



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – November 7, 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
Jon Staiger, Natural Resources Manager
Don Wirth, Community Services Director
Dan Mercer, Public Works Director
Steven Moore, Chief / Police & Emergency Serv.
Karen Kateley, Administrative Specialist
Pam Mac’Kie
Herb Luntz
Steve Hart
William Boggess
John Passidomo

Kimball Prince
David Ellis
Eric Watler
Douglas Scott
Al Kriss
Bill Barton
Richard Grant
Chuck Drake
Dodie Briskey
Michael Keeler

Media:

Eric Staats, Naples Daily News

Other interested citizens and visitors

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

Council Member William MacIlvaine

ANNOUNCEMENTS..... ITEM 3

Proclamations:

Collier County Adoption Month
Acknowledgement of Collier County Commissioner Pam Mac’Kie
Anniversary of Marine Corps

SET AGENDA (add or remove items) ITEM 4

Added Item 8-b (5-11) – Special events

MOTION by Wiseman to ADD ITEM 8-b (5-11) 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 22 – Waiver of conflict request by Roetzel & Andress for a landscape maintenance agreement at the Estuary at Grey Oaks

MOTION by Wiseman to **ADD ITEM 22 TO 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).

Add Item 23 – Executive session relative to litigation – Warm Weather Investments

MOTION by Wiseman to **ADD ITEM 23 TO 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).

Add Item 24 – City Manager briefing (continued from November 5, 2001 Workshop)

MOTION by Wiseman to **ADD ITEM 24 TO 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).

MOTION by Taylor to **SET AGENDA ADDING THE ABOVE ITEMS AND WITHDRAWING ITEMS 17 AND 18**; 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).

PUBLIC COMMENT..... ITEM 5

William Boggess, 1100 Eighth Avenue South, noted that the County's beach renourishment project had failed, adversely affecting 5,400 feet of Naples Beach and 7,000 feet of Vanderbilt Beach. He further explained that the County had authorized introduction of 22,000 cubic yards of material onto Old Naples Beach knowing that it contained rock and had allowed a shortage of 275,000 cubic yards, or 25 percent, in contracted renourishment to occur. Mr. Boggess further asserted that the original plan had not been completed in compliance with either state law or the 1995 City resolution authorizing the project to proceed. He therefore urged that the City follow up on these outstanding issues. Mayor MacKenzie explained that Natural Resources Manager Jon Staiger and Vice Mayor Herms were scheduled to discuss this issue prior to a Council workshop discussion, and suggested that Mr. Boggess present his concerns to them. **Herb Luntz, 200 Diamond Circle**, expressed appreciation to City staff for its support relative to the Veteran's Day celebration and provided details on the parade and other festivities.

ORDINANCE (First Reading) ITEM 6

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 (9:25 a.m.) who noted that Council had previously discussed definitions of natural grade, point of measurement, and consistency of heights. Mayor MacKenzie recommended changing references to "man made" to "human made" where appropriate. In response to Council Member Taylor, Planning Director Ron Lee explained that inside the building envelope, fence height would be measured from the grade as altered, such as a new fill elevation; outside the building envelope, typically along the property line, fence height would be measured from the lower of the unaltered grade or the crown of the road. Miss Taylor noted that Council had previously been told that manufactured fences designed to one specific height would be difficult for citizens to use requiring instead that fences be custom-made. She therefore recommended that Item 5 under Standard Waiver be moved from fence and wall requirements (orientation and design of the fence

or wall) to the Administrative Waiver section so that a citizen could avoid the cost and time involved in obtaining Council approval. Mr. Lee clarified that a standard waiver is granted pre-construction when it is determined the fence or wall cannot meet the Code, but that an administrative waiver is granted after the fact. This may occur, he explained, when citizens determine that due to the contour of the property, the fence or wall cannot meet the height requirement. To address manufactured fences which are higher than presently allowed in Code, Miss Taylor however recommended allowing administrative waivers on a pre-construction basis. Council Member Galleberg said that his research had determined that while there may be need for flexibility on post height, it was not accurate to assume that all manufactured fences violate this provision. Council Member Taylor nevertheless proffered a motion to amend the ordinance as suggested, seconded by Council Member Tarrant.

Planning Director Lee recommended that if staff were granted the authority to approve pre-construction of a fence higher than six feet, Council should establish a maximum number of inches allowed for the waiver and identify the standards by which staff would evaluate requests. In further discussion City Attorney Grady pointed out that allowing greater height would constitute an actual change in the standards, and Mr. Lee said that Council had also considered allowing embellishments on fence posts which had engendered the proposal to allow fence posts to be six feet six inches, the fence itself being six feet, he said. Council Member Tarrant then withdrew his second, calling for greater flexibility to accommodate the citizens and also suggested allowing staff the ability to approve an eight-inch variation. Council Member Wiseman however expressed concern regarding proliferation of excessively tall pre-fabricated vinyl fencing. Mayor MacKenzie concurred, noting that wrought iron fences are allowed to be higher because they afford a higher level of security while still allowing a line of sight. She added that hedges also make effective security barriers. Vice Mayor Herms stated that the six-foot fences he had examined are actually 70 rather than 72 inches and can therefore accommodate drainage underneath. He however suggested amending the section regarding barbed wire fences as described in the motion below.

Public Comment: None. (9:46 a.m.)

MOTION by Herms to APPROVE AS AMENDED TO ALLOW BARBED WIRE ON CITY-OWNED PROPERTY WHERE REQUIRED AND CHANGE “MAN MADE” TO “HUMAN MADE”; *seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

ORDINANCE (First Reading) ITEM 7
AN ORDINANCE AMENDING SECTION 62-94, OBSTRUCTING WIDTH OF ROADWAY; AMENDING SECTION 94-75, SUBMISSION OF SIDEWALK AND DRIVEWAY PLANS, REPEALING SECTION 62-63, MANNER OF STANDING OR PARKING; REPEALING SECTION 62-106, WORKERS PROVIDING SERVICES TO RESIDENTIAL PROPERTY; REPEALING SECTION 94-116, EXTERIOR AND INTERIOR OF STRUCTURES TO DELETE ALL EXTERIOR REFERENCES; REPEALING ARTICLE IX, COMMERCIAL MAINTENANCE CODE, OF CHAPTER 94; REPEALING SECTION 106-236, MAINTENANCE OF PROPERTY; UNSIGHTLY CONDITIONS; REPEALING SECTION 106-238, POLLUTED WATER; ADDING A NEW ARTICLE X TO CHAPTER 106, PROPERTY MAINTENANCE CODE; 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; PROVIDING APPLICABILITY OF STANDARDS TO VACANT BUILDINGS; PROVIDING MAINTENANCE OF PROPERTY; UNSIGHTLY CONDITIONS; PROVIDING DEMOLITION

OF COMMERCIAL BUILDINGS; PROVIDING CONSTRUCTION SITE MANAGEMENT; PROVIDING DESIGNATION OF ADMINISTRATOR, INSPECTIONS, RIGHT OF ENTRY; PROVIDING FOR VIOLATION OF ARTICLE; PENALTY; PROVIDING FOR COMMERCIAL VEHICLE PARKING IN RESIDENTIAL DISTRICTS; AMENDING SECTION 110-86, COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:48 a.m.) who stated that the City Attorney, staff, and representatives of the Collier Building Industry Association (CBIA) as well as community neighborhood associations had met to discuss questions raised at the last Council meeting. He said that staff would provide an overview of various issues and recommended changes. (A copy of this material is contained in the file for this meeting in the City Clerk's Office).

FEMA Coordinator Bob Devlin cited proposed changes allowing demolition on Saturday and the inclusion of residential properties in Section 106-20, which addresses the standards for demolition. He said that contractors had agreed to a 45-60 day implementation period after passage to accommodate estimates which are currently out in the hands of customers. Vice Mayor Herms predicted that the new requirements would add approximately \$5,000 to the price of a house and even more on larger lots. It was clarified that the City already may condemn and level a property destroyed by fire, although Building Official Bill Overstreet explained that staff has been cautious about doing so due to possible legal implications.

Mr. Devlin then explained that the pile driving operations would be limited to 7:00 a.m. to 4:00 p.m. on weekdays. Natural Resources Manager Jon Staiger said that he had conferred that these times would not cause a hardship on pile-driving contractors. City Attorney Beverly Grady also suggested that pile driving and structural exterior demolition be limited to weekdays, noting this would nevertheless permit interior demolition to occur. Vice Mayor Herms, however, said he interpreted this to actually prohibit a contractor from changing a door or window on the weekend. Mr. Overstreet confirmed that staff continues to address an overall definition of demolition.

Mr. Devlin then reviewed the proposed changes regarding the requirement for construction fencing pointing out that a major remodeling which increases building volume of 10,000 cubic feet or more, would require a fence. Council then discussed further clarifying this provision and obtaining input from area contractors of a square footage threshold. Council also briefly discussed improving definition of building, and Mr. Devlin noted that staff would clarify that most commercial construction would require a fence.

In regard to construction related traffic control, Mr. Devlin said that staff would add text that addresses parking, loading, and unloading activities. He also noted that staff would amend Section 94-75 to add a surface water management plan which provides for on-site containment of runoff with surplus routed to the right-of-way. Mayor MacKenzie asked whether on-site runoff retention could be applied retroactively. City Attorney Grady however recommended addressing this in a separate ordinance while the proposed ordinance would capture all new construction.

Mr. Devlin then briefly detailed new items in Section 106-261 relative to construction site management. Vice Mayor Herms recommended determining from the building industry whether it is reasonable to require an engineer to draw site plans showing the water management before submission to the City. Council Member Tarrant also expressed concern regarding increased impact fees and bureaucracy, and Council Member Wiseman concurred, noting that the City is not homogenous in terms of lot size or costs for new construction or remodeling such that one set of

rules would not suffice for the entire City. In addition, she commented that Council had not completed a thorough discussion of the ordinance as currently written. Council Member Taylor expressed the view that reputable contractors respect neighbors and would plan for adequate drainage, and Vice Mayor Herms stated that contractors could in fact install a berm to protect neighbors from flooding, and should therefore not be required to first obtain a survey. Stating that the proposed regulations contain various positive features, Mr. Herms nevertheless took the position that the ordinance had gone too far in some respects. In further discussion, City Manager Rambosk clarified that the ordinance would not require engineered drawings, but would merely ensure that runoff travels to the front or back of the property. Messrs. Rambosk and Overstreet as well as Council Member MacIlvaine then commented on the volume of complaints received regarding water run-off onto adjacent properties.

Mr. Devlin then suggested placement of chemical toilets outside construction fencing to better facilitate pumping operations.

In discussing options for right-of-way parking contained in Section 62-94, Council Member Wiseman observed that it may be difficult to obtain the approval of adjacent property owners in order to park on their right-of-way, and that an ordinance is unnecessary when neighbors cooperate. (See Attachment 1 for descriptions of Concepts 1 and 2 in this regard.) City Attorney Grady also noted that staff had requested deleting the emergency clause in Section 106-263 and suggested allowing the building official to approve parking within the right-of-way abutting off-site parking lots. In response to Mayor MacKenzie, Mrs. Grady also reviewed the sections on penalties and stop work orders.

Public Comment: (10:41 a.m.) **Kimball Prince, 410 13th Avenue South**, stated that the Presidents Council had agreed that it wanted to eliminate parking in the rights-of-way. **David Ellis, 4779 Enterprise Avenue**, Collier Building Industry Association representative, requested further clarification on remodeling and demolition. He then said he agreed with the City Attorney's suggestion to allow the building official to approve right-of-way parking abutting an off-site parking lot. Mr. Ellis also said that requiring the property owner to engineer water management would cause both significant cost and delays, and asked for a reasonable time frame for the contractors to comply with the new regulations, although he said he believed the new regulations provide flexibility for the homeowner and the contractor while still affording protection for the neighbors. Council Member Tarrant predicted that contractors would pass costly violations on to the homebuyer. Mr. Ellis agreed, and added that additional regulations can be burdensome to the industry. He further said he would rather penalize those contractors not complying with current regulations than to create a higher level of regulation for everyone. Mr. Tarrant said he too would prefer less stringent requirements and fewer regulations but instead retaining a full-time employee to work with the contractors, architects, and builders and respond to complaints. Mayor MacKenzie noted that because building in the City is less costly than in most other areas of southwest Florida, flexibility in the fee structure could accommodate a small increase in the regulations. She added that had there been more voluntary compliance or self-policing by the contractors, many of these regulations would not have been needed. Mayor MacKenzie therefore said she is very supportive of the staff's efforts as well as the building industry's input. **Al Kriss, 1301 B Chesapeake Avenue**, Oyster Bay Homeowners Association President, noted what he described as abuse of right-of-way parking in his neighborhood and asked for appropriate enforcement. He also distributed a recent newspaper article showing pictures of Chesapeake Avenue, a copy of which is contained in the file for this meeting in the City Clerk's office. **Douglas Scott, 1322 Chesapeake Avenue**, Chesapeake Point President, stated that while his organization is not seeking to deter legitimate right-of-way parking, he would

like to restrict those who park on the right-of-way in front of their buildings for convenience even when there is adequate on-site parking. **Eric Watler, 1525 Dolphin Lane**, Royal Harbor Association representative, stated that at one of the Association's meetings with City staff, a major City builder had cited the lack of rules or regulations as the cause of these problems and asked that the City enact appropriate policy.

Indicating support for Concept 2, Council Member MacIlvaine recommended with proceeding with staff's proposals; however, City Attorney Grady explained that First Reading would actually occur at a later date because not all language changes had been finalized. While Council Member Galleberg said he favored the direction of the proposal, he nevertheless said he did not believe it necessary to link site maintenance with general parking provisions. He also said that he shares the frustration expressed by members of the public, and expressed the view that that the Planning Advisory Board (PAB) had not performed a critical analysis of the matter. Expressing appreciation for the staff's efforts and the citizen and industry input received, Council Member Taylor said she would support Concept 2.

Council Member Wiseman also expressed appreciation for staff's efforts, noting that the proposal had steadily improved; however, she agreed with Council Member Galleberg that much of the refinement in language should have been accomplished before the matter reached the Council. Mrs. Wiseman also noted that despite considerable time and effort, the Old Naples Preservation Task Force had been unable to formulate a plan for right-of-way parking satisfactory to all parties. She agreed that the aforementioned parking situation on Chesapeake Avenue is serious, but questioned the ability for a Code Enforcement officer to police the right-of-way parking in accordance with the rules as specified in Concept 2. In addition, Mrs. Wiseman said the proposal would require the property owner to have direct communication with those parking in the right-of-way, which would create potential confrontations. She further said she did not believe it to be the function of government to instruct its citizens on how to deal with their neighbors. Moreover, she declared the regulations to be overbroad and bureaucratic and recommended continuing input in order to create the best, most enforceable ordinance.

Citing the need to resolve parking issues, Vice Mayor Herms recommended adoption of regulations which would be modified at a later time, if necessary. He also cited intensity of development and the attendant erosion problems. However, he said, proposed installation of fencing and preparation of a water control plan could add approximately \$7,000 to a project but would not produce a significant benefit. He instead proposed conducting a site inspection and requiring the contractor to install a berm when necessary. He further said that one of the main goals of this ordinance is to organize the construction site with respect to parking, dumpsters, chemical toilets, and storage of materials, but that the plan goes too far on some of the other issues. Council Member Tarrant concurred but further urged hiring of an employee to deal exclusively with these issues. Mayor MacKenzie expressed the belief that the proposed ordinance was nearing final form and expressed appreciation to staff, the building industry and property owner associations for their efforts. She added that she supported Concept 2, while recommending further refinement, and concurred with the concept that the Code must be specific in order to be enforceable. Council Member Wiseman recommended that Council focus more on the property maintenance provisions at the next meeting.

MOTION by MacIlvaine to CONTINUE ITEM 7 TO THE NOVEMBER 19, 2001 REGULAR MEETING (WITH STAFF DIRECTED TO MAKE AMENDMENTS DISCUSSED); seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess 11:20 a.m. to 11:34 a.m. It is noted for the record that all except Council Member Galleberg were present when the meeting reconvened. Council Member Galleberg returned at 11:36 a.m.

RESOLUTION 01-9376 ITEM 9

A RESOLUTION DETERMINING PETITION 01-EV2 TO VACATE AND RELOCATE AN EASEMENT AT 2590 HALF MOON WALK, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:35 a.m.). City Attorney Beverly Grady distributed a revised resolution and explained that, if approved, the existing water line easement would be released and vacated. Additionally, she clarified that the City would accept a utility easement for the new water line and a temporary easement over the existing water line. Once the applicant constructs the new water line and the Utilities Department approves it, the City would then terminate the temporary easement, she said. Attorney John Passidomo, representing the petitioner, affirmed that the City would temporarily retain the existing water line easement, which traverses through the middle of the property.

Public Comment: None. (11:38 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9376, AS AMENDED, RENUMBERING SUB-PARTS OF SECTION 2 (1-3 RATHER THAN 1-4; 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 01-9377 ITEM 10

A RESOLUTION DETERMINING PETITION 01-CU9 FOR A PARKING LOT AT 134-160 6TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:39 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Taylor / visited the site; MacIlvaine, Tarrant / no contact; Galleberg / visited the site, later confirming with petitioner's representative Bill Barton that he had viewed the correct site; Wiseman, Herms / familiarity with the site. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Petitioner's representative and Building Committee Chairman Bill Barton concurred with the three conditions recommended by staff. In further discussion, Mr. Barton also agreed to the advisability of saving two additional mature trees on the site by not constructing two of the seven parking spaces which exceed requirements. After further discussion, Council Member Galleberg proffered the motion as appears below.

Public Comment: None. (11:47 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9377 AS AMENDED IN SECTION 1 TO SHOW PLANS PREPARED BY WILSON MILLER DATED AUGUST 2001 AND IN SECTION 2-1 "A DETAILED LANDSCAPE PLAN MUST BE SUBMITTED AND APPROVED BY THE PLANNING DEPARTMENT WHICH SHALL INCLUDE PRESERVATION OF TWO EXISTING MATURE OAK TREES"; 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).

Mr. Barton then expressed appreciation to the Planning and Building staffs for their cooperation during this process.

RESOLUTION 01-9378 ITEM 11-a

A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 01-LE6 FOR ZOË'S RESTAURANT OWNED BY LA MAR RESTAURANTS, INC. AND LOCATED AT

720 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:47 a.m.).
RESOLUTION 01-9379ITEM 11-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 01-RIS10 FOR ZOË'S RESTAURANT OWNED BY LA MAR RESTAURANTS, INC. AND LOCATED AT 720 FIFTH AVENUE SOUTH MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:47 a.m.).

It is noted for the record that Items 11-a and 11-b were considered concurrently.

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Taylor, Herms, Tarrant / no contact; MacIlvaine / saw the petitioner appear before the Staff Action Committee on an unrelated matter; and Galleberg / visited the site. Council Wiseman indicated that she would abstain from voting because the petitioner's attorneys, Thomas Norsworthy and Richard Grant, are attorneys at her law firm. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Richard Grant, representing La Mar Restaurants, Inc., owner of Zoë's, explained that while the restaurant has an amplified sound permit and plays recorded music in the evenings, permission is now being sought to offer background dinner music from 5 pm to either 10:30 p.m. or 11:30 p.m., depending on the day of the week. The proposed entertainment would consist of up to five performers plus possibly one vocalist and, in addition, Mr. Grant said, after 10:30 p.m., the ability to feature a disc jockey who would use a loudspeaker system to announce recorded music. He however noted concurrence with the staff recommendation to end this activity at 11:30 p.m. Attorney Grant further explained that the recorded music would in fact continue past this time as it does currently, although noting that this is not regarded as live entertainment. Employees would continue to keep the restaurant doors closed and use a sound meter to ensure that the decibel level does not exceed that which is permitted, Attorney Grant said, but questioned whether the resolution actually permits the disc jockey to announce the music until 11:30 p.m., and also requested allowing this individual to announce the availability of food after 11:30 p.m.

In response to Council, Planning Director Ron Lee said that staff has interpreted the use of a disc jockey as similar to live entertainment and that the hours requested are consistent with those of nearby establishments. Attorney Grant affirmed that Zoë's would not simultaneously feature a disc jockey and live entertainers. City Attorney Beverly Grady therefore suggested language indicating that live entertainment shall be limited to either five performers and one vocalist or one disc jockey. Vice Mayor Herms proffered a motion to approve Item 12-a with this amendment; however, further discussion ensued. Council Member Galleberg noted information regarding a violation of alcoholic beverage regulations, and Attorney Grant explained that Zoë's had been cited for serving alcohol in the late evening hours without serving food; however, food had been available and would continue to be available at all times. This is the reason it is advisable for the disc jockey to frequently announce food service, he said. Council Member MacIlvaine noted some \$825 in charges due for ten false alarms. Attorney Grant explained that some of the charges related to the prior owner but that the matter had since been resolved, and that La Mar has had paid its share. Vice Mayor Herms suggested pre-recording the announcements regarding food.

Public Comment: None. (12:00 p.m.)

MOTION by Herms to APPROVE RESOLUTION 01-9378 AS AMENDED IN SECTION 1 "LIVE ENTERTAINMENT SHALL BE LIMITED TO EITHER 1) FIVE PERFORMERS AND ONE VOCALIST OR 2) ONE DISC JOCKEY. THE HOURS FOR ." (ANNOUNCEMENTS BY DISC JOCKEY AFTER 11:30 P.M.

WILL BE PRE-RECORDED); seconded by Taylor and carried 5-1-1, (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-abstain, MacKenzie-yes). (See Attachment 2, Form 8B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

MOTION by Herms to APPROVE RESOLUTION 01-9379 AS AMENDED IN SECTION 2-a WITH SAME WORDING AS 11-a; seconded by Taylor and carried 5-1-1, (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-abstain, MacKenzie-yes). (See Attachment 2).

Recess 12:01 p.m. to 1:30 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

..... **ITEM 23**
EXECUTIVE SESSION RELATIVE TO LITIGATION – WARM WEATHER INVESTMENTS (1:30 p.m.) Mayor MacKenzie stated that pursuant to Section 286.011(8), Florida Statutes, the City Council of the City of Naples, Florida will conduct an executive or closed (attorney/client) session to discuss settlement negotiations and strategy related to litigation expenditures in reference to pending litigation (Warm Weather Investments, Inc. and Bayshore Villas, Inc. v the City of Naples, Case No. 00-1561-CA-HDH) filed in the Circuit Court for the 20th Judicial Circuit, Collier County. The following persons will be present for the executive session: Mayor Bonnie 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 Frederick Hardt; and certified court reporter Pamela Arsenault. The estimated duration of the attorney/client session is 20 minutes. At the conclusion of the attorney/client session, the meeting shall be reopened.

Executive session 1:31 p.m. to 2:11 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

MOTION by Herms to ACCEPT THE SETTLEMENT OFFER (WITH PROVISOR THAT ACCEPTANCE IS NOT AN ADMISSION OR WAIVER ON THE PART OF THE CITY); seconded by Wiseman and carried 5-2, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

CONSENT AGENDA

APPROVAL OF MINUTES..... **ITEM 8-a**
May 22, 2001 Special Meeting; September 4, 2001 Workshop Meeting; and September 17, 2001 Workshop Meeting. Council Member Galleberg noted a scrivener's error on Page 1 of the May 22, 2001 minutes.

COMMUNITY SERVICES..... **ITEM 8-b**

- 1) Holiday Tree Lighting (Bayfront Market Place) – 12/1/01
- 2) Barron Collier High School Christmas Concert (Cambier Park Bandshell) – 12/7/01
- 3) City of Naples Christmas Parade – 12/18/01
- 4) Naples Daily News ½ Marathon – 1/27/02
- 5) Midnight Magic (Venetian Village) – 11/17/01
- 6) Amend Third Street Festival of Lights – 11/19/01
- 7) Holiday Entertainment (Venetian Village) – 11/23/01
- 8) Reception/Dance Demo (Gallery Victoria)
- 9) Private Reception (Brown Bros. Harriman & Co.) – 12/5/01
- 10) Christmas Boat Parade (Venetian Village) – 12/6/01
- 11) Holiday Entertainment (Venetian Village) – 12/13/01

RESOLUTION 01-9380 ITEM 8-c

A RESOLUTION APPROVING A 2002 INTERLOCAL TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES REGARDING THE FOURTH OF JULY FESTIVAL; AND PROVIDING AN EFFECTIVE DATE. Title not read.

Vice Mayor Herms stated that anyone who is interested in participating in the parade should contact Herb Luntz. Mayor MacKenzie asked whether Council would be willing to place on the next Council agenda the concept of using Tax Increment Financing (TIF) funds for the Fifth Avenue South Association special events instead of the City's Special Events fund. Although it was the consensus of Council not to place this on the agenda, Vice Mayor Herms nevertheless suggested applying for Tourist Development Council (TDC) funding. Mayor MacKenzie recommended asking the City Manager to research this matter, and Council Member Tarrant predicted that the TDC would be more favorable if the request came from the Fifth Avenue South Association. He said he would address this at the upcoming TDC meeting.

RESOLUTION 01-9381 ITEM 8-d

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 THEREFOR; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9382 ITEM 8-e

A RESOLUTION APPROVING A PURCHASE ORDER, UNDER STATE CONTRACT, PURSUANT TO SECTION 2-355 (1) (d) (2) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO MID-FLORIDA FORKLIFT, INC., FOR THE PURCHASE OF A NISSAN MODEL JC60 FORKLIFT TO BE USED IN THE PURCHASING DIVISION'S WAREHOUSE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9383 ITEM 8-f

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTING SERVICES CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC.; AUTHORIZING THE CITY MANGER TO EXECUTE SUPPLEMENTAL AGREEMENTS AND APPROVE PURCHASE ORDERS UP TO AN ANNUAL AGGREGATE AMOUNT OF \$10,000; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9384 ITEM 8-g

A RESOLUTION DESIGNATING THE CITY MANGER AS THE CITY'S AUTHORIZED REPRESENTATIVE FOR PURPOSES OF ENTERING INTO AGREEMENTS WITH FLORIDA POWER AND LIGHT COMPANY (FPL) FOR STREET LIGHT REMOVALS, RELOCATIONS, MODIFICATIONS AND/OR ADDITIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE SUCH AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9385 ITEM 8-h

A RESOLUTION APPROVING A CONTRACT WITH JOHNSON ENGINEERING, INC. IN THE AMOUNT OF \$11,500, TO PROVIDE SURVEY SERVICES FOR DRAINAGE BASIN III (CIP NUMBER 99V14); AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9386 ITEM 8-i

A RESOLUTION APPROVING A CONTRACT WITH MADER ELECTRIC MOTORS, INC. TO PERFORM MOTOR STATOR REWINDING SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9387ITEM 8-j
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING A SOFTWARE SERVICE AGREEMENT BETWEEN THE CITY OF NAPLES AND VISIONAIR; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9388ITEM 8-k
A RESOLUTION APPOINTING ONE ALTERNATE MEMBER TO THE CODE ENFORCEMENT BOARD FOR THE BALANCE OF AN UNEXPIRED THREE-YEAR TERM EXPIRING OCTOBER 5, 2002; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE CONSENT AGENDA ITEM 8 (a through k); 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).

END CONSENT AGENDA

RESOLUTION 01-9389ITEM 12-a
A RESOLUTION DETERMINING PETITION 01-LE8 FOR LIVE ENTERTAINMENT AT 898 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:16 p.m.).

RESOLUTION 01-9390ITEM 12-b
A RESOLUTION DETERMINING PETITION 01-RIS13 FOR A RESIDENTIAL IMPACT STATEMENT FOR HOFGARTEN BRAUHAUS LOCATED AT 898 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

It is noted for the record that Items 12-a and 12-b were considered concurrently.

Title read by City Manager Kevin Rambosk (2:16 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie / met with the petitioners several times regarding their efforts to address Building Department concerns, received a compact disc from Susanne Schache which she sent to the River Park Community Center, received several letters, and spoke to two members of the public who did not understand the details of Council's previous discussion; MacIlvaine / received some communications by mail; Galleberg, Taylor, Wiseman, Herms, Tarrant / received two letters from the Schaches. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Petitioner Susanne Schache stated that the only item missing had been the signed FEMA certificate for the flood panels, but that she had just submitted this document to the City Manager. In response to Mayor MacKenzie, she confirmed that the live entertainment would be for the first floor restaurant only. City Manager Rambosk explained that staff has been working with the property owner to obtain a complete certificate of occupancy, and that when the Building Official confers approval of the flood-proofing certificate, the first floor would be complete. He added that staff is still awaiting some information regarding the second floor, and that it is not currently authorized for operation.

Vice Mayor Herms proffered a motion to approve Item 12-a, seconded by Council Member Tarrant; however, further discussion ensued. Prior to the vote, Vice Mayor Herms amended his motion to reflect suggested changes in the resolution to delete references to entertainment upstairs and to a time period which had expired. In response to Council Member Wiseman, City Manager Rambosk confirmed there were no outstanding violations relative to the first floor. Ms. Schache then explained that she typically has only two musicians and one singer for a total of three performers. In further response to Council, Mr. Rambosk said that the third floor is to be used only for residential,

but that staff had asked that it not be occupied until a certificate of occupancy had been issued, and City Attorney Grady recommended inserting language to this effect in Section 1. Mrs. Schache, however, stated that offices on the third floor are used during the day. Noting that the petitioner currently has a temporary certificate of occupancy for the first floor, Council Member Wiseman recommended stipulating that approval would be contingent upon the first floor receiving a final certificate of occupancy. Vice Mayor Herms again modified his motion as appears below.

Public Comment: None. (2:34 p.m.)

MOTION by Herms to APPROVE RESOLUTION 01-9389 (ITEM 12-a) AS AMENDED IN SECTION 1 INSERTING THE WORDS “LIMITED TO THE FIRST FLOOR” INTO THE PROPERTY DESCRIPTION; SECTION 2 PARAGRAPH 1 “LIVE ENTERTAINMENT SHALL BE LIMITED TO A MAXIMUM OF THREE PERFORMERS IN THE HOFGARTEN BRAUHAUS FROM 6:00 P.M. UNTIL 11:30 P.M.”; AND IN SECTION 3 STIPULATING APPROVAL TO BE CONTINGENT UPON THE FIRST FLOOR RECEIVING FINAL CERTIFICATE OF OCCUPANCY. This motion was seconded by Tarrant and carried 6-1, all members present and voting (Wiseman-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, Tarrant-yes, Galleberg-no, MacKenzie-yes).

MOTION by Herms to APPROVE RESOLUTION 01-9390 (ITEM 12-b) AS AMENDED WITH CONDITIONS IN SECTIONS 2 AND 3 AS STATED IN ITEM 12-a; seconded by Tarrant and carried 6-1, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9391 ITEM 13
A RESOLUTION APPROVING A REVISED AND UPDATED MASTER PLAN FOR SEAGATE PARK; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:34 p.m.) who stated that in 1997 Council had approved a master plan for this park; however, the Community Services Advisory Board (CSAB) had recently reviewed the plan and recommended several changes.

Community Services Director Don Wirth explained that the CSAB had reconstituted a citizen ad hoc committee to review the earlier plan and that this committee had proposed various changes unanimously approved by CSAB (Attachment 3). Mr. Wirth then noted the inclusion of a playground for ages 2-7, in recognition that the school playground is not always available during the day for the immediate community, and a basketball court. He said that although CSAB had voted for a full-court basketball facility, the Park Shore community had favored an unlighted half-court. In addition, Mr. Wirth said the committee proposed to maintain the existing ball diamond and lights, with an undersized soccer field to be overlaid.

Council Member MacIlvaine noted his participation on the original committee for Seagate Park improvements and explained that a goal had been to incorporate adequate facilities into a local park that could be used quietly by surrounding residents, without lights. He said that he continued to support that philosophy and that he could not support lighted, full-court basketball. Mayor MacKenzie suggested installing a half-court in such a way as to allow expansion if determined feasible in the future. In response to Mr. Herms, Mr. Wirth affirmed that the full-court at Cambier does attract people from outside the immediate area and that there are parking and noise issues. He also confirmed that the half-court at Seagate Park would have one hoop, which he said would also encourage only local youngsters. Mr. Wirth also explained that because of the additional items and a limited budget, staff anticipated later requesting Council to officially transfer from the Contingency

fund; however, Mayor MacKenzie cautioned that all the departments adhere to their individual budgets.

In further response to Council, Mr. Wirth explained that the restrooms at Seagate Park would be closed at night to avoid vandalism. While Council Member Wiseman expressed concern about safety of the Frisbee golf area, Mr. Wirth explained that the equipment involved is designed to be highly visible, and Vice Mayor Herms noted it could be easily removed if later determined unfeasible.

Public Comment: (2:55 p.m.) **Dodie Briskey, 4236 Crayton Road,** Park Shore Association Vice President, expressed appreciation to Council for upgrading the Seagate facility, but that she remained concerned that the park be for neighborhood youth and could not support lighted, full-court basketball. In response to Mayor MacKenzie, she said the Association did not address the placement of the court to allow for future expansion. Mr. Wirth confirmed that the City could in fact position this facility to allow for future expansion.

MOTION by Galleberg to APPROVE RESOLUTION 01-9391 WITH THE FOUR RECOMMENDED CHANGES WITH THE EXCEPTION OF AN UNLIT HALF-COURT BASKETBALL COURT WITH ROOM FOR EXPANSION IN THE FUTURE IF DESIRED; 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).

City Manager Rambosk noted that it would be necessary for the Collier County School Board to approve these changes.

RESOLUTION 01-9392 ITEM 19
A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND HUMISTON AND MOORE ENGINEERS TO PERFORM PROFESSIONAL ENGINEERING SERVICES FOR THE WEST NAPLES BAY WATERWAYS DREDGING PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:58 p.m.) who noted that staff had been working with the Aqualane Shores Association relative to this project and now is recommending an engineering contract. Natural Resources Manager Jon Staiger stated that total cost for the project, including construction supervision and contingency, is estimated at \$133,500; however, initial purchase orders will include only the reconnaissance level survey and detailed data collection. This first step, he said, must be accomplished in order to provide Aqualane Shores residents an accurate cost estimate; property owners will then be asked for comment on establishing an assessment district.

Although Dr. Staiger noted that the Association did not want to be assessed for this first part of this project (estimated at \$65,000), Assistant City Manager William Harrison had recommended that the City recoup all costs if the taxing district is formed. Dr. Staiger further expressed the belief that it had been a mistake for the City not to receive reimbursement for the initial expenses when establishing the East Naples and Moorings Bay taxing districts which had cost approximately \$15,000 each in 1988. He added that these projects had cost approximately \$1-million each with the total engineering comprising 15-20%. He added that Brett Moore of Humiston & Moore Engineers has indicated that until the reconnaissance phase is completed, it would be difficult to determine how much additional surveying is necessary.

Public Comment: (3:10 p.m.) **Michael W. Keeler, 800 17th Avenue South,** representing the Aqualane Shores Association, however, estimated a total project cost of \$633,000 with engineering

approximately 20%. He said it was in fact appropriate for the City to expend the aforementioned \$65,000, noting that the project would provide such benefits as increased property values, cleaner water, and unimpeded navigation. Mr. Keeler also estimated a per-lot cost of \$1,380 and suggested levying one assessment for each and confirmed that homeowners are in favor of the project. Vice Mayor Herms proffered a motion to approve noting that a precedent had been set for handling these types of initial expenditures, and that the City should therefore not discriminate against this particular neighborhood.

MOTION by Herms to APPROVE RESOLUTION 01-9392 AS SUBMITTED;
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 01-9393 ITEM 14

A RESOLUTION APPROVING CONTRACT AMENDMENT ONE, IN SUBSTANTIALLY THE FORM ATTACHED HERETO BETWEEN THE CITY OF NAPLES AND HARTMAN AND ASSOCIATES, INC. TO PROVIDE PROFESSIONAL ENGINEERING AND HYDROGEOLOGICAL SERVICES TO PERFORM AN AQUIFER PERFORMANCE TEST AT THE GOLDEN GATE WELLFIELD IN AN AMOUNT NOT TO EXCEED \$254,710.00; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT ONE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:16 p.m.) who said that there was an element in the master plan which allowed for the collection of data that would relate to the entire system and identify new water resource potential. He also noted that the City continues to work with the South Florida Water Management District (SFWMD) regarding its permit and that this expenditure would provide required assurances to Golden Gate residents that the wellfield will not impact area groundwater.

Public Works Director Dan Mercer explained that this testing would provide answers to many of the questions about water supplies which have been posed over the years. He said that approximately \$120,000 is for actual engineering services, and the remaining \$134,000 is for equipment and material. Hartman and Associates representative Chuck Drake stated that two monitor wells would be installed, one in the surficial aquifer at about 15 to 20 feet deep and the other at 80-100 feet deep to provide a long-term monitoring network which would indicate the direction of water flow. In response to Council Member Wiseman, Mr. Mercer indicated that the City had applied to the Big Cypress Basin Board for 50% of the cost, and that Director Clarence Tears had indicated his support for this project. In further discussion Mr. Mercer reported that the City had already budgeted \$65,000 for equipment and that the tests would allow the City to receive a long duration water use permit. When complete, the testing will indicate site-specific hydraulic properties, such as how easily water could flow through the aquifer and where it is emanating from, he said. Mr. Drake also said that a calculation could be made of the specific amount the City could derive from the Lower Tamiami aquifer. In response to Vice Mayor Herms, Mr. Drake stated that he could complete the reclaimed water master plan without this data, but that the water master plan would be delayed until about February. He further affirmed for Council Member Tarrant that this testing would determine whether the City has been drawing down the County's water supply.

Public Comment: None. (3:31 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9393 AS SUBMITTED;
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).

Recess 3:31 p.m. to 3:42 p.m. It is noted that all except Vice Mayor Herms and Council Member Galleberg were present when the meeting reconvened. Vice Mayor Herms returned at 3:43 p.m. and Council Member Galleberg returned at 3:44 p.m.

RESOLUTION 01-9394 ITEM 15

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO CONSTRUCTION AGREEMENT BETWEEN THE CITY OF NAPLES AND HOLE, MONTES & ASSOCIATES, INC., IN AN AMOUNT NOT-TO-EXCEED \$123,670.00 FOR THE PURPOSE OF PROVIDING SUPPLEMENTAL ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR PHASE II OF THE PORT ROYAL WATER TANK SITE PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO CONSTRUCTION AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:42 p.m.) who said the Port Royal project is the concluding improvement to address water pressure deficiencies in the south end of the City, calling this proposal a critical component. Staff, he said, had wanted the design engineers to spend additional time on this project to ensure that it is built correctly.

Public Works Director Dan Mercer however explained that the project is now substantially complete and that it may not require all four months of the extended construction period. In response to Council, Mr. Mercer reviewed the following costs: pump station design \$98,278, or approximately 5% of the project cost; contract administration with this amendment \$249,414, or approximately 13% of the overall project; and total project cost \$1,898,660. Council Member Galleberg noted that he would abstain from this vote. Council Member Taylor confirmed with City Manager Rambosk that this amendment is at the City's request.

Public Comment: None. (3:51 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9394 AS SUBMITTED;
seconded by MacIlvaine and carried 6-0-1, (Galleberg-abstain, Herms-yes,
MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See
Attachment 4, Form 8-b Memorandum of Voting Conflict For County, Municipal,
and Other Local Public Officers)

Council Member Galleberg explained that he has a real estate transaction pending with one of the officers of Hole Montes.

RESOLUTION 01-9395 ITEM 20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS FROM THE POLICE CONFISCATION TRUST FUNDS IN COMPLIANCE WITH APPROPRIATE STATE AND FEDERAL REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:51 p.m.). Police Chief Steven Moore stated that this is a request to expend funds in the City's confiscation account, which he noted has two sources; namely the Federal Equitable Sharing Program and the Florida Contraband Forfeiture Act. He stated that State requirements, which he noted are more restrictive than federal requirements, are being followed. City Manager Rambosk added that staff is also following the normal purchasing procedures. In response to Council, Chief Moore explained that the specialized equipment would be used for a program called Mobile Field Force and the facility security would be used for a better security plan, with a berm, parking lot cameras, and fencing. (See Attachment 5.)

Public Comment: None. (3:54 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9395 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).

In response to Mayor MacKenzie, Chief Moore said he had not planned to purchase an emergency rescue marine boat. City Manager Rambosk said there are funds in future capital improvement programs for this type of equipment, and Police Chief Moore added that he is pursuing various grants for police and fire vessels.

RESOLUTION 01-9396 ITEM 16

A RESOLUTION ACCEPTING A RIGHT-OF-WAY EASEMENT FROM LUCILLE COHEN FOR THE INSTALLATION OF A TRAFFIC SIGNAL SYSTEM AT THE INTERSECTION OF U.S. 41 AND 7TH AVENUE NORTH, DIRECTING THE RECORDING OF THE DOCUMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:55 p.m.) who noted that the City would realize a savings of approximately \$80,000. Mayor MacKenzie suggested expressing to the grantor the City's appreciation for her generosity.

Public Comment: None. (3:57 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 01-9396 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).

..... ITEM 22

WAIVER OF CONFLICT REQUEST BY ROETZEL & ANDRESS FOR A LANDSCAPE MAINTENANCE AGREEMENT AT THE ESTUARY AT GREY OAKS (3:57 p.m.) City Attorney Beverly Grady referred to an upcoming proposed agreement between the City, Collier County, and Grey Oaks and that Roetzel & Andress represents the Estuary at Grey Oaks, Ltd. She therefore requested direction from Council regarding using another attorney or waiving the conflict and allowing her firm to review the agreement on behalf of the City. Mayor MacKenzie noted this is merely a landscape maintenance agreement and is fairly straightforward.

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

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

RESOLUTION 01-9397 ITEM 21

A RESOLUTION ESTABLISHING PROCEDURES FOR PRESENTATIONS OF PETITIONS TO THE CITY COUNCIL REQUESTS FOR ADDITIONAL TIME TO PRESENT PETITIONS, SPECIAL NEEDS FOR EXHIBITS AND PROCESS TO REQUEST A TIME CERTAIN ON THE PETITION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:00 p.m.). It was the consensus of Council to continue allowing the petitioner to speak first. Council Member Galleberg expressed his preference for block presentations rather than a question and answer forum, and Mayor MacKenzie pointed out that this would ensure the petitioner a full 20 minutes to make a cogent presentation, which would then be followed by questions from Council. Vice Mayor Herms and Council Member Tarrant however pointed out that many petitions might take longer than 20 minutes. Council Member Wiseman expressed concern that such a policy would make some petitioners in fact feel compelled to speak for this time period instead of simply indicating a willingness to respond to questions. Council Member Galleberg noted that petitioners could actually have more than 20 minutes because they could respond to Council's questions but stressed the importance of allowing petitioners an uninterrupted 20 minutes.

Public Comment: None. (4:06 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 01-9397 (PETITIONER'S PRESENTATION TO OCCUR FIRST; PETITIONER ALLOWED 20 MINUTES (UNINTERRUPTED) TO PRESENT PETITION; CITY CLERK TO BE NOTIFIED OF TIME CERTAIN REQUESTS); seconded by MacIlvaine and

carried 5-2, all members present and voting (MacIlvaine-yes, Taylor-yes, Tarrant-no, Galleberg-yes, Herms-no, Wiseman-yes, MacKenzie-yes).

BRIEFING (4:06 p.m.).....
City Manager Kevin Rambosk briefly noted that the Parker sand web beach renourishment project had begun and that the Fifth Avenue North project would be rescheduled after the tourist season. He then stated that Solid Waste would conduct a hazardous waste material collection on November 10 and a used electronics collection on November 16. He stated that chlorine would be added to the City's water supply in conjunction with state requirements for the annual water quality maintenance program. Mr. Rambosk then said the City had erected a brass plaque memorial at the Naples Pier, but was not able to install the benches requested. He said the City would offer flu shots December 3. Mr. Rambosk added that the Goodlette-Frank Road widening has started and that the bridge railings would be completed November 16. The Collier County Fire Chief's Association recently recognized Fire Inspector Mike Klein and Administrative Specialist Kathy Brooke during its annual awards ceremony. In response to Council Member Taylor, Mr. Rambosk stated that staff had forwarded information to the Planning Advisory Board (PAB) relative to a variance for the River Park Recreation Center but that he had not received a response from the Carver property lessees (relative to use of an adjacent water retention area). Mr. Rambosk added that staff would review the River Park Center budget at a future meeting. He then said the charter boat issue would be presented to Council at the next meeting. Council Member Taylor also asked for information regarding the issues with City Dock tenant Alan Walburn; Mr. Rambosk said that he would meet with a number of the dock tenants on November 9.

PUBLIC COMMENT (4:16 p.m.)
Bill Boggess, 1100 8th Avenue South, read from a prepared statement regarding the beach rock problem (Attachment 6). Although Council Member Tarrant and Vice Mayor Herms suggested holding a special session on the matter, Mayor MacKenzie however noted that Mr. Herms was to meet with Natural Resources Manager Jon Staiger to draft a letter to the State that would address these issues prior to the December 3 Workshop. Council Member MacIlvaine said he believed that an extra meeting would be unnecessary and that Council was moving ahead in an orderly fashion. It was the consensus of Council to not hold a special session at this time.

CORRESPONDENCE & COMMUNICATIONS (4:25 p.m.)
Council Member Tarrant said he confirmed that there is a special meeting of the Tourist Development Council on November 8 and that he would introduce the item discussed (see Page 10) which Mayor MacKenzie clarified as whether the TDC would accept a City-sponsored petition to use TDC money for Fifth Avenue South Association events, or have the Association itself present the petition. Council Member Galleberg said that the Planning Advisory Board, at its October meeting, had discussed whether Council receives the benefits of its deliberations. He said Council does in fact receive the Planning Advisory Board (PAB) minutes and an executive summary, and has access to the tapes. Council Member Tarrant noted the PAB works hard and said he believed its input is extremely valuable to the Council.

Council Member MacIlvaine stated that the Staff Action Committee (SAC) had recently approved the use of three parking places in front of a Fifth Avenue South restaurant strictly for pick-up/drop off for valet parking. He said he believed this constituted improper use of public property, and would set an undesirable precedent. City Manager Rambosk said he believed SAC does have this authority, but that he would perform further research. Vice Mayor Herms explained that the City utilizes parking as the mechanism in which to encourage development on Fifth Avenue. He added that over time the City had allocated excess parking spaces to specific development on the street and that only limited parking space remained in the parking garage. He therefore expressed concern regarding the ability of SAC to relinquish the aforementioned three spaces which would have been

required to permit another development. Mayor MacKenzie suggested placing this on the November 19 Regular Meeting agenda, noting that SAC's decision should be held in abeyance until approved by Council. She added that the naming of public spaces is a power reserved unto the Council, and that she was surprised to learn that SAC had renamed an alleyway a cultural walkway. In addition, Mayor MacKenzie suggested that Council consider allowing the SAC meetings to be replayed on the City television channel. Council Member Taylor suggested inviting SAC representatives to the upcoming Council Meeting. City Attorney Beverly Grady stated that a SAC decision may be appealed to the Council within 28 days.

MOTION by MacKenzie to PLACE APPEAL OF THIS SAC DECISION ON THE NOVEMBER 19, 2001 REGULAR MEETING; seconded by Taylor and carried 6-0-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-abstain, MacKenzie-yes). (See Attachment 2.)

ADJOURN
4:38 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 2/6/02