



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Workshop Meeting – November 5, 2001 8:30 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALL ITEM 1

Present:

Bonnie R. MacKenzie, Mayor
Joseph Herms, Vice Mayor

Council Members:

Gary Galleberg
William MacIlvaine
Fred Tarrant
Penny Taylor
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Beverly Grady, City Attorney
Tara Norman, City Clerk
Ron Lee, Planning Director
William Harrison, Asst. City Manager
George Archibald, Traffic Engineer
Bill Overstreet, Building Official
Virginia Neet, Deputy City Clerk
Dr. Jon Staiger, Natural Resource Manager
Bob Devlin, FEMA Coordinator
Jessica Rosenberg, Recording Specialist
Karen Kateley, Administrative Specialist

James Dean
Mike Pagliccia
Clark Russell
Falconer Jones
Charles Morel
Bob Porter
Bill Varian
Dawn Jantz
Georgia Mosier
Elaine Luckhart
Dianne Mayberry-Hatt

Media:

Denise Zoldan, Naples Daily News

Other interested citizens and visitors

SET AGENDA..... ITEM 2

City Manager Kevin Rambosk noted two items to be added to the agenda: Item 10, requesting an executive session be conducted during the November 7, 2001 Regular Meeting at 1:30 p.m. and Item 11, discussion of the proposed rock clean-up plan submitted by Collier County to the Florida Department of Environmental Protection as requested by Vice Mayor Herms.

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

..... ITEM 3

REQUEST FOR AN EXECUTIVE SESSION RELATING TO WILKINSON HOUSE LITIGATION (KEVIN A. DENTI AS TRUSTEE VS CITY OF NAPLES VS PAMELA

SIBCY, COLLIER COUNTY HISTORICAL SOCIETY, INC. AND KEVIN A. DENTI, TRUSTEE, COLLIER COUNTY CIRCUIT COURT CASE NO. 00-4591-CA-TB (8:34 a.m.) Attorney Bob Foster of Cummings and Lockwood requested, pursuant to Section 286.011 (8)(a), Florida Statutes, that the City Council conduct an executive or closed attorney/client session at 8:00 a.m. during the Monday, November 19, 2001 Meeting to discuss settlement negotiations and strategy related to litigation expenditures in reference to pending litigation (Kevin A. Denti as Trustee vs. City of Naples vs. Pamela Sibcy, Collier County Historical Society, Inc. and Kevin A. Denti, Trustee, Case No. 00-4591-CA-TB, filed in the Circuit Court for the Twentieth Judicial Circuit, Collier County). The following persons may or will be present: Mayor Bonnie R. MacKenzie; Vice Mayor Joseph Herms; Council Members Gary Galleberg, William MacIlvaine, Fred Tarrant, Penny Taylor, and Tamela Wiseman; City Manager Kevin Rambosk; Attorney Lawrence A. Farese; Attorney Jason Korn and a certified court reporter. The estimated duration of the attorney/client session is one hour.

Council Member Taylor, however, requested an alternative date given the anticipated extent of November 19 workshop agenda. However, after further discussion, Mayor MacKenzie indicated that the Executive Session would be held on November 19 as requested.

MOTION by Herms to APPROVE EXECUTIVE SESSION ON NOVEMBER 19, 8:00 A.M., RELATING TO THE WILKINSON HOUSE LITIGATION: seconded by MacKenzie and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

It is noted for the record that in later discussion, Council determined that it was necessary to hold a Special Meeting in order to conduct an Executive Session. See Page 11.

.....**ITEM 4 DISCUSSION REGARDING A REQUEST TO ESTABLISH A PEDICAB SERVICE WITHIN THE CITY** (8:39 a.m.) City Manager Rambosk informed Council that Michael Pagliccia of Sunset Pedicab had requested reconsideration of a franchise previously denied. However, Mr. Rambosk recommended that the petitioner present an overview to determine Council's views prior to preparation of the franchise agreement.

Michael Pagliccia expressed his anticipation for reconsideration and played a video, a copy of which is contained in the file for this meeting in the City Clerk's Office. He reviewed his personal background, noting ten years in law enforcement, and assured Council that Sunset Pedicab would not threaten public safety and would be operated as a legitimate business. He further indicated that he would obtain a \$1-million insurance policy, which would indemnify the City of Naples. He informed Council that he would operate only one pedicab and requested that his proposal be considered at least on a trial basis. Mr. Pagliccia also took the position that a pedicab would alleviate downtown transportation problems by providing another conveyance for the elderly, and stressed that this service was not necessarily intended for tourists.

Council Member Tarrant inquired about the months of operation and whether advertising space on the pedicabs would be considered. Mr. Pagliccia said he proposed to operate year round and that advertising was indeed another facet of business to be considered.

Mayor MacKenzie noted her concern about traffic congestion, especially along Gulf Shore Boulevard, and said that it was her understanding that the Third Street and Fifth Avenue Associations were planning to implement some type of surrey transportation. Mr. Pagliccia said that while he is licensed to operate outside the city limits, he was advised to first seek City

Council approval for in-city operations and that he was ascertaining applicable restrictions. Mayor MacKenzie however reiterated her concerns and therefore indicated a lack of support for the concept.

In response to Council Member Tarrant, Mr. Pagliccia said that charges are assessed per block, per minute and per tip, but that persons on financial assistance would not be expected to pay. He also pointed out that pedicabs are not as slow as they appear and that speeds of 25 miles per hour could be reached. He estimated cab width to be 4 ½ to 5 feet and noted that the dimensions were submitted in his plan, a copy of which is contained in the file for this meeting in the City Clerk's Office. He also assured Council that the pedicab would flow with traffic, that he would pay for available parking and also indicate safe places for passengers to embark and disembark. Mr. Pagliccia further explained that the anticipated route would be within a radius of one mile from Fifth Avenue, that a visible phone number would be on the pedicab and that he would also have access to a mobile phone.

While commending Mr. Pagliccia's initiative, Council Member MacIlvaine nevertheless said that he concurred with Mayor MacKenzie regarding traffic and safety issues. Council Member Taylor said that although safety issues were a concern, she had been persuaded by Mr. Pagliccia's law enforcement experience as well as his presentation. She said she supported one pedicab on a trial basis, noting the advisability of making Naples more pedestrian friendly.

Vice Mayor Herms said that while parking would not present a problem, in his experience, pedicabs do however impede traffic. Although he said he would not support a franchise, he would consider a three-month trial basis, noting that this type of transportation would assist those who have difficulty walking greater distances. Council Member Tarrant indicated his support and concurred that with one unit, impediment of traffic would not be a serious problem. City Manager Rambosk clarified for Mayor MacKenzie that the code does allow for a pedicab franchise, limiting simultaneous operation of two units, and that other requests for franchises could be considered. Noting that most companies operate multiple vehicles which are leased daily, Vice Mayor Herms suggested considering a franchise that requires the owner to be the operator. Council Member Galleberg stated his opposition to pedicabs. Council Member Wiseman stated that even though she was not convinced that a franchise should be issued, she would support one pedicab on a trial basis.

Mr. Pagliccia clarified that he would be considering adding units which would require additional operators, but that he would also be contributing to the community and would adhere to the rules and regulations to ensure a successful operation.

City Manager Rambosk noted that he would consult with the City Attorney with reference to franchise requirements and alternatives, although a short-term franchise might be necessary in order to allow specific routes and traffic safety to be addressed. Council Member Tarrant suggested limiting the number of pedicabs within the City. Mayor MacKenzie stated that she did not consider this a possibility because should Council approve Mr. Pagliccia's request, any operator of a legitimate business would be allowed. Council Member Wiseman equated a pedicab operation to the horse and carriage operators which she said due to economic reality had not proliferated.

MOTION by Taylor to DIRECT CITY MANAGER TO PRESENT TO COUNCIL AN AGREEMENT WITH SUNSET PEDICAB FOR A THREE MONTH TRIAL FOR ONE PEDICAB; seconded by Herms and carried 4-3, all

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

Prior to the vote, Council Member Wiseman said that she considered it inappropriate for Council to continue to use the terminology of directing staff when the direction was being given to the City Manager. Therefore, the motion maker revised the motion to indicate that the direction was being given to the City Manager.

.....**ITEM 5**
DISCUSSION REGARDING A REQUEST TO ELIMINATE A CODE ENFORCEMENT LIEN ON PROPERTY LOCATED AT 620 SANDPIPER STREET (Requested by City Manager) (9:13 a.m.) It was determined that this item would be discussed at a future workshop. Falconer Jones, petitioner, indicated his concurrence.

.....**ITEM 8**
REVIEW OF ITEMS ON THE 11/7/01 REGULAR MEETING AGENDA (9:18 a.m.)
Item 8-b (5 thru 11) (special events) Mayor MacKenzie said that there were several requests to be added. **Item 22 (landscape maintenance at the Estuary)** This was added at the request of the City Attorney. **Item 23 (executive session for Warm Weather Investments)** This was added at the request of the City Attorney. **Item 17 (stormwater services)** City Manager Rambosk requested that this item be withdrawn. **Item 18 (Drainage Basis VI construction)** City Manager Rambosk requested that this item be withdrawn. **Item 3 (proclamation for U.S. Marines)** This was added by Mayor MacKenzie. **Item 8-d (tree trimming)** City Manager Rambosk informed Council that the contracted price was unchanged. **Item 8-c (Fourth of July Festival)** City Manager Rambosk said that he would provide the name of the fireworks company selected. **Item 14 (contract amendment Golden Gate well field)** City Manager Rambosk confirmed that staff would present an overview. **Item 15 (Contract amendment for Port Royal Water Tank Site)** Council Member Tarrant requested a detailed project background, but City Manager Rambosk said he would verify availability of this material at this time since the matter may proceed to litigation. Mr. Rambosk confirmed for Vice Mayor Herms that Hole Montes & Associates was project engineer.

Recess: 9:23 a.m. to 9:36 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

.....**ITEM 9**
REVIEW PROPOSED LEGISLATION THAT WOULD ESTABLISH REGULATIONS REGARDING THE CONDITION AND MAINTENANCE OF ALL RESIDENTIAL, COMMERCIAL AND VACANT PROPERTY, INCLUDING CONSTRUCTION SITES (See related items on 11/7/01 Regular Meeting Agenda) (9:36 a.m.) City Manager Rambosk informed Council that staff would be meeting with the building community the following day, and that changes would be presented to Council during the November 7 Regular Meeting. Mayor MacKenzie noted that for the benefit of the public, only changes would be presented during the regular meeting, and related that a statement had been received from Charles Morel. (A copy of this statement is contained in the file for this meeting in the City Clerk's Office.)

Traffic Engineer George Archibald gave a brief review of new verbiage in Section 62-94 regarding parking: 1) Designated street parking spaces apply primarily to the commercial areas; 2) public right-of-way parking for special occurrences requires a permit; and 3) inclusion of standard conditions: authority for property owners to approve parking on their right-of-way greenscape for up to 12 hours, and prohibition of permanent parking in public rights-of-way. He also cited Resolutions 99-8455 and 01-9256 which provide conditions for safety and aesthetics and apply to various activities that require street parking. Mr. Archibald pointed out that frequency was limited to 12 occasions within a calendar year, but he requested that Council also

consider establishing number of permitted occasions per week. Mr. Archibald also stated that this code should stipulate how it would interface with construction or remodeling activity. He pointed out that 12-hour street parking was permitted if 16 feet of clear roadway was present and property owners granted permission. The permitted short-term parking which primarily addresses lawn servicing, allows parking on the street for two hours with a clear roadway of 12 feet and with the approval of the property owner for frontage parking, Mr. Archibald said, and he explained that the City and the Police Department have the authority to require different controls for special situations.

Vice Mayor Herms inquired about applicability to churches using rights-of-way for overflow parking on Sundays, and Mr. Archibald clarified that the Council has authority concerning special events and church activities and their approval would supercede the code requirement. He noted that churches should however attempt to obtain property owner approval and to also request that Council waive the requirement.

City Manager Rambosk requested that a policy change be considered regarding unlimited right-of-way parking for continuous use, and notification to residents and associations advising them of the change and the process for exemption. In response to Council Member Wiseman, Mr. Rambosk said that the verbiage in Section 62-94 regarding property that abuts a right-of-way would be changed to specify the timeframe involved. Vice Mayor Herms and Council Member Wiseman noted that Lake Park residents had issues with right-of-way parking. Traffic Engineer Archibald said that in each case there is a determination of vested rights for necessary parking, but they would be expected to apply for a right-of-way permit for continuous use. This would allow the City to improve rights-of-way when necessary, he said.

Council Member Galleberg noted that although he supported the objective of the amendment, he questioned how it would be commonly understood or enforced. He also predicted that parking problems would not be alleviated because vehicles could be rotated. Mr. Archibald said that possible enforcement issues would be reviewed because implementation, public notification and special signage would be required, especially in the Gulf Shore Boulevard area. He further stated that the term infrequent should be clearly defined so that compliance is easily determined and an enforcement process developed. He noted that currently the code allows designation of a no parking zone for particular properties until such time as problems are corrected. Council Member Galleberg urged that regulations favorably consider the property owner when the right-of-way abuts a property, is landscaped, and parking by the owner and immediate family is not obstructing traffic. Parking should be prohibited except in designated areas and understandable conditions set forth for the issuing of permits, he concluded.

Council Member Wiseman cited what she described as inconsistencies in Section 62-94 wherein a property owner can grant permission to park but initially has no vested right. Mr. Archibald explained that this does not issue a right but, instead, a permissive use and should remain so since it may be necessary for the City to effect future improvements. In response to Council Member Galleberg, Mr. Archibald noted that the aforementioned existing approved policies clearly articulate control of rights-of-way, although Council direction would be anticipated regarding some type of permitting process. Council Member Taylor and Council Member Galleberg concurred that a fee should not be attached to permitting because of a possible hardship on residents, and that proof of ownership should suffice.

Vice Mayor Herms said that the concept being discussed would have an immense impact because in the past parking areas were not required for non-conforming buildings. City Manager Rambosk also cautioned that while he did not recommend that rights-of-way be used for regular parking unless permitted, this should not become a method for permanent parking.

Building Official Bill Overstreet stated that there were few significant changes in the construction portion of the ordinance, with the exception of construction site fencing. FEMA Coordinator Bob Devlin indicated that provisions had been simplified so that contractors would know what was expected, particularly in determining which project required a fence. He noted that the issue of water runoff had also been addressed to ensure that the contractor would contain water on-site or permit runoff onto the roadway or into a catch basin.

Council Member Taylor said that while she supported the amendment, owners of smaller properties were concerned about unnecessary expense and recommended a provision wherein the contractor could receive a waiver upon concurrence from adjacent property owners that a fence was unnecessary. Council Member Wiseman pointed out that the building official currently has the authority to waive this requirement. Building Official Overstreet explained that a waiver would be considered if a site plan was presented and there were no objections from the neighbors. He further clarified that it would be the contractor's responsibility to create a plan acceptable for the community. He informed Council that fence prices varied from \$2.00 - \$8.00 per foot and that some contractors may reuse fencing. Council Member Taylor, however, noted that for owners of smaller properties, such as those in Lake Park, the additional cost of fencing could be a hardship. She said that she would prefer that the contractor procure written releases from the neighborhood instead of it being discretionary at the City level. Mr. Devlin confirmed that this could be done.

In response to Vice Mayor Herms, Mr. Devlin also explained that the \$2.00 fencing does not contain fabric but would include the installation and teardown, and this is considered unfeasible in some neighborhoods. Mr. Devlin also pointed out that there was generally less construction in lower income areas and therefore fewer construction-related complaints. Building Official Overstreet noted that most complaints concern debris and soil spilling over onto surrounding properties and that an erosion berm could be required in addition to fencing. City Manager Rambosk also said that complaints relative to larger sites center most frequently on haphazardly placed construction equipment and materials. Council Member Galleberg called for further definition of demolition and remodeling within the proposed ordinance, Council Member Tarrant concurred, stating that the focus should be on protecting surrounding properties from waste materials and water runoff.

Responding to Mayor MacKenzie, Mr. Overstreet said that the fine for a violation is \$50.00 per offense and increases up to \$250 with repeat violations. Council was also informed that final inspections can in fact be accomplished when violations exist, but fines must be paid before a Certificate of Occupancy is issued. This is because the Building Department considers the project to have been abandoned by the contractor who would also not be issued another project permit. Mr. Overstreet stated that fines are immediately administered and repeat offenders are constantly observed, however, he said, the objective is not to penalize but to achieve compliance. Regarding limitation of construction activities, Mr. Overstreet noted that the pile driving hours could be shortened to coincide with permitted construction hours (7:00 a.m. until 5:00 p.m.) and eliminated altogether during certain seasons.

In response to Vice Mayor Herms, Mr. Devlin reported that after meeting with various pool contractors, tanker trucks for water discharge had been determined unfeasible and clean-water runoff onto streets would be allowed. Water will be contained onsite when possible or discharged into stormwater systems when a silt fence is used as part of the filtering process, he said, and the contractors would be responsible for removing any waste. Mr. Overstreet said that the Surface Water Drainage Plan was intended to primarily protect neighboring properties, but clean water draining onto rights-of-way would not be prohibited. In further discussion, Mr. Overstreet explained that the project engineer and architect would be required to determine the type of water retention to be implemented and to plan for runoff to be directed onto the street; this is currently required for commercial buildings, he added. He also noted that during the plan review process, City engineers would be consulted for opinions and calculations. Traffic Engineer George Archibald also stated that, on average, a grading plan specifying a surrounding one-foot berm would be sufficient for most sites and that in most cases the initial grading plan complies with the ordinance so that a final plan for the reconstruction of water management is not necessary. Council Member Taylor stressed the importance of implementing this section since residents must now pursue civil damages.

Council Member Taylor also commented on Section 106.260(49)(c) regarding demolition of residential as well as commercial buildings. However, Mr. Overstreet pointed out that guidelines for residential properties are contained within FEMA regulations. City Attorney Grady cautioned that if there was any applicability of this section to residential properties, it should be so stipulated. In response to Vice Mayor Herms, Mr. Overstreet said that bond cost for demolition of a commercial building is ten percent of the value of the work.

In response to Council Member Galleberg, Mr. Archibald said that the concept of Section 106-261(b)(3) was to permit full use of the frontage, both on-site and off-site, and this would be done with the issuance of a right-of-way permit. He further explained that should there be inadequate frontage, the burden is then placed on the contractor to approach adjacent property owners or, failing that, the situation could be considered a hardship case and qualify for a right-of-way permit. Mr. Archibald noted however that incidents of this type are expected to be infrequent, and the City reserves the final decision. He also specified certain controls which should apply such as duration, safety, and aesthetics. Council Member Galleberg cautioned that this process may prove cumbersome and noted the absence of a reference to policies and rules in the ordinance. Mr. Archibald explained that the right-of-way process was currently very informal, but a more formal draft of the permitting process that pertains to public control and the City's right to control is in process.

Council Member Wiseman took the position that it is unnecessary to approach surrounding property owners because the contractor is required to present a parking plan for the Building Department to approve or disapprove, but Mr. Overstreet noted that while the parking could be left to the discretion of the building official, this was an attempt to force contractors to contact and seek approvals within the community. Ms. Wiseman, however, pointed out that the project could then be stopped should other property owners disapprove parking on their frontages. Council Member Galleberg stressed that the approval process be handled carefully and professionally, but also be enforceable. Each case that exceeds parking availability should be reviewed before approval is granted, he added.

Council Member Taylor cited fencing requirements as also being a source of objection by adjacent residents or prohibitive in situations where the contractor asserts a hardship case

although the Building Department nevertheless requires fencing. Council Member Wiseman said that residents should not be pitted against each other. City Manager Rambosk pointed out that the contractor should, however, submit a viable parking plan that would not disrupt the surrounding area, and Council Member Galleberg expressed the belief that communities would respect viable efforts to contain disturbance and rational people would not object to construction. A contractor could make accommodations with the owner of a nearby vacant lot for parking, he added. City Manager Rambosk pointed out that the regulations were intended to address parking problems caused by multiple projects but that he was however hesitant to authorize parking on landscaped rights-of-way, Council Member Galleberg said that occasionally the roadway must be used and this should be considered. Council Member Wiseman said that when a stabilized area is required, it becomes a recognized parking surface and would alleviate some of the problem.

Mr. Rambosk predicted that some contractors would, and some would not, be willing to submit to some of the organizational requests, but Council Member Galleberg urged that a balance be reached between the need for controls and the economics involved. Council Member Tarrant predicted that more bureaucracy and regulations would engender more enforcement demands.

Public Comment: (11:02 a.m.) **Bill Varian, 1400 Blue Point Avenue**, a general contractor specializing in remodeling and a member of the Board of Directors of the Collier Building Industry Association (CBIA), expressed support for the proposed ordinance but requested a clearer definition of demolition. He also suggested that cleanup be required on a regular basis rather than on designated days and requested that implementation take into consideration sufficient time for contractors to process costs into projects that have not been permitted. This would require 30-45 days to bid and apply for a permit, he said. In response to Vice Mayor Herms, Mr. Varian said the water retention and fencing costs be discussed further, and although it would not impact some of his remodeling projects, it should be viewed from an OSHA safety standpoint. In response to Mayor MacKenzie, Mr. Varian stated that limiting the weekday cutoff time to 4:00 p.m. for pile driving should not present a problem. **Dawn Jantz, 3620 Tamiami Trail North**, Naples Area Chamber of Commerce, requested clarification on various definitions and cautioned that since the South Florida environment contributes to the deterioration of buildings, the ordinance should not discriminate against older buildings that have been well maintained. Regarding accessory buildings and signage, she also requested clearer definitions of requirements rather than basing it on a building inspector's determination. Also, she requested a timeframe for enforcement of these issues. **Georgia Mosier, 1021 Spyglass Lane**, member of the Board of Directors of Port Royal Property Owners Association and Chairman of its Architectural Review Committee, recommended that the new rules regarding parking apply only to construction activities. She also requested clarification of the connection between final electrical inspection and fence removal, noting that vehicles are often present onsite after the issuance of a Certificate of Occupancy due to warranty work. Mr. Overstreet clarified, however, that 90% of the work is completed at that point and that the building is considered safe pursuant to the final electrical inspection, although Temporary Certificates of Occupancy are occasionally issued to assist owners. Ms. Mosier then recommended that the six-foot height requirement for the rear setback area on waterfront properties be lowered to three-feet and pointed out that major remodeling projects can be as disruptive as razing a building. She also said that in Section 62.94, loading and unloading, are addressed only by implication and inquired about the role of the Police Department in enforcement, particularly with parking violations and coordination with the building official. Mr. Overstreet said that his staff was working with the Police Department to formulate procedures. **Elaine Luckhart, 3500 Crayton Road**, representing the Presidents

Council, said that neighborhoods were mainly concerned with the construction site aspect of the policy although they felt that the water runoff and drainage issues had been addressed. She said that construction parking poses the real problem and stated that minimum standards for the organization of a construction site require that the surrounding neighborhood not be severely impacted. She said that the special interests should be required to follow the rule of law just as residents are expected to do. Mrs. Luckhart pointed out that 95% of the Presidents Council members had endorsed the proposed ordinance under consideration and stressed that the ordinance would help neighborhoods restore their quality of life. She thanked the Council for their comments and suggestions and expressed the hope that the ordinance would come to fruition. **Diane Mayberry-Hatt, 470 Banyan Boulevard**, Coquina Sands Homeowners Association, concurred with the prior speaker and expressed confidence that the Council would enact an ordinance that would respect the rights of the citizens and protect the City.

Mayor MacKenzie expressed appreciation to the various groups that had participated in the initial ordinance development but noted that some alterations were necessary; therefore, she requested that City Manager Rambosk address various concerns during the November 7 Regular Meeting. Mr. Rambosk also noted that although a city-wide parking process had not been mandated, appropriate right-of-way parking is of significant interest to the City, particularly for new construction sites and commercial/condominium areas. He said staff would attempt to define the present issues in this regard, but recommended proceeding with the ordinance.

In response to Vice Mayor Herms, Mr. Overstreet clarified that a gate in the fence of a construction site would be permissible so long as the entire lot could be closed and good judgment were applied regarding placement and width. City Manager Rambosk then also assured Council Member Galleberg that there would be clear definitions of violation for the issuance of citations on construction parking, but that this would not stop construction. Vice Mayor Herms said he was concerned with passing the regulation on parking that is not actually a part of the construction management plan, since it would place churches and others in a position of having to seek parking approvals from the City. Council Member Galleberg said that there should be a reasonable way to separate these aspects by first allowing no parking except in designated areas and then designating areas for church parking and other events. Council Member Wiseman, however, indicated that she preferred that there not be excessive no-parking signage. Council Member Galleberg said that it would be reasonable for this to be incorporated into the ordinance to avoid continuous issuance of permits. Mr. Rambosk assured him that this would be included.

Citing a concern regarding berms and stemwall construction, particularly in the Old Naples area, Council Member Wiseman recommended that the ground level be modified to conform to existing residences rather than using large swales to deal with runoff from increased height of new construction. Vice Mayor Herms further explained that more stem wall construction should be employed so that the actual elevation of the soil could be two to three feet lower and that FEMA requirements could still be met. Mr. Overstreet concurred that this could be done.

.....**ITEM 6**
DISCUSSION OF PROPOSED POLICY GUIDELINES FOR PRESENTATIONS OF PETITIONS TO THE CITY COUNCIL (Requested by Mayor MacKenzie) (11:39 a.m.)

Mayor MacKenzie clarified her intention that petitioners have 20 minutes for presentations, excluding any Council questions which, she said, could however not be curtailed during presentations. Council Member Galleberg said that a written petition policy would nevertheless make individuals feel obligated to adhere. Mayor MacKenzie also said that she had received

written comments from the City Manager, and suggested that the City Clerk be included in notification from the Planning Director of requests for additional time or special needs for exhibits.

City Attorney Grady noted that changes made to Page 3 had however not changed the connotation. She also cited the procedures used by Collier County, a copy of which is contained in the file for this meeting in the City Clerk's Office. In a discussion of whether the staff or petitioner should make the initial presentation, Mayor MacKenzie noted that when petitioners make initial presentations, the staff then points out difficulties or nuances of the petition. Council Member Wiseman noted, however, that if staff were heard before the petitioner, the petitioner could then focus on areas of disagreement, thus avoiding possible redundancy.

Citing a Supreme Court decision, City Attorney Grady said that over time rezonings have been considered quasi-judicial, and therefore the applicant has the burden of showing compliance with applicable regulations, followed by the burden shifting to the local governing body to establish why the petition does not comply. She said that while more and more governments are providing for the applicant to make the first presentation, there is no requirement to do so, and some communities find that the staff gives them a better foundation of issues. Mayor MacKenzie said she could concur with either order.

City Manager Rambosk pointed out that at one point in time staff had been perceived as supporting projects as opposed to issuing an independent appraisal. He said that as long as this element is considered, the order of presentation could be established either way. Vice Mayor Herms requested clarification of the provision that disallowed direct questions between witnesses. Mayor MacKenzie said that this was intended to avoid conflicts between a petitioner and opposing parties, but clarified that parties could question a petitioner through the Chair. Mayor MacKenzie also said that the guidelines would be acted upon at the November 7 Regular Meeting. Vice Mayor Herms asked how a situation would be handled wherein the staff requested more than 20 minutes. Mayor MacKenzie said that the staff has the same opportunity as the petitioner for additional time.

In response to Council Member Wiseman, City Attorney Grady indicated that a resolution would be required for adoption of the procedures and that language in the procedures would be formalized. Mayor MacKenzie said that petitioners should receive a copy of the procedures at the time they apply for various land use approvals.

.....**ITEM 10**
REQUEST FOR AN EXECUTIVE SESSION RELATED TO LITIGATION (WARM WEATHER INVESTMENTS, INC., AND BAYSHORE VILLAS, INC. v. CITY OF NAPLES, COLLIER COUNTY CIRCUIT COURT CASE NO. 00-1561-CA-HDH

City Attorney Grady requested, pursuant to Section 286.011(8)(8) Florida Statutes, that the City Council conduct an executive or closed attorney/client session during the Regular Meeting of November 7, 2001 to discuss settlement negotiations and the strategy related to litigation expenditures with reference to pending litigation: Warm Weather Investments, Inc., and Bayshore Villas, Inc., vs. City of Naples, Case No. 001561CAHDH filed in Circuit Court of the 20th Judicial Circuit of Collier County. The following persons may or will be present: Mayor Bonnie R. MacKenzie, Vice Mayor Joseph Herms, Council Members Gary Galleberg, William MacIlvaine, Fred Tarrant, Penny Taylor, and Tamela Wiseman, City Manager Kevin Rambosk, City Attorney Beverly Grady and Attorney Fred Hart with Roetzel & Andress, LPA, and

certified court reporter. City Attorney Grady requested that a time of 1:30 p.m. be set for commencement of this session.

MOTION by Herms to PLACE EXECUTIVE OR CLOSED ATTORNEY/CLIENT SESSION ON THE AGENDA AT 1:30 P.M., WEDNESDAY NOVEMBER 7, 2001 REGULAR MEETING; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

In response to Mayor MacKenzie, City Attorney Grady stated that this item must then be officially added at the Wednesday meeting since it had not been advertised as part of the agenda.

.....**ITEM 11**
DISCUSSION OF PROPOSED ROCK CLEANUP PLAN SUBMITTED BY COLLIER COUNTY TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

Vice Mayor Herms said that in the Collier County plan submitted for beach restoration, the offshore sampling area should be redefined. He suggested 5-10 feet to determine the extent of the rock problem. Regarding screening, he noted that due to intense storms, rocks are exposed in trough-like areas as well as during low tide on the North Park Shore beach. Also, sea oats in the renourished area have eroded extensively and this area should also be considered for screening, he said. Mr. Herms noted that the State is willing and interested in solving this problem and reported that the State is consulting with its engineers for solutions which include requiring the County to manually remove rock. He also said that the State would consider any ideas presented and noted that City beaches are different than North Naples beaches that have more rock volume.

Natural Resource Manager Jon Staiger reported that Collier County had entered into a consent order requested by the State, and a rock removal plan had been developed that includes additional sampling, visually and mechanically, both on-shore and off-shore. He also noted County concerns that excavation would disturb beachfront residents and noted one resident who is vehemently opposed to any additional excavation. In response to Vice Mayor Herms, Dr. Staiger said that the sampling area should be approximately 400 feet along the beach and at 50-foot intervals from the shore. Mayor MacKenzie said that she supported Mr. Herms' request of a redefined sampling area and review of the sea oat dunes, and Council Member Taylor concurred. Dr. Staiger said that the County is more interested in considering strategies which had been dismissed in the past, and Mayor MacKenzie stated the required work should nevertheless be conducted in the most cost effective and least intrusive manner possible. She therefore suggested that Dr. Staiger compose a letter for signature by the City Manager, Mayor and Natural Resource Manager incorporating the various concerns just expressed. Dr. Staiger said that he would collaborate with Mr. Herms to ensure that the letter states what is necessary. He also related that a letter from the County to the City Manager indicated preference for the routes that should be taken by sand hauling trucks and noted that he would answer the letter and present the County's formal request to Council. He said that with a fairly formal bidding process by the County for the purchase of sand and hauling, there could be a significant reimbursement from FEMA for damage and repair.

.....**ITEM 7**
BRIEFING BY CITY MANAGER

City Manager Rambosk said that he had been informed that it may be necessary for another notice for an executive session previously read under Item 3.

Recess: 12:04 p.m. – 1:32 p.m. It is noted for the record that Vice Mayor Herms and Council Member Galleberg were absent when the meeting reconvened.

Upon reconvening, Mr. Rambosk advised that in order to conduct an Executive Session at 8:00 on November 19, 2001, it would be necessary to call a Special Meeting. As such, Attorney Bob Foster of Cummings and Lockwood requested, pursuant to Section 286.011 (8)(a), Florida Statutes, that the City Council conduct an executive or closed, attorney/client, session at 8:00 a.m. during the Special Meeting of November 19, 2001 to discuss settlement negotiations and strategy related to litigation expenditures in reference to pending litigation (Kevin A. Denti as Trustee vs. City of Naples vs. Pamela Sibcy, Collier County Historical Society, Inc., and Kevin A. Denti, Trustee, Case No. 00-4591-CA-TB, filed in the Circuit Court for the Twentieth Judicial Circuit, Collier County). The following persons may or will be present: Mayor Bonnie MacKenzie; Vice Mayor Joseph Herms; Council Members Gary Galleberg, William MacIlvaine, Fred Tarrant, Penny Taylor, and Tamela Wiseman; City Manager Kevin Rambosk; Attorney Lawrence Farese; Attorney Jason Korn, and a certified court reporter. The estimated duration of the attorney/client session is one hour.

MOTION by Taylor to APPROVE EXECUTIVE SESSION ON NOVEMBER 19, 2001, 8:00 A.M., RELATING TO THE WILKINSON HOUSE LITIGATION: seconded by MacIlvaine and carried 5-0 (MacIlvaine-yes, Tarrant-yes, Wiseman-yes, MacKenzie-yes, Galleberg-absent, Herms-absent).

Recess in order to convene CRA meeting: It is noted for the record that all except Council Member Tarrant were present when this meeting reconvened at 4:30 p.m.

CORRESPONDENCE AND COMMUNICATION.....

None.

PUBLIC COMMENT.....

None

ADJOURN.....

4:32 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Eileen Debish, Recording Specialist

Minutes approved: 12/19/01