



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – February 20, 2002 – 9:00 a.m.**

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Mayor MacKenzie called the meeting to order and presided.

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**ROLL CALL ..... ITEM 1**

**Present:**

Bonnie R. MacKenzie, Mayor  
Gary Galleberg, Vice Mayor

**Council Members:**

Joseph Herms (arrived 9:03 a.m.)  
William MacIlvaine  
Clark Russell  
Penny Taylor  
Tamela Wiseman

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**Also Present:**

Kevin Rambosk, City Manager  
Beverly Grady, City Attorney  
Tara Norman, City Clerk  
Ron Lee, Planning Director  
David Lykins, Recreation Manager  
Dan Mercer, Public Works Director  
Karen Kateley, Administrative Specialist  
Ronald Wallace, Development Svs Director  
Ann Walker, Planner  
John Passidomo  
Bill Boggess  
Michael Flynn  
Joseph Frontiero

Peter Flood  
Marlin Brennan  
Steve Kingston  
Robin Davis  
Jim Kramer  
Daniel Castaldini  
Larry Farese  
Rev. Debra Carter Williams  
David Corban  
Richard Burton

**Media:**

Dianna Smith, Naples Daily News

Other interested citizens and visitors

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

Rev. Debra Carter Williams, Unity Church of Naples

**ANNOUNCEMENTS ..... ITEM 3**

Aviation Day Proclamation

Presentation of Donation for River Park Midnight Basketball - \$5,000 by 5/3 Bank

**SET AGENDA ..... ITEM 4**

Added Item 10-b(6) Special event at Naples Airport

***MOTION by Galleberg to ADD ITEM 10-b(6); seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

Added Item 19-i Metropolitan Planning Agency appointment

***MOTION by Taylor to ADD ITEM 19-i; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

Added Item 19-j Southwest Florida Regional Planning Council appointment

**MOTION** by Wiseman to **ADD ITEM 19-j**; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Added Item 20 Selection committee for banking services

**MOTION** by Wiseman to **ADD ITEM 20**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**MOTION** by Herms to **CONTINUE ITEM 9 TO THE MARCH 6, 2002 REGULAR MEETING**; seconded by Russell and carried 6-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 1, Form 8B Memorandum Of Voting For County, Municipal, And Other Local Public Officers).

**MOTION** by Galleberg to **SET AGENDA ADDING ITEMS 10-b(6), 19-i, 19-j, 20, CONTINUING ITEM 9, AND REMOVING ITEMS 10-b(1), 10-b(2) and 10-b(4) FROM THE CONSENT AGENDA**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**PUBLIC COMMENT.....ITEM 5**

**Jim Kramer, 992 Plymouth Rock Drive**, noted the excessive rate charged by a local towing company subsequent to his recent traffic accident and asked for Council's assistance in assuring reasonable and competitive rates. Noting the City's limited authority in controlling towing rates, City Manager Rambosk said staff is nevertheless researching possible Code amendments with regard to the City's towing policy and would present recommendations at a future meeting. **Daniel Castaldini, 3396 Crayton Road**, asked for the City's assistance in repairing the right-of-way surrounding his residence. City Manager Rambosk said he would work with Mr. Castaldini in identify the resident's and the City's responsibilities in this regard. **Steve Kingston, Mariners Cove**, asked that Council limit its expenditures for airport noise litigation noting its eventual financial impact on airport businesses. **Bill Boggess, 1100 Eighth Avenue South**, requested that the Council fax a letter to the Department of Environmental Protection (DEP) affirming its commitment to rid City beaches of rocks.

**RESOLUTION 02-9504 .....ITEM 6-a**

**A RESOLUTION DETERMINING CONCEPTUAL GENERAL DEVELOPMENT AND SITE PLAN PETITION 02-GDSP1 FOR CONSTRUCTION OF A MIXED-USE DEVELOPMENT AT 221 9<sup>TH</sup> STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.).

**RESOLUTION 02-9505 .....ITEM 6-b**

**A RESOLUTION DETERMINING PETITION 02-PC1 TO IMPROVE THE PUBLIC RIGHT-OF-WAY AND OBTAIN CREDIT FOR SIX (6) PARKING SPACES ADJACENT TO 221 9<sup>TH</sup> STREET SOUTH AS AUTHORIZED IN SECTION 102-856 OF THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.).

**RESOLUTION 02-9506 .....ITEM 6-c**

**A RESOLUTION DETERMINING PETITION 02-DW2 FOR A WAIVER FROM THE D, DOWNTOWN ZONING REQUIREMENTS IN ORDER TO PLACE BUILDINGS 36.5 TO 42 FEET FROM THE PROPERTY LINE INSTEAD OF 10 FEET AND TO ALLOW**

**PARKING CLOSER TO A FRONT PROPERTY LINE THAN THE FAÇADE OF ONE BUILDING AT 221 9<sup>TH</sup> STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.). This being a quasi judicial proceeding, Council made the following ex parte disclosures: MacKenzie/visited the site, viewed the Planning Advisory Board (PAB) meeting tape, and asked the petitioner's attorney John Passidomo to give a brief presentation; Wiseman/received a letter from Peter Van Arsdale which she said she believed the entire Council received, and met with Carl Fernstrom several months prior; Russell/spoke to David Corban about the plans, received the aforementioned letter from Mr. Van Arsdale, and reviewed the material presented; MacIlvaine/served on the PAB at the time the previous request had been made to increase density, and visited the site; Galleberg/exchanged greetings with Attorney Passidomo, and met several months prior with Mr. Fernstrom who described a redevelopment project; Herms/viewed the PAB meetings, and visited the site; Taylor/no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Attorney Passidomo explained that he is representing the petitioner, Sunstream, Inc., which he said has a contract to acquire Naples Inn and Suites from the current owner/operator. He explained that Sunstream proposes to demolish the buildings on the site and construct a 100 room transient lodging facility, a 2,800 square foot restaurant within the hotel, and a free-standing 7,000 square foot office building. Attorney Passidomo further said the project architect, David Corban of Architectural Network, would make a detailed presentation of the plan and respond to technical questions.

Attorney Passidomo then further explained that the Naples Inn and Suites occupies 4.4 acres when the Code permitted transient lodging facilities at a density of 26 units per acre. In 1999 the current owners created a plan to redevelop the property into a 114 room hotel with a 6,345 square foot free-standing restaurant and a 1,700 square foot office building. The property owner had filed an application for vested rights since Council at that time was in the process of rezoning the entire 41-10 district to the "D" Downtown District which would reduce the permitted density to 21 units per acre. The Council in fact determined that the property owner had expended substantial sums in reliance on previous governmental approvals, and concluded that the property owner was entitled to a vested rights determination, Mr. Passidomo said, and further approved the hotel at 26 units per acre at that same City Council meeting. The one condition in this approval was that Council approve a site plan that was in substantial compliance with the one presented at that time.

Mr. Passidomo then explained that several years later Sunstream submitted an offer to acquire the property from the current owner/operator, secured a contract in late 2001, and retained Architectural Network to develop the plans currently under consideration. He added that the Planning Director has determined that the plan footprint does in fact adhere to the one approved in 1999 although the petitioner is requesting a waiver from the "D" Downtown requirements in order to place the proposed buildings 36.5 to 42 feet from the property line instead of 10 feet. However, he said, the architect has endeavored to comply with the essence of the Code by using landscaping to provide some of the functional equivalency of a building to the property line. Attorney Passidomo asked that Council recognize the constraints imposed upon the petitioner in adhering to the existing footprint on the property, and pointed out that this would be the only petition wherein Council would be asked to consider waivers in the "D" Downtown District that resulted from a vested rights determination. Furthermore, he said that this project would

accomplish a reduction in the permitted number of transient lodging units from 114 to 100; a reduction in the size of the restaurant from a 6,345 square foot free-standing building to a 2,800 square foot structure within the hotel; a reduction of 455 peak hour vehicle trips due to the decreased density; elimination of a driveway, a curb cut, and an access point on U.S. 41; improvements in traffic circulation and impacts, and public safety; and elimination of the structures along substantial portions of U.S. 41 in order to open the property with an attractive vista. Attorney Passidomo also pointed out that these public benefits would help spur redevelopment in the 41-10 area, noting that staff and the PAB recommend approval and that the petitioner agrees to abide by all the proposed conditions contained in the staff report.

Project architect David Corban affirmed that there would be no change in the existing number of hotel units on the site (100). He explained that there would be 10 studio units in the center area on the third floor, 12 three-bedroom units at the corners of each building, and one- and two-bedroom units comprising the remainder. In order to provide additional parking on site the commercial building on U.S. 41 had been reduced to 7,000 square feet. He then explained that the first floor of the main hotel would contain the lobby, the 3,000 square foot restaurant, and hotel offices. The second floor would contain 3,200 square feet of conference space for hotel guests, and the third floor would contain the studio units. Mr. Corban further clarified that the units would be accessed individually rather than through a central corridor, the first floor units through a sidewalk that runs along the outside of the units and the second and third floor units from exterior balconies. He then said it was not feasible to construct a traditional hotel, noting that the length of the site and the 42-foot commercial building height limit requires the hotel be dispersed. Mr. Corban then pointed out that the project greatly improves the frontage along Tenth Street and Third Avenue by removing the chain link fence, providing new landscaping, and adding architectural elements at the build-to line. In addition, he said he would provide six on-street parking spaces that would also be available for public parking as well as access to the property to the north. Moreover, he said the project would provide a catalyst for new growth in the area. Mr. Corban further explained that the parking requirements, the 42-foot height limit, and the inability to place parking below buildings at street front make this development difficult without waivers. He clarified that placing the buildings at the street front with parking behind would not allow the creation of usable outdoor space for the hotel patrons. Moreover, placing the parking in front of the building forms an attractive courtyard space, which he said is important to the function of the hotel.

In response to Council, Planning Director Ron Lee confirmed that this development would have 100 units, or 23 units per acre, and that the vested rights determination allows 26 units per acre, although the Code requires 21. Mr. Corban further explained that there would be a wall and some landscaping to provide privacy for the pool area and to screen the pool equipment, and that the restaurant would be open to the public and have its own parking area. Mayor MacKenzie recommended identifying the proposed right-of-way connection to the property to the north in one of the resolutions. Mr. Lee said the Code encourages interconnections to adjacent properties, when possible, and said that they would be identified during the final General Development and Site Plan (GDSP) review.

Vice Mayor Galleberg stated that he has an interest in a property in close proximity to the subject property, and although Council had previously established that this ownership interest does not preclude him from voting on matters pertaining to the 41-10 district, approval or denial of this petition might affect the value of that property and that he would therefore abstain from voting.

In response to Council Member Wiseman, Attorney Larry Farese, representing the City in this petition, stated in 1999 Council had granted vested rights based upon the site plan presented to Council at that time. Therefore, in order to retain a higher number of units than that allowed by Code, the applicant's site plan would have to be in substantial compliance with the one already approved; any major deviation would mean risking the vested rights approval. However the conditional use resolution specified that the development standards as enumerated in the "D" Downtown District shall be applicable except for the density requirements. Attorney Farese added that the petitioner is therefore asking for waivers from the "D" Downtown District development standards in order to keep that site plan, and said that waivers are in fact necessary to complete the project. Mr. Lee confirmed that staff recommended approval for the waivers because of the requirement that the site plan be in substantial compliance with the one presented at the vested rights hearing.

Council Member Herms recommended placing the six parking spaces along Third Avenue South on the street instead of in the grassed right-of-way in order to save money and to preserve the green space along that street. Mr. Lee suggested evaluating this proposal during the final site plan approval. Council Member Taylor expressed disappointment with the plan and suggested that the petitioner explore other options. Mr. Corban said he had briefly considered other ideas but explained that he could not retain the interior courtyards, which he said were integral to the entire development, with any other parking configuration. Council Member Herms stated that placing buildings close to the street can create a noise impact to the residents, and therefore expressed support of the proposed setbacks. He further said he believed the courtyard would be an attractive feature. Council Member MacIlvaine predicted that the direction in the "D" Downtown District is to relax some of the current requirements which have been detrimental to development, and said he believed this would be an outstanding project. In response to Mayor MacKenzie, Mr. Corban said that he would install an entrance and abide by the required 22-foot setback on U.S. 41. He added that there would be 16 feet of landscaping in front of the building and six feet behind, and that he would be amenable to working with staff in regards to a parking needs analysis. Council Member Taylor recommended installing higher hedges to screen the parking and to beautify the streetscape, and Council Member Wiseman said she believed this project to be inconsistent with Council's previous direction for Tenth Street, saying it would resemble a walled enclave. Council Member Taylor suggested that a long curvilinear sidewalk would soften the vertical lines and Mr. Lee said he would work with the Engineering Department to ascertain whether it were feasible to install the parking without disturbing the right-of-way. Referencing his February 14 memo to Council, a copy of which is contained in the file for this meeting in the City Clerk's Office, Mr. Lee recommended that the recorded deed and declaration of condominium and hotel/motel license be provided to him prior to issuance of the Certificate of Occupancy. In response to Council, City Manager Rambosk said he would ascertain whether reuse water could be brought to Tenth Street, and Mayor MacKenzie suggested accomplishing this in conjunction with installation of the new sidewalk. Mr. Lee explained that the petitioner could in fact install a three-foot fence or wall outside the building envelope, but suggested prohibiting additional fences or walls in the site plan approval. It was also learned that the PAB generally approves the GDSP; however, it was the consensus of Council to place GDSP approval on a future consent agenda in the event of further questions; Attorney Passidomo concurred.

**Public Comment:** None. (10:49 a.m.)

**MOTION by Herms to APPROVE RESOLUTION 02-9504 (ITEM 6-a) AS AMENDED AS FOLLOWS: 1) ON-STREET PARKING ON THIRD AVENUE SOUTH AND TENTH STREET SOUTH TO BE IMPROVED WITH SCREENING BY INCREASING HEDGE HEIGHT (NO MEASUREMENT**

**STANDARD) WITH LANDSCAPING TO BE NEGOTIATED BY STAFF AND PETITIONER; 2) CURVILINEAR SIDEWALK TO BE INSTALLED, IF POSSIBLE, ALONG TENTH STREET AS COORDINATED WITH THE STAFF; 3) ALLOCATE ON-STREET PARKING ON THIRD AVENUE FROM CURRENT PAVED AREA AND EXISTING LANDSCAPING RETAINED NORTH OF THAT PAVED AREA; 4) RIGHT-OF-WAY CONNECTION TO THE PROPERTY TO THE NORTH REQUIRED; 5) OUTBUILDING ADJACENT TO U.S. 41 CAN BE NO LARGER THAN 7,000 SQUARE FEET IN TOTAL SIZE, NO MORE THAN TWO STORIES IN HEIGHT AND WITH AN ENTRANCE ONTO U.S. 41; 6) PROHIBIT ANY WALLS OR FENCES NOT SHOWN ON PLAN SUBMITTED; 7) PARKING NEEDS ANALYSIS SHALL BE APPLIED ONLY IN FAVOR OF ADDITIONAL LANDSCAPING OR A SECOND ENTRANCE/EXIT ONTO TENTH STREET AS BASED ON STAFF RECOMMENDATIONS; 8) FINAL GDSP APPROVAL TO BE PLACED ON THE COUNCIL'S CONSENT AGENDA; AND 9) RECORDED DEED, DECLARATION OF CONDOMINIUM AND HOTEL/MOTEL LICENSE TO BE PROVIDED TO THE PLANNING DIRECTOR PRIOR TO ISSUANCE OF THE CERTIFICATE OF OCCUPANCY;** seconded by MacIlvaine and carried 6-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 2, Form 8b Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.)

**MOTION by Taylor to APPROVE RESOLUTION 02-9505 (ITEM 6-b) AS AMENDED WITH THE SAME STIPULATIONS AS 6-a;** seconded by MacIlvaine and carried 6-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 2.)

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9506 (ITEM 6-c) AS AMENDED WITH THE SAME STIPULATIONS AS 6-a;** seconded by Taylor and carried 6-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 2.)

**RESOLUTION (Continued).....ITEM 7**  
**A RESOLUTION DETERMINING PETITION 02-DW3 FOR WAIVERS FROM THE SETBACK REQUIREMENTS OF THE “D” DOWNTOWN DISTRICT AND THE ALLOCATION OF TEN (10) PARKING SPACES WITHIN THE RIGHT OF WAY OF SIXTH AVENUE NORTH TO ALLOW FOR RENOVATIONS AND ADDITIONS AT 606 9<sup>TH</sup> STREET NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read. (11:01 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/met with the petitioners indicating her approval of a one-story building, suggesting that a trellis be placed on the alleyway side of the building, and requesting additional landscaping on the east side; Wiseman/no contact; Russell/met briefly with the petitioners for an initial project review, and spoke to Planning Director Ron Lee; MacIlvaine/no contact since the Planning Advisory Board (PAB) approval of the previous petition; Galleberg/conversation with Peter Repucci the previous week; Herms/met with the petitioners and made recommendations relative to meeting the “D” Downtown standards for parking and landscaping; Taylor/spoke to Matt Joyner, Marlin Brennan, Carry Geroy, and Planning Director Lee. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Architect and petitioner Matt Joyner explained that there would be only a minor façade change, and that he concurred with a recent proposal to place landscaping at several locations, including along U.S. 41 between the sidewalk and the street. He added that he would allow a nearby restaurant to continue using Bailey’s parking at night, but that the planting would force parking farther away from U.S. 41.

Mayor MacKenzie suggested installing a breakaway door or window on the alleyway side of the building to create an emergency exit. Mr. Joyner stated that he had located some doors along the perimeter of the building for emergency egress, but that he would install another point of exit along the alley.

In response to Vice Mayor Galleberg, Mr. Joyner said he would renovate the existing entry feature on U.S. 41 and reconfigure the parking space to increase its efficiency. Planner Ann Walker stated that this property would not qualify for a monument sign, noting insufficient frontage on U.S. 41, and that the existing signage on U.S. 41 does not conform to the regulations in the “D” Downtown District although the petitioner proposes to retain it. Council Member MacIlvaine recommended that the petitioner conform to existing standards. Planning Director Lee explained that the petitioner could place a 2.5 foot sign band on the entire width of the building on both the U.S. 41 and Sixth Avenue facades; no ground or pole signs would however be permitted.

In further discussion, Mr. Lee stated he believed the perpendicular parking spaces to the south of the building to be the safest option. Mr. Joyner also stated that he did not research placing the building closer to U.S. 41 as using the existing footprint would be more cost effective. He added that Council had approved six parking spaces on the Sixth Avenue North right-of-way for a previous development and that he is currently requesting four more. Mr. Lee however clarified that this plan would supercede any previous approvals, noting that the former project had not been fully implemented. City Attorney Beverly Grady explained that if the building permit were not obtained within one year, the parking would be available to any property owner within the block. Mr. Galleberg therefore noted that the request is for 10 on street parking spaces. Mayor MacKenzie however suggested a statement affirming that this waiver along with the other to increase the number of residential units per acre are now invalid. Council Member Herms concurred and proffered a motion to approve the project stipulating that the previous approvals granted are rescinded. City Attorney Grady affirmed that since the petitioner is not requesting the 9.7-foot setback waiver from Sixth Avenue North as stated in the resolution, it should be deleted. Mr. Herms therefore amended his motion deleting this waiver. Mayor MacKenzie clarified that approval would include placing the south side of the building façade back to the 10 foot setback line, 10 parking spaces, the additional landscaping, and the “D” Downtown District signage standards. Council Member MacIlvaine seconded this motion; however, further discussion ensued.

Planner Walker said there would be insufficient area on the alley right-of-way for landscaping. Mr. Joyner explained that he could install landscaping on the small strip of unpaved City alleyway adjacent to the building, and Council Member Herms expressed support for this as long as it did not affect the ability of vehicles to traverse the alley. Council Member Taylor concurred noting the importance of adequate buffering as well as overall conformance to the “D” Downtown District standards.

Planner Walker explained that in order to meet waiver requirements, staff would have to find that the property does not conform to the district standards and that the existing non-conformities are such that meeting the requirements would be impractical or would not meet the intent of the district. Further, she said the proposed renovations would have to be compatible with adjacent buildings, and achieve the Code requirements as closely as is practical. She then explained that although both adjacent buildings have a minimal setback from U.S. 41, this project would perpetuate the existing setback of almost 100 feet, and therefore the need for non-conforming signage. Ms. Walker added that she believed the building rehabilitation is actually unsubstantial, and that for compatibility and the intent of the district, she would prefer the addition be made on the front of the building closer to U.S. 41. She therefore said she found the standards had not been met and recommended denial of the waiver. In addition, she said that staff recommended denial of the allocation of parking spaces. Mayor MacKenzie pointed out that a waiver request for a zero setback from the alley is also contained in the resolution which City Attorney Grady confirmed should be modified.

**Public Comment:** (11:30 a.m.) **Michael S. Flynn, M.D. 681 Goodlette-Frank Road**, an adjacent property owner, stated that the proposed project would provide greater visibility for his office and thus benefit him and his patients. He added that he would be amenable to any type of signage. **Joseph Frontiero, 1268 Fourth Street South**, Frontiero Custom Homes owner, said that Council's decision regarding this petition would be the determining factor as to whether he would purchase the attached property (Townsend Produce) to relocate his business. He noted for the record that the current property owner is Robert Burton. **Peter Flood, 125 Airport Pulling Road #202**, said he was also considering moving into this space, and that he believed the proposed project would have less impact on the area than the previous plan. He also expressed approval of the construction plans, and said he would comply with applicable signage requirements.

In response to Council, Petitioner Joyner said he believed that some type of identification close to the street is called for but that he would comply with the City's signage standards. Mayor MacKenzie suggested that he create an alternate proposal and request a waiver at a future meeting. In further discussion of this waiver process, Mr. Joyner explained that one of the current property owners would be available at 1:30 p.m. that day to authorize any such action on the property, Mr. Joyner having indicated that his purchase agreement expires on February 21. Council Member Herms suggested making approval of the petition contingent upon the actual purchase of the property with the stipulation that it expire if the property is not purchased within seven days. Vice Mayor Galleberg however cautioned against granting contingent waivers. City Manager Rambosk recommended a continuance until later in the day so the owners could be present.

**Public Comment:** (11:46 a.m.) **Marlin Brennan, 1150 Eighth Terrace North**, representing the Lake Park Association, stated that this property is non-conforming and that any changes made should bring it to current standards. He added that he concurred with staff's recommendation and opposes the plan saying it abuts the east side, which he noted is a residential section of the City. Mr. Brennan further said that if the building is in fact renovated, the owner should remove the east wall and move it back to meet the 10-foot setback, and provide landscaping to protect the neighborhood from further encroachment. He also said the parking on Sixth Avenue North should be limited to six spaces and supplemented with landscaping. **Robin Davis, 1365 Diana Avenue** (City Clerk Tara Norman administered the necessary oath to this speaker who responded in the affirmative) Ms. Davis stated that although she favored renovating the building, it should



be set back to conform to existing standards. She further observed there to be inadequate space in the alley for landscaping. In response to Mayor MacKenzie, she said she would prefer a three story building with adequate vehicle ingress/egress to the one story building as depicted.

**MOTION by MacIlvaine to CONTINUE ITEM 7 UNTIL 1:30 P.M.; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

#### CONSENT AGENDA

**APPROVAL OF MINUTES.....ITEM 10-a**  
November 19, 2001 Regular Meeting and January 22, 2002 Workshop Meeting.

**SPECIAL EVENTS ..... ITEM 10-b**

3) March of Dimes Walk America – 4/6/02

5) Naples Community Sailing Center Regatta (Lowdermilk Park) – 3/9-10/02

6) Naples Airport Open House – 3/2/02

**RESOLUTION 02-9507 .....ITEM 10-c**

**A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND HALL-MARK FIRE APPARATUS, INC. FOR THE PURCHASE OF A FORD F350 SUPERCAB, FIRE RESCUE VEHICLE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 02-9508 ..... ITEM 10-d**

**A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND SOUTHERN PINNACLE SERVICES, INC. TO FURNISH AND INSTALL LANDSCAPE AND IRRIGATION AT THE PORT ROYAL WATER TANK SITE FOR THE PUBLIC WORKS DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 02-9509 .....ITEM 10-e**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE ODOR AND CORROSION CONTROL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND ENVIRO-TECH, IN AN AMOUNT NOT-TO-EXCEED \$75,000.00 FOR THE PURPOSE OF EXTENDING THE SERVICE TO PROVIDE ODOR AND CORROSION CONTROL SERVICES FOR THE WASTEWATER COLLECTION DIVISION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO CONSTRUCTION AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**MOTION by Taylor to APPROVE ITEMS 10-a, 10-b(3,5,6), 10-c, 10-d, AND 10-e; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

#### END CONSENT AGENDA

**.....ITEM 10-b (1)**  
**MCCABE’S IRISH PUB & GRILLE – ST. PATRICK’S DAY CELEBRATION (SUGDEN PLAZA) – 3/16-17/02.** City Manager Kevin Rambosk said there had been no complaints relative to the last year’s event, and that access through Sugden Plaza had been provided as required by Council.

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

**MOTION by MacIlvaine to APPROVE ITEM 10-b(1); seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

.....ITEM 10-b (2)  
**CELEBRATION COMMUNITY CHURCH EASTER SERVICE (LOWDERMILK PARK) – 3/31/02.** City Manager Kevin Rambosk noted that last year's event was held at Cambier Park. Mayor MacKenzie said that although some neighbors may have objected to weekly services, they would likely be amenable to services for special occasions such as on Christmas and Easter.

**Public Comment:** None. (12:02 p.m.)

**MOTION by Galleberg to APPROVE ITEM 10-b(2); seconded by Wiseman and carried 5-2, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).**

.....ITEM 10-b (4)  
**GREAT DOCK CANOE RACE – 5/11/02.** City Manager Kevin Rambosk stated that there had been no requests for changes and no complaints received from the last year's event. He however said questions had nevertheless been raised regarding the ability to police waterfront operations, noting that the City needs the assistance of the Coast Guard, the Marine Patrol, and the Collier County Sheriff's Office to provide a safe atmosphere. City Manager Rambosk further said that he was unsure whether the Coast Guard would be present. Council Member MacIlvaine suggested asking the Florida Marine Patrol or other agencies for assistance. Mayor MacKenzie pointed out that the organizers had been preparing for this event for some time, and that requiring increased waterfront patrol at this time would be unfair. City Manager Rambosk also noted that there was a request for co-sponsorship but that staff recommends denial due to serving of alcohol at the event. Council Member Russell proffered a motion to approve without co-sponsorship. Council Member MacIlvaine seconded the motion with the understanding that The Dock would underwrite the expenses for additional patrol. City Manager Rambosk however suggested continuing the item until the next meeting so the petitioner could respond. Mayor MacKenzie said she could not support the motion noting that all proceeds are donated to charity. Council Member Wiseman suggested that Council vote to approve the event and consider the co-sponsorship at the next meeting. Council Members Russell and MacIlvaine amended the motion; however, Mr. MacIlvaine expressed concern about causing a potentially unsafe condition. City Manager Rambosk stated that he would ask Police Sergeant George Patneau, who works directly with special events, to provide further information. He however affirmed that staff would ensure adequate policing is available, regardless of Coast Guard participation. Council Member MacIlvaine withdrew his second saying he would prefer continuance.

**Public Comment:** None. (12:13 p.m.)

**MOTION by Russell to APPROVE ITEM 10-b(4) WITHOUT CO-SPONSORSHIP CONSIDERING CO-SPONSORSHIP ON THE MARCH 6, 2002 AGENDA; seconded by Galleberg and carried 5-2, all members present and voting (Galleberg-yes, Russell-yes, MacIlvaine-no, Wiseman-yes, Taylor-yes, Herms-no, MacKenzie-yes).**

**Recess: 12:13 p.m. to 1:31 p.m.** It is noted for the record that all Council Members were in attendance except Council Member Wiseman who returned at 1:33 p.m. and Council Member Herms who returned at 1:39 p.m.

**(Continued from Page 9) .....ITEM 7**  
Robert Burton stated that he is the owner of the property which is the subject of this request. (City Clerk Tara Norman administered the necessary oath, and he responded in the affirmative.) Mayor MacKenzie explained that some of the changes that Council is considering would

invalidate the previous waivers he had been given, but that if this petition were not approved, the waivers would remain in effect. Mr. Burton concurred. City Attorney Grady asked that he sign a form affirming that he authorized the architect to be the petitioner for this application. In response to Council, Mr. Burton stated that he had not received any other offers for this property. Council Member MacIlvaine proffered a motion to approve Item 7 with the restrictions previously enunciated, including the stipulation that the sign be in conformance with the “D” Downtown regulations. City Attorney Grady explained that approval does not now need to be contingent upon the purchase, because the owner has consented to this application. Mayor MacKenzie therefore said the other conditions are additional landscaping along the alley, Sixth Avenue North, and U.S. 41 to the extent possible. Mayor MacKenzie seconded the motion; however, further discussion ensued. In response to City Attorney Grady, Mr. Burton affirmed that the amended landscaping plan does not match the one contained in Council’s packet. (A photograph of the amended plan is contained in the file for this meeting in the City Clerk’s Office.)

Council Member Taylor said she could not support the motion, saying it would be a better project with a 10 foot setback on the alley and the building moved closer to U.S. 41. She added that she was certain there were other parties interested in this building as it currently exists. Vice Mayor Galleberg explained that he would in fact vote on the motion, noting that he did not consider this in proximity to the parcel in which he has an interest. He then said he would not render approval, saying that although a one-story building is beneficial, it would not comply with “D” Downtown District regulations. Council Member MacIlvaine, however, characterized the proposal as a tremendous improvement over what exists on the site and added that building closer to the street would entail vacating the original footprint which would create an economic hardship. Mr. MacIlvaine further said he believed it unnecessary to bring the building, which is on one of the City’s main arterials, to the curb line close to traffic. He also said he understood the need for a parking lot in front, and that it would not detract from the appearance or ambience of the area. Council Member Russell concurred that this proposal is an improvement over the existing structure but said he did not favor any changes in presentations aside from what Council had already been given. Further, he recommended that if standards are not in line with the marketplace that Council address necessary changes and not continue to issue waivers. Although also noting improvement in the use of this building, Council Member Wiseman said she could not support the petition. She pointed out that the rehabilitation reduces the structure to two walls, one of which would allow the maintenance of a zero foot setback, and that there would in fact be very little left of the original site and would perpetuate the pedestrian void in the front parking area. She also noted that staff had found the criteria for a waiver had not been met on any element.

Council Member Herms commented that a number of professional people intend to purchase this building in order to renovate it into a low scale, low intensity one-story office building, and he expressed concern about requiring petitioners to demolish buildings in order to perform renovations, noting that many properties are too expensive to make this feasible. Although he said he did not favor the rear yard setback, the petitioner would provide needed streetscape, landscape, and building improvements which he believed to be a reasonable compromise. Mayor MacKenzie agreed with comments made by Council Members MacIlvaine and Herms and added that she believed the goal of the 41-10 area to be the retention of a neighborhood atmosphere that would support a number of small low-intensity businesses. Mayor MacKenzie said it would be unfair to deny this petition on the basis of a rumor of a speculative plan that may

not be forthcoming. Vice Mayor Galleberg said he is considering this petition from a planning perspective, and not on the basis of a subsequent sale.

Council Member MacIlvaine called the project a catalyst in developing the area, and that he could discern no significant drawback. Council Member Herms pointed out that the owners could obtain a permit and build on the site without Council approval if the project meets all the district standards and does not require a waiver and expressed concern regarding the possibility of a building substantially larger than that proposed. In response to Mr. Herms, Planning Director Lee said the petitioners could renovate the existing building footprint without Council approval, and that it would be recognized as a legal non-conformity as long as there were no increase in any non-conforming aspect. Vice Mayor Galleberg commented that this project, which has been characterized as low-intensity, already requires 10 off-site parking spaces, and observed that there would be insufficient parking for a larger project. Mr. Herms however said it may be valuable for staff to determine how much square footage can actually be accommodated on this site. Mr. Galleberg also expressed the view that Council appears to have abandoned the “D” Downtown District regulations. Council Member MacIlvaine however said this area is primarily intended for vehicles rather than pedestrians, and that conforming to these standards by placing the building close to the sidewalk would be a mistake.

**MOTION by MacIlvaine to APPROVE ITEM 7 WITH THE AFOREMENTIONED CONDITIONS.** *This motion was seconded by MacKenzie and failed 3-4, all members present and voting (Wiseman-no, Russell-no, Taylor-no, Galleberg-no, Herms-yes, MacIlvaine-yes, MacKenzie-yes).*

Vice Mayor Galleberg emphasized the importance of attaining clarity on this issue, and said Council needs to receive a final report from the Heart of Naples Committee. Mr. Joyner said he would like to consider other design options, and that he would be amenable to continuance.

**MOTION by MacIlvaine to CONTINUE ITEM 7 TO THE MARCH 20, 2002 REGULAR MEETING;** *seconded by Herms and unanimously carried, all members present and voting (Herms-yes, Galleberg-yes, Taylor-yes, MacIlvaine-yes, Wiseman-yes, Russell-yes, MacKenzie-yes).*

**RESOLUTION 02-9510 ..... ITEM 8**  
**A RESOLUTION DETERMINING WAIVER 02-SAC1 FROM SECTION 102-1095 (b) (4)**  
**a. OF THE CODE OF ORDINANCES WHICH REQUIRES A REAR YARD SETBACK**  
**OF 50 FEET FROM THE MID-POINT OF AN ALLEY IN THE FIFTH AVENUE**  
**SOUTH SPECIAL OVERLAY DISTRICT IN ORDER TO PERMIT TWO CARPORTS**  
**WHICH ENCROACH TO WITHIN 15 FEET OF THE ALLEY CENTERLINE AT 796**  
**FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND**  
**PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:14 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/viewed the property, and uses Bank of America for personal banking; Wiseman/would abstain from voting on this issue because attorneys at her law firm have provided legal services to the owner of the building, although not in relation to this petition; Russell/familiar with the owner of the building and spoke briefly to David Corban about the project; MacIlvaine/reviewed the petition when he was a member of the Staff Action Committee (SAC); Galleberg/familiar with the site; Herms/no contact; Taylor/no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Project architect David Corban explained that the petitioner intends to provide seven covered parking spaces on the south side of the building along the alley, which he noted would involve encroaching into the alley setback, and that SAC had recommended approval of the waiver. He further said this would be a canvas awning supported by an aluminum structure and masonry columns. In response to Council, Planner Ann Walker stated that staff views this as a carport rather than an awning and further explained that there are currently 10 parking spaces under the building which are designated for residential use. The petitioner intends to add four more residential parking spaces so that each of the 14 residential units would have one assigned space, and then add three more spaces for commercial use, she said. There are 37 parking spaces on site, and that the petitioner has met the residential parking requirement of 1.5 spaces per unit, although there would be one covered space per unit. Ms. Walker then explained that there should be a rear yard setback of 50 feet from the mid-point of the alley, but that the petitioner is requesting a variance to permit the carports to encroach to within 15 feet of the alley centerline. Mayor MacKenzie said she could not support the petition, saying there was shortage of available parking and that the public would be reluctant to use shared parking. Council Member Russell said he believed carports to be a good idea, but that he was reluctant to render approval without standards for design. Vice Mayor Galleberg pointed out that there is nothing in Code that requires approval for a carport. Planning Director Ron Lee explained that staff had considered this petition conservatively and decided that the best approach was through a SAC waiver.

**Public Comment:** None. (2:32 p.m.)

**MOTION by Herms to DENY ITEM 8; seconded by Russell and carried 4-2-1 (Russell-yes, Galleberg-no, Herms-yes, Wiseman-abstain, Taylor-yes, MacIlvaine-no, MacKenzie-yes). (See Attachment 3, Form 8B, Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers).**

Vice Mayor Galleberg said he believed this to be well-designed parking on private property. City Attorney Beverly affirmed that Council Member Wiseman may vote on the following motion as it is direction to staff which encompasses more than this particular project.

**MOTION by Russell to DIRECT STAFF TO DEVELOP STANDARDS FOR THE CARPORTS IN THE FIFTH AVENUE OVERLAY DISTRICT; seconded by Galleberg and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Mayor MacKenzie suggested also enacting standards for trash containers. City Manager Rambosk said that staff is considering placing a compactor in this area which would eliminate most of these containers. Council Member MacIlvaine pointed out the unsanitary conditions at an adjacent restaurant which City Manager Rambosk stated that he would investigate. Planner Walker stated for the record that the building under consideration does have a conforming trash container.

**RESOLUTION (Continued – See Item 4) .....ITEM 9-a  
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 02-CU1 TO ALLOW THREE DRIVE THROUGH WINDOWS FOR A PROPOSED BANK ON TWO PARCELS OF LAND LOCATED AT 856 THIRD AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title not read.**

**RESOLUTION (Continued – See Item 4) ..... ITEM 9-b  
A RESOLUTION DETERMINING PETITION 02-DW1 FOR A WAIVER FROM SIGNAGE REQUIREMENTS IN THE D-DOWNTOWN DISTRICT IN ACCORDANCE**

WITH SECTION 102-853 OF THE CODE OF ORDINANCES FOR A PROPOSED BANK AT 856 THIRD AVENUE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9511 .....ITEM 14

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND NEUBERT CONSTRUCTION SERVICES, INC. FOR THE CRAYTON ROAD SIDEWALK PROJECT FOR THE ENGINEERING DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:38 p.m.) who affirmed that the cost is lower than the City's other sidewalk installation contracts.

Public Comment: None. (2:39 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 02-9511 AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 02-9512 .....ITEM 15-1

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND DESIGNED TRAFFIC INSTALLATION COMPANY TO FURNISH AND INSTALL CONCRETE AND STEEL STRAIN POLES FOR THE ENGINEERING DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during the discussion below (2:39 p.m.).

RESOLUTION 02-9513 .....ITEM 15-2

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND MID-CONTINENT ELECTRIC, INC. TO FURNISH AND INSTALL MAST ARM POLES FOR THE ENGINEERING DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during the discussion below (2:39 p.m.).

RESOLUTION 02-9514 .....ITEM 15-3

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND E.B. SIMMONDS ELECTRICAL, INC. TO FURNISH AND INSTALL TRAFFIC LOOP ASSEMBLIES; UPPER AND LOWER SPAN WIRES; AND EMERGENCY AND ROUTINE TRAFFIC SIGNALS AND STREET LIGHTS FOR THE ENGINEERING DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during the discussion below (2:39 p.m.).

RESOLUTION 02-9515 .....ITEM 15-4

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND BENTLEY ELECTRIC COMPANY, INC. TO FURNISH AND INSTALL SPECIFIED STREET LIGHTS FOR THE ENGINEERING DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during the discussion below (2:39 p.m.).

It is noted for the record that Items 15-1, 15-2, 15-3, and 15-4 were considered concurrently.

City Manager Rambosk stated that the above represents six contracts for traffic signal and street lighting installation, maintenance, and repairs. He affirmed that each is the lowest bid. In response to Mayor MacKenzie, Development Services Director Ronald Wallace said that the

City would install mast arms at most locations. He added that the estimates for the mast arms do not include painting but that he could amend the contracts accordingly.

**Public Comment:** None. (2:42 p.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 02-9512 (ITEM 15-1) AS SUBMITTED;** seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**MOTION by Galleberg to APPROVE RESOLUTION 02-9513 (ITEM 15-2) WITH THE CONDITION THAT THE FINALIZED CONTRACT CONTAIN THE PAINTED MAST ARM PROVISION;** seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**MOTION by Taylor to APPROVE RESOLUTION 02-9514 (ITEM 15-3) AS SUBMITTED;** seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**MOTION by Herms to APPROVE RESOLUTION 02-9515 (ITEM 15-4) AS SUBMITTED;** seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Mr. Wallace said staff would be using some Gateway Project funds to extend the street lights on U.S. 41. from Goodlette Road through Seventh Avenue North.

**ORDINANCE (Second Reading amended to First Reading).....ITEM 11**  
**AN ORDINANCE AMENDING CHAPTER 66, ARTICLE II, DIVISION 2 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, BY AMENDING SECTION 66-41 TO ADD DEFINITIONS; AND ADDING A NEW SECTION 66-49, “YEAR ROUND LANDSCAPE IRRIGATION RESTRICTIONS”; FOR THE PURPOSE OF PROVIDING DETAILED STANDARDS FOR YEAR ROUND LANDSCAPE IRRIGATION REGULATIONS; PROVIDING FOR INTENT AND PURPOSE, DEFINITION, APPLICATION, PERMANENT LANDSCAPE IRRIGATION RESTRICTIONS, EXEMPTIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:44 p.m.) who expressed appreciation to Council for considering this item on behalf of Big Cypress Basin Board Director Clarence Tears. He added that Vice Mayor Galleberg had requested an analysis of a recent letter Council had received from Attorney Larry Ingram with regard to water usage.

Public Works Director Dan Mercer said that while Attorney Ingram’s letter was accurate, Mr. Ingram had been looking at the master plan as a whole which included six counties, eight service areas, and four water sources. He however said that his February 15 letter to Council addressed Naples specifically (Attachment 4). City Manager Rambosk then said that Mr. Tears indicated that the State is in the process of formulating water resource savings plans and programs, and that the agricultural users themselves are determining ways to conserve water in order to reduce cost. In response to Council, Mr. Mercer recommended simplifying the ordinance by establishing an irrigation schedule of 12:01 a.m. to 8:00 a.m. for all users. City Attorney Beverly Grady therefore recommended rereading the title and considering this first reading.

Public Comment: None. (2:55 p.m.)

**MOTION by Taylor to APPROVE ITEM 11 AS AMENDED DELETING IN TABLE 1-A “LOTS LESS THAN FIVE ACRES IN SIZE: ODD NUMBER ADDRESSES” AND “EVEN NUMBER ADDRESSES”; AND DELETING FROM TABLE 1-B DISTINCTION IN LOT SIZE FOR NEWLY INSTALLED LANDSCAPING, SETTING TIME FOR WATERING AT 12:01 A.M. TO 8:00 A.M. seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

In further discussion, City Manager Rambosk explained that Code Enforcement and the Utilities Department staff would enforce this ordinance but that the broader time frame for irrigation would likely reduce violations. In addition, he said staff would include an informational flyer with utility bills. Mr. Mercer further predicted that the new regulations would enhance area water pressures.

**ORDINANCE (First Reading) .....ITEM 12  
AN ORDINANCE ADOPTING THE 2001 EDITION OF THE FLORIDA BUILDING CODE WITH AMENDMENTS TO CHAPTER ONE, ADMINISTRATION; AMENDING THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY AMENDING SECTIONS 86-52; 86-53(1) AND (10); 94-31 (a); 94-32 (a); AND (b); 94-33; 94-34; 94-39; 94-43 (s) (4), (5) AND (7); 94-301(a) (6), (b) (1), (3) AND (5), (c), (d) AND (e); 94-303(b) (1) c.2. AND (c) (1); REPEALING SECTIONS 94-35, ELECTRICAL CODE; 94-37, ACCESSIBILITY CODE; 94-40, SWIMMING POOL CODE; 94-41, ENERGY CODE; 94-42, STANDARD AMUSEMENT CODE; 94-71, TIME LIMITATIONS ON BUILDING PERMITS; 94-72, SURVEY OF BUILDING FOUNDATIONS PRIOR TO COMPLETION OF CONSTRUCTION; 94-73, COMMERCIAL AND INDUSTRIAL CONSTRUCTION TO BE PERFORMED BY LICENSED CONTRACTORS; 94-74, CONSTRUCTION BY UNLICENSED BUILDERS, DESIGNATION OF AGENT BY LICENSED BUILDER FOR ISSUANCE OF BUILDING PERMITS; 94-76, EXEMPTION FROM CERTAIN PERMIT FEES FOR SUBDIVISION DEVELOPERS; 94-77, MINIMUM DISTANCE BETWEEN FLOOR AND CROWN OF STREET; 94-78, NOTICE OF COMMENCEMENT; ARTICLE IV, HOUSING CODE OF CHAPTER 94; 94-302, DEFINITIONS; OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:59 a.m.). Mayor MacKenzie expressed reservations regarding the requirement that swimming pool owners keep windows facing pool areas shut unless there is a fence around the pool or an alarm on a window registering 85 db which would be in conflict with the City’s existing noise ordinance. She added that the Naples Airport Authority (NAA) is currently involved in litigation regarding the established level of 60 db, and therefore suggested enacting the Building Code without that provision until staff can determine the potential for legal ramifications.

City Attorney Beverly Grady stated that while the general statute authorizes technical amendments to the Florida Building Code, she recommended forming a county-wide compliance review board through interlocal agreement that would ensure that any codes being adopted do not lessen the Florida Building Code. Notwithstanding, Mrs. Grady expressed doubt that adopting the State mandate would affect other noise provisions in the City’s Code. Mayor MacKenzie, however, expressed reservations relative to enforcing the ordinance under consideration. While acknowledging that State law can be overly bureaucratic, Council Member Wiseman nevertheless said the revisions would reduce potential for injury. Cautioning that



omitting a provision of the State code could place a hardship on Building Official William Overstreet, Mrs. Wiseman further expressed doubt that any State mandate would interfere with the City's ability to enforce the Stage II jet ban. She then proffered a motion to approve; however, further discussion ensued. In further response to Council, City Attorney Grady stated that the Code would take effect March 1, pursuant to State statute, and that it was expected that the cities and counties would abide by this date thereby avoiding inconsistency, although the earliest the City Council could take final action would be at the March 6th Regular Meeting. Council Member Herms suggested asking local legislators Dudley Goodlette or Burt Saunders to attend a Council Meeting to discuss changing these laws. He also suggested that commercial buildings submit a survey that establishes the final elevation in order to ensure appropriate building height.

**Public Comment:** None. (3:17 p.m.)

**MOTION by Wiseman to APPROVE ITEM 12 AT FIRST READING AS SUBMITTED; seconded by Taylor and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).**

**ORDINANCE (First Reading) .....ITEM 13**  
**AN ORDINANCE AMENDING THE FIRE PREVENTION AND PROTECTION CODE BY AMENDING SECTIONS 38-66, 38-67, 38-68, 38-91 (a), 38-91 (b) (1) (d), 38-92, 38-96, 38-97, 38-100, 38-106, 38-109, 38-138 (a); DELETING SECTIONS 38-95, 38-106 AND 38-202 FOR THE PURPOSE OF ADOPTING THE FLORIDA FIRE PREVENTION CODE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:17 p.m.). In response to a question regarding the need for retrofitting sprinklers in surrounding fire districts, City Manager Rambosk stated that two buildings meet the definition of high-rise in the East Naples Fire District and approximately nine exist in North Naples. Such buildings must comply within 12 years, he said, and noted that Marco Island is in the process of addressing this issue with its one such building. In response to Council, Battalion Chief James McEvoy stated that there were no other changes that would create an economic impact to the citizens.

**Public Comment:** None. (3:20 p.m.)

**MOTION by Russell to APPROVE ITEM 13 AT FIRST READING AS SUBMITTED; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 02-9516 .....ITEM 17**  
**A RESOLUTION APPROVING THE SETTLEMENT OF WORKER'S COMPENSATION CLAIM FOR FORMER EMPLOYEE NORMAN ODENEAL, IN THE TOTAL AMOUNT OF THIRTY-FIVE THOUSAND EIGHT HUNDRED TWELVE DOLLARS (\$35,812.00); AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:21 p.m.).

**Public Comment:** None. (3:22 p.m.)

**MOTION by Wiseman to APPROVE RESOLUTION 02-9516 AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 02-9517 .....ITEM 18-a**  
**A RESOLUTION APPOINTING ONE ALTERNATE MEMBER TO THE PLANNING ADVISORY BOARD TO FILL AN UNEXPIRED TERM: AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:23 p.m.). Council

Member Wiseman nominated Falconer Jones and Council Member Herms nominated Franklin Duane.

**Public Comment:** None. (3:23 p.m.)

**MOTION by Wiseman to APPROVE RESOLUTION 02-9517 (APPOINTING FALCONER JONES).** *There was no second to this motion (Wiseman-yes, Herms-no, MacIlvaine-yes, Taylor-no, Russell-yes, Galleberg-yes, MacKenzie-yes).*

Council Member Taylor said she believed Mr. Duane to be more experienced. There was no action on the motion to appoint Mr. Duane.

**RESOLUTION 02-9518 ..... ITEM 18-b**

**A RESOLUTION APPOINTING AN ARCHITECT TO THE PUBLIC ART ADVISORY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** Title not read (3:23 p.m.).

Vice Mayor Galleberg nominated Franklin Duane. Mayor MacKenzie confirmed that nothing would preclude Mr. Duane from later switching to the Planning Advisory Board, and Council Member Wiseman expressed appreciation in an architect coming forward to serve on this board.

**Public Comment:** None. (3:24 p.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 02-9518 (APPOINTING FRANKLIN DUANE).** *This was no second to this motion. (Galleberg-yes, Russell-yes, Wiseman-yes, Herms-yes, MacIlvaine-yes, Taylor-yes, MacKenzie-yes).*

**RESOLUTION 02-9519 ..... ITEM 16**

**A RESOLUTION APPROVING USE OF THE COUNTY'S CONSULTANT PROCUREMENT PROCESS IN ORDER TO NEGOTIATE A CONTRACT WITH HUMISTON & MOORE ENGINEERS TO ASSIST THE CITY TO UNDERTAKE THE GORDON PASS JETTY SAND TIGHTENING PROJECT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:25 p.m.).

**Public Comment:** None. (3:26 p.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 02-9519 AS SUBMITTED;** *seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**RESOLUTION (Continued) ..... ITEM 19-a**

**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE BOARD OF DIRECTORS OF THE NAPLES ART ASSOCIATION; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:26 p.m.).

**RESOLUTION (Continued) ..... ITEM 19-e**

**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE BOARD OF DIRECTORS OF THE NAPLES PLAYERS; AND PROVIDING AN EFFECTIVE DATE.**

Title not read. (3:26 p.m.).

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**It is noted for the record that Items 19-a and 19-e were considered concurrently.**

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City Attorney Beverly Grady stated that a question had been raised regarding whether there was a conflict in a Council Member serving on a not-for-profit board. Absent an inherent conflict, Mrs. Grady nevertheless explained that there is potential for such issues to arise and that it would therefore be prudent for Council to consider the purpose for this dual membership. (See Attachment 5.) Council Member Taylor said she has served on the Naples Art Association board for the past two years but that she had never voted, although Mrs. Grady pointed out that as a full member, Miss Taylor is entitled to vote, even though there are other ways for the City to monitor this board. Vice Mayor Galleberg said he did not perceive a need to have a Council Member on the board at this time, and Mayor MacKenzie suggested a continuance to enable further study.

Council Member Wiseman said that nothing arose in her two years on the Naples Players board that constituted a conflict, although she had not been acting in an official capacity, but as simply one member of that board. Mrs. Wiseman further said she believed it important for Council to be a part of these two boards, but that she would be amenable to modification of the arrangement whereby Council Members serve thereon. Council Member Russell expressed approval for amending the agreements to have a liaison and thus avoid any future conflict; Council Member MacIlvaine concurred.

**Public Comment:** None. (3:41 p.m.)

**MOTION** by Herms to **CONTINUE ITEMS 19-a and 19-e**; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION 02-9520 ..... ITEM 19-b**  
**A RESOLUTION APPOINTING ONE MEMBER OF NAPLES CITY COUNCIL TO THE TOURIST DEVELOPMENT COUNCIL; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:42 p.m.).

**Public Comment:** None. (3:42 p.m.)

**MOTION** by Herms to **APPROVE RESOLUTION 02-9520 (APPOINTING VICE MAYOR GALLEBERG)**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**FLORIDA LEAGUE OF CITIES (no resolution) ..... ITEM 19-c**  
Mayor MacKenzie said she was uncertain whether a liaison to the Florida League of Cities must be designated because every city that belongs to the organization is welcome to attend. Council Member Wiseman, however, recommended that Council Members not attend together.

*Consensus that Council Members will have informal rotation in attending meetings.*

**JUVENILE JUSTICE COUNCIL (no resolution) ..... ITEM 19-d**  
**Public Comment:** None. (3:46 p.m.)

**MOTION** by Galleberg to **APPOINTING COUNCIL MEMBER TAYLOR**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION 02-9521 ..... ITEM 19-f**  
**A RESOLUTION APPOINTING ONE MEMBER OF NAPLES CITY COUNCIL TO THE AIRPORT NOISE COMPATIBILITY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:46 p.m.).

**Public Comment:** None. (3:47 p.m.)

**MOTION** by Galleberg to **APPROVE RESOLUTION 02-9521 (APPOINTING COUNCIL MEMBER MACILVAINE)**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION ..... ITEM 19-g**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE INTERGOVERNMENTAL AFFAIRS COORDINATING COMMITTEE WITH THE CITY OF MARCO ISLAND; AND PROVIDING AN EFFECTIVE DATE.** Title not read. (3:47 p.m.). It was noted that this committee is no longer in existence.

**RESOLUTION 02-9522 ..... ITEM 19-h**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE PUBLIC ART ADVISORY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:48 p.m.).

**Public Comment:** None. (3:48 p.m.)

**MOTION by Wiseman to APPROVE RESOLUTION 02-9522 (APPOINTING COUNCIL MEMBER TAYLOR); seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION ..... ITEM 19-i**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE NAPLES (COLLIER COUNTY) METROPOLITAN PLANNING ORGANIZATION; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:49 p.m.). Council Member Herms stated that a previous motion to appoint him to this organization did not specify an expiration date. Mayor MacKenzie said she believed this was to fill Vice Mayor Galleberg's unexpired term until the next election, and that the resolution indicates this term runs until 2004.

*This item was removed from the agenda.*

**RESOLUTION 02-9523 ..... ITEM 19-j**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:50 p.m.).

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

**MOTION by Galleberg to APPROVE RESOLUTION 02-9523 (APPOINTING COUNCIL MEMBER RUSSELL).** *This motion which was unanimously carried without second, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Mayor MacKenzie said she believed the I-75 Interchange Committee would sunset in March; however, City Clerk Tara Norman said it would likely continue through the end of the year. Vice Mayor Galleberg observed that there is insufficient latitude for the City to accomplish anything.

**MOTION by MacIlvaine to RELINQUISH SEATS ON THE I-75 INTERCHANGE COMMITTEE;** *seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Mayor MacKenzie stated that the Naples Preserve Steering Committee technically sunsetted on December 31, 2001 but is still meeting. Council Member Taylor recommended extension for another year.

*It was the consensus of Council (Council Member Wiseman dissenting) to extend the Naples Preserve Steering Committee through December 31, 2002.*

*It was also the consensus of Council to prepare necessary resolutions to dissolve the following to be presented at the March 6 Regular Meeting: Joint Advisory Board for Youth Relations, Computer Committee, Gateway Committee, and the Naples Community Hospital Committee.*

*It is also noted for the record that Council Member MacIlvaine requested removal from the Staff Action Committee (resolution to be on the March 6 Regular Meeting agenda) and that the External Audit Committee will be*

*established by resolution; Council Member MacIlvaine indicated his willingness to serve in this capacity.*

**RESOLUTION 02-9524 .....ITEM 20**

**A RESOLUTION APPOINTING A SELECTION COMMITTEE RELATING TO THE SELECTION OF A QUALIFIED PUBLIC DEPOSITORY TO PROVIDE BANKING SERVICES FOR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.**

Title read by City Manager Kevin Rambosk (4:01 p.m.) who said that the committee would prepare the request for proposals for services and make recommendations to Council. However, since Accounting Manager Dorothy King has a conflict with one of the banks, he recommended that Accountant Karen Ball serve on the committee. In addition, he said that he believed it important to have a member of Information Services also serve on the board. Council Member MacIlvaine volunteered to serve on the committee.

**Public Comment:** None. (4:05 p.m.)

**MOTION by Herms to APPROVE RESOLUTION 02-9524 AS AMENDED TO REMOVE DOROTHY KING AND ADD KAREN BALL AND MARK NELSON, AND TO APPOINT COUNCIL MEMBER MACILVAINE;**  
*seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Although it was noted that added Item 21 relative to engaging the services of an attorney to represent the City in planning petitions could be considered on March 6th, City Attorney Grady affirmed that it would also be appropriate to add it to this agenda.

**MOTION by Herms to ADD ITEM 21 TO THE AGENDA;**  
*seconded by Russell and carried 6-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 6, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers).*

**.....ITEM 21**

**DELEGATE TO CITY MANAGER SELECTION OF ATTORNEY, BASED ON PRICE PER HOUR AND OTHER CRITERIA, TO REPRESENT THE CITY IN A PLANNING PETITION ON THE MARCH 6, 2002 AGENDA.** (4:05 p.m.). City Attorney Beverly Grady said she had recommended that Council proffer an official motion to authorize the City Manager to select one of the two attorneys Council had approved; namely, Jean Rawson or Don Pickworth.

**Public Comment:** None. (4:05 p.m.)

**MOTION by Herms to APPROVE ITEM 21;**  
*seconded by Taylor and carried 6-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 7, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers).*

City Attorney Grady confirmed that there would be no conflict for Ms. Rawson who performs services for staff during Code Enforcement proceedings.

**CORRESPONDENCE & COMMUNICATIONS (4:07 p.m.).....**

Noting the projects proposed for the “D” Downtown District, Council Member Russell urged that Council accelerate the planning process for this area and receive a report from the Heart of Naples Committee (HONC), and consider retaining a consultant. Vice Mayor Galleberg expressed concern that waivers do not require notification of surrounding properties, and that they are not reviewed by the Planning Advisory Board (PAB). He then asked that the City Manager contact the County with regard to creating the countywide compliance review board in order to address the new swimming pool and other provisions in the State building code. (See

Item 12). Mayor MacKenzie suggested that the Community Redevelopment Agency (CRA) meet with the HONC in a joint session. Mr. Galleberg said he believed the HONC is certain of its direction, and that it is imperative that it submit its final report to Council. City Manager Rambosk said the HONC would identify other priority issues at its next meeting, and therefore recommended scheduling a CRA meeting soon thereafter. Council Member Herms said he did not believe in retaining consultants, saying they generally advocate additional zoning. He instead expressed approval of the concept of citizens working with the Council; however, Vice Mayor Galleberg commented on the role for professional expertise. Council Member Wiseman said that consistency and a dependable plan would drive the success of this area.

Council Member Taylor expressed surprise that the program in which the League of Women Voters interviewed the Council candidates had not been rebroadcast on the City's government access channel. City Manager Rambosk said that he was under the impression that this should not be rebroadcast, the League not being a governmental entity. Mayor MacKenzie said the League had not asked the City for co-sponsorship, and that it may be beneficial to ask the City's cable attorney for an opinion on whether this would lead to other groups requesting airtime. She recommended rebroadcasting the forum in the future with the City as co-sponsor.

City Attorney Grady said on behalf on Roetzel & Andress that she had been pleased to have worked for the City since 1997, and that the firm is looking forward to a continuing positive relationship depending upon the City's needs. She expressed her gratitude for the opportunity to meet the citizens, to work with the City Manager and staff, and to represent Council. Mayor MacKenzie expressed appreciation for Attorney Grady's work and dedication.

City Manager Rambosk said that in reference to exotic plant removal day, staff either grinds stumps or treats them. He noted a crime prevention news release which would be forwarded to the media in regards to what he described as the traveling burglars. City Manager Rambosk further said that there would also be television announcements that day, and that the Ft. Myers News-Press has committed to write a story on this issue. He added there had been two such incidents thus far this year in the northern area of the City.

**PUBLIC COMMENT (4:25 p.m.)**.....  
None.

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Bonnie R. MacKenzie, Mayor

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Tara A. Norman, City Clerk

Prepared by:

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Jessica R. Rosenberg, Recording Specialist

Minutes approved: 5/15/02

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