Taylor suggested not using the same committee members as previously. Vice Mayor Herms concurred saying that if this committee makes the same recommendation, controversy would arise. Council Member Galleberg however said these are, in fact, the appropriate people to choose a marine contractor.

MOTION by Wiseman to APPROVE RESOLUTION 01-9272 (ITEM 17-b) AS SUBMITTED; seconded by MacIlvaine and carried 5-2, all members present

and voting (Galleberg-yes, Tarrant-yes, MacIlvaine-yes, Wiseman-yes, Taylor-no, Herms-no, MacKenzie-yes).

Council Member Tarrant said although he would prefer a new selection committee, it was important to immediately choose a responder. Mayor MacKenzie stressed the importance of obtaining a contract for these services.

RESOLUTION 01-9273ITEM 17-c

A RESOLUTION APPOINTING A SELECTION COMMITTEE RELATING TO THE SELECTION FO A FINANCIAL ADVISOR AND BOND COUNSEL TO ASSIST THE CITY IN THE ISSUANCE OF MUNICIPAL BONDS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:48 p.m.) who said that the City has had no contract for its bond counsel, although it does have a contract for financial advisor services that is now about to expire. Staff is therefore considering issuing requests for proposals (RFP) for both, and using an existing committee to review applicants and make recommendations. In response to Council, Assistant City Manager William Harrison said that staff is recommending a Council Member serve and recommended using the existing audit committee.

Public Comment: None. (3:50 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9273 (ITEM 17-c) AS SUBMITTED; 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).

Mayor MacKenzie noted for the record that she did confer briefly with City Attorney Pritt before voting on Item 17-b, and that he had said it would be appropriate for her to vote without a conflict of interest. Vice Mayor Herms questioned whether the Mayor would be able to vote on the actual selection; however, Mayor MacKenzie recommended dealing with this when the situation arises.

Recess 3:52 p.m. to 4:07 p.m. It is noted for the record that Vice Mayor Herms returned to the meeting at 4:10 p.m. and Council Member Taylor was absent for the balance of the meeting.

ORDINANCE 01-9274ITEM 18-a

AN ORDINANCE AMENDING SECTION 46-67 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF UPDATING RECREATIONAL FEES FOR SERVICES ADMINISTERED BY THE COMMUNITY SERVICES DEPARTMENT; PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:08 p.m.). Community Services Director Don Wirth stated that the bandshell fees for non-residents and businesses would be significant, and that any profits realized by performing organizations would be directed to non-profit groups. He added that if the City has extraordinary costs involving utilities, extra staffing, or other considerations, it can charge them to the organization renting the facility. Mr. Wirth however said that everything else in the ordinance is the same as at First Reading.

Mayor MacKenzie asked for clarification on defining organizations and Council Member Wiseman suggested stipulating that organizations must have their principal place of business within the City. City Attorney Robert Pritt said that Council must act on the final exact language of the ordinance, or schedule it for another hearing. Council suggested various amendments in further discussion. Council Member Wiseman asked that all pages of a proposal or ordinance be numbered for easier reference, and Council Member Galleberg requested that a corrected version of an ordinance also be provided when there are significant changes.

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

MOTION by Wiseman to ADOPT ORDINANCE 01-9274, AS AMENDED TO REQUIRE CHARITABLE, NONPROFIT, CIVIC AND GOVERNMENTAL ORGANIZATIONS TO HAVE A PRINCIPAL PLACE OF BUSINESS IN NAPLES OR COLLIER COUNTY IN ORDER TO RECEIVE A REDUCED FACILITY RENTAL FEE; seconded by MacIlvaine and carried 4-2 (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-absent, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9275 ITEM 18-b
A RESOLUTION AMENDING APPENDIX “A” TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FLORIDA FOR THE PURPOSE OF AMENDING RECREATIONAL FEES FOR SERVICES ADMINISTERED BY THE COMMUNITY SERVICES DEPARTMENT; PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:22 p.m.).

Public Comment: None. (4:22 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9275, AS SUBMITTED; seconded by MacIlvaine and carried 4-2 (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-absent, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9276 ITEM 19
A RESOLUTION APPROVING THE FLEISCHMANN PARK MASTER PLAN AND AUTHORIZING STAFF TO DEVELOP AN IMPLEMENTATION SCHEDULE CONSISTENT WITH FUNDING PREVIOUSLY APPROVED IN THE BOND ISSUE FOR PARK AND RECREATION FACILITIES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:22 p.m.). Mayor MacKenzie suggested an increase in parking spaces designated for the concession area. Community Services Director Don Wirth however recommended against this as the area is only for the concession stand employees. He also pointed out that staff favored keeping parking on the perimeter of the park as a general design concept. In further response to Council, Mr. Wirth said that the Community Services Advisory Board (CSAB) did approve the plan with the additional detail added for the walking path but indicated that a picnic shelter area had been placed close to the parking lot. In response to Council Member Wiseman, Mr. Wirth provided information on the underground drainage system for the baseball fields, which he described as similar to what is currently used in Cambier Park. Vice Mayor Herms questioned the right-of-way parking on 15th Avenue North and Parks and Parkways Design/CIP Superintendent Terry Fedelem said this is a shell-paved area which Mr. Wirth explained would be cleaned and redefined but would remain as shell for drainage purposes. Mr. Herms pointed out that Council must approve any conversion of rights-of-way.

In further discussion, Mr. Fedelem said there was a master plan line item to address the Goodlette-Frank Road retention area; Mr. Herms however voiced concern that the retention areas would collect water and pose drowning risks. Mr. Fedelem said another option would be an underground retention system and Mr. Wirth stated that staff would work with the Engineering Department to explore this possibility. In addition, Mr. Wirth said that the new building would be multi-functional and that floor plans and information would be provided at a later date. He also addressed the expansion of the skateboard park in order to accommodate the 4,000 members. Vice Mayor Herms suggested connecting the new parking lot to the school, but Mr. Fedelem said that research indicated that such a connection would create major traffic and safety problems.

Public Comment: None. (4:33 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9276 AS SUBMITTED; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9277ITEM 20
A RESOLUTION AUTHORIZING THE CITY MANAGER TO TERMINATE A CONTRACT WITH UNITED CONTRACTORS AND ENGINEERING CORP. FOR MAINTENANCE DREDGING DOCTORS PASS AND TO NOTIFY THE PERFORMANCE BONDHOLDER, CUMBERLAND CASUALTY AND SURETY COMPANY, OR THEIR RESPONSIBILITY TO COMPLETE THE PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:34 p.m.) who said that staff had kept Council informed of all the problems and is asking for authority to terminate the contract if necessary. In response to Council Member MacIlvaine, Natural Resources Manager Jon Staiger stated that the general contractor has asked the subcontractor to stop working. He added that a representative of the general contractor was again negotiating with the subcontractor and is considering an alternative firm in Miami that has much larger equipment that could expedite the work. The subcontractor, however, is reluctant to resume working until there is assurance of payment, noting that there is almost \$100,000 outstanding. Dr. Staiger also said that there is over \$63,000 left in the contract plus almost \$35,000 in retainage, although there are outstanding debts owed some vendors. Staff has decided that since the contractor is trying to finish the job, any declaration of default would be postponed. The contractor has already removed a few hundred cubic yards of rock, but that there is an estimated 5,000 more to be removed. In response to Council, Dr. Staiger said if the City terminates the contract, the performance bondholder must locate another firm to finish the project. City Manager Rambosk said staff's recommendation to the bondholder would be to contact the firm willing to finish this work.

Public Comment: None. (4:40 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9277 AS SUBMITTED; seconded by Tarrant and carried 6-0 voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9278ITEM 21
A RESOLUTION RANKING THE TOP THREE FIRMS IN ORDER OF PREFERENCE TO PROVIDE ENGINEERING SERVICES FOR THE WEST NAPLES BAY WATERWAYS DREDGING PROJECT; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT WITH THE TOP-RANKED FIRM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:40 p.m.). City Attorney Robert Pritt said the rankings must be inserted into the resolution.

Public Comment: None. (4:40 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9278 AS AMENDED TO INCLUDE RANKING (AS PER WHEREAS SECTION) IN SECTION 1; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

ORDINANCE (First Reading)ITEM 22
AN ORDINANCE AMENDING SECTION 118-90, DEFINITIONS; SECTION 118-91, PERMIT FEES; SECTION 118-94, INSPECTION FEES; SECTION 118-98, BUILDING PERMIT SURCHARGE; SECTION 118-99, IMPACT FEES; SECTION 118-101, CONTRACTOR LICENSING FEES; AMENDING THE DEFINITION OF IMPACT FEES, INCREASING BUILDING PERMIT FEES; INCREASING INSPECTION FEES; AMENDING THE DEFINITION OF SURCHARGES COLLECTED FOR THE STATE; AMENDING THE DEFINITION OF IMPACT FEES IMPOSED BY THE COUNTY; INCREASING CONTRACTOR LICENSING FEES; PROVIDING FOR

CODIFICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:42 p.m.). In response to Council, Building Official William Overstreet said the plumbing permit fee would be \$.10 per square foot. Mayor MacKenzie suggested that the reference to a particular resolution in Section 5 be substituted by the phrase “as authorized by interlocal agreement.” In further response to Council, Mr. Overstreet said the additional revenue would be less than 40 per cent overall but that the City had not raised fees in six years, although there has been a significant increase in Building Department services and personnel. Vice Mayor Herms asked that staff provide examples of permit fee increases for the average home for Second Reading.

Public Comment: None. (4:50 p.m.)

MOTION by MacIlvaine to APPROVE ITEM 22 AS AMENDED TO INCLUDE A RATE OF \$0.10 PER SQUARE FOOT FOR PLUMBING PERMITS; AND IN SECTION 118-99 TO DELETE THE REFERENCE TO SPECIFIC INTERLOCAL AGREEMENT; seconded by Wiseman and carried 5-1 (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

**ORDINANCE (Continued, See Page 2)ITEM 23
PUBLIC HEARING TO CONSIDER ADDING ARTICLE X TO CHAPTER 2 OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH A CITIZENS’ POLICE REVIEW BOARD TO REVIEW POLICIES AND PROCEDURES PERTAINING TO POLICE CONDUCT TOWARDS CITIZENS.**

**RESOLUTION 01-9280ITEM 24
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO CONTRACT WITH NAPLES DOCK AND MARINE SERVICES IN AN AMOUNT OF \$138,000.00 TO PROVIDE EMERGENCY SERVICES FOR REPAIR OF THE WEST SEAWALL OF THE HARBOUR DRIVE BRIDGE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (4:51 p.m.) who said that immediate repair action was needed on the Harbour Drive Bridge seawall and that a local contractor had offered to do the work at a cost less than that estimated by staff.

Public Comment: None. (4:52 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9280 AS SUBMITTED; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

CORRESPONDENCE & COMMUNICATIONS (4:52 p.m.).
In response to Council Member MacIlvaine City Manager Rambosk indicated that a traffic island on the approach to Belair Lane from Old Trail had been budgeted and that he would contact him regarding the scheduled date. Council Member Galleberg suggested discussing the Comprehensive Plan amendment process at a future workshop. Council Member Tarrant requested an update on the Calusa Bay well replacements. City Manager Rambosk said that staff had provided a schedule, and that all the steps are proceeding as planned. Mr. Tarrant then questioned the disagreement between the Beach Walk residents and Hotel Escalante. City Manager Rambosk said the request for an alley vacation would be presented to Council in the near future, and that all surrounding residents will have been notified. He added that the hotel’s manager and owner have contacted the condominium and have reconciled their differences on that issue, but are still working on a trash container/fence compound. Also in response to Council Member Tarrant, City Manager Rambosk said that unauthorized fill placed in an alley off Seventh Street just south of Seventh Avenue North was being addressed by staff, which has been working with the property owner who filled the alley as well as the surrounding residents.

He explained that the fill is a shell material that will have to be removed. Additionally, staff has been reviewing all the other blockages throughout the alley to determine a way to promote appropriate access and drainage. Mr. Tarrant then questioned the City's response to a shark attack. City Manager Rambosk said there are beach patrol personnel on duty during the day that would immediately contact EMS when needed. Mayor MacKenzie asked that staff provide a cost analysis of having a lifeguard on duty. City Manager Rambosk noted that there is significant liability in offering this type of service and that he would provide additional information.

ADJOURN (4:59 p.m.)

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 9/19/01.

City Council Regular Meeting – August 15, 2001– 9:00 a.m.

08/15/01 City Council Regular Mtg, Attachment 1, Page 1 of 2.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME <i>Wiseman, Tameca Eady</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Naples City Council</i>
MAILING ADDRESS <i>P.O. Box 460</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY <i>Naples</i>	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
COUNTY <i>Collier</i>	NAME OF POLITICAL SUBDIVISION: <i>City of Naples</i>
DATE ON WHICH VOTE OCCURRED <i>8-15-01</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in the capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

City Council Regular Meeting – August 15, 2001– 9:00 a.m.

08/15/01 City Council Regular Mtg, Attachment 1, Page 2 of 2.

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, TAMELA EADY WISEMAN, hereby disclose that on August 15, 2001:

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

- ☐ inured to my special private gain or loss;
- ☒ inured to the special gain or loss of my business associate, Richard C. Grant;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

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

Agenda item #12-b. Text Amendment Petition 01-T3B.
Motion #1 - approval with deletions
Motion #2 - Zoning changes to be drafted

A shareholder in my law firm represents the Naples Beach Hotel & Club which would be affected by the Ordinance and which has objected to its passage.

Date Filed

8-15-01

Signature

Tamela Eady Wiseman

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

City Council Regular Meeting – August 15, 2001– 9:00 a.m.

08/15/01 City Council Regular Mtg., Attachment 2, Page 1 of 2.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS			
LAST NAME—FIRST NAME—MIDDLE NAME <i>Hermes R. Joseph</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>City Council</i>	
MAILING ADDRESS <i>368 4th Ave North</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY <i>Naples, FL</i>	COUNTY <i>Collier</i>	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY NAME OF POLITICAL SUBDIVISION: <i>City of Naples</i>	
DATE ON WHICH VOTE OCCURRED <i>8/15/2001</i>		MY POSITION IS/ <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in the capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

City Council Regular Meeting – August 15, 2001– 9:00 a.m.

08/15/01 City Council Regular Mtg., Attachment 2, Page 2 of 2.

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, R. Joseph Herms, hereby disclose that on August 15, 20 01:

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

- ☒ inured to my special private gain or loss; appears to be a possible conflict of interest.
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

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

I own a block of property in the Downtown District. The proposed change in Comp Plan and then the zoning to more residential may give me a private gain or loss or the appearance of a gain or loss.

Date Filed

8/15/2001

Signature

R. Joseph Herms

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.