



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – March 6, 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  
William MacIlvaine  
Clark Russell  
Tamela Wiseman

**Absent:** Penny Taylor

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**Also Present:**

Kevin Rambosk, City Manager  
Robert Pritt, City Attorney  
Tara Norman, City Clerk  
Ron Lee, Planning Director  
Ralph LaCivita, Comptroller  
Anne Middleton, Budget & Invest. Manager.  
Jon Staiger, Natural Resources Manager  
Karen Ball, Accountant  
Karen Kateley, Administrative Assistant  
James Whittaker, Recreation Supervisor  
Donald Pickworth  
Chip Jones  
Roberta Harris  
Robert Duane  
Vin DePasquale  
Chuck Longdon  
Laverne Franklin

Brian Shimer  
Fred Coyle  
Chris Foster  
Rufus Watson  
Carl Kuehner  
Jim Boula  
Brian Leiding  
Thomas Gordon  
Tom Morgan  
Mildred Morgan  
Barbara Turrentine-Bowe  
Kat Jones  
Audrey Barbera  
Henry Halle  
Pastor Steve Wigdahl  
**Media:**  
Dianna Smith, Naples Daily News

Arlene Guckenberger Other interested citizens and visitors

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

Pastor Steve Wigdahl, Emmanuel Lutheran Church

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

None. (See Page 11.)

**SET AGENDA (ADD OR REMOVE ITEMS) .....ITEM 4**

Add Item 21-d - Metropolitan Planning Organization appointment

**MOTION by MacIlvaine to ADD ITEM 21-d; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

Add Item 25-a – Amplified sound request for Multiple Sclerosis Society Walk on March 17, 2002.

Add Item 25-b – Restoration Church program at Cambier Park on March 29, 2002.

Add Item 25-c – Haitian Cultural Day at Cambier Park on March 30, 2002.

**MOTION by MacIlvaine to ADD ITEMS 25(a, b and c); seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**MOTION by Galleberg to SET AGENDA CONTINUING ITEM 8 TO THE MARCH 20, 2002 REGULAR MEETING; CONTINUING ITEM 16 TO THE APRIL 3, 2002 REGULAR MEETING; AND WITHDRAWING ITEM 20; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

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

**Roberta Harris, 150 10<sup>th</sup> Avenue South**, asked for City funding for the long-term medical expenses of her daughter who was injured at a softball game at Cambier Park. City Manager Kevin Rambosk said the City's Risk Management group would meet to address this issue, and that he would contact Ms. Harris thereafter.

**CONSENT AGENDA**

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

December 3, 2001 Special, December 5, 2001 Special, and January 23, 2002 Regular Meeting minutes.

**SPECIAL EVENTS.....ITEM 11-b**

1) Bay Days Waterway Clean-Up – 4/13/02, Bay Days Bike Fest – 4/20/02.

2) American Cancer Society Relay for Life – 4/26 – 27/02.

**RESOLUTION 02-9525.....ITEM 11-c**

**A RESOLUTION APPROVING A CONTRACT TO EVERGLADES FARM EQUIPMENT CO., INC. FOR THE PURCHASE OF A JOHN DEERE TRACTOR; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 02-9526.....ITEM 11-d**

**A RESOLUTION AMENDING THE STATEMENT OF ORGANIZATION OF THE NAPLES PRESERVE STEERING COMMITTEE BY EXTENDING THE SUNSET DATE TO DECEMBER 31, 2002; RATIFYING ALL ACTIONS OF SAID COMMITTEE TO DATE; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 02-9527.....ITEM 11-e**

**A RESOLUTION APPOINTING A REPRESENTATIVE DESIGNATED BY THE UNITED ARTS COUNCIL TO THE PUBLIC ART ADVISORY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**MOTION by Wiseman to APPROVE ITEM 11 (a, b, c, d and e); seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**END CONSENT AGENDA**

**ORDINANCE 02-9528.....ITEM 13**

**AN ORDINANCE AMENDING CHAPTER 66, ARTICLE II, DIVISION 2 OF THE CODE OF ORDINANCE 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 (9:12 a.m.) who stated that the revision directed by Council had been incorporated in revised copy provided. He also affirmed that daily watering of new plantings would be permitted.

**Public Comment:** None. (9:15 a.m.)

**MOTION by Russell to ADOPT ORDINANCE 02-9528, AS SUBMITTED; seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

.....**ITEM 6  
PRESENTATION OF ANNUAL FINANCIAL REPORT BY CITY AUDITORS KPMG LLP.**

(9:15 a.m.) KPMG representative Chip Jones expressed appreciation to Council for the opportunity to present the audit. He then gave a presentation which highlighted information included in the Comprehensive Annual Financial Report as well as trends over the past several years. (A copy of each document is contained in the file for this meeting in the City Clerk's Office.)

In response to Council, Mr. Jones said that the backup receipts of some credit card transactions were missing at the City Dock. Community Services Director Don Wirth stated that no explanation could be determined but that staff is implementing KPMG's recommendations. With reference to fuel sales at the City Dock, Mr. Wirth also noted that staff now understands the City's goal to price fuel at a rate equal to the average of local retailers and that a record of price survey findings is kept. In addition, he affirmed that the City has an electronic system that shows the volume and retail dollar amount of daily fuel sales. Council Member Herms requested a future report on fuel loss, and in further response to Council, Comptroller Ralph LaCivita confirmed that the City collects sales tax on all City Dock slips.

Although Council Member Herms noted that the audit report lacked a listing of the value of the airport, Council Member MacIlvaine said he believed this would however be misleading. Mr. Jones stated that he would research this, noting that one of the issues in the new accounting standards (GASB 34) is capturing all the fixed assets. Mayor MacKenzie suggested a separate listing of those lands pledged or leased by the City. In further discussion, Mr. Jones asserted that the aforementioned new standards would provide increased clarity to the financial statements, especially in regards to those items subsidized by the citizens through ad valorem taxes. Vice Mayor Galleberg asked that Mr. Jones research whether the City should adopt these standards earlier than required, and Council Member MacIlvaine said that the Audit Committee also feels this should be done as quickly as feasible. Mr. Jones said he would work with City Manager Rambosk and Mr. LaCivita to determine whether he could capture all the necessary information in the infrastructure area over the next four weeks.

**Public Comment:** None. (10:04 a.m.)

**MOTION by Galleberg to DIRECT AUDITOR TO REPORT BACK IN WRITING AS SOON AS POSSIBLE RELATIVE TO THE IMPLEMENTATION OF GASB 34 REQUIREMENTS; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**Public Comment:** (10:04 a.m.) Jim Boula, 702 Broad Avenue South, a leaseholder at the City Dock, said that he had previously questioned whether the financial assets at the City Dock had been correctly assigned. Mr. Boula further expressed concern that the audit did not address the internal

controls of the City Dock Enterprise Fund, which had been used to finance many of the improvements at Naples Landing. Mr. Boula therefore urged utilization of a depreciation schedule for fixed assets and making improvements to the City Dock. City Manager Rambosk said he would provide the research staff had already performed in this regard but noted that Council had previously determined that Naples Landing benefits and supports the City Dock and therefore incorporated the two entities into one enterprise fund. Vice Mayor Galleberg recommended putting forth evidence affirming this policy. **Brian Leiding, 235 Bahia Point**, asked that Auditor Jones determine whether the new accounting laws would allow City Dock and Naples Landings expenditures to be listed separately. Mr. Jones noted that enterprise fund requirements would be much stricter and that many entities would move various items into special revenue funds. He further said that activities are often grouped together for administrative purposes, and that combining Naples Landing with the City Dock is however appropriate.

**Recess 10:14 a.m. to 10:29 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

**RESOLUTION 02-9529.....ITEM 7-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 read by City Manager Kevin Rambosk (10:29 a.m.).

**RESOLUTION 02-9530.....ITEM 7-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 read by City Manager Kevin Rambosk (10:29 a.m.).

**It is noted for the record that Items 7-a and 7-b were considered concurrently.**

Based on previous Council direction, City Manager Rambosk stated that he had engaged the services of Attorney Donald Pickworth to represent the City in this matter, but that he would rotate the occasional need for outside representation to Attorney Jean Rawson on the next case. Mayor MacKenzie directed him to add this to the next City Council agenda so Council could give him specific authorization. Vice Mayor Galleberg reported that he would abstain from voting on this item because of an ownership interest in the property at issue, although not in conjunction with the petitioners.

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/viewed the property and the Planning Advisory Board (PAB) meeting videotape, received a letter from Peter Van Arsdale regarding the petition, spoke by telephone to Robert Duane wherein he overviewed the merits and highlights of the proposal, emphasized the PAB's reasons for approval, and explained that the bank would likely withdraw from the project if the monument sign were not approved; Wiseman/visited the site, received a telephone message from the petitioner's representative but had been unable to return it; Russell/visited the site, reviewed the PAB minutes, and received a telephone call from Tom Gordon in support of this petition; MacIlvaine/visited the site, discussed the pros and cons of the proposed designs and the effect on the Heart of Naples area, and read various PAB reports; Herms/visited the site and watched the PAB meeting. City Clerk

Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Robert Duane, Planning Director of Hole Montes, Inc., displayed an aerial photograph of the 21,000 square foot site formerly containing the U.S. Post Office; it was proposed to contain a 10,300 square foot, two-story bank building with three drive through lanes. It also depicted the 3,200 square foot site that has been incorporated into the application for the conditional use which he said would contain a passive park, signage for the bank, a dry retention area, and two parking spaces. (A copy of this photograph is contained in the file for this meeting in the City Clerk's Office.) Mr. Duane also noted that the petitioner would enter into a deed restriction so the City could stipulate how the passive park could be utilized should conditions change. Mr. Duane said that the smaller lot was brought into the application because of its value to the bank for signage and to unify the parcels for better planning. He noted that staff recommends approval of the conditional use for the bank, agreeing with all the stipulations set forth in the staff report. Further, he said, the petitioner would widen the adjacent alleyways from 15 to 24 feet and dedicate them to the City during the development process. Mr. Duane urged that the Council especially consider the unique nature, size and location of this somewhat landlocked property and grant the waiver from signage requirements, which, he added, is not only critical to the redevelopment of the site, but would be reasonable considering the project benefits which include open space, a unified plan, and a public amenity.

Mayor MacKenzie, however, confirmed that the petitioner would consider utilizing only one of the two allowed sign bands allowed on the building in conjunction with a sign on the out parcel. Mr. Duane then explained that the petitioner, Thomas Taylor, is the contract purchaser and the trustee for the property. In further discussion of ownership of the property, Vice Mayor Galleberg received Attorney Pickworth's concurrence to respond that he has an ownership interest in the corporation that owns the property and has the authority to speak on behalf of the corporation. He had signed the petition as the owner, and no other signatures are required. Indicating his willingness to grant a waiver in this case, Council Member MacIlvaine predicted that this project would greatly improve and have a positive impact upon the Heart of Naples. Mr. MacIlvaine however suggested reconfiguring the proposed sign, saying it appeared to be massive and top-heavy.

While agreeing that the project would improve the area, Council Member Wiseman nevertheless questioned whether a site directly on U.S. 41 was appropriate for a passive park. Mrs. Wiseman further pointed out that the proposed restrictive covenant is not a dedication to the public for access, that the passive park would in fact remain as private property, and that there is no requirement for the City to approve a landscaping and maintenance plan. Mr. Duane however agreed to revise the deed restriction accordingly for public access and assumption of maintenance, and explained that the petitioner intended to partner with the Naples Botanical Gardens to create a unique landscaping feature. Mr. Duane further predicted that a passive park would be used by area workers and that with removal of the existing building, the property would enhance the entire intersection. He further said he believed that the petitioner would assume liability for users of the park.

Planning Director Ron Lee predicted that this passive park would function much like Menefee and Merrihue Parks on Fifth Avenue as redevelopment created more pedestrian orientation. He said he also believed a passive park to be an appropriate use, especially given the size of the site. Council Member Russell nevertheless observed that although not a true passive park, the bank needs this area for signage and for visibility for the actual structure behind it.

It was then noted that either the building could be reduced in size or on-street parking could be requested so that the two spaces in the passive park could be eliminated. However, petitioner's representatives indicated that they did not wish to consider these alternatives.

Petitioner Thomas Taylor further explained that the necessary stormwater management would be installed to create dry retention along with grass and landscaping and hardscape features such as a walkway and several park benches.

Council Member Wiseman suggested amending Section 2 of the conditional use resolution to incorporate the restrictive covenant, including maintenance responsibilities and a pledge for public access. Mrs. Wiseman also expressed concern about conferring approval without the Council reviewing a landscaping and drainage plan. Mr. Lee suggested requiring that the staff approve the landscaping plan prior to installation; Mr. Duane accepted this alternative. Council Member Herms proffered a motion to approve Item 7-a based upon that review by the staff and with the other conditions stated. Council Member Wiseman however also recommended that the mortgagee and other lien holders join in the restrictive covenant to protect the City's interests since these entities would otherwise not in case of foreclosure be bound by this agreement. Mr. Duane agreed to this stipulation and Mr. Herms amended his motion accordingly.

**Public Comment:** (11:05 a.m.) **Thomas Gordon, 242 Second Avenue South**, registered his support for the project, noting that the property had been an eyesore for some time. Although expressing support for the proposed passive park, he recommended planting some large palm trees to act as a buffer from U.S. 41 in the event a sitting area is installed. He also suggested a roundabout at Third Avenue South and Sixth Street South, saying this would benefit the residents by alerting the heavy commercial traffic that it is entering a residential neighborhood. Mr. Gordon therefore asked that Council support this project so it may proceed without delay.

**MOTION by Herms to APPROVE RESOLUTION 02-9529 (ITEM 7-a) AS AMENDED AS FOLLOWS: 1) SECTION 2-6 "THE RESTRICTIVE COVENANT ATTACHED HERETO AND MADE A PART HEREOF IS APPROVED...."; 2) RESTRICTIVE COVENANT TO CONTAIN ASSURANCES OF PUBLIC ACCESS AND MAINTENANCE OF PASSIVE PARK AREA; 3) MORTGAGEE AND OTHER LIEN HOLDERS TO JOIN IN RESTRICTIVE COVENANT; AND 4) STAFF TO APPROVE LANDSCAPE PLAN FOR PASSIVE PARK (INCLUDING SIGNAGE AND OUTDOOR FURNISHINGS); seconded by MacIlvaine and carried 5-0-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes). (See Attachment 1, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.)**

Council Member Herms proffered a motion to approve Item 7-b with Mayor MacKenzie's recommendation regarding the signage. Mr. Lee explained that staff had previously recommended denial of the waiver based on the original plan submitted, but that it does in fact support the revised plans submitted at the PAB meeting.

**Public Comment:** None. (11:09 p.m.)

**MOTION by Herms to APPROVE RESOLUTION 02-9530 (ITEM 7-b) AS AMENDED – PETITIONER TO FORGO ONE OF THE TWO PERMITTED SIGN BANDS ON THE BUILDING IN CONSIDERATION OF THE GROUND SIGN TO BE ERECTED ON THE OUT PARCEL; seconded by MacIlvaine and carried 4-1-1 (Galleberg-abstain, Herms-yes, MacIlvaine-yes, Russell-no, Taylor-absent, Wiseman-yes, MacKenzie-yes). (See Attachment 1.)**

Although expressing support for the project, Council Member Russell said he did not believe Council should eliminate one of the sign bands.

**RESOLUTION (Continued – See Item 4) .....ITEM 8-a**  
**A RESOLUTION DETERMINING VARIANCE PETITION 02-V1 FROM SECTION 102-296 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES A REAR YARD SETBACK OF 20 FEET IN THE R3T-12 DISTRICT IN ORDER TO PERMIT AN EXISTING PORTE-COCHERE, THE ROOF OF WHICH EXTENDS TO WITHIN 8.5 FEET OF THE REAR PROPERTY LINE, AT 290 5TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION (Continued – See Item 4) ..... ITEM 8-b**  
**A RESOLUTION DETERMINING A PUBLIC RIGHT-OF-WAY PERMIT APPLICATION FOR THE INSTALLATION OF GATES IN THE ALLEY AT THE HOTEL ESCALANTE; APPROVING SPECIAL CONDITIONS FOR INSTALLATION, OPERATION AND MAINTENANCE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PERMIT APPLICATION; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

.....**ITEM 24**  
**CONSIDER A REQUEST FOR CITY CO-SPONSORSHIP AS IT RELATES TO THE “GREAT DOCK CANOE RACE” – 5/11/02.** (11:09 a.m.) Vin DePasquale, owner of the Dock and Riverwalk Restaurants, requested the City’s endorsement and financial support for this year’s Great Dock Canoe Race, and offered to answer Council’s questions. Council Member Herms pointed out that Council’s main concern had been relative to ensuring adequate marine patrol and safety on the water. City Manager Kevin Rambosk said that Police Chief Steven Moore has advised him that the event would be properly staffed. Vice Mayor Galleberg proffered a motion to approve, seconded by Council Member Wiseman; however, further discussion ensued. Mayor MacKenzie clarified that Council had previously approved the event, but continued the decision to co-sponsor until this meeting. Council Member MacIlvaine expressed the view that the City would in effect be contributing to advertising a private enterprise and that the City should not be involved in promotion of an event where alcoholic beverages are served. Vice Mayor Galleberg, however, pointed out that this is a long-standing, charitable event, and is considered by many a City tradition. Council Member Russell said he would withdraw his prior objection based on consistency regarding co-sponsoring events which serve alcohol because the City has annually supported this popular event. However, he recommended discussion of policy amendments at a future meeting.

**Public Comment:** None. (11:14 a.m.)

***MOTION by Galleberg to APPROVE ITEM 24; seconded by Wiseman and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-no, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).***

**ORDINANCE (First Reading).....ITEM 12**  
**AN ORDINANCE AMENDING SECTION 62-104 “PERMIT PARKING” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF AUTHORIZING BY RESOLUTION THE CHARGE FOR AN ANNUAL PARKING PERMIT AT NAPLES LANDING; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:16 a.m.) who however noted that staff was not yet prepared to review the results of its research on potential impacts of reducing the annual parking fees for City residents. He also reported that Collier County had recently contacted the City with regard to renegotiating the beach parking interlocal agreement. Mayor MacKenzie suggested continuing this item until the next meeting when, she said, Council would have a better understanding of the relationship between the City and County with regard to many different waterfront uses. Vice Mayor Galleberg said he favored continuance, noting his opposition to increasing fees for City residents or dramatically increasing usage of Naples Landing, which he

noted is already one of the most compact, crowded areas of the County. He added that the City was put in this position because of the County funding agreements, and should make every effort to change those arrangements. Vice Mayor Galleberg proffered a motion to continue this item until the March 20 Regular Meeting. Council Member MacIlvaine seconded this motion, noting that the City should amend the interlocal agreement if possible and take control of its own facilities. In response to Council, City Attorney Robert Pritt explained that this ordinance stipulates that the fees will be set by resolution but does not address the fees themselves, stating the opinion that Council should to the extent possible set most City fees by resolution. City Manager Rambosk noted that staff had traditionally set this particular rate although all the others were approved by Council. He recommended that Council approve the ordinance, and then discuss the potential impacts of any County agreement when it considers the resolution setting the actual fees. City Attorney Pritt further recommended that the fees be set by Council rather than staff and Vice Mayor Galleberg withdrew his motion to continue.

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

**MOTION by MacIlvaine to APPROVE ITEM 12, AS SUBMITTED, AT FIRST READING; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**ORDINANCE 02-9531.....ITEM 14**  
**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 (11:24 a.m.) who said that staff had previously provided an overview as to the changes, but that there had been no change since first reading.

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

**MOTION by Wiseman to ADOPT ORDINANCE 02-9531, AS SUBMITTED; seconded by Russell and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-no).**

Mayor MacKenzie said she did not believe the City should have to police regulations which apply to windows adjoining swimming pools.

**ORDINANCE 02-9532.....ITEM 15**  
**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 (11:26 a.m.).

**Public Comment:** None. (11:27 a.m.)

**MOTION by Wiseman to ADOPT ORDINANCE 02-9532, AS SUBMITTED; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION (Continued – See Item 4) .....ITEM 16**  
**CONSIDER A VARIANCE FROM SECTION 110-45 (b) OF THE CODE OF ORDINANCES IN ORDER TO PERMIT A POOL TO ENCROACH 15 FEET INTO THE 20-FOOT REAR YARD REQUIREMENT AT 1493 BLUE POINT AVENUE.** (Editor's Note: No draft resolution was provided for this item.)

**RESOLUTION 02-9533.....ITEM 17**  
**A RESOLUTION DETERMINING AN OUTDOOR DINING PERMIT FOR STARBUCKS LOCATED AT 1 9<sup>TH</sup> STREET SOUTH; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:27 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Wiseman, and Russell/visited the site; MacIlvaine/no contact; Galleberg/viewed the site; Herms/viewed the site and spoke to the manager. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Starbucks representative Chuck Longdon stated that this proposal is in response to the many customers who had requested outdoor seating. He then explained that he had mistakenly set up tables and chairs along Central Avenue and U.S. 41 before realizing Council authorization was required, and that he understood approval would be contingent upon keeping all seating on the Central Avenue side of the store only. Although noting that having seating along U.S. 41 could create a potential safety issue, Mayor MacKenzie said she thought the proposal would make an attractive addition. In further response to Council, Mr. Longdon said he would not remove any landscaping and that he is in fact discussing landscape improvements with the property owner.

**Public Comment:** None. (11:33 a.m.)

**MOTION by Russell to APPROVE RESOLUTION 02-9533, AS SUBMITTED; seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 02-9534.....ITEM 18**  
**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND APPLIED TECHNOLOGY AND MANAGEMENT, INC. (ATM) TO PROVIDE CONSULTING SERVICES FOR THE CITY OF NAPLES MARINA FACILITIES DEVELOPMENT STUDY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:33 a.m.) who stated that Council had previously approved Applied Technology and Management, Inc., (ATM) as the consultant to conduct a study concerning options for renovations to the City Dock, Naples Landing, and the Pulling Property. He added that the consultant evaluated each of those sites with regard to economic, engineering, and environmental impacts involved in making improvements. Council also appointed a consultant selection committee to review the proposal, assess the feasibility of options, and develop a consensus as to the ultimate direction for each facility.

Mayor MacKenzie noted City Attorney Robert Pritt's prior caution against expending money on the Pulling Property due to its uncertain status, but said she would favor moving some of the public boat launch traffic off Tenth Street into a location off Goodlette Road if possible. She further suggested

providing John Pulling (donor of the property) with a master plan concept to determine whether it meets his expectations. City Manager Rambosk said he believed Mr. Pulling would concur, and City Attorney Pritt said that despite a possible issue with the title, Council would not be precluded from working with Mr. Pulling in this regard.

Vice Mayor Galleberg identified this as a first step in a comprehensive process, noting that the City may also wish to coordinate plans with a land owner adjacent to the City Dock. He then said the committee had discussed some changes in the scope of services relative to the extent of the market feasibility study, an hourly rate with a cap as opposed to a flat fee, and a timeline. Mr. Galleberg however noted that the changes do not appear to be reflected in the agreement, and questioned whether this would reduce the amount of work to be done. Natural Resources Manager Jon Staiger said he had discussed these matters with the consultant, but said the main issue is relative to designing a facility and a policy that meets the market demands. He further asked whether the City would build something that accommodates the residents or the City and its policies, adding that the City would not want a facility that is obsolete nor one designed for a vessel mix that does not occur. Dr. Staiger further said the consultants, who placed great emphasis on public input, would also research various alternatives with regard to the demand for slips at the City Dock. Vice Mayor Galleberg proffered a motion to approve; however, further discussion ensued.

In response to Council, City Manager Rambosk said a maximum of ten slips could be added to the City Dock due to the footprint as well as the available parking. Mr. Herms however noted the possibility of replacing the entire facility with a floating dock; City Manager Rambosk concurred, noting the advantage of having a modern facility. Mayor MacKenzie added that this would also aid in improving water quality in Naples Bay. Dr. Staiger stated that the permitting agencies such as the Department of the Environmental Protection (DEP) would prefer to replace the old wooden pilings with floating docks, which have only a small number of concrete pilings to hold them in place. Although it would not add a significant number of slips, Dr. Staiger explained that the City may be able to expand its submerged land lease farther to the east.

Vice Mayor Galleberg then explained that the committee had decided to enter into an agreement for scope of services for the conceptual phase only. When Council is presented with the possibilities, it can then revisit this issue and enter into a design phase, he added. Community Services Director Don Wirth stated that this concept design would determine how additional parking may be accommodated upon expansion. Council Member Herms expressed concern about changing the City Dock, which he called a unique architectural detail. Although saying he would not support this study, Mr. Herms acknowledged the validity of investigating the Pulling Property and the Naples Landing area. Mayor MacKenzie however said she has been assured that the City Dock facility would appear similar even with a floating facility, and City Manager Rambosk affirmed that the City could improve the facility without drastically changing its appearance. In response to Council, Community Services Director Wirth said that the Risk Manager has directed replacement of a portion of the City Dock decking, although, he said, the entire facility has generally deteriorated. Council Member MacIlvaine cited floating docks as safer for both staff and boaters. Despite what he predicted as extensive future discussion regarding the City Dock, Vice Mayor Galleberg urged that the City proceed to take a unified approach to the three facilities.

**Public Comment:** None. (11:55 a.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 02-9534, AS SUBMITTED;**  
**seconded by MacIlvaine and carried 5-1 (Galleberg-yes, Herms-no, MacIlvaine-**  
**yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

Council Member Herms said this is a precursor to building a new City Dock, which he does not support.

**Recess 11:56 a.m. to 1:31 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

**ANNOUNCEMENTS** .....

Recognition of Olympic Bronze Medalist Brian Shimer.

**ORDINANCE (First Reading).....ITEM 9**

**AN ORDINANCE AMENDING SECTIONS 110-128 (b), (g), AND (i), “LIVE ENTERTAINMENT PERMIT REQUIREMENTS,” SECTION 110-135 (a), “APPLICABILITY OF ARTICLE, “AND SECTION 110-139 (a). “EXTENDED HOURS PERMIT,” OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH HOURS AND PROCEDURES FOR AMPLIFIED OUTDOOR LIVE ENTERTAINMENT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (1:53 p.m.). Planning Director Ron Lee stated that based upon direction from Council, the proposed ordinance would: 1) limit the hours of operation for outdoor live amplified music on weekdays to 10:00 p.m. and on weekends to 11:00 p.m.; 2) require that all permits undergo Council review and approval regardless of complaints or citations; 3) replace the term “residential development” with “residential units”; and 4) provide a cross reference in the residential impact statement to make the hours consistent. He added that the Planning Advisory Board (PAB) recommended approval, but suggested retaining the current approval process which is to place live entertainment permit renewals on the consent agenda if staff finds no complaints, citations, or sustained violations, and the regular agenda if there are.

Council Member Russell suggested changing residential “units” to “unit” in case there is only one residential unit across a waterway or within 300 feet of the site; City Attorney Robert Pritt concurred. In response to Vice Mayor Galleberg, Mr. Lee said that although the ordinance establishes the latest music can operate, Council would still have the latitude to specify an earlier time based upon specific circumstances. Council Member Herms observed that these regulations would not apply to indoor entertainment, but Mr. Lee pointed out that the new annual renewal process would apply to all live entertainment. Mayor MacKenzie however recommended establishing the same time limitation for amplified entertainment whether indoors or outdoors. Council Member MacIlvaine concurred, but said he would prefer the entertainment cease at 9:00 p.m. on weekdays. Vice Mayor Galleberg observed that this is a limiting provision which would formalize Council’s practice of restricting entertainment to a certain hour if within the range of residences.

**Public Comment:** (2:06 p.m.) **Chris Foster, 2527 44<sup>th</sup> Street SW**, member of Citizens Organized to Defend the Arts (CODA), stated that this group had proposed the 10:00 p.m. and 11:00 p.m. limitations, which he said he believed to be reasonable as long as the City’s guidelines relative to allowed decibel level are met. He further said the proposed renewal process may prove time consuming and detrimental to the hospitality industry. Mr. Foster therefore urged Council to achieve a balance on this issue, and introduced into the record 22 petitions affirming CODA’s position on these issues into the record. (Copies of this material are contained in the file for this meeting in the City’s Clerk’s Office.) **Tom Morgan, 615 W. Lake Drive**, stated that noise has been a continuing problem, and urged Council to maintain appropriate control. **Mildred Morgan, 615 W. Lake Drive**, urged cooperation between the musicians, residents, and Council, and suggested limiting hours of operation to 10:00 p.m.

Council Member Herms proffered a motion to approve with Council's direction regarding the renewal process; however, further discussion ensued. Vice Mayor Galleberg said he believed there to be no reason to conduct an annual full-fledged renewal process for those establishments receiving no complaints or citations. Mr. Lee said the existing language would accomplish this objective. There being no second to the above motion, Council Member Wiseman proffered a motion to accept the text of the ordinance as presented with the exception of Section 110-128 (i), the renewal procedure, which she said would remain as it was in the original draft. Mr. Lee confirmed that the Planning Department would continue to process the requests and place them on the consent agenda. Mrs. Wiseman added to her motion Council Member Russell's recommendation regarding "residential unit or units" as well as a requirement for annual review for those establishments with registered complaints.

Council Member Russell said he nevertheless believed this process to be overly bureaucratic although he favored setting hours for outdoor entertainment, pointing out that non-amplified entertainment may in fact be as disturbing. Vice Mayor Galleberg said that while outdoor amplified entertainment had received considerable focus and publicity, the ordinance would apply to all live entertainment, whether amplified or not and would limit outdoor amplified music to the hours stated. In further discussion, Council Member MacIlvaine said that outdoor music was of greater concern because it is indiscriminate and may be heard by everyone, although establishments with indoor music can be required to keep doors closed. Mayor MacKenzie suggested that the ordinance address all entertainment. However, Council Member Wiseman pointed out that this represented a compromise between disparate points of view after a miscommunication had led to the belief that the City would ban all outdoor amplified music. Vice Mayor Galleberg reiterated that this ordinance merely codifies the City's current practice. In response to Council, Mr. Lee affirmed that Council can always revoke live entertainment permits, if warranted.

**MOTION by Wiseman to APPROVE ITEM 9 AT FIRST READING, AS AMENDED AS FOLLOWS: 1) SECTION 110-128(i) LIVE ENTERTAINMENT TO REMAIN AS IN CURRENT CODE WITH THE ADDITION OF THE WORD ANNUAL: (IF NO COMPLAINTS HAVE BEEN FILED WITH THE CITY DURING THE PREVIOUS YEAR, LIVE ENTERTAINMENT PERMITS MAY BE RENEWED ON AN ANNUAL BASIS THROUGH THE PLANNING DEPARTMENT. RENEWALS SHALL APPEAR ON THE CITY COUNCIL'S CONSENT AGENDA AND, UNLESS REMOVED, SHALL BE APPROVED THEREON. ESTABLISHMENTS WITH REGISTERED COMPLAINTS SHALL REQUIRE ANNUAL CITY COUNCIL APPROVAL, WITH RENEWAL APPEARING AS AN ITEM ON THE CITY COUNCIL'S REGULAR AGENDA.); AND 2) IN ALL INSTANCES "RESIDENTIAL UNITS" SHALL BE REVISED TO "RESIDENTIAL UNIT OR UNITS"; seconded by Galleberg and carried 4-2 (Taylor-absent, MacIlvaine-no, Wiseman-yes, Galleberg-yes, Russell-yes, Herms-yes, MacKenzie-no).**

Although voicing agreement with imposing standards, Mayor MacKenzie said she believed music should cease at 9:00 p.m. and recommended clearer language prior to second reading.

**RESOLUTION (Not enacted).....ITEM 10  
A RESOLUTION APPROVING A CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED HERETO BETWEEN THE CITY OF NAPLES AND OAK FLORIDA INC, DBA OWEN-AMES-KIMBALL COMPANY TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE CONSTRUCTION OF THE RIVER PARK COMMUNITY CENTER IN AN AMOUNT NOT TO EXCEED \$2,190,360**

**AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND PROVIDING FOR AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:51 p.m.).

**Recess 2:51 p.m. to 3:02 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

City Manager Rambosk noted that Council had ranked the River Park Community Center first among its intended projects and determined and authorized the requisite funding, later setting criteria and directing staff to proceed with plans to construct the facility. He however said he could not recommend proceeding with the center in its present form since it would exceed the funding authorized, and made a presentation of various options, concept plans, and schedules for a one-story rather than a two-story structure. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.)

In response to Council, City Manager Rambosk said that Owens-Ames-Kimball would renegotiate with those companies who had already submitted bids on the initial center design, and Council Member Russell expressed support for the new direction as outlined. Council Member Wiseman, however, said that without the assistance of an experienced community center builder, the project thus far had resulted in a building that could not be accommodated on the available land, and was dysfunctional in its two-story configuration. She further said that the process had been unfair to Building Official William Overstreet, who had designed the project, as well as the community and the Council, and that further delay has only caused additional frustration. Mrs. Wiseman also expressed doubt that simply removing the second floor and retaining the basic configuration of the first floor would resolve no other outstanding issues than reducing cost. She further cautioned against taking a piecemeal approach to the construction process where there are separate contracts for the demolition, site preparation, construction, and landscape and street improvements, because the total cost of the new plan is yet unknown. Although stating that she was not intending a further delay, Mrs. Wiseman nevertheless emphasized the importance of resolving all outstanding issues, as well as determining the scope of work and the total cost.

Council Member Herms stressed the importance of public input, stating that the staff and Council had worked diligently with the community to achieve consensus on the desired facilities. He also characterized the extra cost as minor compared to the overall budget and the amount of money the City has available for projects such as this, noting that the estimated \$125 per square foot is reasonable in light of other recently built facilities and also the fact that the community center would contain kitchen facilities. Vice Mayor Galleberg disagreed, stating that the overage was significant but also noting that he was encouraged by the staff's proposal and that the community and Council both desire a first-rate community center open to the public in as short a time as possible. Mr. Galleberg said he would support the effort but stressed the importance of receiving specific information and cost estimates. Mayor MacKenzie stated that she, too, did not wish to delay this project, that she was pleased with the staff's efforts in achieving community goals, but also recommended seeking additional funding on the state or federal level.

Council Member MacIlvaine recommended proceeding without delay, calling the one-story building a superior design that would be easier to manage and to operate. In response to Council, Building Official Overstreet affirmed that converting to a one-story structure would necessitate the project being reengineered, although much of the foundation work had already been done. By obtaining architectural and drafting assistance, he predicted that he could present elevation drawings at the next City Council meeting, and City Manager Rambosk added that staff would then also submit additional information on the entire design.

**Public Comment:** (3:50 p.m.) **Rufus Watson, address not given**, representing the NAACP, supported proceeding with the project, and that further delay would erode the good will achieved between the community and the Council. Recommending the new plan, he noted that it retains all the basic functions the community had wanted and addresses some of the safety issues the Police & Emergency Services Department had raised. Mr. Watson further predicted that Owens-Ames-Kimball would complete the project within the allocated funding. **Carl Kuehner, 1537 Gordon Drive**, took issue with the Council giving the contractor complete discretion to build the community center in the fastest time possible. He further said the process had lacked professionalism and urged that Council allot sufficient time to construct the project correctly. **Barbara Turrentine-Bowe, 580 13<sup>th</sup> Street NW**, expressed approval of the new design noting she believed the space would be used correctly. **Kat Jones, P.O. Box 10710**, urged use of funds allocated for the project, and recommended that Council consider the suggestions of Recreation Supervisor James Whittaker, noting his long-standing support of the community. Mayor MacKenzie clarified that the Council is merely attempting to utilize any possible federal grant money before it is no longer available. **Audrey Barbera, 518 Lake Louise Circle**, expressed approval for returning to the original concept of a one-story building, commending City Manager Rambosk and the staff for the modifications offered. She however suggested modifying the proposed terrace in front of the auditorium for greater safety, installing an overhang over the landing, and placing the main entrance on Third Avenue North with a drop-off area for children. In addition, she recommended that the City accept the space offered by the Macedonia Baptist Church for the after school programs while construction is underway. **Henry Halle, 1601 Gulf Shore Boulevard North, #6**, Community Services Advisory Board (CSAB) member, urged that the project move forward, noting the diligent work devoted to it by the City Manager, the Building Official, and staff. He however recommended that the City stay within the \$2-million budget, and that it keep the community involved in every step of the process. **LaVerne Franklin, 7005 Kiwi Place**, NAACP Local President, stated that although she believed both plans would be acceptable, options should have been explored before reaching this stage. She said the community needs guarantees. Mrs. Franklin also said that Council should proceed without delay in order to access the federal grant money. **James Whittaker, 578 13<sup>th</sup> Street North, River Park Center Director**, conveyed what he described as enthusiastic support for the new design, saying it contains all the components that those involved had deemed important. He explained that he did not favor the second floor because he did not have the staff to program that space.

Mayor MacKenzie asked that City Manager Rambosk provide further information with exact cost estimates, a demolition schedule, and information on grant availability at the March 20 Regular Meeting. Council Member Wiseman however said the City should have already identified all available funding sources and that while the redesign is positive, there are many issues to be resolved before proceeding. Council Member Russell said that he considers the difficulties encountered to be part of the process, although he said he had never believed the project as conceived would stay within the budget and was reluctant to approve until full designs and all other relevant information is available. Council Member MacIlvaine said he however perceived a greater sense of urgency, that the one-story building was a better design, and that Council should move ahead. Vice Mayor Galleberg stated that while the project had lacked focus he recommended that the City work from the plan presented and continue to move forward. Council Member Herms predicted that while redesigning the building would take over a year, proceeding with the new plan presented could see construction begin fairly quickly. He recommended using the City's contingency funds to make up for the \$190,000 shortfall. While expressing dismay over delays, Mayor MacKenzie expressed the opinion that the new plan makes good sense and keeps faith with the community.

Council Member MacIlvaine proffered a motion to move ahead with the project as outlined by the City Manager; however, further discussion ensued. City Manager Rambosk asked that Council give direction to proceed to work with the contractor to develop the demolition, site preparation, and vertical structure phases, and provide information on the demolition portion and on costs at the March 20 meeting. Vice Mayor Galleberg seconded the above motion but said the Council must have a guaranteed maximum price before beginning the second phase. City Manager Rambosk said OAK had said it would provide a guaranteed price for demolition by March 20, and a guaranteed price for site preparation and the vertical structure eight to ten weeks thereafter.

In response to Council, Planner Susan Golden explained that the Department of Housing and Urban Development (HUD) had proposed reducing the Community Development Block Grant (CDBG) funding to those communities with a per capita income of more than twice the national average, one of which is the City of Naples. She added this would take effect in fiscal year 2003. In addition, she said the County is providing the City with \$250,000 per year in block grant funding based on a City/County agreement. The County is concerned that if the City is not prepared to move forward within the next four to six months, it will lose future block grant funding, she added.

**MOTION by MacIlvaine to MOVE AHEAD WITH THE PROJECT AS OUTLINED BY CITY MANAGER RAMBOSK (WORK WITH THE CONTRACTOR TO DEVELOP DEMOLITION, SITE PREPARATION AND VERTICAL BUILDING PHASES; PROVIDE COUNCIL AT THE MARCH 20, 2002 REGULAR MEETING INFORMATION ON THE DEMOLITION PORTION AND ADDITIONAL INFORMATION ON COSTS; AND PROVIDE ELEVATION DRAWING); seconded by Galleberg and carried 4-2 (Galleberg-yes, Taylor-absent, Russell-yes, Wiseman-no, Herms-no, MacIlvaine-yes, MacKenzie-yes).**

While Vice Mayor Galleberg said he believed the project could be accomplished with expert management, Council Member Wiseman expressed doubt about the newest design and the ultimate success of the community center. Council Member Herms said he would prefer to construct the original plan, saying it was only slightly over budget. Mayor MacKenzie said she wanted to see the project progress.

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**Recess 4:49 p.m. to 5:01 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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**ORDINANCE (First Reading).....ITEM 19**  
**AN ORDINANCE AMENDING SECTION 110-94 (c) (2) AND DELETING SECTION 110-94 (c) (4) OF THE CODE OF ORDINANCES PERTAINING TO PIER DIMENSION REGULATIONS FOR GOLDEN SHORES AND OYSTER BAY IN ORDER TO REGULATE THE DISTANCES PIERS AND BOAT LIFTS MAY EXTEND INTO THE WATERWAYS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:01 p.m.). Natural Resources Manager Jon Staiger explained that the east side of Naples Bay has three subdivisions: Golden Shores, Oyster Bay and Royal Harbor, each of which is currently governed by its own regulations. The Oyster Bay Homeowners Association, which represents Oyster Bay and Golden Shores, has however requested combining these entities under one set of rules and allowing slightly more encroachment into the canal than the 25% currently allowed. Dr. Staiger further stated that the only traffic in those waterways, which are generally 70 feet wide, emanates from the ingress and egress by residents. In order to allow dock contractors to perform maintenance, riprap repair, and other functions, a minimum centerline width of 32 feet is needed, he said, which would allow vessels four feet longer in the water without overlapping the neighbor or encroaching into the side yard setback. This would allow some of the multi-family properties to have one dock per unit in a

relatively short extension of shoreline as well as allowing somewhat larger boats. Dr. Staiger however said that for those canals 65 feet wide, the 25% rule would still apply.

Dr. Staiger said the new angle dock design would leave sufficient space for novice boaters to dock safely and would also facilitate navigation. He further said that the citizens contacted by letter regarding this new regulation have registered support, and that he believed this to be a reasonable request. Council Member Wiseman stated that she owns a lot in this area, but that based upon the number of affected properties, she does not believe she is required to abstain. City Attorney Robert Pritt concurred, saying there would be no special private gain under Florida statutes.

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

**MOTION by MacIlvaine to APPROVE ITEM 19 AT FIRST READING, AS SUBMITTED; seconded by Russell and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION (Withdrawn-See Item 4) .....ITEM 20  
PUBLIC HEARING TO CONSIDER A SETTLEMENT, IN THE TOTAL AMOUNT OF \$3,525.60, IN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) CASE – JOHN CAPONE VS. CITY OF NAPLES (CHARGE NO. 150A200615) WITHOUT ADMISSION OF ANY VIOLATION TO THE AMERICANS WITH DISABILITIES ACT.**  
(Editor's Note: No draft resolution was provided for this item.)

**RESOLUTION 02-9535.....ITEM 21-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 (5:12 p.m.). Mayor MacKenzie commended Council Member Taylor's work on this committee. In response to Council, City Attorney Robert Pritt stated that it is a policy decision as to whether Council Members can serve on not-for-profit boards, although noting that there could be potential for problems. Mayor MacKenzie said that in light of the fact that the entity occupies public property, many benefits accrue from maintaining this contact. In response to Council Member Wiseman, City Attorney Pritt stated that a City-controlled meeting would require conformance with the Sunshine Law (Chapter 286, Florida Statutes), and that most not-for-profit boards would not wish to subscribe to that level of control. He further said that a Council Member can be appointed as a non-voting liaison, but that a regular member of a board would be expected to vote. Council Member Wiseman said that while the Naples Players board had not decided the issue, Executive Director James Rideoutte had expressed a preference for a representative of Council in an ex officio role. However, she added, any change of this nature would most likely require both the Naples Players and Naples Art Association to amend their bylaws and use agreements. Nevertheless, Mrs. Wiseman said that she is willing to continue in her present capacity on the Naples Players board. Council Member MacIlvaine observed in comparison that his effectiveness as a member on the Airport Zoning Commission would suffer if he could not vote, although noting that this board is subject to the Sunshine Law statute. Vice Mayor Galleberg suggested that a Council Member abstain on certain votes; however, Council Member Wiseman said abstention would be allowed only on matters that deal with a member's personal pecuniary interest. Although affirming the protections from liability on not-for-profit boards, City Attorney Pritt said he was unsure about the actual regulations.

**RESOLUTION 02-9536.....ITEM 21-b  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE BOARD OF DIRECTORS OF THE NAPLES PLAYERS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:24 p.m.).



**RESOLUTION 02-9537.....ITEM 21-c**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE STAFF ACTION COMMITTEE (SAC) FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING MAY 31, 2002; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:24 p.m.).

**RESOLUTION 02-9538.....ITEM 21-d**  
**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 (5:26 p.m.).

**Public Comment:** None. (5:26 p.m.)

**MOTION by MacKenzie to APPROVE RESOLUTION 02-9536 (ITEM 21-b), APPOINTING COUNCIL MEMBER WISEMAN;** *seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

Mayor MacKenzie noted Council Member Taylor had indicated her willingness to continue on the Naples Art Association.

**MOTION by Galleberg to APPROVE RESOLUTION 02-9535 (ITEM 21-a), APPOINTING COUNCIL MEMBER TAYLOR.** *This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9537 (ITEM 21-c), APPOINTING VICE MAYOR GALLEBERG.** *This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

Although expressing no objection to Council Member Herms remaining on the Metropolitan Planning Organization (MPO), Mayor MacKenzie said that his attendance had been irregular and that she would support whomever Council wished to appoint. Council Member Wiseman said she would serve on this board. Vice Mayor Galleberg nominated Mrs. Wiseman; however, further discussion ensued. Mr. Herms said that Council's previous motion to select him for this board did not contain a deadline. He explained that he had indicated he would be willing to serve until February 2002 because he was uncertain whether he could do so beyond that time. The motion made, however, was to appoint him until the end of the term which would be 2004, he added. City Clerk Tara Norman stated that the official record of the meeting is what the body accepts as its official record in the minutes. She added that the Recording Specialist picked up the sense of the motion which was to finish the term in 2002, this also being reflected in the annotated agenda. This change was however not made when the resolution was finalized with the 2004 expiration date. Council Member Russell said it was his clear understanding that Mr. Herms was to fill the unexpired term until 2002. City Attorney Pritt said that the Council has the authority to change an appointment. Mr. Herms concurred but noted the time limitation for reconsideration of items had expired. Mayor MacKenzie said the transcript of the original appointment is clear, and that Council's intention was to fill the remainder of Mr. Galleberg's term until February 2002.

**MOTION by Galleberg to APPROVE RESOLUTION 02-9538 (ITEM 21-d), APPOINTING COUNCIL MEMBER WISEMAN.** *This motion was carried 5-1 without second. (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

**RESOLUTION 02-9544.....ITEM 22-1**  
**A RESOLUTION APPOINTING ONE RESIDENT TO AT-LARGE SEAT #1 OF THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING**

**MARCH 6, 2002, AND CONCLUDING MARCH 5, 2004; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9545.....ITEM 22-2**

**A RESOLUTION APPOINTING ONE RESIDENT TO AT-LARGE SEAT #2 OF THE CITIZENS' POLICE REVIEW BOARD FOR A ONE-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2003; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9546.....ITEM 22-3**

**A RESOLUTION APPOINTING ONE RESIDENT TO AT-LARGE SEAT #3 OF THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2004; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9547.....ITEM 22-4**

**A RESOLUTION APPOINTING ONE RESIDENT TO AT-LARGE SEAT #4 OF THE CITIZENS' POLICE REVIEW BOARD FOR A ONE-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2003; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9539.....ITEM 22-5**

**A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 1 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2004; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9540.....ITEM 22-6**

**A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 2 TO THE CITIZENS' POLICE REVIEW BOARD FOR A ONE-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2003; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9541.....ITEM 22-7**

**A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 3 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2004; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9542.....ITEM 22-8**

**A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 4 TO THE CITIZENS' POLICE REVIEW BOARD FOR A ONE-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2003; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**RESOLUTION 02-9543.....ITEM 22-9**

**A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 5 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 6, 2002, AND CONCLUDING MARCH 5, 2004; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (5:35 p.m.).

**It is noted for the record that Items 22-1 to 22-9 were considered concurrently and that no public comment was registered.**

**MOTION by Galleberg to APPROVE RESOLUTION 02-9539 (ITEM 22-5), APPOINTING JAMES GRANOFF TO SECTOR 1. This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

Council Member MacIlvaine nominated Raymond Humphrey and Council Member Herms nominated Bruce Becker for Sector 2.

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9540 (ITEM 22-6), APPOINTING RAYMOND HUMPHREY TO SECTOR 2.** This motion was carried 5-1 without second (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

There was therefore no action on the motion to appoint Bruce Becker for Sector 2.

Council Member MacIlvaine nominated Warren Adkins and Vice Mayor Galleberg nominated Willie Anthony for Sector 3.

**MOTION by MacIlvaine to APPROVE ITEM 22-7 APPOINTING WARREN ADKINS TO SECTOR 3.** This motion failed 1-5 without second (Galleberg-no, Herms-no, MacIlvaine-yes, Russell-no, Taylor-absent, Wiseman-no, MacKenzie-no).

**MOTION by Galleberg to APPROVE RESOLUTION 02-9541 (ITEM 22-7) APPOINTING WILLIE ANTHONY TO SECTOR 3.** This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9542 (ITEM 22-8), APPOINTING MARK KENNEDY TO SECTOR 4.** This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

Council Member MacIlvaine nominated James Proud and Vice Mayor Galleberg nominated Lloyd Donnelly for Sector 5.

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9543 (ITEM 22-9), APPOINTING JAMES PROUD TO SECTOR 5.** This motion was carried 5-1 without second (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

There was no action on the motion to appoint Lloyd Donnelly for Sector 5.

Council Member MacIlvaine nominated Marc Gertner and Council Member Herms nominated Warren Adkins to at large seat #1.

**MOTION by MacIlvaine to APPROVE ITEM 22-1, APPOINTING MARC GERTNER TO AT LARGE SEAT #1.** This motion failed 2-4 without second (Galleberg-no, Herms-no, MacIlvaine-yes, Russell-no, Taylor-absent, Wiseman-yes, MacKenzie-no).

**MOTION by Herms to APPROVE RESOLUTION 02-9544 (ITEM 22-1), APPOINTING WARREN ADKINS TO AT-LARGE SEAT #1.** This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

Vice Mayor Galleberg nominated Marc Gertner and Council Member Herms nominated Bruce Becker for At-large Seat #2.

**MOTION by Galleberg to APPROVE RESOLUTION 02-9545 (ITEM 22-2), APPOINTING MARC GERTNER TO AT-LARGE SEAT #2.** This motion was carried 4-2 without second (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-no).

There was no action on the motion to appoint Bruce Becker to At-large Seat #2.

Vice Mayor Galleberg nominated Lloyd Donnelly and Council Member MacIlvaine nominated J.D. Campbell.

**MOTION by Galleberg to APPROVE RESOLUTION 02-9546 (ITEM 22-3), APPOINTING LLOYD DONNELLY TO AT-LARGE SEAT #3. This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

There was no action on the motion to appoint J.D. Campbell to At-large Seat #3.

Council Member Russell nominated Bill Barnett, Council Member MacIlvaine nominated J.D. Campbell, and Vice Mayor Galleberg nominated Sanford Haberman to At-large Seat #4.

**MOTION by Russell to APPROVE ITEM 22-4, APPOINTING BILL BARNETT TO AT-LARGE SEAT #4. This motion failed 2-4 without second (Galleberg-no, Herms-no, MacIlvaine-no, Russell-yes, Taylor-absent, Wiseman-no, MacKenzie-yes).**

**MOTION by MacIlvaine to APPROVE ITEM 22-4, APPOINTING J.D. CAMPBELL TO AT LARGE-SEAT #4. This motion failed 1-5 without second (Galleberg-no, Herms-no, MacIlvaine-yes, Russell-no, Taylor-absent, Wiseman-no, MacKenzie-no).**

**MOTION by Galleberg to APPROVE RESOLUTION 02-9547 (ITEM 22-4), APPOINTING SANFORD HABERMAN TO AT-LARGE SEAT #4. This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

Vice Mayor Galleberg observed that there had been more excellent candidates than Council could appoint to the available seats but that he hoped they would maintain their interest. Mayor MacKenzie suggested considering alternates. City Attorney Robert Pritt suggested that Council ratify all the appointments by acclamation.

**MOTION by MacKenzie to RATIFY ALL APPOINTMENTS. This motion was carried 6-0 without second (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 02-9548.....ITEM 23**  
**A RESOLUTION ACKNOWLEDGING WITH THANKS TO THOSE WHO SERVED ON THE BOARDS AND COMMITTEES NAMED HEREIN; DECLARING THAT SAID BOARDS AND COMMITTEES ARE INACTIVE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:50 p.m.).

- 1) The Joint Advisory Board for Youth Relations
- 2) The Computer Committee
- 3) The NCH Advisory Committee
- 4) The Intergovernmental Affairs Committee
- 5) The Gateway Committee

**Public Comment:** None. (5:52 p.m.)

**MOTION by Russell to APPROVE RESOLUTION 02-9548, AS SUBMITTED; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).**

**CONSIDER THE FOLLOWING SPECIAL EVENTS (5:53 p.m.) .....ITEM 25**

- a) MS Walk 3/17/02 (amplified sound)
- b) Restoration Church program – Cambier Park 3/29/02
- c) Haitian Cultural Day – Cambier Park 3/30/02

**Public Comment:** None. (5:53 p.m.)

**MOTION** by Wiseman to **APPROVE ITEM 25-a**; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

**MOTION** by Galleberg to **APPROVE ITEM 25-b**; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

City Manager Rambosk said that the Haitian Cultural Day organizers had requested co-sponsorship in an amount not-to-exceed \$500 which would cover the special event fee and any insurance. He also affirmed there is approximately \$8,000 remaining in co-sponsorship funds.

**Public Comment:** None. (5:57 p.m.)

**MOTION** by Wiseman to **APPROVE ITEM 25-c WITH UP TO \$500 CO-SPONSORSHIP**; seconded by Herms and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

**CORRESPONDENCE & COMMUNICATIONS** (5:57 p.m.) .....

Council Member MacIlvaine stated that Council had the year before allowed Vergina Restaurant to place six tables and 24 seats in the Cultural Walkway but that there are now 16 tables and 50 seats there. City Manager Kevin Rambosk said staff would notify the owner and explain that any change in the approved seating would require further Council action. If the restaurant does not correct within 10 days, it would receive a notice of violation. Council Member MacIlvaine noted the importance of taking decisive action in these matters.

Council Member Wiseman cited her recent attendance at a Leadership Florida conference for elected, public officials and recommended that other Council Members attend in order to gain a perspective on how other communities are coping with issues the City is facing, such as being the cultural center of the entire County. One such solution may be to encourage the County to develop Municipal Special Taxing Units (MSTU), she explained. In addition, Mrs. Wiseman said there were also informative presentations on meeting water demands and aquifer storage and recovery wells.

In response to Vice Mayor Galleberg, City Clerk Tara Norman said there were previously no set terms on the Staff Action Committee (SAC). Council later established four year terms, and appointed members for unexpired terms.

**PUBLIC COMMENT** (6:07 p.m.).....  
None.

**ADJOURN** .....  
(6:07 p.m.)

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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: 6/5/02