



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting September 19, 2001 9 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
Fred Tarrant
Penny Taylor
Tamela Wiseman

Absent:

William MacIlvaine, Council Member

Also Present:

Kevin Rambosk, City Manager
Beverly Grady, City Attorney
Tara Norman, City Clerk
Ron Lee, Planning Director
William Harrison, Asst. City Manager
James Whittaker, Recreation Supervisor
Don Wirth, Community Services Director
Laura Spurgeon, Planner
Susan Golden, Planner
George Archibald, Traffic Engineer
John Barkley, Naples Police Officer
Robert McGregor, Naples Police Officer
Karen Kateley, Administrative Specialist
Dan Mercer, Public Works Director
Richard Yovanovich
Henry Kennedy
Mark Simmons
Doug Finlay
Charles Kessler

Herb Luntz
Jessica Fike
John Tarangelo
Edward Dotter
John Stanley
Joyce Brown
Audrey Barbera
Dave Rice
LaVerne Franklin
Maurice Kent
Alice Landon
Honey Lehman
Tom Bamrick
Robert Iamurri
Joe Biasella

Media:

Denise Zoldan, Naples Daily News

Other interested citizens and visitors

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

City Clerk Tara Norman

ANNOUNCEMENTS.....ITEM 3

Naples Little League Girls' Softball Division Proclamation – Junior League Braves Team members, manager, coaches, parents and sponsors recognized.

Annual prayer service of the Collier County Home Schoolers to be conducted outside on the plaza at 10 a.m.

SET AGENDA (add or remove items).....ITEM 4

Add Item 25 - Sale of property on West Lake Drive.

MOTION by Galleberg to ADD ITEM 25 TO THE AGENDA; seconded by MacKenzie and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 26 - Addition to selection committee for architectural/engineering services at City Dock and Pulling Property.

MOTION by Galleberg to ADD ITEM 26 TO THE AGENDA; seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 27 - Audit of Risk Management Fund.

MOTION by Wiseman to ADD ITEM 27 TO THE AGENDA; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Galleberg to SET AGENDA CONTINUING ITEMS 7, 8 AND 19 TO THE OCTOBER 3, 2001 REGULAR MEETING; WITHDRAWING ITEMS 9-c-2, AND 11, REMOVING ITEM 9-e FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION; DESIGNATING A AND B SECTIONS UNDER ITEM 18; AND ADDING ITEMS 25, 26 AND 27; seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

PUBLIC COMMENT.....ITEM 5

Mark Simmons, 2550 U.S. 41, representing youth flag football, said it had been approximately three months since the Council had approved continuing its association with the Naples Gators Football Program, contingent upon the Gators pursuing Pop Warner affiliation and barring board members who had been banned by Pop Warner; however, Mr. Simmons said that on September 18 Gators members had approved moving its league to the Miami area. Mr. Simmons said that only he and Cheer Coordinator Jessica Fike were involved in the youth flag football program, which has more than 100 participants, and asked that staff continue to work with him and his program as he intended to resign from the Gators board. He also said he wanted donors to be aware they were benefiting the youth flag program and not the Naples Gators organization which, he said, has a negative effect on fund raising. Community Services Director Don Wirth said that the flag program had been organized, managed and administered by the City, and coaches previously affiliated with the Gators not in violation of Pop Warner regulations could continue volunteering for the youth flag football program. Responding to Vice Mayor Herms, Mr. Simmons said approximately 15 coaches are now involved in the youth flag football, one a former Gator coach in good standing with Pop Warner. Mr. Simmons said that although the youth flag program was able to purchase its own equipment, it had been borrowing Gator equipment on which funds are still owed. Responding to Council Member Taylor, City Manager Rambosk stated that the City owns the building in which the Gators store their equipment, and Mr. Wirth confirmed that they could continue to do so. Responding to Mayor MacKenzie, Mr. Simmons stated that he sought Council action to ensure that the Gators organization understands that it would be unaffiliated with the youth flag football program. Responding to Mayor MacKenzie, City Attorney Beverly Grady said that the Council would then be approving something it had already directed and had been implementing.

MOTION by Herms to REAFFIRM PRIOR ACTION TO CONTINUE THE CITY'S FLAG FOOTBALL/CHEERLEADING PROGRAM WITHOUT THE INVOLVEMENT OF THE GATORS ORGANIZATION; seconded by Tarrant and carried 5-1 (Galleberg-no, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Galleberg dissented, stating this was not a matter to be considered by Council at this time.

Doug Finlay, 3430 Gulf Shore Boulevard North, said that while his City property taxes only increased from \$146 to \$148 in the past year, if he were to move his taxes would increase significantly. He said that homeowners who complain about increased property taxes probably do not understand the homestead law and that the homestead exemption is more substantial the longer a person lives in a particular residence. He indicated his support for Council Members Galleberg and Wiseman and Mayor MacKenzie in not wanting services or capital expenditures decreased, but also recognized Council Members Taylor and Tarrant and Vice Mayor Herms for their concern about the level of County taxes. Mayor MacKenzie then also thanked Mr. Finlay in assisting the City with Phase 2 water restriction compliance in that he had observed violations not seen by staff. **Charles Kessler, 525 Anchor Rode Drive**, Planning Advisory Board (PAB) Chairman, stated the Florida Department of Community Affairs had delayed submission of the Comprehensive Plan from February 2004 to 2005, so the PAB had also postponed the planning process until 2002. He cited concern expressed at the September 5 Council meeting about updating impact fees, which the PAB had agreed to study on Council's behalf. Mayor MacKenzie, however, recommended first determining the legalities of this approach and suggested that the Council take the request under advisement before responding. Nevertheless, Mayor MacKenzie acknowledged the PAB's generosity in volunteering and Council Member Taylor characterized their assistance as valuable. Responding to Council Member Taylor, Mr. Kessler said the PAB would conduct a workshop and special meeting on September 28, 2001. Mr. Kessler also noted the PAB conducted one workshop, one special and two regular meetings to prepare the proposed construction site maintenance ordinance, approving it by unanimous vote before transmitting it to Council. Mr. Kessler also suggested that a PAB Member review PAB decisions at Council meetings, and Mayor MacKenzie indicated that the Council would examine its workshop schedule for discussion of this matter.

Herb Luntz, 770414 Diamond Lake Circle, reported that he was organizing a Veterans' Day Parade for noon on November 11. Responding to Mayor MacKenzie, City Manager Kevin Rambosk predicted that City funding being requested by Mr. Luntz would be minimal, and Mr. Luntz listed emergency services, golf carts, portable toilets and barricades for the event with the remainder of services and materials to be supplied by others. Vice Mayor Herms proffered a motion to approve the event with Mr. Luntz as the coordinator working with City staff; however, further discussion ensued. Council Member Galleberg stated that the Council should however not take action at that meeting and made a motion to direct staff to prepare an item for the next agenda. City Attorney Beverly Grady said five affirmative votes would be required to add this item to the agenda and would include approved funding for the event. Mr. Luntz however urged that Council not delay a decision since the event would take place in six weeks. Vice Mayor Herms proffered a motion to add the item to current agenda, seconded by Council Member Taylor; however, further discussion ensued. Mayor MacKenzie said that while Mr. Luntz should have consulted the staff in the days prior to this meeting to facilitate an informed decision, since the event was important to the community, City funding of up to \$5,000 would be appropriate, and Council should not delay action. Mr. Luntz said he anticipated needing less than \$5,000

from the City and clarified that he had just learned of the proposed event within the last two days and he had been occupied with other activities necessary for the event.

MOTION by Herms to ADD ITEM RELATIVE TO VETERANS' DAY PARADE CO-SPONSORSHIP; seconded by Taylor and carried 6-0 (Taylor-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Galleberg-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Herms to APPROVE VETERAN'S DAY PARADE (11/11/01) IN RESPONSE TO CURRENT NATIONAL CRISIS WITH HERB LUNTZ AS COORDINATOR BETWEEN CITY STAFF (THROUGH THE CITY MANAGER), COLLIER COUNTY AND SCHOOL SYSTEM, AND APPROPRIATING UP TO \$5,000 OF CITY FUNDS TO SUPPORT THE PROGRAM. This motion was seconded by Galleberg and carried 6-0 (Galleberg-yes, Taylor-yes, Tarrant-yes, Wiseman-yes, Herms-yes, MacIlvaine-absent, MacKenzie-yes).

Responding to Council Member Galleberg, City Manager Rambosk confirmed that Council would be provided an update on parade plans at its October 1 Workshop Meeting.

RESOLUTION 01-9316.....ITEM 6
A RESOLUTION GRANTING LIVE ENTERTAINMENT PETITION 00-LE2 FOR APPROVAL OF LIVE ENTERTAINMENT AT 2950 NINTH STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:55 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Galleberg, Taylor, Herms and Wiseman/received a letter from petitioner John Tarangelo; Wiseman/brief meeting and telephone conversation with the petitioner's attorney; Tarrant/brief telephone conversation with Edward Dotter, a neighbor. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

City Manager Rambosk distributed copies of an updated letter (Attachment 1) from Edward Dotter that detailed alleged sound violations at Johnny T's All American Restaurant, the property in question. Planning Director Ron Lee confirmed that Mr. Dotter and approximately 180 other residents and businesses within 500 feet had been mailed a notice 10 days prior to this meeting. John Tarangelo, owner of Johnny T's, said Council had last year granted a license for live entertainment until 11 p.m. for his business, a commercially-zoned site and that he has continued to apply sound insulation to windows in order to address Mr. Dotter's noise complaints, yet 12 complaints from Mr. Dotter and two anonymous complaints had been received. Of these, five were before 11 p.m., 12 before 11:30 p.m. and only two had occurred between 11:30 p.m. and midnight, Mr. Tarangelo said, and he cited difficulty complying with permit requirements because customers want to continue listening to music after 11 p.m. He also said that he has suffered financially because of the earlier time he has been required to discontinue live performances and that 22 employees would be affected if his business closes. Mr. Tarangelo characterized Mr. Dotter's calls as harassment, noting that he cannot control parking lot noise but has been required to hold the restaurant's refuse in the hallway until the following morning so as not to disturb Mr. Dotter who had also called police at 9:40 p.m. on St. Patrick's Day to complain about a trolley in the parking lot. There had been a false police report of a brawl at his establishment, he said, the business had been recently fined \$100 when the music registered seven decibels over ordinance limitations, and \$1,135 in fines for false alarms had been paid. Although he said he continuously provided quality live entertainment and desired a permit for

live entertainment until midnight, his attorney had advised him to request only an 11 p.m. permit. Mr. Tarangelo said it reflects negatively on an entertainment business when police walk in the front door.

Responding to Mr. Galleberg, Mr. Tarangelo said he is the sole owner of Johnny T's and sometimes performs there as an entertainer. He also noted that some of complainant Dotter's calls to police had occurred in the summer when no live bands were performing. Planning Director Lee confirmed for Council Member Galleberg that businesses on Fifth Avenue South have been granted entertainment permits until 11:30 p.m., and Paddy Murphy's Irish Pub is permitted to approximately 1:30 a.m. Responding to Mr. Tarangelo, Council Member Galleberg stated that each restaurant's permitting request was considered individually, but Council does try to ensure consistency in its regulations. Other information elicited in further discussion included Mr. Tarangelo's understanding that valet parking was to be utilized only for large shows, which he said he had not yet conducted, and that he is disinclined to move his business because of its proximity to Old Naples, Port Royal and Pelican Bay clientele. Planning Director Lee stated that Mr. Dotter's home is approximately 100 feet southeast of Johnny T's and the nearest other property is approximately 150 to 175 feet away. Mr. Tarangelo asserted that Mr. Dotter's allegations of increased amplification are unfounded because he possesses insufficient equipment and had had only five of the seven entertainers permitted. Council Member Tarrant stated that the business should abide by its 11 p.m. permit.

Police Officer John Barkley stated that he and Officer Robert McGregor conducted sound studies at Johnny T's on June 8, July 13 and August 17, 2001, with violations occurring only on August 17, the only date the City's new octave meter was used, and that day's testing was conducted at 10:46 p.m. and proceeded for 15 minutes at three different ranges on the octave meter. He said that results indicated violations exceeding 50 decibels, even after subtracting three decibels. He said the results indicated 55 decibels at 31.5 hertz (cycles per second), 50.4 decibels at 250 hertz, and 43.1 decibels at 500 hertz. Officer Barkley stated that the 31.5 hertz measured the low bass, which can travel through concrete walls and other barriers. He said the last test occurred from 11:07 to 11:12 p.m., so the business had been cited for live entertainment past the 11 p.m. permit and the sound violation. Officer McGregor stated that the police department offered to set the bass mixer to ensure compliance with the correct decibel range, but Mr. Tarangelo had not yet contacted them. Sound tests had been conducted according to ordinance requirements at the rear of the restaurant, which was diagonal to the Dotter residence and most of the noise complaints have occurred on Friday and Saturday nights. In response to Mayor MacKenzie, City Manager Rambosk said it would be inefficient to train each officer to use the octave meter, but the City's goal is to eventually have one trained officer available per shift.

Public Comment: (10:25 a.m.) **Edward Dotter, 2911 10th Street North**, disputed Mr. Tarangelo's allegations about false complaints and noted that there had been no sound problems for approximately two months beginning in July, although the prior weekend he had again noted increased noise. He said was speaking for a neighbor unable to attend the meeting as well as another resident now living out of state. Mr. Dotter related what he described as attempts to negotiate with Mr. Tarangelo, but after March 17, the restaurant no longer accepted his telephone calls; therefore, he began calling the police department. Mr. Dotter said the bass sound was most penetrating, and therefore most annoying, and he had complained about the noise before 11 p.m. in order for the police officer to hear it. He said most of the sound problems occur on Fridays and Saturdays when music does not cease at 11 p.m. and the patrons create noise in the parking lot. Mr. Dotter also disputed Mr. Tarangelo's assertion that valet parking was required only for

events, stating that the permit required valet service on Fridays and Saturdays as well. Mr. Dotter said that if the current permit could not be enforced then another should not be granted. Mr. Dotter said that while he has been pleased with the response he has received from the Naples Police Department, it is pointless to grant another permit if the current requirements cannot be enforced. Planning Director Lee clarified that live entertainment, not amplified music, is to cease at 11 p.m. at Johnny T's. **John Stanley, 4040 Old Trail Way**, said that Mr. Dotter resorted to calling the police department because Johnny T's would be requesting another permit. Mr. Stanley noted that while approximately 200 individuals frequent the business, only one person has been complaining. **Joyce Brown, 1131 28th Avenue North**, said that she supported the business receiving another permit and welcomed the restaurant as a good neighbor.

While concurring with Council Member Tarrant that the restaurant should abide by its permit, Council Member Galleberg said concessions should be made by both sides, Council Member Galleberg pointed out that the Dotters had purchased their home in 1990 when the business center was already established, and the restaurant is zoned Highway Commercial. Noting inconvenience to the Dotters but also Mr. Tarangelo's attempts at accommodation, Mr. Galleberg recommended that Johnny T's be granted a permit for live entertainment until 11:30 p.m. on Fridays and Saturdays, which would be consistent with regulations for other businesses on Fifth Avenue. While Council Member Wiseman indicated her concurrence, she said the restaurant had been violating the terms of the permit by extending entertainment hours and not providing valet service, but she called the Dotters' concerns genuine and cited Mr. Tarangelo's various other attempts to comply. Council Member Taylor suggested that the Dotters may have been hearing recorded music after 11 p.m. and that Mr. Tarangelo may have believed that he was in compliance. Vice Mayor Herms, however, stated that Mr. Tarangelo had agreed to comply with the terms of the stringent permit and to cooperate with the neighbors, including the Dotters and the others they represent, but 11 p.m. was a reasonable hour for a home to be afforded quiet. While the problems began when the two parties discontinued communication, Vice Mayor Herms said that there had nevertheless been apparent noise violations. In further discussion, Planning Director Lee explained that while live entertainment must cease at 11 p.m., and recorded music could be played until closing, exceeding noise ordinance levels would be a violation. Officer McGregor also explained that police officers do not normally go beyond the front door of an establishment when responding to a complaint and that business owners usually receive only warnings for first violations, but after receiving numerous complaints, the police department becomes more involved.

Mr. Tarangelo reiterated that violations occurred only twice in 52 weeks and live entertainment was usually curtailed at 11 p.m., which is half an hour earlier than other City establishments. However, he said he could not afford valet services until 1 a.m. when many of his customers leave the parking lot. He said that he wanted the police department to set the restaurant's sound equipment with the City's meter to ensure compliance. Although Council Members Galleberg and Wiseman supported allowing live entertainment at Johnny T's until 11:30 p.m., Mayor MacKenzie expressed reservations due to preexisting violations, recommending an 11 p.m. permit for six months when it could be reconsidered. City Attorney Grady said that the Council could grant the permit for a shorter period of time and that a subsequent renewal could then grant extended hours for live entertainment, subject to compliance with the current permit.

After further discussion relative to possible amendments to the resolution under consideration, Council Member Galleberg proffered a motion to approve with revisions to Section 2, Item 5, to state that the noise ordinance applies to all activities; Section 2, Item 7, to state that the permit

would be revoked after three violations of the resolution, not when three complaints are documented; and Section 2, Item 8, to state that valet service would be provided during all hours of live entertainment on Fridays and Saturdays, not during all hours of operation on Fridays and Saturdays. Council Member Tarrant seconded; however, further discussion ensued.

Council Member Taylor said monitoring of the parking lot could be effective in reducing noise, which, she noted, Mr. Dotter had suggested as a viable alternative to valet parking. Council Member Galleberg then amended his motion to include the monitoring of the parking lot instead of valet service, and Council Member Tarrant concurred with this revision as seconder. Responding to Council Member Wiseman, City Manager Rambosk said that a warning issued by the police department would not be considered a citation, and the officers use discretion in trying to resolve complaints and consider the frequency of violations when issuing citations. Responding to Vice Mayor Herms, City Manager Rambosk agreed to have the Planning Department transmit to Police & Emergency Services a list of all permits so that business owners with three citations would be required to come before Council. Responding to Mayor MacKenzie, public speaker John Stanley said that he would try to ensure that Mr. Tarangelo and his business complied with the permit, and Mr. Dotter said he agreed with what the Council had decided.

MOTION by Galleberg to APPROVE RESOLUTION 01-936, AS AMENDED, TO INCLUDE “THE CITY NOISE ORDINANCE SHALL APPLY TO ALL ACTIVITIES.” IN SECTION 2-5, “WITHIN A 12-MONTH PERIOD, IF THREE CITATIONS ARE ISSUED FOR VIOLATION OF THE CONDITIONS OF THIS RESOLUTION OR ANY CITY ORDINANCE, CITY COUNCIL MAY REVOKE THIS LIVE ENTERTAINMENT...” IN SECTION 2-7, “THE PETITIONER SHALL PROVIDE STAFF SUPERVISION OF THE OUTDOOR AREAS UNTIL 12:00 MIDNIGHT DURING LIVE ENTERTAINMENT ON FRIDAY AND SATURDAY EVENINGS.”. This motion was seconded by Tarrant and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION (Continued See Page 2)ITEM 7-a
A RESOLUTION DETERMINING SUBDIVISION PETITION 01-SD12, TO BE KNOWN
AS CITY CENTER 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 not read.**

**RESOLUTION (Continued See Page 2)ITEM 7-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 not read.**

**ORDINANCE (First Reading) (Continued See Page 2)ITEM 8
AN ORDINANCE AMENDING SECTION 62-63 MANNER OF STANDING OR
PARKING; AMENDING SECTION 62-94, OBSTRUCTING THE WIDTH OF
ROADWAY; REPEALING SECTION 62-106, WORKERS PROVIDING SERVICES TO
RESIDENTIAL PROPERTY, SECTION 94-116, EXTERIOR AND INTERIOR OF
STRUCTURES TO DELETE ALL EXTERIOR REFERENCES, ARTICLE IX,
COMMERCIAL MAINTENANCE CODE, OF CHAPTER 94, SECTION 94-261, 94-262,
94-263, 94-264, 94-265, DEMOLITION OF COMMERCIAL BUILDING 94-266,**

DESIGNATION OF ADMINISTRATIVE, INSPECTIONS; RIGHT OF ENTRY, SECTION 94-267, VIOLATION OF ARTICLES; PENALTY, SECTION 94-268, DUTIES OF BOARD OF APPEALS, DECISION OF BOARD OF APPEALS; SECTION 94-269, RIGHT OF APPEAL PROCEDURE FOR APPEALS; SECTION 106-236, MAINTENANCE OF PROPERTY; UNSIGHTLY CONDITIONS, SECTION 106-238 POLLUTED WATER; ADDING ARTICLE IX SECTION 106 REQUIRED DEVELOPMENT AND DESIGN STANDARDS PROVIDING FOR TITLE AND CITATION; PROVIDING FOR PURPOSE; PROVIDING GENERAL PROVISIONS; PROVIDING DEFINITIONS; PROVIDING VACANT LOT MAINTENANCE; PROVIDING RESIDENTIAL AND COMMERCIAL PROPERTY MAINTENANCE; PROVIDING RESPONSIBILITIES OF OWNER AND OPERATOR; PROVIDING GENERAL MAINTENANCE GUIDELINES; PROVIDING APPLICABILITY OF STANDARDS TO VACANT BUILDING; PROVIDING CONSTRUCTION SITE MANAGEMENT; PROVIDING MAINTENANCE OF PROPERTY; UNSIGHTLY CONDITIONS; PROVIDING DEMOLITION OF BUILDINGS; PROVIDING DESIGNATION OF ADMINISTRATOR, INSPECTIONS, RIGHT OF ENTRY; PROVIDING VIOLATIONS OF ARTICLE PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9317.....ITEM 9-e(1)
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HOLE MONTES AND ASSOCIATES IN AN AMOUNT NOT-TO-EXCEED \$5,600.00 FOR A SITE SURVEY OF RIVER PARK; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during discussions below.

RESOLUTION 01-9318.....ITEM 9-e(2)
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ANCHOR ENGINEERING CONSULTANTS IN THE AMOUNT OF ~~\$40,000~~ \$25,000 FOR ENGINEERING CONSULTING SERVICES FOR THE RIVER PARK CONSTRUCTION PROJECT; WAIVING COMPETITIVE NEGOTIATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:25 a.m.)

RESOLUTION 01-9319ITEM 9-e(3)
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH DWIGHT OAKLEY ARCHITECTS IN AN AMOUNT NOT-TO-EXCEED \$7,500.00 FOR ARCHITECTURAL SERVICES FOR THE RIVER PARK CONSTRUCTION PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during discussions below.

RESOLUTION 01-9320.....ITEM 9-e(4)
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HOLE MONTES AND ASSOCIATES IN AN AMOUNT NOT-TO-EXCEED \$10,375.00 FOR A SITE SURVEY OF THE LOWDERMILK PARK CONSTRUCTION PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during discussions below. City Manager Rambosk said he recommended discussing the items that would elicit public comment, which would be those regarding the building's design.

Public Comment: (11:27 a.m.) **Audrey Barbera, 518 Lake Louise Circle**, disputed the current Community Center configuration facing away from Tenth Street, pointing out that the prior 12-

member committee, of which she was a member, had agreed that the entrance should be as close as possible to Tenth. She said that their committee understood that a vacant corner property at Tenth Street and Third Avenue could both be used for water management and a structure and suggested negotiations with the lessee of that property to continue to allow that arrangement. She said the building had originally been designed as one story to allow the staff closer supervision and that the new design included not only a two-story auditorium without windows, but a second-floor woodworking shop where it would be difficult to transport materials, and a kitchen that faces an outside wall and has no windows. Ms. Barbera called the entrance design elaborate and impractical with a two-story atrium serving no purpose. She therefore recommended consulting an architect to ensure the project would be completed appropriately.

Council Member Galleberg said the discussions of the committee organized to consider the building plans should be incorporated into the Council's decision. Vice Mayor Herms stated that Building Official William Overstreet had been constrained in his design both by the water management parcel which had been leased to other parties and by the limited lot size. To ensure adequate square footage for all uses, he said, it had been necessary to design a two-story structure, although walls could be moved, windows added, and facilities such as the woodworking shop relocated; changing the location, however, would take too much time. Assistant City Manager William Harrison confirmed that staff had approximately two months before contacted the lessee, a corporation providing subsidized housing under the federal tax code, and he said that it is possible for a building to be erected over a water management area similar to that which had been done in Cambier Park. Vice Mayor Herms, however, cautioned that more land would be needed and that underground retention facilities would be costly. Council Member Galleberg said that the Council should postpone its decision to ensure proper design, but the project should not be delayed indefinitely. Mayor MacKenzie said that she understood as Ms. Barbera did that the land would be utilized up to Tenth Street, if possible, or be landscaped but not contain a deck with benches and tables as presently configured. Also responding to Mayor MacKenzie, City Manager Rambosk stated that windows had not been included in the scale model due to time constraints in preparation of the model and drawings. Vice Mayor Herms pointed out that approximately 20 residents of River Park had offered advice at a recent meeting regarding the building's design, and staff had incorporated many of those ideas.

Dave Rice, 575 First Avenue North, said that the original committee had decided to locate the center on Tenth Street to encourage utilization by other City residents. Although Mr. Rice stated that a delay would be acceptable in order to provide a Tenth Street entrance, Council Member Tarrant called for community support for postponement to be documented to avoid Council's being accused of ongoing delays. Council Member Galleberg said he had believed the building plans to have been the committee's recommendation, but that it now appeared otherwise. Vice Mayor Herms reiterated that the committee had tried to locate the center closer to Tenth but was told that the land was unavailable in addition to time constraints to ensure availability for summer programming in 2002, predicting that renegotiating the land lease and redesign could delay construction as much as nine months. City Manager Rambosk said that staff had already begun some of the construction requirements to meet the September ground breaking, and recommended a special meeting be called if necessary to receive additional public comment. **James Whittaker, 578 13th Street North**, said he was speaking as a River Park resident and not as a City employee. He said he had suggested a \$1.5-million community center to Council approximately 10 years ago as a joke because the River Park community had consistently been the last to receive support from the City; however, Council had surprisingly granted the request. Although many years had then intervened, the City has again planned a building, he said, which

River Park residents want the entire community to utilize. He said however that only three of the 20 individuals providing comment had been River Park residents. Mr. Whittaker however urged that the center proceed without delay but that the current River Park recreation staff be allowed to review the plans before being submitted to the Planning Advisory Board (PAB) for consideration. Mr. Whittaker said he had at first been pleased to discover that the plans had been completed, although what he described as impractical changes had been made so that it would be difficult for staff to monitor various activities at the center.

City Manager Rambosk said another meeting would allow staff to obtain more information, and Council Member Taylor concurred. Council Member Tarrant expressed appreciation for Mr. Whittaker's comments, in particular his indication that he and others oppose a River Park designation for the center.

Planner Susan Golden said she respectfully requested the Police Department also review the interior and exterior design for Crime Prevention Through Environmental Design (CPTED) before the plans are submitted for bid.

Recess: 12:13 p.m. to 1:34 p.m. It was noted for the record that the same members were in attendance when the meeting reconvened.

Although Council discussed holding a special meeting on September 24 to receive additional public comment, Council Member Wiseman pointed out another public forum had in fact not been requested by Mr. Whittaker who had instead requested further review by City staff. She said the police department should evaluate the proposed plans as Planner Golden had suggested and pointed out that James Whittaker is a logical spokesperson for River Park residents and the most knowledgeable regarding modifications to the floor plans. City Manager Rambosk said that during the recess Mr. Whittaker had indicated that it would be acceptable to meet with Building Official William Overstreet to discuss proposed changes, which would then be submitted to the PAB. City Manager Rambosk said that while changes could be completed by staff through the committee that had been established for review, he cautioned that this may entail beginning the project anew. He also said that it would require at least three days to determine whether the requests just heard from the public are feasible. Various Council Members then confirmed that a special meeting would not be necessary unless action were necessary on using the water management area. Mayor MacKenzie stated that Mr. Whittaker's comments and Planner Golden's request for CPTED review should be incorporated into a motion because the current plans were less than desired although the building's isolation from Tenth could be overcome without moving the entire facility. Responding to Council Member Galleberg, City Manager Rambosk stated that the required site survey for the center had been completed, and \$8,000 in engineering services had been performed. He said that further progress could be halted if Council believed the building should be rearranged. However, Vice Mayor Herms stated that moving the building would reconfigure its shape so that the facility would have to be reengineered.

LaVerne Franklin, 7005 Kiwi Place, local NAACP president, opposed reconfiguring the building and said that a final meeting with Mr. Whittaker, Ms. Barbera and Mr. Rice before PAB approval would be a disservice to the individuals who had been working for years on the plan. She predicted that changing the entrance to Tenth Street would not encourage use by individuals from outside River Park who fear crime, pointing out that many NAACP members have ceased attending meetings in River Park for this reason. Ms. Franklin stated that residents should however be afforded an opportunity to respond to new changes in the building plans. She said

that the Council should consider the expected construction delays when analyzing whether changes should be made to the entrance and that decisions should not be made in haste.

Titles to the above resolutions were read by City Manager Rambosk. Vice Mayor Herms requested separate votes.

MOTION by Wiseman to APPROVE RESOLUTION 01-9317 (Item 9-e-1); seconded by Galleberg and carried 5-1. (Galleberg-yes, Herms-no, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Mr. Herms explained his dissenting vote as being the cost of the survey although he said he understood that City Manager Rambosk had no other option.

MOTION by Herms to APPROVE RESOLUTION 01-9318 (Item 9-e-2) AS AMENDED TO INCLUDE A NOT-TO-EXCEED AMOUNT OF \$25,000; seconded by Tarrant and carried 6-0. (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

City Manager Rambosk reported that just \$2,600 had been expended for architectural services with Dwight Oakley Architects to assist Building Official Overstreet in preparing the drawing and display model and that it was unlikely any more would be spent.

MOTION by Herms to APPROVE RESOLUTION 01-9319 (Item 9-e-3); seconded by Wiseman and carried 6-0. (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Wiseman to DIRECT CITY MANAGER TO WORK WITH STAFF TO ADDRESS ISSUES RAISED BY JAMES WHITTAKER AND SUSAN GOLDEN REGARDING MODIFICATIONS TO THE INTERIOR OF THE RIVER PARK COMMUNITY CENTER AND TO, ONCE AND FOR ALL, DETERMINE STATUS OF THE LEASED LAND AND ITS AVAILABILITY FOR CONSTRUCTION OF THE CENTER. This motion was seconded by Galleberg and carried 6-0. (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

In response to Council Member Tarrant, City Manager Rambosk agreed to determine if Tourist Development Tax (TDC) could be utilized for these fees. In further discussion of the level of engineering fees under Item 9-e-4, Vice Mayor Herms said he believed Hole Montes fees for a site survey at Lowdermilk Park had been excessive. Responding to Council Member Galleberg, City Manager Rambosk explained that construction at Lowdermilk Park was to have begun before November 1, but that the required permits had not been approved by the Department of Environmental Protection (DEP), although the reason for denial was unknown at that time. City Manager Rambosk also said Hole Montes was the only firm capable of completing the site survey for Lowdermilk Park within 10 days.

MOTION by Galleberg to APPROVE RESOLUTION 01-9320 (Item 9-e-4); seconded by Taylor and carried 5-1. (Galleberg-yes, Herms-no, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION.....ITEM 25
A RESOLUTION DETERMINING THE REQUEST OF SCOTT WALKER AND PHYLLIS WALKER FOR THE CITY TO SELL THEM A 2 FOOT BY 160 FOOT STRIP OF REAL PROPERTY ADJACENT TO THEIR PROPERTY AT 651 WEST LAKE DRIVE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:02 p.m.).**

Jim Elson, 680 Eighth Avenue South, appeared as representative of Scott and Phyllis Walker and explained that the couple had purchased a single-family residential lot at 651 West Lake Drive

which was smaller than neighboring properties because the southernmost two-foot strip of land had been sold to the City approximately 40 years before to accommodate drainage into the nearby lake. Therefore, the Walker's home must be smaller due to reduced setback area. He said that the alternatives proposed by the Walkers include allowing the two-foot strip to be considered part of their setback so that instead of 60 ½ feet wide the lot would become 62 ½ feet, providing the required 15 feet between neighboring homes, or purchasing the strip of land from the City. Responding to Mayor MacKenzie, Mr. Elson clarified that he is a real estate broker and is representing the Walkers as a friend. Responding to Vice Mayor Herms, Mr. Elson said that the previous owner of the property had believed that she owned the two-foot strip and therefore listed a larger lot size. The Walker's house plans had been designed for the larger lot before a survey revealed the error; nevertheless, they closed on the property. City Manager Rambosk said that if Council concurred with the Walkers purchasing the two-foot strip, the necessary staff study could be completed. Mr. Elson confirmed that the Walkers would pay all costs, and City Attorney Beverly Grady recommended that a contract be prepared for presentation to Council. Vice Mayor Herms noted that while the Walkers had offered \$2,000, at an estimated value of approximately \$40 per square foot, its value would be \$14,000 or more; Council Member Galleberg said the value could be as high as \$50 per square foot. Council Member Tarrant, however, pointed out that an entranceway on South Gordon Drive had been given by the City to the adjoining landowner, which must have also had value. In further discussion it was clarified that the City's legal costs in the transaction should be borne by the petitioner. Council Member Galleberg asserted that it had been the obligation of the homebuyer to consult the survey before purchase, and while Mr. Elson concurred, he said that it was also atypical for a two-foot wide land strip to be City-owned as opposed to being contained in an easement.

Council Member Galleberg asked for additional information such as when the existing home had been built, whether a setback violation already existed, and to determine prior to incurring legal expenses whether the petitioner would purchase the land strip for approximately \$20,000 to \$25,000 plus fees. Council Member Wiseman also noted that even after a sale to the Walkers, the City could still have access to the easement. Council Member Tarrant nevertheless suggested that Mr. Elson inform the Walkers that the City had given property in similar circumstances; however, City Manager Rambosk said this situation was different.

Council Member Galleberg proffered a motion to direct staff to study the historical details and determine whether the petitioners would be interested in a transaction, and to defer attorney's fees; however, further discussion ensued. Vice Mayor Herms proposed an amendment to the motion to include that the petitioners agree to an approximately \$20,000 purchase and legal fees before the City proceeds. Council Member Galleberg agreed to amend his motion, and Vice Mayor Herms seconded. Council Member Galleberg stressed that the purchase should be without costs to the City.

MOTION by Galleberg to DIRECT STAFF TO EXAMINE HISTORICAL DETAILS OF THIS REQUEST AND TO DETERMINE WITH THE PETITIONER AND AGENTS WHETHER A POTENTIAL TRANSACTION EXISTS, INCLUDING PURCHASE PRICE (IN THE \$20,000 RANGE PLUS ATTORNEY FEES), WITHOUT INCURRING ATTORNEY FEES IN THE AFOREMENTIONED RESEARCH. *This motion was seconded by Herms and carried 5-1. (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Council Member Tarrant said he dissented because consistency in government policy was important. While Mayor MacKenzie said that she agreed, rules are occasionally different depending upon the land in question.

.....ITEM 24
CONSIDER A REQUEST TO REDUCE OR ELIMINATE CODE ENFORCEMENT LIENS ON PROPERTY LOCATED AT 495 GALLEON DRIVE. Title read by City Manager Kevin Rambosk (2:19 p.m.) who said staff received information about existing code enforcement action regarding this property just the night before. Council Member Wiseman disclosed a voting conflict because her law firm represents the prospective buyer of the property in question. Vice Mayor Herms suggested postponement for review of the request, and City Attorney Beverly Grady stated that pending litigation against the City filed by the property owner had not been included in the correspondence submitted; therefore, she said that the appropriate procedure would be for the petitioner to submit a settlement offer for Council's consideration. Vice Mayor Herms proffered a motion to continue Item 24 until the next meeting; however, no second was heard. City Attorney Grady said she would review whether Council Member Wiseman could vote on a procedural motion to continue.

Attorney Richard Yovanovich, representing the property owner, Carol Kendall, said that while he had intended to request a postponement, he had learned that a potential sale could occur before the next City Council meeting. Council Member Tarrant said he wanted to hear more details. Council Members Taylor and Galleberg then indicated their desire to hear the petitioner's attorney at that time.

Attorney Yovanovich stated that numerous code enforcement actions had been filed against the Kendall property, although he said his client had been out of state when some of the violations occurred. Mr. Yovanovich stated that the first two fines were levied in 1995 and 1996 for \$7,075, and a code enforcement action against the property in December 2000 failed to cite the fine levied for failure to remove cinder blocks from the property. He said that if the City would release its liens and the order imposing fines that was most recently recorded, Mrs. Kendall would pay \$7,075 for the outstanding 1995 and 1996 liens upon the sale closing which was expected on September 29, 2001; he said his client anticipated relocating to another state. Mr. Yovanovich took the position that additional delays would result in legal fees for both sides and pointed out that the fines for leaves in the swimming pool, grass height of more than 12 inches, and cinder blocks in the front yard had been more than adequate to achieve compliance, which had occurred. He asked the Council to direct City Manager Rambosk to execute the necessary releases, delivering them to the buyer's attorney before closing, and the City could receive the aforementioned funds from the closing proceeds. Responding to Council Member Taylor, City Manager Rambosk said the City had incurred \$18,439.97 in legal fees regarding the property, and these fees were not included in the lien amounts; also the code enforcement action in 2000 had resulted in more than \$50,000 in liens, which City Attorney Grady confirmed had been recorded. Responding to City Attorney Grady, Mr. Yovanovich said that the pending lawsuit against the City would be ongoing and that legal fees had been incurred by his client while attempting to determine whether the City properly followed its own procedures in declaring the wall on Mrs. Kendall's property an unsafe structure. Responding to Mayor MacKenzie, City Attorney Grady said the Kendalls' pending lawsuit challenged the Building Official's decision, which was upheld by the Board of Appeals and that the lawsuit contained no settlement offers. Mr. Yovanovich clarified that wall height compliance issues had been resolved by the petitioner before fines had been incurred, and that this is a separate matter from the wall's alleged unsafe condition. City Manager Rambosk explained that the most recent violations occurred because

concrete blocks and other building materials for the wall had been left in the front yard for an extended period of time. In response to Mayor MacKenzie, City Attorney Grady clarified that Council's decision regarding the proposal being presented would have no impact on the lawsuit, and the City would be unable to receive attorney's fees.

Maurice Kent, 4160 Cutlass Lane, representing the Port Royal Property Owner Association, urged Council to consider a proposal since the Kendall home is located on Galleon Drive in Port Royal. He related the daily telephone complaints received by the Association regarding the condition of the Kendall property, code enforcement having been unsuccessful in this regard. He said the \$7,500 offer by Mrs. Kendall should be accepted since she would be unlikely to otherwise relinquish the suit. Mr. Kent suggested that a condition of any settlement be that Mrs. Kendall forego the lawsuit; Attorney Yovanovich said that he would consult with his client in this regard.

Council Member Tarrant urged immediate Council action to allow the sale of the property, but not without the lawsuit being quashed. Council Member Galleberg however pointed out that Mrs. Kendall had wasted City resources, and it would be improper to accept the settlement as proposed when there were approximately \$80,000 in outstanding fines, and the City had incurred \$18,000 in expenses. When Council Member Tarrant expressed concern about delaying the sale, Vice Mayor Herms said that proceeds from the sale could be escrowed, although the City would still be faced with the existing lawsuit.

City Attorney Grady noted allegations in a letter received the day before regarding improprieties and actions by the City, including slander of title and improper notice that were cited as reasons to reduce the liens. She said that Council should not be considering an item where the information had not been submitted to staff in a timely manner so that she was unable to provide advice. While agreeing to the possibility of escrow of funds from the house sale, Mr. Yovanovich nevertheless predicted that a judge would most likely determine that a \$50,000 fine for construction debris was excessive. Council Member Galleberg said rather than a \$50,000 fine, it had been an accumulation of \$250 per day that was acceptable because of the City's enforcement history on the Kendall property. Council Member Galleberg agreed that the Council should not consider waiving the fees until further review of the materials presented, and Vice Mayor Herms proposed a negotiated settlement.

Responding to Mayor MacKenzie, Mr. Yovanovich stated, however, he was uncertain whether Mrs. Kendall would sell her house if the City did not accept the terms as presented and that mediation would only result in the City incurring further expenses. Mr. Yovanovich recommended that Council make a counterproposal, but Vice Mayor Herms stated that this would be unacceptable without the opportunity to review the proposal. City Attorney Grady said this had been the petitioner's first attempt at remedying the matter, and Mrs. Kendall could have approached the Code Enforcement Board for settlement. Mr. Yovanovich said his client had been attempting to sell her property by the end of September, so there would not be adequate time to approach the Code Enforcement Board. He said Council has the authority to reduce code enforcement fines and believed that the City had the legal authority to settle lawsuits; otherwise the matter would have to be determined by a judge. Council Member Tarrant said he wanted the petitioner to quash her lawsuit against the City and pay its legal fees, and Council Member Taylor concurred. Council Member Galleberg said that Mrs. Kendall's closing was scheduled for September 29, while the Council had learned of the matter for the first time on the 19th; he therefore opposed settlement discussions without further information. He however said he could

support an attempt at negotiation. The Council then discussed the advisability of holding a special meeting on the matter if a compromise could be reached, noting that the neighborhood was anxious to have this six-year matter ended. City Manager Rambosk recommended that the long-standing matter be resolved, but said that Mrs. Kendall's lawsuit must be quashed, and the City should recoup as much of its legal fees as possible. He said Council should consider that \$10,000 more could be spent on staff time alone if the fines were to be resolved by the Code Enforcement Board. Council Member Tarrant proffered a motion to so direct; however, further discussion ensued.

Responding to Mayor MacKenzie, City Attorney Grady stated the item could be continued to the next meeting or a special meeting, which should be included in the motion, while staff and the petitioner negotiate an agreement. City Attorney Grady however confirmed that an executive session could be called if a settlement offer was received from Mrs. Kendall, although not included in the current request. City Manager Rambosk said that staff would recommend that the matter be settled if Mrs. Kendall paid no less than half of the fines and removed the lawsuit within the next 30 days. Responding to Council Member Galleberg, Mr. Yovanovich confirmed that his client's willingness to settle the matter was conditioned on the sale of the house. Mayor MacKenzie urged that staff and the petitioner should meet due to the September 29 closing.

MOTION by Tarrant to CONTINUE SO PETITIONER AND STAFF CAN TRY TO RESOLVE THE MATTER, AND DISCUSS IT AT THE NEXT REGULAR MEETING OR A SPECIAL MEETING, IF NECESSARY;
seconded by Herms and carried 5-0-1 (Taylor-yes, MacIlvaine-absent, Wiseman-abstain, Galleberg-yes, Tarrant-yes, Herms-yes, MacKenzie, yes).
(See Attachment 2, Form 8B Memorandum of Voting Conflict for county, Municipal, and other Local Public officers.) (See later motion on Page 25.)

Recess: 3:05 p.m. to 3:19 p.m. It was noted for the record that the same members were in attendance when the meeting reconvened.

RESOLUTION 01-9321.....ITEM 22
A RESOLUTION ADOPTING AN IMPROVEMENT PROGRAM FOR THE SUN TERRACE AREA TO MITIGATE THE NEGATIVE IMPACTS OF TRAFFIC ON RESIDENTIAL STREETS IN THE AREA, DIRECTING THE CITY STAFF TO INITIATE STEPS TO IMPLEMENT THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:19 p.m.). Traffic Engineer George Archibald said that traffic calming measures are being considered for the Sun Terrace area from Goodlette-Frank Road to U.S. 41 and from approximately 22nd Avenue North to 28th Avenue North; residents had met to form a traffic neighborhood management program committee. Mr. Archibald said that the improvement program (Attachment 3) would provide reduced speed limits of 25 miles per hour, multi-way stops, speed tables with brick pavers, installation of a gateway treatment to reinforce the premise of entry into a residential area, and construction of sidewalks. He said the committee obtained 165 signatures of approval from the 275 single-family homes in Sun Terrace, which he said indicated general acceptance of the program. Mr. Archibald said the neighborhood now sought Council's adoption of the program and direction to staff to implement, which would include funding and design. He cautioned, however, that the project could take many years due to opposition to sidewalks by 26th Avenue North residents. Council Member Galleberg proffered a motion to approve and Council Member Tarrant seconded; however, further discussion ensued. Council Member Taylor said she was concerned about a gateway treatment at 22nd Avenue North because of the high volume of Naples High School traffic that frequently causes congestion. Mr. Archibald said neighborhood residents had recognized this and 22nd would be handled differently from 26th.

Public Comment: Alice Landon, 2580 10th Street North, said the residents on her street had not been consulted or represented. She said that the proposal prevented her use of Diana Avenue because of proposed changes to U.S. 41; Mr. Archibald stated that the plan had however been revised. She also said that sidewalks would be too close to her daughter's bedroom window, acknowledging that she was nevertheless concerned about the speed of traffic. In answer to Mayor MacKenzie, Mr. Archibald said that not all residents receive written notices of neighborhood meetings when grass-roots projects such as these are in the early stages, but any adjacent property owners would have to be notified when it was next presented to Council. Vice Mayor Herms and Council Member Tarrant expressed concern, however, that all residents of the area had not been notified. Vice Mayor Herms said that it would therefore be difficult to approve the request without a full neighborhood consensus. Council Member Galleberg, however, said that while sidewalk installation is frequently controversial, traffic calming measures for that neighborhood have been needed.

Council Member Tarrant then withdrew his second because he said all the neighborhood residents should be notified. Vice Mayor Herms suggested that the Council approve lowering the speed limit to 25 miles per hour, installing a gateway treatment, and creating multi-way stops temporarily to determine their effects, but defer approval of construction of sidewalks and speed tables. City Manager Rambosk concurred, stating that the neighborhood could then proceed to conduct further meetings with all residents. Council Member Galleberg, however, stated that the residents had in fact proceeded correctly because their actions would allow the City Council to address the neighborhood's requirement for traffic calming measures.

Honey Lehman, 1170 26th Avenue North, said she had talked to other 26th Avenue North residents who had not been contacted. She said she had written Mr. Archibald four years prior regarding speeding and had suggested stop signs be placed at two side streets, but she said she had been told that would be unfeasible. She recommended temporary stop signs to determine the effect upon traffic calming and said that she supported reducing the speed limit to 25 miles per hour, although more than that should be done. Ms. Lehman stated she was sympathetic to 26th Avenue residents' concern about the closeness of sidewalks and that every homeowner in the area should be notified of the proposal before proceeding.

Vice Mayor Herms then proffered a motion to approve the reduction of speed limits and the creation of multi-way stops for the neighborhood; however, further discussion ensued. Traffic Engineer Archibald said the improvements would have to be individually analyzed pursuant to state law and presented to Council. Council Member Wiseman stated she would second the motion made by Council Member Galleberg to approve because nothing would be finalized without all citizen concerns having been addressed. Council Member Galleberg confirmed that his motion was for a conceptual approval and concurred that additional homeowner contact would take place.

MOTION by Galleberg to APPROVE RESOLUTION 01-9321 INCLUDING LOCATION-BY-LOCATION PUBLIC CONTACT; seconded by Wiseman and carried 5-1 (Wiseman-yes, Tarrant-yes, Taylor-yes, Galleberg-yes, Herms-no, MacIlvaine-absent, MacKenzie-yes)

Vice Mayor Herms said he voted against the resolution because it would set a bad precedent for moving forward on an issue that had inadequate community support.

**(Continued).....ITEM 23
CONSIDER A REQUEST TO WAIVE FEES ASSOCIATED WITH A VARIANCE
PETITION FOR 1170 26TH AVENUE NORTH (3:55 p.m.)** City Manager Kevin Rambosk

explained that the only alternative available to petitioner Honey Lehman to retain the nonconforming shed she had replaced would be to request a variance. While the prior shed had collapsed, it had not been due to a catastrophic event. Mr. Rambosk however recommended waiving the \$425 variance fee because of Ms. Lehman's inability to pay. Council Member Tarrant proffered a motion to approve, Vice Mayor Herms seconded; however, further discussion ensued.

Ms. Lehman predicted, however, that an adjacent neighbor would not approve the shed because she said he had called the City to report it as a violation. However, City Manager Rambosk stated that both she and her neighbor would have the opportunity to address City Council. In a discussion of the replacement shed, City Manager Rambosk stated the stable concrete foundation on which the new shed had been placed had also been the foundation for the prior nonconforming structure. Ms. Lehman said she cannot afford to move the shed. Council Member Galleberg stated that while he had not been provided with any evidence indicating that Ms. Lehman should have the variance fees waived, he would prefer to revise the ordinance so no one would have to submit to the variance procedure when replacing decrepit sheds. In response to Council Member Taylor, City Manager Rambosk confirmed that a modified ordinance could allow individuals who replace nonconforming decrepit sheds in the interim to be in compliance. Vice Mayor Herms concurred with such an amendment; Council Member Tarrant then withdrew his motion, and Vice Mayor Herms withdrew his second.

MOTION by Galleberg to CONTINUE UNTIL CITY COUNCIL CONSIDERS AN AMENDMENT TO THE ORDINANCE RELATIVE TO REPLACEMENT OF STORAGE SHEDS; seconded by Herms and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie, no).

Mayor MacKenzie explained that she had dissented because of concerns about future implications in regard to the proposed amendment. City Manager Rambosk assured Ms. Lehman that he would provide a letter to the Code Enforcement Board suggesting that no fees be incurred for violations pending the ordinance amendment. Council Member Taylor said that she would abstain because approximately 12 years ago she had replaced a shed that was likely in the easement.

MOTION by Galleberg to DIRECT STAFF TO REVIEW CODE PROVISION REGARDING REPLACEMENT OF STORAGE SHEDS AND PROVIDE RECOMMENDED LANGUAGE AND ANALYSIS THEREOF; seconded by Herms and carried 4-1-1 (Galleberg-yes, Tarrant-yes, MacIlvaine-absent, Wiseman-yes, Taylor-abstain, Herms-yes, MacKenzie-no). (See Attachment 4, Form 8B Memorandum of Voting Conflict for County, Municipal, and other Local Public officers.)

Council Member Wiseman cautioned against automatically continuing a nonconforming use, but Vice Mayor Herms said the amendment would instead allow the continuance of a nonconforming structure. Mayor MacKenzie said she opposed making law without adequate study, but Council Member Galleberg noted that staff would merely be studying the possibility of the amendment.

**RESOLUTION (Continued).....ITEM 12
A RESOLUTION APPROVING CONTRACTS WITH SOUTHERN BLEACHER CONSTRUCTION COMPANY, INC. AND KREHLING CONSTRUCTION COMPANY TO RENOVATE THE BLEACHERS/BATTING CAGE AND DUGOUTS IN CAMBIER PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.** Title not read. City Manager Kevin Rambosk said

that staff was requesting a continuance because of various questions raised. Mayor MacKenzie noted that registered speakers Tom Bamrick and Robert Iamurri were not then in attendance.

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

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 9-a

August 13, 2001 Workshop. Council Member Wiseman said that Page 4 of the August 13 meeting should reflect that it is the von Liebig Art Guild, not Art Center.

.....ITEM 9-c

APPROVE THE FOLLOWING SPECIAL EVENTS:

- (1) Collier Food & Beverage Golf Tournament Event (Harold's Place) – 9/22/01
- (2) Private Party Annabelle's Restaurant (Fifth Avenue South) – 10/8/01 (event cancelled).
- (3) Gulf Coast Runners Monster Dash 5K Run – 10/20/01 (Goodlette Road/Fleischmann Blvd).
- (4) Naples Daily News Jazz Band Concerts (Cambier Park) – 10/28/01, 11/18/01, 1/27/02
- (5) Ridge Lakes Halloween Party (Palm Circle) – 10/31/01
- (6) Gravure Association of America dance (Beach Club) 11/15/01
- (7) American Heart Association Walk (Gulfview Middle School) – 11/17/01
- (8) Eden Institute of Florida Art Fest (Fleischmann Park) – 1/26-27/02
- (9) Naples High School Homecoming Parade (Fifth Avenue South) – 10/4/01

RESOLUTION 01-9322.....ITEM 9-d

A RESOLUTION WAIVING COMPETITIVE BIDS PURSUANT TO CITY CODE, SECTION 2-356 (4) AND AUTHORIZING THE PURCHASE OF TWO (2) IN CAR CAMERAS AND ACCESSORY EQUIPMENT FOR USE IN POLICE VEHICLES, UPGRADE THE EXISTING RADAR TRAILER TO GATHER TRAFFIC COUNTS AND SPEED DATA FOR ANALYSIS, AND TO PURCHASE A NEW "SPEED MONITORING AWARENESS RADAR TRAILER"; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9323.....ITEM 9-f

A RESOLUTION RESCHEDULING VARIOUS CITY COUNCIL REGULAR MEETINGS AND WORKSHOPS IN NOVEMBER AND DECEMBER, 2001, AND JANUARY, 2002, AS ENUMERATED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9324.....ITEM 9-g

A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO CONTRACT WITH STAHLMAN-ENGLAND IRRIGATION, INC. IN THE AMOUNT OF \$45,481.75 FOR FURNISHING AND INSTALLING A REUSE IRRIGATION SYSTEM AT THE GEORGE WASHINGTON CARVER HOUSING PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9325.....ITEM 9-h

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND ROCK N ROLL STAFFING FOR A TEMPORARY LABORER SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Wiseman to APPROVE ITEMS 9-a (AS AMENDED), 9-c (1, 3-9), 9-d, 9-f, 9-g, and 9-h; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

RESOLUTION 01-9326.....ITEM 9-b

A RESOLUTION AUTHORIZING A COST-SHARE CONTRIBUTION TO THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) IN AN AMOUNT NOT-TO-EXCEED \$15,000.00, TO ASSIST IN PROVIDING FOR A FEASIBILITY STUDY OF CONSTRUCTION AND OPERATION OF A REGIONAL IRRIGATION DISTRIBUTION SYSTEM (RIDS) PROJECT MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:11 p.m.). Vice Mayor Herms stated that he had requested a separate vote on this resolution because he did not want to support the proposed expenditure. Council Member Wiseman said she would move approval because every other neighboring jurisdiction has agreed to participate, and Council would be sending a poor message by refusing, especially when the City has the highest water usage of any community in the region. Council Member Galleberg seconded.

MOTION by Wiseman to APPROVE RESOLUTION 01-9326; seconded by Galleberg and carried 4-2 (Galleberg-yes, Herms-no, MacIlvaine-absent, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms said he opposed the motion because the South Florida Water Management District (SFWMD) had indicated it would be using Aquifer Storage and Recovery (ASR) systems that could possibly contaminate the future water supply.

ORDINANCE (Second Reading).....ITEM 10
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 (4:12 p.m.). Responding to Vice Mayor Herms, City Manager Rambosk said the company had been in compliance by ensuring that the Police & Emergency Services Department (PESD) had been made aware of the shut-off valves, and it had met compliance requirements for extension off the main lines.

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

MOTION by Galleberg to APPROVE ORDINANCE 01-9327; seconded by Wiseman and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9328.....ITEM 13
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE STATE OF FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) FOR A \$200,000 MATCHING GRANT FOR PHASE II OF THE FLEISCHMANN PARK REDEVELOPMENT PLAN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:14 p.m.) who noted that staff was requesting Council authorization to submit the grant application because the City would have to fund 50 percent, or \$200,000 and had already committed more than \$200,000 for the park redevelopment.

MOTION by Wiseman to APPROVE RESOLUTION 01-9328; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION (Continued).....ITEM 14-a
A RESOLUTION APPROVING A CONTRACT WITH WARNER ARCHITECTS, INC. TO PROVIDE DESIGN SERVICES FOR THE RENOVATION AND EXPANSION OF THE NORRIS COMMUNITY CENTER; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION (Continued).....ITEM 14-b

A RESOLUTION DIRECTING THE NORRIS CENTER SELECTION COMMITTEE TO PREPARE AND DISTRIBUTE A REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT AT RISK FOR RENOVATION AND EXPANSION OF THE NORRIS COMMUNITY CENTER, RECEIVE AND ANALYZE RESPONSES, AND PREPARE A PRIORITIZED LISTING OF RESPONSES; AND PROVIDING AN EFFECTIVE DATE.

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

Titles read by City Manager Kevin Rambosk, (4:14 p.m.) who noted that staff recommended hiring an outside architect to develop plans for the Norris Center. Council Member Wiseman, however, said the City should consider a possible awkward perception of using an in-house architect for the River Park Community Center but hiring an outside architect for the Norris Center at approximately \$95,000. Assistant City Manager William Harrison said Building Official William Overstreet's architectural services have, however, been used by the City to design the Utilities, Police & Emergency Services, Solid Waste, and Development Services buildings at the municipal complex. Council Member Wiseman however pointed out that office buildings are designed differently from park facilities, and that she considered Norris Center a low priority for improvements funded by bonding. She also called the proposed fees expensive for the size and function of the Norris Center. Vice Mayor Herms concurred, stating that a new building could be built for approximately the same amount or less than the renovations. Assistant City Manager Harrison stated that the architectural fees would be 7% of the final \$1.1-million construction costs, and payment to the architect would not exceed \$95,000. City Manager Rambosk said the City's building official has been functioning as an architect so that other projects have been delayed, but assigning him to architectural work only would force him out of employment in the near future. Council Member Wiseman said the City should consider hiring an employee with architectural experience, and Mayor MacKenzie stated that the \$95,000 fees could be used for that purpose. Vice Mayor Herms said he would recommend the City only make essential improvements to the Norris Center, such as compliance with FEMA regulations, and then replace it in approximately 10 years after the building had reached its useful life. He said constructing a new \$1.5-million structure would be more economically feasible than spending \$1.3-million on renovations.

Mayor MacKenzie said the decision to renovate had however been determined after overwhelming public sentiment in favor, and small improvements require many others that may not have been apparent. She said she however concurred with Council Member Wiseman in that some projects favor in-house architectural services while others do not, although the Norris Center, like the River Park Community Center, renovations should also be required to remain within budget. Community Services Director Don Wirth stated the Architectural Services Selection Committee had reported to a previous Council that it would be approximately \$400,000 for renovations, which Mayor MacKenzie said would only be for upgrading the structure and not the expansion that the public had also requested.

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

Council Member Taylor proffered a motion to instruct staff to reassess the project and consider utilizing in-house architectural services; however, additional discussion ensued. However, City Manager Rambosk said while he would be amenable to this, he would ask Council to compensate Mr. Overstreet beyond the approximately \$3,000 bonus he has received for the extra workload. Council then further discussed in-house design versus using an outside architect and also noted proposed completion dates, taking into consideration heavier use periods at the center. Vice Mayor Herms noted that Council had approved a resolution acknowledging the preferred

ranking of architects and had directed that a contract be negotiated although the proposal had never been completed. Architect John Dyehouse, he said, had completed the difficult task of designing room addition sketches, and all that remained would be the easier process of designing the structurals. Council Member Wiseman stated for clarification that Building Official Overstreet's funding estimate for the River Park Community Center did not include engineering fees of \$25,000 which the City Council had already approved, but Warner Architects, Inc., had included engineering and construction management in its proposal. City Manager Rambosk suggested allowing staff to review the proposed resolutions and provide an analysis in two weeks. Vice Mayor Herms seconded the motion proffered by Council Member Taylor to reassess the project using in-house architectural services.

Mayor MacKenzie said that while she was sympathetic to Council Members' concerns, she could not support the motion because of the amount of work already completed. She said she supported a contract for no more than 7% of \$1.1-million and wished to move forward with beginning renovations.

MOTION by Taylor to CONTINUE ITEM 14-a (FOR 2 WEEKS) FOR STAFF TO REASSESS PROJECT WITH THE POSSIBILITY OF USING IN-HOUSE ARCHITECTURAL SERVICES ALONG WITH PROVIDING INFORMATION ON IMPACT OF DELAY; seconded by Taylor and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

MOTION by Herms to CONTINUE ITEM 14-b; seconded by Wiseman and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

Recess: 4:40 p.m. to 4:51 p.m. It was noted for the record that the same members were in attendance when the meeting reconvened.

**RESOLUTION (Continued).....ITEM 15-a
A RESOLUTION DETERMINING PETITION 01-LE8 FOR LIVE ENTERTAINMENT AT 898 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION (Continued).....ITEM 15-b
A RESOLUTION DETERMINING PETITION 01-RIS13 FOR A RESIDENTIAL IMPACT STATEMENT FOR HOFGARTEN BRAUHAUS LOCATED AT 898 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

It was noted for the record that Items 15-a and 15-b were considered concurrently.

Title read by City Manager Kevin Rambosk (4:52 p.m.). Mr. Rambosk reported the owners of the Hofgarten Brauhaus had requested a live entertainment permit, not including the Oktoberfest celebration that had been cancelled due to the recent World Trade Center attack. Mayor MacKenzie stated that the petitioner, Dr. Hans Schache, had already left the meeting.

City Manager Rambosk stated that Council had been provided with a list of violations outstanding at the establishment and that he had requested that Senior Plans Examiner Bill Taylor examine the building to determine what violations still exist but that staff had recommended that the petitioner address deficiencies regarding violations in the fire safety systems. He recommended that violations be corrected before approving the owners' requests, and further that the restaurant either be closed or issued a Certificate of Occupancy. Council

Member Galleberg pointed out that some of the same violations had been in existence in April 2000 when Council previously considered the restaurant's petition for entertainment, and the owners should take action rather than merely offering to do so. City Manager Rambosk stated he had told the petitioners that the first floor could remain open if violations were corrected but that the second floor should remain closed until repairs in that location are completed. Mayor MacKenzie noted that petitioner Dr. Schache had returned. This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/met briefly with Susanne Schache who had stopped at the Mayor's Office after meeting with City Manager Rambosk; Tarrant/brief telephone with Mrs. Schache who had explained that they had been attempting to correct the problems; Wiseman/her son and the Schache's son are in the same grade at school; Galleberg, Taylor and Herms/no contact. City Clerk Tara Norman then administered an oath to Mr. Schache; he responded in the affirmative. City Manager Rambosk then swore and affirmed that the information he had already provided was correct and to the best of his knowledge.

Petitioner Schache reported that a general contractor had advised him that the restaurant was in compliance, needing only flood panels that he had placed in storage. He said that he had been unaware of any other violations, although five inspectors had examined the three floors of the building but would not divulge what violations were found. He said he would correct the violations within two weeks because he wanted a Certificate of Occupancy.

MOTION by Wiseman to CONTINUE ITEMS 15-A AND 15-B TO OCTOBER 3, 2001; seconded by Tarrant and carried 5-1 (Galleberg-no, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Galleberg said he had dissented in the permit approval in 2000 because the many violations indicated an apparent disregard for the Code and questioned the above continuance. Mayor MacKenzie and Council Member Wiseman said they however supported the continuance because the petitioner would now seemingly correct the violations. Vice Mayor Herms said he was optimistic the petitioner would cooperate, but staff should work with the restaurant owners as well. Council Member Galleberg said all City businesses were subject to inspections, and do not have significant numbers of violations that are not repaired.

**RESOLUTION 01-9329.....ITEM 18-a
A RESOLUTION EXTENDING THE CONTRACT WITH GALLAGHER BASSETT SERVICES, INC.; AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS THEREFORE; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 01-9330.....ITEM 18-b
A RESOLUTION APPROVING THE CITY'S SELF-INSURANCE PROGRAM PROVIDING FOR PREMIUMS AND THE LOSS FUND FOR FISCAL YEAR 2002 WITH ARTHUR J. GALLAGHER AND COMPANY; IN SUBSTANTIALLY THE FORM ATTACHED HERETO; AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS THEREFORE; AND PROVIDING AN EFFECTIVE DATE.**

It was noted for the record that Items 18-a and 18-b were considered concurrently.

Titles to both items were read by City Manager Kevin Rambosk (5:16 p.m.) Assistant City Manager William Harrison said the City seeks full bids every five years for the risk management self-insurance services. He said that the City has \$100,000 self-insured retention on property liability, \$150,000 per occurrence on workers' compensation, and purchases additional insurance against catastrophic loss. He further explained the City has a loss pool so that if ten employees are seriously injured in one year, it must fund only up to \$650,000, including deductibles and legal fees, which would be significantly less than 10 times \$150,000 or \$1.5-million. The City insures its \$160-million in property for \$50-million, and in the event of a catastrophic hurricane,

the Federal Emergency Management Agency (FEMA) would provide assistance. He said the City also has \$2-million in coverage for federal and out-of-state claims. Gallagher Bassett Insurance Services has been providing property, liability and workers' compensation additional insurance and administration services for the City, and their three-year contract is expiring, he said.

MOTION by Wiseman to APPROVE RESOLUTION 01-9329; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Wiseman to APPROVE RESOLUTION 01-9330; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION.....ITEM 20
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT FOR EMERGENCY SEWER INTERCONNECT BETWEEN THE CITY OF NAPLES AND COLLIER COUNTY; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:22 p.m.). Public Works Director Dan Mercer stated that he, City Attorney Robert Pritt and staff had reviewed the proposed interlocal agreement and had incorporated most of the suggested changes. He noted that Item 5 had been rewritten for clarity, now stating that a sample had to be submitted for every interconnection to ensure that no objectionable material would be released into the collection system. He said Item 9d had been added so that City Manager Rambosk would be notified immediately of a sewer interconnect request. Public Works Director Mercer also noted that each entity would financially reimburse the other for sewage capacity used, and the interconnection would only be utilized during emergencies. Responding to Council Member Tarrant, he confirmed that Collier County has had difficulty in the last two years providing sufficient sewage capacity because of rapid expansion. While Council Member Tarrant characterized it as unfair for the County to utilize the City's wastewater plant upgraded at citizens' expense, Council Member Wiseman noted that the interconnect could not be used to alleviate inadequate capacity by the County. Mayor MacKenzie said the word "additional" in Item 6 could be construed as having various meanings, and Public Works Director Mercer indicated that it would be removed. Council Member Galleberg proffered a motion to approve, and Council Member Wiseman seconded.

Public Comment: (5:32 p.m.) None.

Responding to Vice Mayor Herms, Mr. Mercer said that staff would return to City Council for approval for interconnect designs, locations and funding.

MOTION by Galleberg to APPROVE RESOLUTION 01-9331, AS AMENDED, IN ITEM 6 OF INTERLOCAL AGREEMENT AS FOLLOWS: "IF IT IS DETERMINED THAT THE RECEIVING PARTY'S INFRASTRUCTURE OR GEOLOGICAL TREATMENT IS UPSET DUE TO INDUSTRIAL TOXINS, THEN THE SUPPLYING PARTY SHALL BE RESPONSIBLE FOR ANY ADDITIONAL COSTS TO CORRECT THE DAMAGE." This motion was seconded by Wiseman and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION.....ITEM 21
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUPPLEMENTAL AGREEMENT TO THE CITY'S ANNUAL CONTRACT WITH E.B.

SIMMONDS ELECTRICAL INC. AND TO ISSUE A PURCHASE ORDER IN THE AMOUNT OF \$109,933.00 FOR REPLACEMENT OF THE TRAFFIC SIGNAL SYSTEM AT THE INTERSECTION OF PARK SHORE DRIVE AND CRAYTON ROAD; AUTHORIZING THE CITY MANAGER CONTRACT AUTHORITY SUBJECT TO PROVISIONS OF FLORIDA STATURE 377.11; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:33 p.m.) who said that staff was requesting a replacement of the signal system at the intersection of Park Shore Drive and Crayton Road because it wanted to provide new safety elements and replace parts that were 25 years old.

MOTION by Wiseman to APPROVE RESOLUTION 01-9332; seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9333.....ITEM 26
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 read by City Manager Kevin Rambosk (5:34 p.m.) Council Member Galleberg proffered a motion to approve, Council Member Wiseman seconded. Responding to Vice Mayor Herms, City Manager Rambosk said that approximately ten spaces would be added at the City Dock, and a dock with a ramp had been considered at the Pulling Property.

Public Comment: (5:34 p.m.) None.

MOTION by Galleberg to APPROVE RESOLUTION 01-9333; seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

(Continued).....ITEM 24
CONSIDER A REQUEST TO REDUCE OR ELIMINATE CODE ENFORCEMENT LIENS ON PROPERTY LOCATED AT 495 GALLEON DRIVE. (See also Page 15) Petitioner's Attorney Richard Yovanovich confirmed that his client, Carol Kendall, would quash her lawsuit against the City with prejudice if the dismissal document stated that she would not be admitting liability; Mrs. Kendall would also pay \$7,075 in fines. He said his client urged settlement and had opposed a future special meeting. Mr. Yovanovich said the lawsuit had been an appeal of the decision that a wall at her home at 495 Galleon Drive had been an unsafe structure. He said that he hoped the Council perceived Mrs. Kendall's offer as a good faith effort and that the City could resolve the issues related to the lawsuit and Code Enforcement Board. In response to Mayor MacKenzie, City Attorney Beverly Grady stated she would at least be submitting a memorandum to Council after she reviewed the files in regard to the request but that she had concern that Mrs. Kendall had made no effort until the day before to resolve the fines which date to December 2000. She said the lawsuit against the City has been in the judge's possession and that she recommended that a general release be included so that the petitioner would be unable to proceed in any way against the City, which she said she had also recommended to Mr. Yovanovich. She said that currently the City was being asked to reduce the lien, but the lawsuit dismissed with prejudice could allow one party to take it to a higher court. Responding to Council, Mr. Yovanovich stated that his client would not agree to a general release but that he would be amenable to meeting with the City's attorneys to resolve the conflict, and then calling a special meeting to finalize the agreement. Responding to Council Member Wiseman, Mr. Yovanovich said he could not state with certainty that Mrs. Kendall would be moving permanently from the City, but she has a contract on an out-of-state home. City Attorney Grady clarified that a specific release would preclude any suits related to Code Enforcement Board cases, and a general release

would protect the City from any other unrelated claims and ensure that neither party had claims against the other up to the day it was signed. Council Member Galleberg stated that petitioner should absolve the City from the pending legal action. Mayor MacKenzie recommended that the agreement should be predicated on whether the City Attorney discovers some fact as of yet unknown. Mr. Yovanovich said the proposal would be considered void if the City Attorney discovers anything untenable in the files of which the petitioner's attorney had been unaware.

Vice Mayor Herms proffered a motion that the proposal is acceptable in concept if the City Attorney's research did not reveal any unknown legal elements, and to have the petitioner's and City's attorneys negotiate for settlement. City Attorney Grady said Council must first move to reconsider the item, and then take action. Council Member Taylor proffered a motion to reconsider Item 24 for discussion and possible action, Vice Mayor Herms seconded; however, further discussion ensued.

Council Member Galleberg recommended that Council determine the amounts required for settlement, but Mayor MacKenzie stated that the petitioner would not offer more than \$7,075. Vice Mayor Herms said Council should consider a payment of \$9,000, or approximately half the City's attorney's fees. Mr. Yovanovich also assured Council Member Galleberg that the lawsuit he had filed on behalf of Mrs. Kendall is not frivolous and is legitimate and pointed out that Mrs. Kendall's homestead could not be foreclosed for liens. However, City Attorney Grady stated that the proceeds could nevertheless be taken after the homestead is sold. Council Member Galleberg said that a letter to City Manager Rambosk had indicated that Mrs. Kendall had in fact been living out-of-state attending law school so that her home in Naples could not possibly be homesteaded, although Mr. Yovanovich stated that it was considered her homestead at this time.

MOTION by Taylor to RECONSIDER Item 24 FOR DISCUSSION AND POSSIBLE ACTION; *seconded by Herms and carried 5-0-1 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-abstain, MacKenzie-yes). (See Attachment 5, Form 8B Memorandum of Voting Conflict for County, Municipal, and Other Local Public officers.)*

City Manager Rambosk stated that the cinder blocks had been removed from Mrs. Kendall's front yard approximately two weeks before. Council Member Galleberg and Vice Mayor Herms said they would approve the City accepting \$7,075 as settlement if the matter would be resolved, although they said they were not pleased with the offer.

MOTION by Herms THAT PROPOSAL IN CONCEPT IS ACCEPTABLE AS LONG AS THE CITY ATTORNEY'S RESEARCH DOES NOT REVEAL ANY UNKNOWN LEGAL ELEMENTS, AND TO DIRECT STAFF TO WORK WITH PETITIONER'S ATTORNEY TO DRAFT NECESSARY SETTLEMENT DOCUMENTS AS WELL AS A GENERAL RELEASE SPECIFIC TO THIS PROPERTY; *seconded by Tarrant and carried 5-0-1 (Galleberg-yes, Tarrant-yes, Wiseman-abstain, Herms-yes, MacIlvaine-absent, Taylor-yes, MacKenzie-yes). (See Attachment 5.)*

Council Member Galleberg said staff should carefully review the materials during negotiations, and he said his vote should not be construed as acceptance of the offer.

.....ITEM 27
A RESOLUTION AUTHORIZING THE MAYOR TO INVITE, ON BEHALF OF THE NAPLES CITY COUNCIL, THE COLLIER COUNTY CLERK OF THE CIRCUIT COURT TO EXAMINE THE CITY OF NAPLES RISK MANAGEMENT FUND; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk, (6:10 p.m.) who stated that Council had already received a synopsis in regard to the emergency cleanup

in Royal Harbor, although it has been inconclusive with regard to work performed by Joe Biasella (Del Rey Marine) but that staff had determined from invoices that the City had overpaid approximately \$1,000 for the boom, and a refund had been requested from Del Rey Marine. Mr. Rambosk also explained that the City had been using Del Rey as first responder to hazardous material situations on the waterway, but staff has since determined that all City firefighters have first responder water and land cleanup capabilities so they will now assume that responsibility. City Manager Rambosk said the City has a fire/harbor master boat at the City Dock and a tow vessel that would have to be transported for first responder, and additional supplies may be required and purchased from low bidders. He said that a Request For Proposal (RFP) for cleanup that had been prepared by staff was ready for bid. Responding to Council Member Taylor, City Manager Rambosk confirmed that the first responder for cleanup would be the Police & Emergency Services Department (PESD), which must be on site to secure the area. Responding to Vice Mayor Herms, City Manager Rambosk said the City has a contract detailing hourly rates, material costs and other criteria with SWS for spill cleanup anywhere in the City. Council Members Tarrant and Taylor commended City Manager Rambosk for these actions.

Public Comment: (6:17 p.m.) **Joe Biasella, 860 12th Avenue South**, concurred with having City firefighters serve as first responders, although he recommended that the City either repair or replace its current fireboat. Mr. Biasella also said that if the Collier County Clerk of the Circuit Court had previously examined the Risk Management Fund, his business may not be under examination; however, he assured Council of his full cooperation with Clerk of Court Dwight Brock's inquiry. Because of what he described as a current negative perception of his company, Del Rey Marine, Mr. Biasella asked that bidding for future cleanup services be delayed. In response to Vice Mayor Herms, Mr. Biasella said he did not know the name of the company where he had obtained cleanup pads used in Royal Harbor since his supplies are received from various sources. Vice Mayor Herms said Mr. Biasella had charged the City for 18 pad packages, but the City had no proof of the pad purchase for the cleanup because Del Rey records indicated only two packages were bought in 1998 and others were purchased after the cleanup. Vice Mayor Herms said he could, however, substantiate that Mr. Biasella had traded \$14,600 in services and materials with Island Marine. Mr. Biasella said that more in this regard could be substantiated when the company's owner returned to the City. Vice Mayor Herms said that it was contradictory that the City had been charged \$560 for a set of pads for the Port Royal cleanup but only \$150 for set of pads for Royal Harbor. Council Member Wiseman proffered a motion to approve, stating that the various issues raised would not be resolved that day; however, further discussion ensued.

Mayor MacKenzie recommended that the proposed resolution be amended to reflect that Mr. Brock also specifically examine the Del Rey account so Council could reach unanimous approval. Council Member Tarrant said that Clerk of Court Brock should initially address the first responder issue that had been widely publicized by the news media. Citing various pieces of information which he said Mr. Biasella had not provided, Vice Mayor Herms recommended that the motion include direction that Mr. Biasella either provide documentation requested by City Manager Rambosk or the City would ask that the state insurance investigator subpoena them; Council Member Taylor concurred. Mr. Biasella asserted that he had not had an opportunity to answer Vice Mayor Herms' questions, but Vice Mayor Herms said that Mr. Biasella had in fact been afforded an ample opportunity for response.

Responding to Council Member Wiseman, City Manager Rambosk confirmed that subpoena authority would derive only from a criminal investigation. Vice Mayor Herms then stressed that

the City had potentially been defrauded by being overcharged for materials and had the ability to request such a criminal investigation by the appropriate authority. Mr. Biasella, however, said that while Vice Mayor Herms' allegations were serious, he would delay further response until the Brock investigation, accusing Mr. Herms of destroying him professionally and personally by discussing the issue with the news media. Vice Mayor Herms, however, asserted that he had not undertaken a personal vendetta, but Mr. Biasella disagreed because he said he had been called a thief. Even with a subpoena, Mr. Biasella said, he could not provide the requested invoices because they were not in his possession.

Calling Mayor MacKenzie's proposal an appropriate procedure, Council Member Galleberg nevertheless said that it was ridiculous that Mr. Biasella could not provide the appropriate invoices, although no fraud or criminal intent had yet been proven. Council Member Wiseman said that Mr. Brock's wider investigation could alleviate other concerns such as the possibility of prior improper practices, and she said she supported examining Del Rey Marine first. After Vice Mayor Herms cited various discrepancies in Mr. Biasella's billing to the City, he reiterated a lack of investigative powers in the Brock investigation so he said he therefore could not support the amended motion. Council Member Galleberg seconded the amended motion made by Council Member Wiseman. Vice Mayor Herms maintained that more investigative authority was needed, and Council Member Taylor concurred. Responding to Council Member Galleberg, City Manager Rambosk said he would have referred the matter to Police & Emergency Services had he discovered evidence of criminal activity during his investigation.

MOTION by Wiseman to APPROVE AS AMENDED TO REQUEST THAT DEL REY MARINE ISSUES BE EXAMINED FIRST; seconded by Galleberg. This motion failed 3-3 (Taylor-no, Herms-no, MacIlvaine-absent, Tarrant-no, Galleberg-yes, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms proffered a motion to approve, as amended below, and Council Member Taylor seconded. In response to Mayor MacKenzie, City Manager Rambosk stated that he believed that the first motion would allow Clerk of Court Brock authority and flexibility to investigate, but if additional assistance were deemed to be needed, the matter could be turned over to the proper agency for investigation. Mayor MacKenzie said that including the use of a state insurance investigator would prejudice the matter even before it had been investigated.

MOTION by Herms to APPROVE AS AMENDED ABOVE AND ALSO TO ALLOW USE OF THE STATE INSURANCE INVESTIGATOR TO ASSIST CLERK OF COURT BROCK IN THIS DETERMINATION; seconded by Tarrant. This motion failed 3-3 (Galleberg-no, Taylor-yes, Tarrant-yes, Wiseman-no, Herms-yes, MacIlvaine-absent, MacKenzie-no).

ORDINANCE (Second Reading).....ITEM 16
AN ORDINANCE ADDING ARTICLE X TO CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO ESTABLISH A CITIZENS' POLICE REVIEW BOARD, PROVIDING FOR THE PURPOSE OF THE BOARD INCLUDING PROVISION OF INPUT AND INVOLVEMENT FROM THE COMMUNITY CONCERNING LAW ENFORCEMENT ACTIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (6:52 p.m.) who noted that the second paragraph of Section 2-286(a)(5) should have deleted ("if the recommendation includes b., c., or d., as listed above").

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

MOTION by Galleberg to APPROVE AS AMENDED IN SECTION 2-286(A)(5) "A REPORT SHALL BE SUBMITTED TO THE CHIEF OF PESD.

IF THE RECOMMENDATION INCLUDES B., C., OR D., AS LISTED ABOVE; *seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 01-9335.....ITEM 17

A RESOLUTION ADOPTING THE POLICIES AND PROCEDURES FOR THE CITIZENS' POLICE REVIEW BOARD; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Manager Kevin Rambosk (6:56 p.m.) who reported that LaVerne Franklin of the NAACP had requested Section I-7-A be amended by adding a minimum notice of three to five days prior to special meetings, Section II-C-2 be amended by making available the original log of formal complaints, and Section III-G be amended to allow the release of reports that included recommendations for approval.

Public Comment: None (6:59 p.m.).

MOTION by Galleberg to APPROVE RESOLUTION 01-9335, AS AMENDED, AS FOLLOWS: POLICIES AND PROCEDURES SECTION I-7-A, SPECIAL MEETINGS, SUBSECTION 4, TO PROVIDE A MINIMUM NOTICE OF 3-5 DAYS OF A SPECIAL MEETING; SECTION II-C-2, COMPLAINTS RECEIVED BY NAPLES POLICE DEPARTMENT, "PROFESSIONAL STANDARDS SHALL SUBMIT TO THE BOARD, AT REGULAR MEETINGS, ITS ORIGINAL LOG..."; AND SECTION III-G, NEW BUSINESS/APPEARANCES, "THE BOARD SHALL SUBMIT A WRITTEN REPORT TO THE CHIEF OF PESD CONTAINING ITS RECOMMENDATION AND THE GROUNDS FOR SUCH RECOMMENDATION IF THE RECOMMENDATION INCLUDES 2, 3, OR 4-WITHIN SUBSECTION F ABOVE. THOSE MEMBERS VOTING IN THE...." This motion was seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-absent, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

CORRESPONDENCE & COMMUNICATIONS.....

Council Member Taylor recommended that Council examine the FEMA elevation requirements in the 41-10 District. Responding to Council Member Wiseman, Mayor MacKenzie said she had sent condolence letters to the mayors of New York and Washington, D.C. after the September 11 terrorist attack, and concurred that Council could also send a proclamation. City Manager Rambosk said the City firefighters would be presenting a proposal for a fund-raising event on behalf of victims. Council Member Wiseman said she would be requesting that Item 27 (examination of Risk Management Fund) be placed on the next regular meeting agenda. Council Member Tarrant said the Naples Pier should be monitored with guards or motion detectors to prevent vandalism, theft and graffiti and that the facility be closed after midnight. Council Member Tarrant said that a County official had also informed him that it may be possible for vandalism repair at the pier to be funded by Tourist Development Council (TDC). City Manager Rambosk said staff had been working with Police & Emergency Services (PESD) to assist in establishing a security camera program, which would be presented to Council in the future. Responding to Vice Mayor Herms, City Manager Rambosk said Natural Resources Manager Jon Staiger, SWS and Del Rey Marine had advised him a \$1,000 refund would be forthcoming due to billing for an incorrect boom. Mayor MacKenzie said the Red Ribbon (anti-drug) Coalition had requested permission to place bows on Fifth Avenue South and Third Street South from October 19-27, 2001, and she suggested that the bows be placed on the streetlights. She noted the committee members would remove the bows.

PUBLIC COMMENT.....
None.

ADJOURN
7:08 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Annette Thompson, Recording Specialist

Minutes approved: _____