



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – October 17, 2001 – 9:00 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
Dan Mercer, Public Works Director
Sheldon Reed, Fire Commander
Jon Staiger, Natural Resources Manager
Lori Burke, Human Resources Director
Karen Kateley, Administrative Specialist

Lucille Ferguson
Russ Reddick
Henry Kennedy
Robert Iamurri
Willie Anthony
William Klohn
Diane Bond
Rev. Jay Kawolski
Mark Shapiro
Anthony Mansolillo

Other interested citizens and visitors

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

Rev. Jay Kawolski, First United Methodist Church

ANNOUNCEMENTS..... ITEM 3

Employee Recognition Awards – Employees attaining 5, 10, 15, 20, and 25 years of service
Recognition of Fire Commander Sheldon Reed upon retirement
Red Ribbon Week proclamation

SET AGENDA (add or remove items) ITEM 4

Add Item 11-b (10) – Coquina Sands Block Party

MOTION by Herms to ADD ITEM 11-b (10) TO THE AGENDA; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 23 – Award bid for stormwater improvements

MOTION by Herms to ADD ITEM 23 TO THE AGENDA; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes,

Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 24 – Special master for vested rights claims

MOTION by Taylor to ADD ITEM 24 TO THE AGENDA; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 25 – Naples Daily News request to amend 42-foot height restriction (Attachment 1) Council Member Wiseman questioned why the Naples Daily News had submitted its request in what she described as an unorthodox manner. Mayor MacKenzie said that while she intended to pose several procedural questions regarding this item, City Attorney Beverly Grady had recommended adding it to the agenda prior to discussion. Council Member Galleberg questioned why the item was being added as an emergency when the Naples Daily News had been planning this expansion for the past two years.

MOTION by Herms to ADD ITEM 25 TO THE AGENDA; seconded by Taylor. This motion failed 3-4, all members present and voting (Tarrant-yes, Galleberg-no, Herms-yes, Wiseman-no, Taylor-yes, MacIlvaine-no, MacKenzie-no).

Council Member Tarrant said the City should consider this request, noting that the Naples Daily News employs approximately 500 people. Council Member Taylor also pointed out that there is a deadline to place this issue on the ballot, but that it first requires Planning Advisory Board (PAB) review. In addition, she described the newspaper as a good neighbor, and recommended that Council extend the requested courtesy. Council Member MacIlvaine however said that an initiative to enact a change in the City Charter should be presented to the citizens.

MOTION by Galleberg to SET AGENDA (CONTINUING ITEM 7 TO 11/19/01, CONTINUING ITEM 8 TO 11/7/01, AND WITHDRAWING ITEMS 11-i, 16, 18, 19 and 21(6)); seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

PUBLIC COMMENT (9:26 a.m.).....ITEM 5
None.

RESOLUTION 01-9352ITEM 6
A RESOLUTION DETERMINING PETITION 01-N1 FOR EXPANSION OF A NONCONFORMITY AT 800 SOUTH GOLF DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:26 a.m.). This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie, Galleberg/visited the site; Herms, MacIlvaine, Taylor, Wiseman, and Tarrant/no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Petitioner's attorney Mark Shapiro stated that although the petition would not increase the number of units, it would add square footage to the bathrooms. Attorney Shapiro further explained that the petitioner discovered only after receiving a demolition permit and beginning work that the finished project would not comply with the applicable zoning ordinances; the 20 residential units are on lots zoned R3-12 multifamily, while the parking lot, pool and accessory building are on lots zoned R1-7.5 single family residential. Although the original plans called for encroachment of several feet into the single-family lots, this has since been amended, he said. Christian Andrea, landscape architect with Architectural Land Design, displayed the landscape plan, a copy of which is contained in the file for this meeting in the City Clerk's office. He indicated that live oak trees would be positioned around the north and south property lines, as

well as guava, palms, and hedges along the south property line to provide adequate buffering and privacy for the pool area. While some cabbage palms will be retained on the site, exotics will be replaced with additional live oaks. In summary, Mr. Andrea explained variations in height between trees, shrubs and ground cover materials. He also noted that screening would provide sufficient space for utility meters to be read. In addition, Mr. Andrea said he would fill in the voids in the areca palm hedgerow on the west side of the property line, and would add a concrete privacy wall and a small layer of shrubbery for softening. In response to Council Member Galleberg, Mr. Andrea said the pool would remain unchanged but that he would extend the fence line to allow more landscaping into the pool deck area.

Petitioner's agent Anthony Mansolillo stated that based on Building Department review several revisions to the plans had been made. He further explained that after the demolition permit had been issued and petitioner had applied for a mortgage, the Building Department discovered a conflict with zoning ordinances; therefore, construction was halted. The petitioner then secured the building and redesigned the west side to eliminate encroachment from the expansion. City Manager Rambosk pointed out that the City staff may not have known about the construction plans when the demolition permit was issued. Mr. Mansolillo then said that the expansion is to increase the size of the units to accommodate safety and other features such as full sprinklers, fire separation walls, electrical upgrades, master bathrooms, and laundry facilities. In response to Vice Mayor Herms, Mr. Mansolillo said the square footage would increase from 1015 to 1200. He also confirmed that the trash containers would abut another parking lot.

Planning Director Ron Lee reported that both the staff and PAB have found that the conditions for a non-conformity have been met and recommended approval with conditions. In response to Council Member MacIlvaine, Mr. Lee said staff had sent 45 letters to neighboring property owners. Mr. Lee also noted that due to neighborhood concern regarding landscaping and privacy, the petitioner had agreed to install a wall along the west side of the property line; although one neighbor had also registered concern regarding parking lot landscaping, the new plan provides appropriate screening. In response to Council, he then explained that the western half of the property is zoned and designated in the Comprehensive Plan as single family, although the entire property should more appropriately be rezoned to R3-12 multifamily and should be designated in the Comprehensive Plan as Medium Density Residential. However, since the complex is more than 10 units per acre, this would also require a Large Scale Comprehensive Plan amendment, and both of the current year cycles had already been exhausted, Planning Director Lee added. He however emphasized that rezoning would not increase the permitted density because the number of units already exceeds the maximum allowed. Council Member Galleberg pointed out that the rezoning would result in 22 per cent lot coverage, while the Code allows 25 per cent, and therefore questioned whether this would in fact ensure there would be no expansions in the portion zoned R1-7.5. Mr. Lee confirmed that petitioner could technically be allowed another three per cent lot coverage, or approximately 2,000 square feet. Mr. Galleberg suggested approving this agenda item but later denying the rezone in order to prevent future expansion on that portion. Vice Mayor Herms recommend that Council also consider potential impacts of a rezone upon the neighborhood, noting that the petitioner could build larger units close to the residential properties on the west side. Mr. Lee said that Council approval of this petition means it is recognizing this parcel as non-conforming, but added that the petitioner could continue to use this property as it exists. Council Member Tarrant said the petitioner would be expending significant funds to improve and upgrade an existing building while maintaining the same number of units, and that he would support the petition.

Public Comment: (9:55 a.m.) **Diane Bond, 78 Eighth Avenue North**, (who responded in the affirmative to an oath administered by City Clerk Tara Norman) voiced concern regarding the potential rezone of the single-family lot, and also urged placement of sufficient landscaping between the parking in the southerly area and the right-of-way.

Although voicing support for the plans to improve the property, Mayor MacKenzie called the safeguards proposed in the resolution insufficient to protect neighbors and suggested more dense landscape buffering. Council Member Galleberg voiced approval for the plan, noting that it would retain the existing building footprint while urging Council to be cognizant of the ramifications for the parcel currently zoned R1-7.5. As an alternative, Mr. Lee suggested rezoning to Planned Development (PD) to allow Council to establish standards for the entire parcel and designate the existing lot coverage as the maximum allowed. Council Member Galleberg concurred with this approach as better addressing neighbor concerns. Council and staff then discussed various possible amendments to the proposed resolution (see motion below) and City Attorney Beverly Grady stated that the petitioner would have to agree to amendments on the record and that the aforementioned landscape plans could be made a part of the resolution.

Vice Mayor Herms urged that the project be allowed to go forward in order to remove the blight from the neighborhood. Petitioner Mansolillo confirmed that construction is ready to begin and indicated that provisions of the condominium documents preclude future selling of lots. Mr. Mansolillo also explained that neighbors had indicated that they were satisfied with the amended landscape plans, and he affirmed his willingness to install a masonry wall along the west side of the property. Mr. Mansolillo also noted that in addition to delays for re-engineering, difficulties had been experienced with transference of bonds when the general contractor's business was sold; however, he said that Gulf Coast Construction is now the contractor of record and predicted project completion within one year.

In response to Council, Mr. Andrea explained that the parking area in the southwest corner of the property contains six oak trees and a double hedge of coco plum and ixora between it and the right-of-way. In addition, he said there would be cabbage, areca, and queen palms, and that the building would be densely landscaped far exceeding Code requirements. In response to Council Member Taylor, Planning Director Lee said in the past the City has required a minimum hedge height of four feet at the time of planting and six feet within one year. Mr. Andrea however cautioned that for safety a three to four foot hedge would not obscure visibility but should adequately screen vehicles in the parking area.

Public Comment: (10:23 a.m.) **Lucille Ferguson, 777 7th Avenue North** (who responded in the affirmative to an oath administered by City Clerk Tara Norman) requested further clarification of the walls to be installed and voiced concern regarding the condition of the existing areca palms. Mayor MacKenzie explained there would be a six-foot masonry wall along the side property and a three-foot masonry wall with 18 inches of wrought iron in the front yard. Planning Director Lee suggested adding a stipulation that the palm trees on the west side shall be properly maintained and that any dead trees be replaced within a specified time. Mr. Mansolillo concurred.

Council Member MacIlvaine indicated an abiding concern that the petition would require a Comprehensive Plan amendment to accommodate greater density. However, Vice Mayor Herms pointed out that retaining single-family zoning on one parcel would provide the most effective buffer. In response to Council Member Wiseman, Planning Director Lee confirmed that Council could approve the non-conformity petition and the petitioner could continue to use the property

as long as the parking lot on the west side is not expanded which could be so stipulated. Council Member Galleberg, however, noted that a future PD would afford added assurance that the land standing alone has no value as well as address all outstanding details. Vice Mayor Herms however maintained a PD can be amended, and that the petitioner had indicated no desire for a zoning change. Mr. Galleberg nevertheless pointed out that the petitioner could continue with the construction conditioned on filing for a PD at which time all neighbors' concerns could be fully addressed.

City Attorney Grady received confirmation of the identity of the site plan dated August 28, that parking would be eliminated from the single-family portion, and the location of the dumpster had been noted. She said that a non-conformity petition could be approved with no requirement to later amend the Comprehensive Plan or rezone, or the petitioner could be required to subsequently rezone to a PD consistent with the site plan being approved. It was the consensus of Council to retain the non-conforming status of the property. Council Member Tarrant proffered the motion that appears below; Mr. Mansolillo indicated acceptance of all features of the approval.

MOTION by Tarrant to APPROVE RESOLUTION 01-9352 AS AMENDED TO DELETE SECTION 2-6; REVISE SECTION 2-2 AS FOLLOWS: "THE LANDSCAPING SHALL BE INSTALLED PRIOR TO CERTIFICATE OF OCCUPANCY AND SHALL BE INSTALLED AND MAINTAINED IN COMPLIANCE WITH THE PLANTING PLANS SHEETS L1 THROUGH L3 AS PREPARED BY ARCHITECTURAL LAND DESIGN AND DATED 10/16/01, THAT ANY PALM TREES ON THE WEST SIDE OF THE PROPERTY SHALL BE PROPERLY MAINTAINED AND ANY LOST TREES SHALL BE REPLACED, AND THE HEDGE BETWEEN ON-SITE PARKING AREAS(INCLUDING THOSE ADJACENT TO THE ALLEY) AND THE STREET RIGHT-OF-WAY SHALL BE MAINTAINED AT A HEIGHT OF SIX (6) FEET WITHIN ONE YEAR FROM DATE OF INSTALLATION, EXCEPT FOR SIGHT VISIBILITY FOR TRAFFIC AS APPROVED BY THE CITY"; REVISE SECTION 2-3 AS FOLLOWS: "THE EXPANSION OF THE PARKING AREA ON THE SINGLE FAMILY ZONED PORTION OF THE PROPERTY IS DENIED; DELETE SECTIONS 2-5 AND 2-6; REVISE SECTION 2-7 AS FOLLOWS: "PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY, A MASONRY WALL OF SIX (6) FEET IN HEIGHT, WHERE PERMITTED BY CODE, SHALL BE CONSTRUCTED ALONG THE WEST PROPERTY LINE AS A BUFFER TO ADJACENT SINGLE FAMILY RESIDENCES, AND A THREE (3) FOOT MASONRY WALL WITH 18 INCHES OF WROUGHT IRON SHALL BE CONSTRUCTED WITHIN THE FRONT YARD SETBACK, AS DEPICTED ON THE SITE PLAN"; AND RENUMBER THE ABOVE SECTIONS AS NECESSARY TO ACCOMMODATE THE REVISIONS CITED. This motion was seconded by Herms and carried 6-1, all members present and voting (Wiseman-yes, MacIlvaine-no, Tarrant-yes, Galleberg-yes, Herms-yes, Taylor-yes, MacKenzie-yes).

Council Member MacIlvaine said this project would increase the density adjacent to a low-density residential area, and that it is not in the best interest of the City and its residents. Council Member Tarrant, however, said the petitioner proceeded with City-approved permits and that this project would greatly improve the property. Council Member Galleberg took the position that the project would in fact not increase density and that it would benefit the nearby residents; Vice

Mayor Herms concurred. Mayor MacKenzie expressed appreciation to Mr. Mansolillo for his efforts to resolve the concerns of neighbors.

Recess 10:47 a.m. to 11:03 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Taylor who returned during consideration of the Consent Agenda.

RESOLUTION (Continued).....ITEM 7
A RESOLUTION DETERMINING PETITION 01-AV1 FOR AN ALLEY VACATION AT 290 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; ACCEPTING AN EASEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

Public Comment: None. (11:03 a.m.)

MOTION by Herms to CONTINUE ITEM 7 TO THE NOVEMBER 19, 2001 REGULAR MEETING; *seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

ORDINANCE (First Reading) (Continued)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.

Public Comment: None. (11:04 a.m.)

MOTION by Herms to CONTINUE ITEM 8 TO THE NOVEMBER 7, 2001 REGULAR MEETING; *seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 11-a

July 24, 2001 Special and September 5, 2001 Regular Meeting minutes were approved. Council Member Galleberg noted scrivener's errors on Pages 11 and 20 in the September 5, 2001 Regular Meeting minutes.

COMMUNITY SERVICES..... ITEM 11-b

- 1) Eglise de Jesus Christ Full Gospel Church conference (River Park) – 10/19-10/21/01
- 2) City of Naples/Anchor Health/Harborside Healthcare/Lakeside Pavilion Seniors Day in the Park (Cambier Park) – 11/3/01
- 3) Beasley Broadcasting/ABA Entertainment fundraiser on behalf of local Amercian Red Cross (Cambier Park Bandshell) – 11/9/01
- 4) Restoration Church Thanksgiving Celebration (Cambier Park Bandshell) – 11/20/01
- 5) Naples Sail and Power Squadron Annual Christmas Boat Parade (Venetian Bay) – 12/6/01
- 6) Royal Brass Orchestra Concert Series (Cambier Park Bandshell) 1/6/02, 3/17/02, 4/14/02
- 7) Naples Art Association Annual National Art Festival (Cambier Park) – 2/22-2/24/02
- 8) Naples Daily News Jazz Band (Cambier Park Bandshell) – 3/8/02, 4/5/02, 4/26/02
- 9) National Multiple Sclerosis Society Annual Walk (Lowdermilk Park) – 3/17/02
- 10) Coquina Sands Homeowner Association Block Party – 11/3/01

RESOLUTION 01-9353ITEM 11-c

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND GREENHEART DURAWOODS IN THE AMOUNT OF \$79,988.84 FOR THE PURCHASE OF FURNISHING AND DELIVERING IPE/PAU LOPE TROPICAL HARDWOOD; AND PROVIDING AN EFFECTIVE DATE. Title not read.

CITY MANAGER ITEM 11-d

BUDGET AMENDMENT TO ADJUST FUNDS AVAILABLE IN FISCAL YEAR 2002 BUDGET. Council Member Taylor said she had requested more information about the requirement for sub-contractors to produce a certificate of workers' compensation. City Manager Rambosk said this is a statutory requirement and that staff would expect the construction manager to ensure that all subcontractors are fully compliant. Assistant City Manager William Harrison explained that the City requires its contractors to have insurance and, on jobs where it would be appropriate, performance bonds.

RESOLUTION 01-9354ITEM 11-e

A RESOLUTION APPROVING A SUPPLEMENTAL AGREEMENT TO THE CITY'S ANNUAL CONTRACT WITH E.B. SIMMONDS ELECTRICAL INC., IN THE AMOUNT NOT-TO-EXCEED \$18,000, FOR RELOCATION OF A TRAFFIC SIGNAL MAST ARM AND RE-WIRING AT THE INTERSECTION OF PARK SHORE DRIVE AND GULF SHORE BOULEVARD; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUPPLEMENTAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9355 ITEM 11-f

A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING AN INTERACTIVE VOICE RESPONSE SOFTWARE LICENSE AGREEMENT AND AN INTERACTIVE VOICE RESPONSE SYSTEM AND INSTALLATION AGREEMENT BETWEEN THE CITY OF NAPLES AND SELECTRON, INC. FOR INTERACTIVE VOICE RESPONSE SYSTEM, INCLUDING THE PURCHASE OF AN INTERFACE PROGRAM FROM H.T.E.; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn)ITEM 11-g

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND ASPLUNDH TREE EXPERT CO. TO FURNISH HARDWOOD TREE TRIMMING SERVICES FOR THE COMMUNITY SERVICES DEPARTMENT; AUTHORIZING THE

CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read. City Manager Rambosk stated that the City Attorney had found inconsistencies in the resolution, and is assisting staff with the corrections.

RESOLUTION 01-9356 ITEM 11-h
A RESOLUTION APPROVING A CONTRACT WITH AAA GENERATOR & PUMP, INC. TO PERFORM GENERATOR MAINTENANCE SERVICES IN AN AMOUNT NOT-TO-EXCEED \$20,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

(Withdrawn).....ITEM-i
REJECT ALL BIDS, WAIVE FURTHER COMPETITIVE BIDS AND APPROVE A CONTRACT FOR WIRELESS PHONE SERVICES \ VENDOR: AT&T WIRELESS SERVICES, INC., FT MYERS, FL, USING THE PRICES AND TERMS OF LEE COUNTY QUOTATION #Q-010294 \ ESTIMATED ANNUAL COST: \$53,600.00 \ FUNDING: DEPARTMENT'S COMMUNICATIONS ACCOUNT.

MOTION by Herms to APPROVE CONSENT AGENDA ITEMS 11-a (AS AMENDED), 11-b (1-10), 11-c, 11-d, 11-e, 11-f, AND 11-h; AND WITHDRAWING ITEMS 11-g AND 11-i; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

ORDINANCE 01-9357ITEM 12-a
AN ORDINANCE GRANTING REZONE PETITION 01-R7 TO REZONE FIVE ACRES OF PROPERTY LOCATED AT 704 GOODLETTE ROAD NORTH FROM PS TO PD IN ORDER TO CONSTRUCT A SINGLE TENANT OFFICE CAMPUS, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:11 a.m.). This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie/attended the Allen Systems Group-United Way Softball Tournament on October 13, but did not discuss the petition; MacIlvaine, Galleberg, Wiseman, Tarrant/no contact; Taylor/ received telephone message from Willie Anthony; Herms/conversation with the developer's representative who affirmed there had been no complaints regarding the project since first reading. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

In response to Council Member Galleberg, petitioner's representative Michael Fernandez said that he had contacted nearby resident Willie Anthony regarding the removal of the exotics from among the mangroves, and had assured Mr. Anthony of his availability to address any problems throughout the construction process. Mr. Fernandez then affirmed that no mangroves would be removed. In response to Council Member Taylor, Mr. Fernandez explained that the mangroves are dense and are approximately 25 feet in height and screening should not be significantly affected by removal of Australian pines. He however added that the General Development Site Plan (GDSP) requires the petitioner to plant additional mangroves as needed, although significant replanting with mangroves and other types of vegetation will occur on the north/south border which now contains approximately 90 per cent Brazilian pepper.

Public Comment: (11:16 a.m.) **Willie Anthony, no address given** (City Clerk Tara Norman administered an oath and he responded in the affirmative). Mr. Anthony said his main concern is the possibility of gaps in the shoreline buffering, and while not opposed to the project, he said he did not want the entire rear of the building exposed to the nearby community. He further

questioned why the neighborhood was not informed of this project before the Planning Advisory Board (PAB) considered it.

Planning Director Ron Lee said it is the City's policy to notify all the residents within 500 feet of the project, and that although the City has a computer generated program that interfaces with the Collier County Tax Assessor's Office, he would determine whether there may have been some malfunctions and whether Mr. Anthony's address had been included. He further pointed out that an apartment landlord may however receive a notice and not inform tenants. City Manager Rambosk also said he would check with the Information Services Department to determine whether the system is functioning properly.

MOTION by Wiseman to ADOPT ORDINANCE 01-9357 AS SUBMITTED;
seconded by Galleberg and unanimously carried, all members present and
voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes,
Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9358 ITEM 12-b
A RESOLUTION DETERMINING PETITION 01-DSE12 FOR A DEVELOPMENT OF
SIGNIFICANT ENVIRONMENTAL IMPACT AT 704 GOODLETTE ROAD NORTH,
MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE
DATE. Title read by City Manager Kevin Rambosk (11:24 a.m.).

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

MOTION by Galleberg to APPROVE RESOLUTION 01-9358 AS
SUBMITTED; ***seconded by Wiseman and unanimously carried, all members***
present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes,
Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9359 ITEM 12-c
A RESOLUTION DETERMINING PETITION 01-RIS14 FOR A RESIDENTIAL IMPACT
STATEMENT AT 704 GOODLETTE ROAD NORTH, MORE PARTICULARLY
DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City
Manager Kevin Rambosk (11:25 a.m.).

Public Comment: None. (11:25 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9359 AS
SUBMITTED; ***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).

ORDINANCE 01-9360 ITEM 13
AN ORDINANCE AMENDING SECTION 86-203 (a) OF THE CODE OF ORDINANCES
OF THE CITY OF NAPLES FOR THE PURPOSE OF DELETING THE ACCEPTANCE
OF PETITIONER REQUIREMENT FOR CONDITIONAL USES; PROVIDING A
SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (11:25 a.m.).

Public Comment: None. (11:25 a.m.)

MOTION by Wiseman to ADOPT ORDINANCE 01-9360 AS SUBMITTED;
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).

ORDINANCE 01-9361 ITEM 14
AN ORDINANCE AMENDING SECTION 110-53 OF THE CODE OF ORDINANCES IN
ORDER TO ESTABLISH PERMITTED STANDARDS FOR BUILDING MATERIALS
FOR BOAT SHELTERS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER

PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:26 a.m.).

Public Comment: None. (11:26 a.m.)

MOTION by MacIlvaine to ADOPT ORDINANCE 01-9361 AS SUBMITTED;
seconded by Wiseman and unanimously carried, all members present and
voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes,
Wiseman-yes, MacKenzie-yes).

ORDINANCE (First Reading)ITEM 15
AN ORDINANCE AMENDING SECTION 110-37 OF THE CODE OF ORDINANCES
FOR THE PURPOSE OF ESTABLISHING HEIGHT MEASURING STANDARDS AND
ADMINISTRATIVE WAIVERS FOR FENCES EXCEEDING PERMITTED HEIGHTS;
PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN
EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:26 a.m.) who said that staff had, at Council's direction, added a definition of natural grade as well as clarification on point of measurement. Planning Director Ron Lee then cited two specific issues; namely, the method of measuring fence height, and inconsistencies regarding fence heights along property lines. To address the first, Mr. Lee said that staff had developed a two-tiered process. He explained that if within the building envelope, the fence height would be measured by the finished grade at the fence or wall location. If outside the building envelope, the fence height would be measured by the lower of the natural grade at the fence or wall location, or the crown of the road. In addition, he noted that staff established a standard whereby new fences and walls along property lines shall not exceed an adjacent fence by more than six inches.

In response to Council Member Galleberg, Mr. Lee said while the Planning Advisory Board (PAB) was reviewing the fence and wall waiver changes, it was also preparing a construction site management ordinance, and that there had been a concern about prohibiting chain link fences when the construction site maintenance code allows them on a temporary basis. Mr. Galleberg suggested inserting less limiting language indicating chain link fences are prohibited except as expressly allowed elsewhere in the Code.

Public Comment: (11:31 a.m.) **Russ Reddick, 888 10th Street South**, distributed several illustrations of what he described as the standard vinyl fences, copies of which are contained in the file for this meeting in the City Clerk's Office. Because he said that it is difficult for residents to obtain a fence or supporting posts that comply with the regulations, Mr. Reddick asked that Council amend the ordinance to allow a seven-foot high fence, including embellishments, for those currently permitted at six feet (front yard within the building envelope) and allow a four-foot high fence, including embellishments, for those currently permitted at three feet (front yard outside the building envelope). Mayor MacKenzie said she did not concur with this proposal and expressed concern regarding increasing fence heights. She also noted that the proposed ordinance would allow staff the authority to grant administrative waivers of up to six inches; however, Mr. Reddick said that allowing the staff to grant an additional foot would greatly reduce waiver requests. Council Member Tarrant voiced approval for granting additional height, citing increased convenience for residents. Mayor MacKenzie suggested amending the ordinance to allow a fence height of six feet six inches, allow the six-inch administrative waiver, but prohibit any fence from exceeding seven feet. Mr. Reddick concurred, saying that a six-foot fence with a five-inch post and a three-inch decorative cap would be six feet eight inches.

Council Member MacIlvaine, however, said that if it were difficult to obtain a six-foot fence, the City would be better served by actually decreasing permitted height. He equated a seven-foot

high fence with a stockade which would impair the beauty of the area; Council Member Wiseman concurred. Vice Mayor Herms suggested allowing six to eight inch caps on posts. Council Member MacIlvaine alternately suggested lowering the posts another six inches into the ground, but Vice Mayor Herms said that a shorter fence would not afford adequate security, and that the question is whether the City will make it impossible to use attractive details on the six-foot fence. Council Member MacIlvaine then recommended a maximum of six feet with gateposts of six feet, six inches. In further response to Council, Planning Director Lee explained that administrative waivers are currently issued on a post-building permit basis, and City Attorney Beverly Grady clarified that if an applicant were issued a permit for a six-foot fence, but the fence when built was higher but less than six feet six inches due to unusual site conditions, staff would consider whether to grant a waiver. Vice Mayor Herms concurred with allowing an additional six inches for posts; however, Council Member Wiseman noted that there must also be a minimum distance between posts. After further discussion, Vice Mayor Herms proffered the motion that appears below; however, City Attorney Grady recommended that because of the substantive changes, the proposal be returned to Council for another ordinance first reading.

MOTION by Herms to APPROVE AS AMENDED IN SECTION 110-37 (b) (1-b) AS FOLLOWS: “FRONT YARD WITHIN BUILDING ENVELOPE: SIX FEET MAXIMUM HEIGHT, GATE POSTS SIX FEET/SIX INCHES WITH A SIX FOOT MINIMUM SEPARATION EXCEPT FOR GATES” AND SECTION 110-37 (b) (1-c) AS FOLLOWS: “FRONT YARD OUTSIDE BUILDING ENVELOPE: THREE FEET MAXIMUM HEIGHT, GATE POSTS THREE FEET/SIX INCHES WITH A SIX FOOT MINIMUM SEPARATION EXCEPT FOR GATES.” This motion was seconded by Taylor and carried 4-3, all members present and voting Taylor-yes, Herms-yes, MacIlvaine-no, Tarrant-no, Galleberg-yes, Wiseman-yes, MacKenzie-no).

Council Member Tarrant said he believed this action represents over regulation. It is noted for the record that first reading would occur at the November 7, 2001 Regular Meeting.

Recess 12:09 p.m. to 1:32 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**RESOLUTION (Withdrawn)ITEM 16-a
A RESOLUTION DETERMINING PETITION 01-LE8 FOR LIVE ENTERTAINMENT AT 898 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION (Withdrawn) ITEM 16-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. Title not read.**

**.....ITEM 9
EXECUTIVE SESSION (ATTORNEY/CLIENT SESSION) RELATING TO PENDING LITIGATION (COLLIER ENTERPRISES, LTD., COLLIER DEVELOPMENT CORPORATION, AND HAMILTON HARBOR, INC. V. CITY OF NAPLES, CASE NO. 00-1562-CA-HDH) (1:32 p.m.)** Mayor MacKenzie said that pursuant to Section 286.011 (8) (a), Florida Statutes, she is requesting that the City Council of the City of Naples, Florida, conduct an executive or closed (attorney/client) session at 1:30 p.m. during the Regular Meeting of Wednesday, October 17, 2001, to discuss settlement negotiations and strategy related to litigation expenditures in reference to pending litigation (of Collier Enterprises, LTD., Collier Development Corporation and Hamilton Harbor Inc., v. City of Naples, Case No. 00-1562-CA, pending in the

Circuit Court for the Twentieth Judicial Circuit in and for Collier County, Florida.) The following persons may or will be present: Mayor Bonnie R. MacKenzie; Vice Mayor Joseph Herms; Council Members Gary Galleberg, William MacIlvaine, Fred Tarrant, Penny Taylor, and Tamela Wiseman; City Manager Kevin Rambosk; City Attorney Roetzel & Andress Co., L.P.A. by Robert D. Pritt and Frederick Hardt; Weiss Serota Helfman Pastoriza & Guedes, P.A., by Nancy E. Stroud and Edward Guedes; and a certified court reporter. The estimated duration of the attorney/client session is one hour.

Executive Session: 1:34 p.m. to 3:31 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

MOTION by Herms to INSTRUCT THE ATTORNEYS TO MEET WITH THE VARIOUS PARTIES; seconded by Taylor and carried 4-3, all members present and voting (Wiseman-no, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Galleberg-no, MacKenzie-no).

Recess 3:33 p.m. to 3:43 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Mayor MacKenzie said she had been given a news report from the Naples Airport Authority stating that it has learned that the National Business Aviation Association and the General Aviation Manufacturers Association has dropped their lawsuit challenging the constitutionality of the Stage 2 ban at the Naples Municipal Airport. With the conclusion of all litigation against the restriction, the Naples Airport Authority expects to move forward with the enforcement of the Stage 2 jet ban beginning in March 2002.

**RESOLUTION 01-9363ITEM 10-a
A RESOLUTION DETERMINING SUBDIVISION PETITION 01-SD12, TO BE KNOWN AS CENTER CITY PLAZA, FOR PROPERTY LOCATED ON THE WEST SIDE OF U.S. 41 BETWEEN FIFTH AVENUE NORTH AND SIXTH AVENUE NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND ACCEPTING THE ACCESS EASEMENT WITHOUT MAINTENANCE OF THE ROADWAYS OR SIDEWALKS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:45 p.m.).**

**RESOLUTION 01-9362 ITEM 10-b
A RESOLUTION DETERMINING PETITION 01-AV2 FOR VACATION OF THE 20 FOOT EAST/WEST ALLEY WITHIN THE BLOCK BOUNDED BY U.S. 41, FIFTH AVENUE NORTH, 8TH STREET, AND SIXTH AVENUE NORTH, SAID ALLEY MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:45 p.m.). Mayor MacKenzie noted that Council would consider Item 10-b prior to Item 10-a.**

William Klohn explained that he is president and principal of MDG Capitol Partners, the developer and petitioner for City Center Plaza, that he is the president of Newblock 1, and that he has the power of attorney to represent TIB National Bank. Noting the continuance from the prior meeting, Mr. Klohn said he had mistakenly believed that these items were merely procedural and could be addressed by Hole Montes, project engineers; therefore, he had not attended the meeting. Nevertheless, he said he had reviewed the meeting videotape and would address Council's stated concerns.

Mr. Klohn noted that Council Member Wiseman had indicated that various problems with the petition could not be quickly resolved; however, he explained that he had spent hundreds of hours working with his associates and City staff in order to make the project successful. During

negotiations of the project layout, the configuration of the surveys and boundaries changed many times, he said, the net result being access areas contiguous to the property lines, which helps in dealing with the easements, he said. Mr. Klohn further said all of the property owners on the block entered into a maintenance agreement, which indicates they will maintain all of the lands within their piece of property. Council Member Wiseman, however, explained that she had questioned whether this agreement had dealt with the access easement areas or the parking areas. Mr. Klohn said he would incorporate additional language or create a second maintenance agreement that would stipulate that the property owners would maintain their respective properties. He then confirmed that the easement was not for the roadway system, but that he would commit to incorporate the maintenance agreement to address the roadways.

Mr. Klohn further confirmed that the occupants in Building D, a two-story rental apartment, have the right to use the swimming pool in Building C. He then said he had tried to address all the requests made, and confirmed that there would be complete cross easements in a fashion that would provide full vehicular access to the public and to the City as a beneficiary of the easement.

Mr. Klohn then addressed a concern regarding construction on a City-owned alley, stating that no construction was planned other than the infrastructure that was approved in the Planned Development (PD) for underground utilities. He then said that although there was discussion regarding the existence of a prior north/south alley, Planning Director Lee had indicated that none existed. Mr. Klohn added that the public would benefit from this north/south easement. He further pointed out that future developers could not reconfigure the easements or setbacks without Council approval.

In response to Council Member Wiseman, Mr. Klohn confirmed that he had received a letter from City Attorney Grady regarding the conflict of the non-exclusive parking easement and had determined that the attorney who had recorded the easement had inadvertently included an incorrect sketch, but that this has since been corrected. City Attorney Grady said she had advised him that the correct way to rectify this would be to re-execute the easement and record the correct attachments; Mr. Klohn said he would do so. Mrs. Grady also asked that Mr. Klohn provide a more legible copy of the exhibit. In response to Council, Mrs. Grady explained that the dedication includes language which contemplates there may be a condominium association created in the future. Council Member Wiseman questioned what would occur if there were no property owner association and maintenance in the access area were needed; she also expressed uncertainty regarding having an easement stipulating parcel owners maintain their own area. Mayor MacKenzie also pointed out that it could be difficult for the City to locate an absentee owner to perform maintenance, and Mrs. Wiseman explained that it is wholly consistent with the PD to require one local entity to be responsible for the entire access easement. Mr. Klohn said that there would be a dedication on the plat regarding a property owner association that would maintain the roadway, but urged approval of the alley vacation and plat with the aforementioned conditions so that the project could move forward. In response to Vice Mayor Herms, Mr. Klohn said the layout of the parcels appears erratic because Council had opposed any of the Building B parking being owned by another entity. Vice Mayor Herms questioned why it was important for TIB National Bank to own part of the property when the City owns the alley, noting that Tract A owners could later be denied access to their driveways. Mr. Klohn said the easement would grant perpetual access, and that the City would be the beneficiary. Agent George Hermanson of Hole Montes said his direction was to produce an easement that was open to the public, and demonstrate to the City that it was receiving a benefit in the additional square footage. He also agreed with Mr. Klohn that there would be no problems in terms of the access easement.

Council Member Wiseman then questioned whether a specific acceptance of dedication of the access easement must appear on the plat; however, City Attorney Grady said this would be contained in the resolution. Referring to her October 16 memo (see Attachment 2), Mrs. Grady said that there is a dedication to the public for the purposes of accessing these four tracts, and not a through street. Council Member MacIlvaine proffered a motion to approve Item 10-b; however, further discussion ensued. Council Member Wiseman noted that the formation of a property owner association would require revision to the plat and that Council should review all the dedications which would be approved with the plat. Mrs. Grady however said that if Council intended that revisions be made, the plat should not be approved at that time, although the maintenance issue should not be contained on the plat but addressed in an instrument recorded in the public record. She also recommended that Council not grant conditional vacations. Mayor MacKenzie concurred, pointing out that she however believed the City had contributed to the confusion in this particular instance, and said she would be willing to accept the petitioner's voluntary agreement to abide by the conditions listed below so the project may proceed.

MOTION by MacIlvaine to APPROVE RESOLUTION 01-9362 (ITEM 10-b) TO INCLUDE CONDITIONS BELOW; seconded by Taylor and carried 4-3, all members present and voting (Galleberg-no, Taylor-yes, Tarrant-yes, Wiseman-no, Herms-no, MacIlvaine-yes, MacKenzie-yes).

Council Member Wiseman said she could not support a conditional vacation. Vice Mayor Herms said this would be detrimental to the two residential properties and that the City should have maintained its alleys and the requirement that the two properties border the alleys so there would be no question regarding access.

MOTION by MacIlvaine to APPROVE RESOLUTION 01-9363 (ITEM 10-a) TO INCLUDE CONDITIONS BELOW; seconded by Taylor and carried 4-3, all members present and voting (Taylor-yes, MacIlvaine-yes, Wiseman-no, Galleberg-no, Tarrant-yes, Herms-no, MacKenzie-yes).

Council Member Wiseman said she believed questions remained about this petition, and predicted that various problems would later arise. Council Member Galleberg concurred, commenting on the complexity of the matter.

CONDITIONS: Utilities shall be relocated at the cost of the petitioner; cross-parking easement to be re-executed with legible exhibits to depict the requirements of the Planned Development (PD); formation and creation of a property owner association; declaration that provides maintenance responsibilities of the access easement by the property owner (s); and sidewalk maintenance by the City.

RESOLUTION 01-9364ITEM 17
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 read by City Manager Kevin Rambosk (4:35 p.m.) who said that in 1999 Council had approved a proposal to renovate the bleachers/batting cage and dugout in Cambier Park and that this project and the concession stand renovations should be completed by December 10. Mayor MacKenzie ascertained that the two registered speakers had both declined to address Council.

Public Comment: None (4:36 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9364 AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members

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

RESOLUTION (Withdrawn)ITEM 18-1

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND A PERSONAL TOUCH LAWN SERVICE, INC. FOR PROVIDING LANDSCAPE MAINTENANCE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn)ITEM 18-2

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND GREENWERX GROUND-KEEPING, INC. FOR PROVIDING LANDSCAPE MAINTENANCE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn)ITEM 18-3

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND MACIAS' LAWN SERVICE FOR PROVIDING LANDSCAPE MAINTENANCE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn)ITEM 18-4

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND TLC LAWN MAINTENANCE, INC. FOR PROVIDING LANDSCAPE MAINTENANCE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn)ITEM 19

CONSIDER A CONTRACT WITH EXPRESS SCRIPTS, INC., TO PROVIDE PRESCRIPTION DRUG SERVICES FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN. Title not read.

RESOLUTION 01-9365ITEM 20

A RESOLUTION DETERMINING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE, A SWIMMING POOL AND POOL DECK AND TO INSTALL FILL, LANDSCAPING AND EXTERIOR LIGHTING WEST OF THE COASTAL CONSTRUCTION SETBACK LINE AT 54 32ND AVENUE SOUTH; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:36 p.m.). This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie, Galleberg/visited the site; all other Council Members registered no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Natural Resources Manager Jon Staiger noted that the State's concern about storm surge is mitigated by the fact there is a structure immediately to the west with a massive sea wall that has been in place for approximately 50 years. Dr. Stagier said he believed the proposal is appropriate and that staff recommends approval.

Public Comment: None. (4:39 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9365 AS SUBMITTED; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Dr. Staiger then provided an update on the beach restoration and explained that the State had given the City permission to issue emergency permits for beach repair activities from September 18 to October 18. Dr. Staiger noted that although several property owners south of the beach restoration project have suffered dune and beach loss, this is not an area on which the County intends to place sand. Therefore, he recommended issuing what he described as a blanket permit for restoration activities in that area. He confirmed that this is not in the vicinity of Parker sand web nets (beach restoration) and that a group of citizens who have received coastal construction control line variances are planning to accomplish some beach repair in front of their properties. Dr. Staiger further said that if Council concurs, staff would proceed to put a program in place that would be valid under the State emergency order even though it may not start until November or December. Brett Moore of Humiston & Moore Engineers said that based on data he had collected, a recent storm had resulted in loss of approximately five cubic yards per foot of sand in the upland area and 10 cubic yards per foot south of Gordon Pass. In response to Council Member MacIlvaine, Dr. Staiger affirmed that the engineering work would be done under the supervision of the City. Council registered no objection to this plan.

RESOLUTION 01-9366 & 01-9367ITEM 21-1
A RESOLUTION APPOINTING ONE COMMISSIONER TO THE CITY OF NAPLES
AIRPORT AUTHORITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City
Manager Kevin Rambosk (4:46 p.m.).

Public Comment: None. (4:46 p.m.)

MOTION by MacIlvaine to APPOINT PETER ESCHAUZIER (21-1 (a)
(RESOLUTION 01-9366); seconded by Taylor and unanimously carried, all
members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes,
Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Galleberg to APPOINT ALICE CARLSON (21-1
(b)(RESOLUTION 01-9367); seconded by Wiseman and unanimously carried,
all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes,
Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9368ITEM 21-2
A RESOLUTION APPOINTING A CITIZEN TO THE CARVER FINANCE, INC.,
BOARD OF DIRECTORS; AND PROVIDING AN EFFECTIVE DATE. Title read by City
Manager Kevin Rambosk (4:47 p.m.).

Public Comment: None. (4:47 p.m.)

MOTION by Taylor to APPOINT PAUL NICK (RESOLUTION 01-9368;
seconded by Herms and unanimously carried, all members present and voting
(Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-
yes, MacKenzie-yes).

RESOLUTION 01-9369 & 01-9370ITEM 21-3
A RESOLUTION APPOINTING ONE MEMBER TO THE CODE ENFORCEMENT
BOARD FOR THE BALANCE OF AN UNEXPIRED THREE YEAR TERM EXPIRING
JUNE 16,2003; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager
Kevin Rambosk (4:48 p.m.). Mayor MacKenzie stated that there is a vacancy for both a regular
member and for an alternate member for three-year terms. After a brief discussion, Council
decided to appoint two candidates to regular terms and to consider an alternate member at a
subsequent meeting.

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

MOTION by Tarrant to APPOINT JAMES DEAN (RESOLUTION 01-9369);
seconded by Herms and unanimously carried, all members present and voting

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

MOTION by Galleberg to **APPOINT ARDIVAN MOAVENI (MOVE HIM FROM ALTERNATE TO REGULAR MEMBERSHIP) (RESOLUTION 01-9370)**; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9371ITEM 21-4

A RESOLUTION APPOINTING ONE CITY REPRESENTATIVE TO THE CITY/COUNTY AFFORDABLE HOUSING COMMISSION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:50 p.m.).

Public Comment: None. (4:51 p.m.)

MOTION by Herms to **APPOINT RICHARD SNYDER (RESOLUTION 01-9371)**; seconded by Tarrant and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9372ITEM 21-5

A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR THE BALANCE OF A THREE YEAR TERM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:52 p.m.).

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

MOTION by Galleberg to **APPOINT GARY PRICE (RESOLUTION 01-9372)**; seconded by Tarrant and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION (Withdrawn)ITEM 21-6

A RESOLUTION APPOINTING AN ARCHITECT TO THE PUBLIC ART ADVISORY COMMITTEE FOR A TWO-YEAR TERM; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9373ITEM 23

A RESOLUTION APPROVING A CONTRACT BETWEEN KYLE CONSTRUCTION, INC. AND THE CITY OF NAPLES FOR STORM WATER IMPROVEMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:52 p.m.) who said that staff is determining ways to improve the City's stormwater plan, and is asking that Council approve this contract in the amount of \$232,600. Council Member Taylor asked that staff investigate the area of Third Street and Second Avenue North because of the recent flooding.

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

MOTION by Wiseman to **APPROVE RESOLUTION 01-9373 AS SUBMITTED**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9374ITEM 24

A RESOLUTION APPOINTING A SPECIAL MASTER TO HEAR CLAIMS FOR VESTED RIGHTS UNDER SECTION 86-211 AS AMENDED, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES AND UNDER SECTION 14.1 OF THE CITY CHARTER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin

Rambosk (4:53 p.m.). Council Member Wiseman expressed appreciation to Judge Jack Schoonover for his generosity in consenting to act as a special master.

Public Comment: None. (4:53 p.m.)

**MOTION by Taylor to APPROVE RESOLUTION 01-9374 AS SUBMITTED;
seconded by MacIlvaine and carried 6-1, all members present and voting
(Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-
no, MacKenzie-yes).**

Council Member Wiseman said she has objected to the way the City has established this procedure and the impact it will have upon those involved. Council Member Galleberg concurred but noted that the applicants had agreed to it, and said this is the best position, given the City's policy. Vice Mayor Herms asked that staff provide further clarification on the petitioners.

RESOLUTION 01-9375ITEM 22
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 Mayor MacKenzie (4:54 p.m.) who identified two problems to be addressed: questions regarding bills submitted by Del Rey Marine and the City's own internal policies and procedures. She however said that because of the efforts of Council Member Taylor and Vice Mayor Herms, the Insurance Fraud Division of the State Attorney's office is also investigating the Del Rey Marine issue. She said she questioned how Del Rey Marine became the City's first responder and received payment without Council approval and without adhering to the conditions imposed by ordinance. Mayor MacKenzie said the reason for asking Clerk of Circuit Court Dwight Brock to examine the risk management fund is to determine how the aforementioned events occurred, and to suggest corrections to prevent recurrence. Although State agencies would not address the City's administrative difficulties, Mayor MacKenzie said that Clerk of Circuit Court Brock would bring a level of integrity and dedication to this task, and expressed the hope that Council would unanimously approve this resolution.

Council Member Wiseman identified retrospective and prospective applications of Mr. Brock's services; namely, retrospectively regarding Del Rey and may include other similar instances, and prospectively whether a department should be added or further staff training provided. Mrs. Wiseman said that since this has been called to the City's attention, Council should disclose information to the public, noting that the citizens should have complete confidence in its government. She further said she thought it would be an embarrassment if the Council were to decline Mr. Brock's offer for political reasons. Mrs. Wiseman proffered a motion to approve; however, further discussion ensued.

Council Member Galleberg pointed out that although they both involve Del Rey Marine, the Port Royal boat fires and the Royal Harbor fuel spill are two distinctly different issues. Vice Mayor Herms said that although he supports Mr. Brock's involvement, the City would also have to make a legal determination regarding expenditures in the risk management fund. He added that Mr. Brock will likely suggest the City utilize methods currently used in the County that ensure all expenditures have the required documentation. Additionally, he predicted that Mr. Brock would offer a valuable analysis and that he looked forward to his response. Council Member Tarrant however noted that confusion may occur when two investigative parties become involved; however, Council Member MacIlvaine said that Mr. Brock had indicated he would defer reporting until he was certain it would not adversely affect any other investigation. Council Member Tarrant expressed appreciation for Mr. Brock's willingness to serve and

Council Member Taylor said she was delighted to see the Council's change in attitude since she had broached this issue some two months before.

Public Comment: None. (5:12 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9375 AS SUBMITTED; 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).

At this point in the meeting, Natural Resources Manager Jon Staiger said he had received a signed contract from Orion Construction to complete the Doctor's Pass dredging project. He said the prices quoted are \$8,000 for mobilization, \$109,650 for removal of 5100 cubic yards of sand and rock, and \$2,000 for de-mobilization. Any additional sand would be removed at a per cubic yard cost of \$21.50, he said. Dr. Staiger then said the Moorings Bay Special Taxing District would examine this next week, and that he would present this to Council for approval at the November 7 Regular Meeting. He further said the project should be completed in three weeks.

City Manager Rambosk said staff has continued to improve the security at the City's water facilities, has contacted several consultants, and is awaiting a proposal.

City Attorney Beverly Grady stated that pursuant to Section 286.011 (8) (a), Florida Statutes, she is requesting the City Council of the City of Naples, Florida, conduct an executive or closed (attorney/client) session at 1:30 p.m. during a Special Meeting to be held on October 30, 2001 to discuss settlement negotiations and strategy related to litigation expenditures in reference to pending litigation (Collier County Circuit Court Case, Collier Enterprises Limited, Collier Development Corporation, and Hamilton Harbor, Inc. v. the City of Naples, Case No. 00-1562-CA-HDH) and a claim for relief pursuant to the Bert J. Harris Private Property Rights Protection Act. The following persons may or will be present: Mayor Bonnie R. MacKenzie, Vice Mayor Joseph Herms; Council Members Gary Galleberg, William MacIlvaine, Fred Tarrant, Penny Taylor, and Tamela Wiseman; City Manager Kevin Rambosk, City Attorney Roetzel & Andress L.P.A., Beverly Grady and Frederick Hardt and Nancy Stroud, Weiss Serota Helfman Pastoriza and Guedes, P.A., and a certified court reporter. After a brief discussion, Council agreed to reschedule a Heart of Naples Committee meeting slated at 1:00 p.m. on October 30 until earlier that day.

Public Comment: None. (5:15 p.m.)

MOTION by Taylor to CONDUCT AN EXECUTIVE SESSION AT 1:30 P.M. ON TUESDAY, OCTOBER 30, 2001; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

CORRESPONDENCE & COMMUNICATIONS (5:15 p.m.).....

In response to Council Member MacIlvaine, City Manager Rambosk stated that the Hofgarten Brauhaus would remain closed until such time as it follows all applicable ordinances and procedures. Mr. MacIlvaine then said it was recently disclosed at a Code Enforcement Board meeting that the Florida Real Estate Commission had issued 114 citations to one individual for illegal real estate signs. Mr. Rambosk said that the Board has the ability to take action based on that information, but that he would also follow up. Council Member Taylor then said she would like to correct the record and explained that she did not contact the Florida Department of Insurance. (See Item 22.) She however said that she did in fact support the investigation. Vice Mayor Herms said that he recently received a letter relative to a water line break, reportedly to have been leaking for approximately three weeks at Crayton Road and Putter Point Drive, which

he had forwarded to the City Manager. In response to Mr. Herms, City Manager Rambosk affirmed that the ratepayers would assume the cost of this water lost out of the system. Mayor MacKenzie said that preliminary reports indicate this was an irrigation leak, and that it was however on the private property side of the water meter so that the City could therefore not repair the leak and had been unable to contact the property owner. Council Member Tarrant requested an update on the Gordon River bridge railings. City Manager Rambosk said that staff had reached an agreement with the contractor providing for up to 20 per cent of the original contract price for any extra costs if the project is completed within four weeks. Mr. Tarrant then said several citizens had commented on the large plastic drainage pipes extending across the beach, and questioned why they are not covered.

It is noted for the record that Council Member Taylor left the meeting at 5:21 p.m.

Natural Resources Manager Jon Staiger stated that he has discussed with the Department of Environmental Protection (DEP) the concept of masking these pipes in some fashion although DEP would prefer them to be taken off the beach altogether. The City had to obtain special permission to extend them when it started the beach restoration project, he added, and pointed out that there is no other destination for drainage flows unless pumped into the interior of the City. He further said that the pipes are normally beneath the sand but that Hurricane Gabrielle had exposed them for a time. Council Member Tarrant then expressed concern regarding beach renourishment, noting that he foresees significant disruption emanating from the proposed 12,000 truckloads of sand being transported onto the beach. He therefore suggested awaiting natural renourishment from sand bars or mechanically bringing sand from offshore. Mayor MacKenzie stated that the Beach Renourishment/Maintenance Committee had however devised a distribution system ensuring that no one area would be overly impacted as it attempted to protect the beach. She added that there are now some parts of the beach so desperately in need of sand that the City cannot wait, noting that the beach has lost almost all of the dune vegetation it had planted in conjunction with the Coastal Engineering beach renourishment project. Mayor MacKenzie added that she hoped the Tourist Development Council and the County Commission would understand the importance of both adding the sand and replanting the dunes to stabilize it. City Manager Rambosk said that in order to accomplish this quickly, staff would not complete renovation of Horizon Way or the other south end beach accesses in anticipation of gaining access to the beach. Mayor MacKenzie said staff has diligently tried to spread the impact of the renourishment effort throughout the neighborhood, and expressed appreciation to the members of the County Coastal Advisory Committee for determining a significant source of upland sand.

PUBLIC COMMENT (5:28 p.m.).....
None.

ADJOURN
5:28 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 1/9/02