



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – April 3, 2002 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present: Bonnie R. MacKenzie, Mayor
Gary Galleberg, Vice Mayor
Council Members
Joseph Herms
William MacIlvaine
Clark Russell
Penny Taylor
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Robert Pritt, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
Don Wirth, Community Services Director
William Overstreet, Building Official
David Lykins, Recreation Manager
Ralph LaCivita, Comptroller
Anne Middleton, Budget & Investment Manager
Jon Staiger, Natural Resources Manager
Susan Golden, Planner
Randy Ward, Dockmaster
Dan Mercer, Public Works Director
George Archibald, Traffic Engineer
Karen Kateley, Administrative Specialist
Adrian Herbst
Jeff Larson
John Ayers

Dana Perkins
Mark Simmons
John Sorey
Jim Boughton
Steven Shimp
Ellen Goetz
Charles Kessler
George Black
Audrey Barbera
Catrena Arnold
Gary Price
Amy Rego
Richard Kepley
Pastor Gene Scott

Media:

Dianna Smith, Naples Daily News

Other interested citizens and visitors.

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

Pastor Gene Scott, Celebration Community Church

ANNOUNCEMENTSITEM 3

National Telecommunicators Week Proclamation – Read by Council Member Taylor
Recognition of Dockmaster Randy Ward for Certified Marina Manager designation

SET AGENDA (add or remove items) **ITEM 4**

Add Item 16-b - Norris Community Center RFP

MOTION by Taylor to **ADD ITEM 16-b**; 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).

Add Item 21-c-4 – Appointment to Moorings Bay Special Taxing District Advisory Committee

MOTION by Galleberg to **ADD ITEM 21-c-4**; 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 Russell to **SET AGENDA WITH ABOVE ADDITIONS; CONTINUING ITEM 8 TO 5/1/02; AND REMOVING ITEM 11-b-5 FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION (NOTING THE FOLLOWING SCHEDULE: ITEM 17-a AND 17-b AT 10:00 A.M.; ITEM 15 AT 1:30 P.M. WITH ITEM 16 TO FOLLOW; ITEM 22-a AT 3:30 P.M.; AND ITEM 22-b AT 4:00 P.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).

PUBLIC COMMENT **ITEM 5**

Charles Kessler, 525 Anchor Rode Drive, Planning Advisory Board (PAB) chairman, requested further information with regard to the proposed restructuring of the PAB. (See Item 20.) Mayor MacKenzie said she believed that while it is important to speak to former and current members of the PAB on this subject, she had first sought to ascertain Council's interest. Mayor MacKenzie further recommended that interested parties attend the afternoon session when Council would most likely consider this issue and noted that should a majority of Council wish to pursue it, she would immediately schedule a Council Workshop discussion. **Mark Simmons, 4380 Enterprise Avenue**, referred to Council's decision to allow the Naples Gators to use Fleischmann Park for youth football, and he reported that those members banned by the Pop Warner organization were still involved, despite Council's prohibition. He therefore requested that Council select another program. Mayor MacKenzie said that if Council determines that the Naples Gators are not in compliance with the terms and conditions of the agreement, it would revoke its approval. Council Member Wiseman added that selection committee member and Recreation Supervisor Mike Leslie would attend the Naples Gators meetings to ensure that all conditions are being met. City Manager Kevin Rambosk said staff had provided a letter to the Naples Gators confirming Council's specific direction, and Council Member Herms said he believed that any violation from this point forward should result in termination.

RESOLUTION 02-9566 **ITEM 6**

A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AWARDED \$12,980,000 WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2002; AUTHORIZING THE EXECUTION AND DELIVERY OF A FORWARD DELIVERY BOND PURCHASE AGREEMENT FOR THE SALE OF THE BONDS PURSUANT TO THE TERMS AND CONDITIONS STATED THEREIN; FIXING THE DATE, MATURITIES, INTEREST RATES AND REDEMPTION PROVISIONS; APPOINTING THE BOND REGISTRAR AND PAYING AGENT FOR THE BONDS, APPROVING THE FORM AND DISSEMINATION OF THE OFFICIAL STATEMENT FOR THE BONDS; AUTHORIZING ALL OTHER NECESSARY ACTION IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:23 a.m.). Budget & Investment Manager Anne Middleton cited the goals of refunding the Series 1992 Water and Sewer bonds and extending maturities to level principal and interest payments. She explained

that the future value savings with the maturity extension is \$1.5-million and the net present value savings is \$641,000. (See Attachment 1.)

It was determined that, although no attorney signatures appeared on the resolution draft before Council, City Attorney Pritt had in fact approved a draft as to form and that the resolution had been prepared by bond counsel Jack McWilliams; it had also been reviewed by the underwriter's attorney, according to the underwriter's representative Jeff Larson, Managing Director of Hanifen Imhoff. Mr. Larson also noted that the resolution draft before Council had been completed only after pricing of the issue was concluded at 2:00 p.m. the day before. This document approves the sale of the bonds with the specifics contained in the bond purchase agreement, a copy of which is contained in the file for this meeting in the City Clerk's Office. Mr. Larson also noted that although the issue was initially authorized up to \$15-million, the actual issue size is \$12,980,000, which was deemed to be sufficient to refund the issue, and that the document would be signed upon Council approval. Closing would occur on June 4 because, according to federal tax law, the bonds cannot be advance refunded until 90 days prior to the call date, which is September 1. He clarified that this is a forward pricing, and that the rates are established beforehand.

It was determined that the finalized resolution draft references the \$12,980,000 figure. Mrs. Middleton also confirmed that there are no other bonds to be refunded due to their interest rate levels. Mr. Larson said that Council should take pride in the City's bond ratings which are among the highest in the state and that bond insurance continues not to be required.

Public Comment: None. (9:36 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9566 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 Galleberg THAT BOND COUNSEL SIGNS THE RESOLUTION ATTESTING TO ITS LEGALITY PRIOR TO CLOSING; 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).

CONSENT AGENDA

APPROVAL OF MINUTESITEM 11-a
September 5, 2001 Special, December 5, 2001 Regular and December 19, 2001 Regular.

SPECIAL EVENTS ITEM 11-b

- 1) Classic & Exotic Car Show/Display (Bayfront) – 4/20/02.
- 2) Soroptimist International Charity Benefit (Cambier Park) – 4/21/02.
- 3) Community Outreach Services (River Park Pavilion) – 5/02-4/02
- 4) An Afternoon of High Fashion & Hair Design (Bayfront) – 5/18/02.
- 6) Art In The Park (Park Street) – 11/02/02, 12/07/02, 1/04/03, 2/01/03, 3/01/03, 4/05/03.

RESOLUTION 02-9567.....ITEM 11-c
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND GALEANA CHRYSLER-JEEP, INC. IN THE AMOUNT OF \$19,148.89 FOR THE PURCHASE OF A 2002 JEEP WRANGLER; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9568..... ITEM 11-d
A RESOLUTION RESCHEDULING THE JULY 3, JULY 17, AND AUGUST 7, 2002 REGULAR CITY COUNCIL MEETINGS TO THE REGULAR CITY COUNCIL MEETING OF AUGUST 21, 2002, AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9569.....ITEM 11-e
A RESOLUTION APPROVING A JOINT PROJECT AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR PAINTING OF SIGNAL AND SIGNING STRUCTURES WITHIN THE U.S. 41-GORDON RIVER BRIDGE PROJECT; AUTHORIZING THE MAYOR TO EXECUTE THE JOINT PROJECT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9570.....ITEM 11-f
A RESOLUTION APPROVING A REVISED INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES AND COLLIER COUNTY FOR 800 MHZ RADIO MAINTENANCE; REPEALING RESOLUTION 02-9475; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9571.....ITEM 11-g
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND SECURITY ONE SYSTEMS, INC., TO FURNISH AND INSTALL CLOSED CIRCUIT TELEVISION SYSTEMS AT THE CITY DOCK AND THE CITY PIER FOR THE COMMUNITY SERVICES DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9572.....ITEM 11-h
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH JOHN DEERE COMPANY FOR THE PURCHASE OF A JOHN DEERE TRACTOR; REPEALING RESOLUTION 02-9525; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE CONSENT AGENDA ITEMS 11-a, 11-b (except 11-b-5), 11-c, 11-d, 11-e, 11-f, 11-g, 11-h; 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).

SPECIAL EVENTITEM 11-b-5
GERMAIN OFF-SITE CAR SALE (COASTLAND CENTER MALL) 5/23-27/02, 7/18-21/02, 9/20-22/02, 11/7-10/02. (9:37 a.m.) Council Member Taylor suggested moving the event to a location outside the City, noting that these events tend to be intensive and generate significant traffic. Vice Mayor Galleberg also pointed out that this type of use would not conform to the Planned Development (PD) covering the Coastland Mall development, and he expressed doubt about adequacy of parking. Council Member MacIlvaine expressed the view that the proposed use is not beneficial for property within the City, and Council Member Russell noted the lack of a large, open space in the City needed for such events. Mr. Russell also asserted that this would add intensity to an already intense use. Mayor MacKenzie pointed out that the majority of these events would however occur in the off-season, and said that she did not object to Coastland Mall partnering with another organization in order to stimulate business, and Council Member Wiseman also noted the potential benefit to Coastland's small merchants, especially during the summer. She, therefore, proffered a motion to approve the May, July, and September events; however, further discussion ensued.

Council Member Herms took the position that holding the car sale would require amendment to the shopping center's PD since the PD requires that all cars be sold inside. Council Member Russell disagreed, saying that this is a special events process and not a regular use. Mr. Herms nevertheless expressed doubt that the proposed tents would be sufficient to enclose all the cars. Council Member Taylor reiterated County Commissioner Fred Coyle's recent caution that continuing to create attractions in the City would worsen traffic congestion, but Mayor MacKenzie said she believed

Commissioner Coyle's point pertained to the County's obligation to encourage additional public facilities outside the City in order to relieve this pressure.

Public Comment: None. (9:50 a.m.)

MOTION by Wiseman to APPROVE THE EVENTS IN MAY, JULY, AND SEPTEMBER; seconded by MacKenzie. This motion failed 2-5, all members present and voting (Wiseman-yes, MacIlvaine-no, Russell-no, Galleberg-no, Herms-no, Taylor-no, MacKenzie-yes).

MOTION by MacIlvaine to DENY ITEM 11-b(5); seconded by Herms and carried 5-2, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-no, MacKenzie-no).

RESOLUTION 02-9573.....ITEM 12-a
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND BADGER METER, INC. IN THE AMOUNT OF \$719,508.35 FOR THE PURCHASE OF WATER METERS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:50 a.m.).

RESOLUTION 02-9574.....ITEM 12-b
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND THIELSCH ENGINEERING, INC., TO FURNISH WATER METER INSTALLATION SERVICES FOR THE PUBLIC WORKS DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:50 a.m.). Public Works Director Dan Mercer explained that Badger Meter sells directly to its clients and that the proposed electronic meters can be read from the street. He then described the equipment and affirmed that it would not extend more than two inches above the meter lid creating a domed effect. Vice Mayor Galleberg proffered a motion to approve Item 12-a; however, further discussion ensued. Mr. Mercer then also clarified that the life expectancy of batteries contained in the device is 12-15 years and would transmit a signal in the event of an electrical or mechanical failure. He further explained that this equipment would replace the approximately 5,700 City meters located in the County and that staff would evaluate the program in one year in order to determine whether to extend it. In response to Council Member MacIlvaine, Mr. Mercer said the City would pay for the meters as they arrive over an approximate 120-day period. He further confirmed that Badger Meter is the City's present supplier, and that these meters are constructed of cast brass meeting the City's standards. Staff, he said, had been displeased with the County's meter supplier and therefore drafted its own specifications; bids received will result in a savings of approximately \$400,000. Council Member MacIlvaine observed Badger Meter's reputation for excellence.

Public Comment: None. (9:55 a.m.)

MOTION by Galleberg to APPROVE ITEM 12-a 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 Galleberg to APPROVE ITEM 12-b AS SUBMITTED; 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).

At this point in the meeting, Mayor MacKenzie stated that she had been unaware of a registered public speaker who wished to address Council on Item 11-b(5) and requested reopening the discussion. City Attorney Robert Pritt advised that any of the five Council Members who had voted for denial can request reconsideration.

MOTION by Galleberg to RECONSIDER ITEM 11-b(5) FOR THE PURPOSE OF PUBLIC COMMENT; *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).*

Public Comment: (9:55 a.m.) **Dana Perkins, 13315 N. Tamiami Trail,** Germain Motors Marketing Director, said that while the company has had many off-site sales in both the City and the County, requirements have become increasingly strict making sites difficult to engage. She cited months of negotiation necessary to finalize an agreement with Coastland Mall which, she said, is also seeking additional revenue. Nevertheless, Germain remains flexible with regard to dates and other measures to lessen traffic impact, Ms. Perkins said, and she urged Council approval of any sale dates deemed appropriate. She then also proposed that Germain use 200 of the 300 spaces for the sale and designate the remaining 100 reserved spaces for customer parking.

While expressing doubt that Council intended to disparage Germain in any way, Mayor MacKenzie explained that with some 300 special events in the City each year, areas in Collier County are better able to accommodate this event. In response to Council, Ms. Perkins expressed doubt that area schools could provide adequate space. Council Member Wiseman, however, said she believed it would be harsh to not allow one sale with 200 vehicles, noting that Fleischmann Park visitors use Coastland Center's parking lot frequently without objection from the mall management.

Various Council Members continued to express reservations regarding the intensity of this and other similar events and the desirability for seeking venues in the unincorporated area and indicated the need to review special event issues in general. Mayor MacKenzie observed that the majority of Council is willing to discuss this at a Council Workshop. Ms. Perkins said she would attend such meeting, and she pointed out that Coastland Mall had indicated that this would be an exclusive authorization to Germain. Following the reading of the titles for the next agenda item below, Council Member Herms suggested that Council officially close Item 11-b(5).

MOTION by Herms to DENY ITEM 11-b(5); *seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-no, MacKenzie-no).*

RESOLUTION 02-9575.....ITEM 17-a
A RESOLUTION APPROVING AN ENGAGEMENT AGREEMENT WITH THE BALLER HERBST LAW GROUP, P.C. FOR CONSULTING SERVICES PERTAINING TO THE TRANSFER OF OWNERSHIP OF THE CABLE SERVICES FRANCHISE, AT&T AND COMCAST MERGER; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:15 a.m.).

RESOLUTION 02-9576..... ITEM 17-b
A RESOLUTION APPROVING AN ENGAGEMENT AGREEMENT WITH THE BALLER HERBST LAW GROUP, P.C. FOR CONSULTING SERVICES PERTAINING TO CABLE AND TELECOMMUNICATIONS; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:15 a.m.). Mr. Rambosk expressed the view that the City has been fortunate over the past ten years to have the services of Adrian Herbst, one of the country's leading cable attorneys, but staff recently determined that no formal agreement existed between Baller Herbst Law Group and the City. The action proposed, therefore, would rectify this situation, he said, and he introduced Attorney Herbst to provide an overview with regard to the cable television franchise transfer.

Mr. Herbst stated that the City's cable television franchise agreement contains a procedure addressing the sale or change of control of the cable system, allowing the City the right to review the transfer. He noted that the proposed merger of AT&T and Comcast (into AT&T Comcast) would be one of the largest transactions in the cable industry. If the City determines that subscribers would be adversely affected as a result, the cable company must be notified in 30 days of the company's request and a public hearing held 30 days thereafter subsequent to giving appropriate public notice. Should the Council then make a finding of adverse impact, a 120-day review period would commence to examine the transaction. Subsequent to Council approval of his engagement agreement, Mr. Herbst said that he would request information from Comcast for Council to make an informed decision, noting that the resulting entity would control some 40% of the households in the country in terms of cable services. Although the FCC and the Justice Department would ultimately decide these issues, the City has the right to make a record and to determine its own impacts. He therefore recommended that Council approve the resolutions presented that day and direct the City Manager to notify the cable company and publish notice of a public hearing. (See also Item 23.)

Mayor MacKenzie requested that, following research into the AT&T/Comcast merger, Mr. Herbst prepare for a workshop discussion prior to the public hearing dealing with the merger and peripheral matters dealing with options for other cable service providers. Council Member MacIlvaine nevertheless expressed the belief that the City would be unable to exercise significant authority even after receiving all the appropriate information. Attorney Herbst said the Council in fact has the right to deny the transfer if it believes there would be an adverse effect to subscribers, or if it believes this entity would not have the legal, technical, or financial qualifications which, he added might allow the Council to negotiate with the company and have some impact on local decisions. In further response to Council, Attorney Herbst said that while federal law establishes certain guidelines for franchise and cable operators, unlike telephone service licensed by the State, the City is actually the cable franchising authority and grants the license to engage in business. Attorney Herbst further noted that 27 communities in Broward County formed a consortium to seek competitive overbuilders but were unsuccessful due to a decline in the number of overbuilding companies. Attorney Herbst however said there may be viable competition in the future due to emerging technologies.

In response to Council Member Wiseman, Attorney Herbst affirmed that while a new cable company would most likely install its own system, dividing the subscriber base may make the endeavor unfeasible. Noting that the City had considered but not proceeded with an overbuilder in 1993, Council Member Herms said that the overriding question involves the impact of satellite technology on cable. It was learned that Attorney Herbst would coordinate his services with the City Attorney and that the estimated cost to the City of the franchise process was \$7,500. Mayor MacKenzie indicated that she had not spoken directly to Attorney Herbst but had transmitted her questions through the City Manager or the City Attorney. City Attorney Pritt noted that the Herbst contract would be signed by the Mayor because, as legal service, it required Council approval.

Public Comment: None. (10:35 a.m.)

MOTION by Wiseman to APPROVE RESOLUTION 02-9575 (ITEM 17-a) AS SUBMITTED; *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).*

MOTION by Herms to APPROVE RESOLUTION 02-9576 (ITEM 17-b) 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 02-9577.....ITEM 23
A RESOLUTION RELATING TO THE TRANSFER OF CONTROL AND INTERNAL REORGANIZATION OF THE OWNERSHIP OF COMCAST CABLEVISION OF THE SOUTH, INC., THE CABLE TELEVISION FRANCHISEE SERVING THE CITY OF NAPLES, FLORIDA; SETTING A DATE FOR HEARING; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:35 a.m.). Mayor MacKenzie noted that this would establish May 1 as the hearing date and April 29 as the workshop. (See discussion above.) Attorney Adrian Herbst clarified that should a cable system be sold, the City has the right of first refusal.

MOTION by Taylor to APPROVE RESOLUTION 02-9577 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).

City Attorney Robert Pritt expressed concern that the workshop could be construed as a de facto public hearing, but Attorney Herbst advised that Council would be complying with the law by conducting the public hearing on the advertised date and that an open discussion would not jeopardize this provision.

RESOLUTION 02-9578.....ITEM 13
A RESOLUTION APPROVING A PROJECT AGREEMENT BETWEEN THE CITY OF NAPLES AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REGARDING THE LAND AND WATER CONSERVATION FUND MATCHING GRANT OF \$150,000 FOR PHASE I OF THE FLEISCHMANN PARK REDEVELOPMENT PLAN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:42 a.m.).

Public Comment: None. (10:43 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9578 AS SUBMITTED;
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).

Recess 10:43 a.m. to 11:00 a.m. It is noted for the record that the entire Council was present when the meeting reconvened.

RESOLUTION 02-9579.....ITEM 7
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 read by City Manager Kevin Rambosk (10:43 a.m.) who explained that this item was continued from the March 20 Regular Meeting when Council had requested a discussion of the maintenance and use agreement. This being a quasi-judicial proceeding, Council made the following ex-parte disclosures: MacKenzie, Galleberg/no contact since the last meeting; Russell, MacIlvaine, Herms/no contact; and Wiseman/brief conversation with representatives of the hotel regarding the installation of the gates. Council Member Taylor said she would abstain from voting due to an ongoing business relationship with the petitioner. City Clerk Tara Norman then administered an oath to those intending to offer testimony; all responded in the affirmative.

Noting that the intent of the project had been to not request variances from City regulations, petitioner's representative John Ayers indicated that the petitioner had been maintaining the alley and would approve of the proposed maintenance and use agreement. He however expressed concern

that if Council did not approve the proposed gates in the alleyway, injuries could occur resulting in liability and litigation.

City Manager Rambosk explained that when renovating the hotel, the owners had mistakenly believed the alley to have been vacated and commenced with renovations accordingly. Council Member Wiseman received confirmation that the petitioner would agree to the use and maintenance agreement with minor amendments provided that the gates are installed; absent the gates, however, the petitioner would still agree to maintenance but not to a blanket indemnification for any injuries suffered in the alley. She therefore suggested a more limited indemnification that would be solely for failure to maintain alley improvements; Mr. Ayers concurred. Although Vice Mayor Galleberg cautioned that the petitioner should be responsible for any injuries to its guests in this petitioner-improved alley, Mrs. Wiseman said that a blanket indemnification burden on the hotel would not necessarily be fair since the configuration was partly the fault of the City. She said she concurs with installation of the gates due to a potentially hazardous condition and that appropriate signage could indicate that there is still public access available. Council Member Russell, however, supported vacating the alley while Mayor MacKenzie pointed out that Council had previously decided against it. Vice Mayor Galleberg explained that while this particular redevelopment is attractive, vacating the alley would leave the City with limited authority in terms of future development. Council Member Herms noted that a private condominium association actually owns part of the alley, and that vacation would leave insufficient direct access, which he noted would also occur with installation of the proposed gate. In response to Council, Mr. Ayers said the gates would be closed at all times unless a vehicle approached.

City Attorney Robert Pritt advised that it is a Council policy decision whether to require that the property owner indemnify the City, but the City does not have the authority to create or waive liability for itself and cannot enter into an indemnification agreement. Council Member Wiseman clarified that she had not suggested that the City indemnify the hotel but that there be a limitation on the indemnification the hotel would afford the City in terms of maintenance.

Public Comment: (11:30 a.m.) **Richard Kepley, 3839 Rum Row** (who responded in the affirmative to an oath administered by the City Clerk) stated that he had wanted to abide by all City rules and regulations when he had acquired the property, the former Beachcomber Hotel. He said that his architects and City staff had jointly designed this project to be in compliance over a period of several months. The gates were a part of this design, he continued, and that although he had initially postponed it, he now supports installation to ensure the safety of the children at the hotel.

Vice Mayor Galleberg noted the City Attorney's legal opinion that the City has limited if any authority to authorize a gate blocking a public way. (See Attachments 2 and 3.) City Attorney Pritt said that in researching this matter he had learned from the Collier County Attorney's Office that the litigation relative to the Lely guard gate is being mediated. Council Member Wiseman, however, took the position that the Lely matter is not applicable to this situation since it involves a private road to which the developer had granted easements to the State and County. City Attorney Pritt said he had also provided Attorney General Office Opinion No. 90-51, the closest to the issue of use of gates on public street, although an opinion could be requested from the Attorney General relative to this specific case. In summary, Mr. Pritt said a municipality is not authorized to install a security gate on a public road that limits access to the road to residents and to those nonresidents who have purchased a remote control unit to open the gate.

Vice Mayor Galleberg observed that while it had been unfortunate that staff had erred when it informed the petitioner that the alley was vacated, even gates that would open for any approaching vehicle could easily be construed as a barrier and therefore inappropriate notwithstanding the history of the matter. He recommended therefore reaching consensus regarding the indemnity issue and Council Member Wiseman recommended including an assignability clause. Mr. Kepley said that in the event units are sold as a condominium, the condominium association would represent those unit owners and would sign on their behalf.

In a discussion of maintenance requirements for petitioner-improved facilities, Traffic Engineer George Archibald (who responded in the affirmative to an oath administered by the City Clerk) pointed out that a standard right-of-way permit process (see Attachment 4) outlines permittee responsibilities and indemnifies the City to some degree. Mr. Archibald further said that the permittee is typically the property owner, and that the obligation runs with the property and is assignable with approval of the local government. Council Member Wiseman however observed that the original party would nevertheless not be released from liability that resulted from occurrences prior to the assignment.

City Attorney Pritt said Council had previously directed that he prepare a maintenance agreement in addition to the right-of-way agreement, which he said he believed appropriate because the standard right-of-way permit conditions do not clearly indicate that indemnification continues after the structure is installed. Mr. Kepley then said he would maintain the entire alley regardless of Council's decision regarding the gates. Council Member Russell said he did not believe the gates would resolve the traffic problem and proffered a motion seconded by Council Member Herms to deny them.

MOTION by Russell to APPROVE RESOLUTION 02-9579 TO DENY THE GATES; seconded by Herms and carried 5-1-1 (MacIlvaine-yes, Taylor-abstain, Russell-yes, Galleberg-yes, Herms-yes, Wiseman-no, MacKenzie-yes). (See Attachment 5, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.)

In response to Mayor MacKenzie, City Attorney Pritt confirmed that Council should hold further discussions in abeyance until hotel and City representatives could research the indemnification and the right-of-way permit. Recommending that Council make a policy decision on the indemnification issue, Council Member Wiseman pointed out that the City is requiring the hotel to assume the complete responsibility for keeping the area open to the public when the City should in fact assume some responsibility. Mayor MacKenzie however suggested that there be a compromise between complete indemnification and no indemnification, and Council Member MacIlvaine concurred, stating that the attorneys could draft a format for Council review. Council Member Wiseman requested information on other cases that have dealt with a blanket indemnification to a municipality.

MOTION by Herms to DIRECT THE CITY ATTORNEY AND THE PROPERTY OWNER'S ATTORNEY TO DRAFT AN AGREEMENT FOR COUNCIL CONSIDERATION AT THE APRIL 17, 2002 REGULAR MEETING; seconded by MacKenzie. This motion failed 3-3-1 (Galleberg-no, Russell-no, MacIlvaine-yes, Wiseman-no, Taylor-abstain, Herms-yes, MacKenzie-yes). (See Attachment 5.)

After further discussion of the advisability of limited indemnification, the following motion was made

MOTION by Galleberg to INSTRUCT THE CITY ATTORNEY TO WORK WITH THE PETITIONER'S ATTORNEY TO CRAFT A MAINTENANCE AND USE AGREEMENT FOR CONSIDERATION ON APRIL 17, 2002, INCLUDING

CORRECTIONS AND REVISIONS DISCUSSED, AND SUBMITTING ALTERNATIVE INDEMNITY PROPOSALS (INCLUDING ANALYSIS OF ENFORCEABILITY OF INDEMNIFICATION IN LIGHT OF THE DIFFERENT CLASSES; NAMELY, GUESTS AND NON-GUESTS); seconded by Wiseman and carried 6-0-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-abstain, Wiseman-yes, MacKenzie-yes). (See Attachment 5.)

RESOLUTION (Continued).....ITEM 8
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. See Item 4 above.

.....ITEM 14
DISCUSSION/APPROVAL OF THE DATE THE TEDDY BEAR FAIR IS TO BE HELD AT CAMBIER PARK. (12:21 p.m.) City Manager Kevin Rambosk reported that although Council had previously requested changing the fair date, organizers had maintained their preference for Saturday, October 19. Mayor MacKenzie explained Council's concern involved there being a Naples Concert Band performance that weekend in Cambier Park and that Fifth Avenue would also be closed. Fair representative George Black noted that the Teddy Bear Fair in Cambier Park generally coincides with the Oktoberfest without difficulty.

Public Comment: None. (12:30 p.m.)

MOTION by Taylor to APPROVE ITEM 14 FOR OCTOBER 19, 2002 FROM 10:00 A.M. TO 3 P.M.; seconded by Herms and carried 5-2, all members present and voting (Taylor-yes, Wiseman-yes, Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-no, MacKenzie-no).

Council Member Russell clarified that his concern regarding the scheduling of events had to do with the impacts to business owners. Mayor MacKenzie said a number of citizens had also expressed concern about multiple events and street closures.

Recess: 12:30 p.m. to 1:34 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.

RESOLUTION 02-9580.....ITEM 15
A RESOLUTION APPROVING A CONTRACT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO BETWEEN THE CITY OF NAPLES AND OAK/FLORIDA, INC., D/B/A 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 \$1,550,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by Mayor MacKenzie (1:34 p.m.). City Manager Kevin Rambosk introduced OAK President Steven Shimp, landscape architect Ellen Goetz, architect William Overstreet, and project manager David Lykins. He said these individuals would provide specifics on the guaranteed maximum price contract, the total project, the site, an additional building elevation from the Third Avenue side, the landscape plan for the plaza area, and programming. He then displayed a diagram of the project site (a copy of which is contained in the file for this meeting in the City Clerk's Office) and listed the following components: the vertical structure of the building and the plaza area connecting it to 10th Street; basketball pavilion; children's playground; pool area; and the landscaping and lighting bordering 11th Street and Third Avenue North, which he noted would be included in this year's capital improvement budget. The parking area, he said, would serve all of the facilities.

Mr. Overstreet also presented an elevation depicting the building from Third Avenue North, explaining that he had tried to incorporate the old Florida style residential look while still maintaining adequate room height. Wall height to the bottom of the roof truss is 14 feet and the windows are 5 feet 4 inches by 3 feet. He said that the flat roof above the entrance would accommodate the mechanical equipment and that the building would serve as a hurricane shelter rated to withstand 140 mph winds.

In her presentation, landscape architect Goetz cited certain goals such as visibility of the building from Tenth Street and function of the area in a democratic, open, flexible manner while still accommodating the Police & Emergency Services (PESD) interest in security. She added that the dark aluminum picket-style fence would be 42 inches high and placed 25 feet from the sidewalk. There would also be a pair of gateposts on the Tenth Street side, which would identify the entrance as well as secure the gates, and a smaller set of gateposts at the property line. There would also be a secondary entrance along Third Avenue North which would provide access to the residential units to the north. In addition to the plant material planned, Ms. Goetz further recommended introducing some royal palms.

Council Member Wiseman questioned whether the building could not extend onto the leased property (Carver Apartment site) if the aforementioned installations could be placed there. City Manager Rambosk said that lessee representatives had indicated their approval of landscaping and drainage improvements, but not a structure. Documents submitted to the lessee by the City Attorney had not as yet been signed and returned, he said.

It was then noted that drainage would be directed to the perimeter of the site and that an additional drainage area would be located near the basketball pavilion, which would not be fenced but well lighted for ease of access. While complimenting the landscape design, Mayor MacKenzie nevertheless suggested installation of a vine on the rear of the building to compensate for the few windows planned. In further response to Council, City Manager Rambosk said there would be no access between the fence and the back of the buildings except for maintenance or improvements. He noted that one of the most important assets for routine police patrol is adequate visibility on as many sides of the building as possible, and that although the entire rear of the property would be obscured, there would be visibility between buildings.

Mr. Lykins stated that there is a large amount of space for programming and that he had taken into account all the data collected from individual users, community input meetings, and focus and user groups. Mr. Lykins said that some of the programming would parallel that of the Norris Community Center and Fleischmann Park, but that much would be unique to this facility due to the amount of available space. In addition, he said there were also some support facilities on this property, noting that it has the only public swimming pool in the City. He then explained that there is an aquatics program consisting of youth and adult lessons, youth competitions, and CPR classes, which he predicted would expand as the participants grow. He added that there are a number of athletic programs that would occur at the basketball pavilion as well as the Anthony Park location. The auditorium would host music, dance, theater, and visual arts programs. In addition, Mr. Lykins said staff is working with area schools with regard to developing educational classes that would mirror the school curriculum. He further said there would also be adult education classes structured similarly to those at area community colleges. There would be a fitness room that would host classes in weight training, aerobics, yoga, health education, nutrition, and wellness. In addition, there would also be a homework center, a computer lab, mentoring and tutoring services, after school programs, a small library, reading programs, life enrichment programs, and intervention and

youth services programs. He explained that the challenge in offering these services was in getting a commitment from a number of the instructors, but staff believes that there would be a variety of programs that would appeal to all ages.

Mr. Lykins then reported that demolition of the existing structure had been delayed to April 10, but that construction would commence on schedule on May 6. He added that the recreation staff has relocated to Anthony Park and is in the process of establishing the children's programs there and at the Macedonia Baptist Church. Mr. Lykins however noted that construction on the basketball pavilion, the pool, and the playground would commence on September 3. The building and all associated elements should be completed by January 31. City Manager Rambosk assured Council that signage would identify the demolition date.

Council then further discussed use of a portion of the adjacent leased Carver Apartment site, and Council Member Wiseman also expressed concern about approving a conceptual design with no clear idea of the actual appearance. City Attorney Robert Pritt explained that the City had granted a 75-year lease on the Carver property although it could force a sale for a public purpose through eminent domain. Council Member Taylor suggested that the City proceed if the leaseholder does not accede to the proposed use. City Attorney Pritt predicted such litigation would take four to six months. City Manager Rambosk stated that due to this uncertainty, the building would occupy property that the City owns and controls. Council Member Wiseman, however, expressed dismay that the Council had not been privy to communications with the Carver lessee and noted that she had not seen the lease in question. Council Member Taylor nevertheless recommended that the City proceed with construction and afford the City Manager as much latitude as necessary regarding the leased property.

Council Member Russell said he would have difficulty granting approval without definitive plans and documents and asked to see a rear elevation, urging that the design stage first be completed and approved. Steven Shimp of OAK stated that he had reviewed the design drawings and had conversed with the architect as to the structure and the systems to be used, noting that there was sufficient information to understand what will be constructed. Mr. Shimp further said that he has since performed a detailed financial analysis, and he affirmed that the guaranteed maximum price would be workable for his company. He also confirmed that there would be windows on the rear wall as shown on the plan. City Manager Rambosk also noted that various colorized elevations had not been prepared due to cost. Council Member Herms expressed approval of the plan, noting that while he did not concur with the theatre section from a design standpoint, there were no alternatives for that type of stage. He further said he believed the windows would be sufficiently large to provide adequate lighting and noted that the flat roof structure containing the utilities would have a slight taper which would facilitate drainage.

Public Comment: (2:31 p.m.) **Audrey Barbera, Lake Louise Circle**, said that based on advice from a private attorney, the City's lease with the Carver Finance Corporation, dated August 21, 1980, could be considered boilerplate and that there was no prohibition of the City using the property. Compliance with density requirements could be handled through the variance process and are often granted, she said. She then noted that the City Manager had only begun to explore this issue in November when the Assistant City Manager had failed to do so. She also said that City Attorney Pritt informed her he could not contact the present leaseholder unless specifically directed to do so by Council. Ms. Barbera said she had wondered who might not have wanted to see the new center integrated into the larger community, noting that it had always been a major part of the 41-10 redevelopment. She added that Council Member Russell's concern regarding the security around the

proposed east wing as well as the front entrance design could be resolved by moving the building 100 feet closer to Tenth Street, which would leave a 30-foot setback where minimal landscaping would eliminate any shaded or hidden areas as well as the need for the fencing in the garden area. She further noted that the proposed landscaping and fencing would further isolate River Park. In addition, Ms. Barbera proposed relocating the east wing parallel to Third Avenue to provide greater access for police patrol. In conclusion, she characterized the aforementioned changes as vital to the success of the new center.

Noting Mrs. Barbera's advocacy of both the project and the River Park area, Vice Mayor Galleberg nevertheless stated that he was unaware of a plan that placed the building directly on Tenth Street. City Manager Rambosk also pointed out that the proposed building is just 40 feet from the placement proposed by architect Andrea Clark Brown in a prior design. Council Member Wiseman reiterated her questioning of the completeness of the current submission, pointing out that specific details are required when Council considers requests relative to private property. Planning Director Ron Lee affirmed that the current plans are in compliance with the original variance requests and are in substantial compliance with the original plans approved. Council Member Wiseman however said she cannot recall proceeding with such a large project with so little information.

Public Comment: (2:43 p.m.) **Catrena Arnold, 1488 Blue Point Avenue**, said she believed that the proposed fence was unnecessary and merely a convenience for law enforcement. While indicating concurrence with Ms. Barbera that the building should be closer to Tenth Street, Ms. Arnold nevertheless recommended that Council proceed without delay.

Council Member Herms proffered a motion to proceed with the project, seconded by Council Member MacIlvaine; however, further discussion ensued. City Manager Rambosk confirmed that the total project cost would be \$2-million, excepting the street lighting which would be included in the capital improvement budget. Mr. Shimp explained that the guaranteed maximum price includes only the site preparation for that area but not the landscaping, fencing, or hardscape plans, allowing Council to make further decisions on these issues. Vice Mayor Galleberg pointed out that the contract cost is \$1,550,000 although Section 4-b states that upon completion of the design phase, competitive bids will be taken on an open market basis for all sub-trades, and subsequent to bidding, a guaranteed maximum price will be formulated. Mr. Shimp explained this is standard contract language but that he has already completed that process and selected sub-contractors on the previous two-story version of the building. It is therefore his intent, he said, to negotiate contracts at those dollar amounts or less with successful bidders from the first round of a complete bidding, although delineating a specific dollar amount at a public meeting would place the City at a competitive disadvantage in the marketplace. Although he said that he had not yet finalized the figures with the sub-contractors, Mr. Shimp assured Council that the guaranteed maximum price is firm. In further discussion, City Attorney Pritt agreed that Section 4-b should contain the global dollar amount, noting that he believed the City would receive a new document. City Attorney Pritt said he believed Council could however proceed, noting that Exhibit K contains the aforementioned \$1,550,000 figure. Mr. Shimp further pointed out that that design development is complete, and Council would be approving the design development drawings with an associated guaranteed maximum price. Council Member Herms noted that the \$128 per square foot approximates that of the original project. Council Member Wiseman recommended that the City Attorney review contract language relative to indemnification which she says now conflicts with recent statutory amendments.

MOTION by Herms to APPROVE RESOLUTION 02-9580 (APPROVING CONTRACT AND MOVING FORWARD AT PRICE QUOTED) AND WITH THE STIPULATION THAT THE INDEMNIFICATION CONFORM TO STATE LAW;

seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

RESOLUTION (Continued).....ITEM 16-a
A RESOLUTION APPROVING A CONTRACT WITH WARNER ARCHITECTS, INC. TO PROVIDE DESIGN SERVICES FOR THE RENOVATION AND EXPANSION OF THE NORRIS COMMUNITY CENTER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:58 p.m.) who reviewed the history of the proposed renovations of the Norris Community Center. While a selection committee to examine renovations was established in 1999, staff is unable to engage architectural services beyond those of a minor nature. He also indicated that Recreation Manager David Lykins had obtained comment relative to architectural style from those families who had donated funds to Cambier Park.

Council Member Herms contrasted the \$260 per square foot renovation cost with the \$128 per square foot cost of rebuilding, noting that floodproofing would amount to approximately \$500,000. Vice Mayor Galleberg and Council Member MacIlvaine agreed and expressed approval for moving forward with a new building. Council Member Russell said there had however been strong community sentiment to retain the façade, profile, and architecture of the existing building. He however recommended confirming both the costs of various options and the public opinion; Council Member Wiseman recommended resubmitting this to the Community Services Advisory Board (CSAB) for further evaluation.

Mr. Lykins said that selection committee member Laverne Gaynor had indicated support of the desires of the CSAB and users, and despite sentiment regarding the existing structure to which her family had contributed, was willing to entertain the notion of a new building.

In further discussion of renovation or a new structure and receiving further public comment thereon, City Manager Rambosk suggested continuance for one month to allow determination of whether the RFP issued for this contract would allow design of a new structure while also affording time for further discussion and public comment through the CSAB.

Public Comment: None. (3:30 p.m.)

MOTION by Taylor to CONTINUE FOR ONE MONTH (MAY 1, 2002 REGULAR MEETING); seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

Vice Mayor Galleberg pointed out that Council was in fact not then considering the design phase of the project, and Mayor MacKenzie noted that an architect was to first be retained so as to take part in public discussions. Council Member Herms asked staff to obtain drawings made by an architect who had previously withdrawn from the project.

RESOLUTION 02-9582.....ITEM 9
A RESOLUTION DETERMINING VARIANCE PETITION 02-V2 FROM SECTION 102-186(1) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES A 30-FOOT FRONT YARD SETBACK FROM CRAYTON ROAD IN ORDER TO APPROVE AN AFTER-THE-FACT VARIANCE FOR A POOL CAGE WHICH EXTENDS 5.8 FEET INTO THE SETBACK, AT 4700 CRAYTON COURT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during discussions below (3:30 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosure: all members except Vice Mayor Galleberg registered no contact, Mr. Galleberg

indicating that he had viewed the site. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Attorney John White, representing petitioner Ann Wasser, noted materials provided: a map, a series of photographs that identify the location of the home, the pool cage area that encroaches into the setback, and a view of the hedge that is located across the street which he said shows that the encroachment is only slightly visible from the road. (Copies of these documents are contained in the file for this meeting in the City Clerk's Office.) He added that the staff report identifies the guidelines and standards applicable with respect to this application and that staff had found that this encroachment was unintentional and does not increase or intensify the use of the pool cage.

Regardless of the possibility of a calculation error in setbacks applicable to corner lots, Attorney White indicated that the contractor who had made this error had ceased operations during construction, making completion of this home and pool difficult. Planning Director Ron Lee also confirmed that the required as-built drawings were not submitted prior to issuance of a certificate of occupancy and the error had not been discovered until the property was to be sold. Council Member MacIlvaine received confirmation that the entire area is screened from the public by the hedge and that the Planning Advisory Board (PAB) had unanimously recommended approval of the variance. Mayor MacKenzie also noted that the PAB had recommended correction of the encroachment if the home were demolished. Planner Ann Walker (who responded in the affirmative to an oath administered by Notary Public Jessica Rosenberg) confirmed that a permit is required to construct a pool, a deck, and a cage and that the property owner must also have a site plan to show the location of the pool. In response to Council, Attorney White explained that one contractor installed the pool and pool shell while a second constructed the cage. Mr. Lee said that although the deck encroaches into the setback, it is the pool cage that requires the variance because the deck is less than 30 inches in height. While indicating support for the PAB recommendation, Council Member Herms nevertheless requested a copy of the site plan. Council Member MacIlvaine proffered a motion to approve with the PAB's recommendation and Attorney White further noted that staff had received two letters of support from neighbors. Planner Walker confirmed that the variance would be recorded in the public record.

Public Comment: None. (3:39 p.m.)

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9582 AS SUBMITTED;
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).**

RESOLUTION 02-9583.....ITEM 10
A RESOLUTION DETERMINING VARIANCE PETITION 02-V3 FROM SECTION 102-748 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH LIMITS THE MAXIMUM HEIGHT OF STRUCTURES IN THE PS DISTRICT TO 30 FEET FOR PRINCIPAL BUILDINGS IN ORDER TO PERMIT A HEIGHT OF 58 FEET TO THE PEAK OF THE SANCTUARY ROOF AND 69 FEET TO THE PEAK OF THE TOWER FOR THE MOORINGS PRESBYTERIAN CHURCH LOCATED AT 791 HARBOUR DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:39 p.m.). Although ex parte disclosures are required in a quasi-judicial proceeding, no Council Member indicated contact with reference to this petition. Notary Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Architect Jim Boughton introduced Moorings Presbyterian Church Pastor Bruce Ingles and Music Director Dick Crofts and explained that the project was actually multi-phased, beginning in 1996 when the church received a conditional use for a music center. In 1999, the church received approval for additions and renovations as well as a slight increase in the height of the sanctuary, he said, and has since completed the family life center, deemed as Phase II. Phase III is presently under construction and will include the fellowship and administration building. Mr. Boughton said that the request for additional height in the sanctuary was the result of donation of an organ, although the new design would be less vertically imposing than the current structure and most of the roof line would be limited to 42 feet. He added that there would be a 69-foot tower on Riviera Drive, but it would be constructed adjacent to the two Collier Buildings and other commercial uses, which would be the most appropriate location. Mr. Boughton said he had resolved concerns of one neighbor who had commented on the proposed landscaping on Binnacle Drive and that he believed this variance to be comparable to other approvals Council had given to churches of similar size.

Public Comment: None. (3:49 p.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9583 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).

Recess 3:49 p.m. to 3:55 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.

.....ITEM 22-a
EXECUTIVE SESSION (ATTORNEY/CLIENT SESSION) RELATING TO THE FOLLOWING LITIGATION MATTER: WHARTON-SMITH INC. V. THE CITY OF NAPLES; CASE NO. 00-2730-CA (20TH JUDICIAL CIRCUIT) (3:55 p.m.) Mayor MacKenzie announced that at the request of the City Attorney, the City Council would commence an attorney/client session to discuss settlement negotiations and or strategy relating to litigation expenditures concerning Wharton-Smith, Inc. v. the City of Naples (Case No. 00-2730-CA, 20th Judicial Circuit). The estimated time for this session is one-half hour after which the regular meeting will be reopened. Those attending the attorney/client session are the following: Mayor Bonnie MacKenzie, Vice Mayor Gary Galleberg; Council Members Joseph Herms, William MacIlvaine, Clark Russell, Penny Taylor, and Tamela Wiseman; City Manager Kevin Rambosk, City Attorney Robert Pritt, and Fred Hardt of the law firm Roetzel & Andress, Attorney Frank Riggs of Smith, Curry & Hancock, and Pam Arsenault of AAF Reporting, Court Reporter. The City Council has given notice of the time and date of the attorney/client session. At the end of the attorney/client session, Mayor MacKenzie said she would announce termination of the session and reopen the meeting.

It is noted for the record that the attorney/client session occurred from 3:58 to 4:33 p.m. The entire Council was present when the meeting reconvened.

Mayor MacKenzie announced the end of the aforementioned attorney/client session. Vice Mayor Galleberg said he would abstain from voting because he has a pending real estate transaction with the president of Hole, Montes. He added that this ~~contact~~ contract did not exist during prior considerations and that it is scheduled to close within one week, after which time he would not feel bound to abstain.

MOTION by Wiseman to DESIGNATE CLARK RUSSELL (IN ADDITION TO CITY MANGER KEVIN RAMBOSK) AS THE CITY COUNCIL'S REPRESENTATIVE TO ATTEND ALL OR A PORTION OF THE NON-BINDING MEDIATION SCHEDULED FOR APRIL 9 AND 10, 2002; seconded by MacIlvaine and carried 4-2-1 (Galleberg-abstain, Russell-yes, Wiseman-yes,

Herms-no, MacIlvaine-yes, Taylor-no, MacKenzie-yes). (See Attachment 6, Form 8B Memorandum Of Voting Conflict For County, Municipal, And Other Local Public Officers.)

..... ITEM 22-b
EXECUTIVE SESSION (ATTORNEY/CLIENT SESSION) RELATING TO THE FOLLOWING LITIGATION MATTER: HAMILTON HARBOR LITIGATION SPECIFICALLY 1) COLLIER ENTERPRISES, LTD. V. CITY OF NAPLES; CASE NO. 00-1562-CA (20TH JUDICIAL CIRCUIT, COLLIER COUNTY). 2) RELATED CLAIM BROUGHT UNDER THE BERT J. HARRIS, JR. PRIVATE PROPERTY RIGHTS PROTECTION ACT. 3) ALL RELATED LITIGATION. (4:37 p.m.) Mayor MacKenzie said the City Attorney had advised the City Council that he desires advice concerning the following pending Hamilton Harbor cases: Collier Enterprises, Ltd. v. the City of Naples, Case No. 00-1562-CA (20th Judicial Circuit, Collier County); City of Naples v. Collier Enterprises, LTD. et al, Second District Court of Appeal, Case No. 00-26-3; James K. Kessler et al v. the City of Naples, Case No. 99-1743-CA (20th Judicial Circuit, Collier County); James K. Kessler v. the City of Naples, Second District Court of Appeal, Case No. 99-2132; James K. Kessler et al v. the City of Naples et al, Second District Court of Appeal, Case No. 99-4327; James K. Kessler et al v. the City of Naples et al, Second District Court of Appeal, Case No. pending assignment; the Conservancy of Southwest Florida v. the City of Naples, Case No. 99-2809-CA (20th Judicial Circuit, Collier County); James Kessler et al v. the City of Naples, Circuit Case No. 99-2812-CA (20th Judicial Circuit, Collier County); the Conservancy of Southwest Florida v. the City of Naples et al DOAH Case No. 992599; Save the Manatee Club et al v. the City of Naples et al DOAH Case No. 99-2600-GM; Collier Enterprises, related Bert. J. Harris claim; Collier Enterprises related vested rights claim. The City Council will commence an attorney/client session to discuss settlement negotiations and/or strategy relating to the litigation expenditures. The estimated time for this session is one hour after which the meeting will be reopened. The persons attending this attorney/client session are the following: Mayor Bonnie R. MacKenzie, Vice Mayor Gary Galleberg; Council Members Joseph Herms, William MacIlvaine, Clark Russell, Penny Taylor, and Tamela Wiseman; City Manager Kevin Rambosk, City Attorney Robert Pritt and Fred Hardt of the law firm of Roetzel & Andress, Nancy Stroud of Weiss, Serota, Helfman, Pastoriza and Guedes, and Pam Arsenault of AAF Reporting, Court Reporter. The City Council has given notice of the time and date of the attorney/client session. At the end of the attorney/client session, Mayor MacKenzie said she would announce the termination of the session and reopen the meeting.

It is noted for the record that the attorney/client session occurred from 4:43 to 5:34 p.m. The entire Council was present when the meeting reconvened.

Mayor MacKenzie announced the end of the attorney/client session.

MOTION by Galleberg to INSTRUCT ROETZEL & ANDRESS TO CONTACT ATTORNEY FOR HAMILTON HARBOR LITIGANTS AND DISCUSS POSSIBLE SCENARIOS FOR SETTLEMENT; seconded by MacIlvaine and carried 5-2, all members present and voting (Russell-yes, Galleberg-yes, Herms-no, Wiseman-yes, Taylor-no, MacIlvaine-yes, MacKenzie-yes).

Council Member Herms said that this would afford the attorneys significant latitude in which to negotiate rather than providing the specific direction Council had previously given relative to following the City's zoning and Development of Regional Impact (DRI) process.

MOTION by Wiseman to DESIGNATE ROETZEL & ANDRESS AS THE SOLE LAW FIRM TO REPRESENT THE CITY OF NAPLES ON ALL HAMILTON HARBOR MATTERS AND THAT SERVICES OF LAW FIRM OF WEISS SEROTA HELFMAN PASTORIZA & GUEDES BE TERMINATED EXCEPT FOR THOSE MATTERS NECESSARY TO TRANSITION THE WORK THAT

THEY ARE DOING TO THE LAW FIRM OF ROETZEL & ANDRESS AND THAT WEISS SEROTA BE REQUESTED TO RENDER A FINAL BILLING;
seconded by Russell and carried 5-2, all members present and voting (Wiseman-yes, MacIlvaine-yes, Russell-yes, Galleberg-yes, Herms-no, Taylor-no, MacKenzie-yes).

Council Member MacIlvaine expressed appreciation for the work done by Attorney Nancy Stroud; however, Council Member Herms said he believed it important to retain her services.

Recess: 5:39 p.m. to 5:53 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.

RESOLUTION 02-9584.....ITEM 19
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 02-CU3 FOR APPROVAL OF TWO OFF-SITE PARKING SPACES PURSUANT TO SECTION 106-102 OF THE CODE OF ORDINANCES IN ORDER TO COMPLY WITH THE REQUIREMENTS OF AN UNRESTRICTED CHARTER BOAT OCCUPATIONAL LICENSE FOR LEISURE UNLIMITED, INC., MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during discussions below (5:53 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: Wiseman, MacIlvaine, Galleberg, Herms/no contact; MacKenzie, Russell/exchanged greetings with the petitioner; Taylor/spoke briefly to Alex Engelsted and Gary Martin regarding this matter. City Clerk Tara Norman then administered an oath to those intending to offer testimony; all responded in the affirmative.

Petitioner Alex Engelsted stated that she had recently received an extension of her lease which would then expire in August 2003. Planning Director Ron Lee said that staff would include this lease in the record, and that the conditional use would expire upon termination of the lease.

Public Comment: None. (5:58 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 02-9584 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).

.....ITEM 20
DISCUSSION REGARDING ESTABLISHMENT OF A “BOATING AND WATERWAYS” COMMITTEE AND POSSIBLE RESTRUCTURING OF THE PLANNING ADVISORY BOARD (SEE ALSO RELATED ITEM ON 4/1/02 WORKSHOP AGENDA). (5:58 p.m.) Mayor MacKenzie said that if Council believes in placing a stronger emphasis on planning, it could authorize the staff to proceed with discussions on a possible restructuring of the Planning Advisory Board (PAB). If not, she said she would request that Council direct the City Manager to allocate no more than \$5,000 to allow the Municipal Code Corporation to review the Code of Ordinances. (Previously in the meeting, City Attorney Robert Pritt said that the PAB members present at the meeting can address Council as long as they do not enter into a discourse with other PAB members.)

Public Comment (6:01 p.m.) **Charles Kessler, 525 Anchor Rode Drive**, PAB chairman, was granted permission to speak last. **Gary Price, 3120 Leeward Lane**, PAB member, expressed concern with City long-range planning and asked Council to share its vision with the PAB so that it could incorporate these elements into its work. Prior to any change in structure of the PAB, he recommended improved communication between the two bodies. In response to Council Member Herms, Mr. Price said he believes that planning encompasses everything the City does to alter the appearance of the City. He added that when considering a petition, he always seeks to determine how it would affect its surroundings as well as any ensuing trend the City may be setting. **Amy Rego, 1060 Sixth Street South**, PAB member, read a prepared statement into the record

(Attachment 7). **John Sorey, 220 Gulf Shore Boulevard Blvd. North**, PAB member, stated that the entire board is dedicated to providing the most effective planning possible and is willing to spend the time necessary to perform its functions. He recommended that Council give the PAB the direction and guidance to develop a vision of the City for the next 20 years, suggesting that the two entities participate in a joint workshop. **Charles Kessler, 525 Anchor Rode Drive**, PAB chairman, agreed that there should be more emphasis on planning and said that the PAB is ready to do whatever Council feels is necessary to make Council's job easier. Mr. Kessler suggested that Council direct the PAB to consider its functions and operation, noting that by the time Council returns from summer recess it will have a work product to review which can serve as a starting point.

As a former PAB member, Council Member MacIlvaine said he sometimes felt dismayed that Council had ignored the PAB's recommendations. He therefore suggested that Council highlight the results of the PAB deliberations so that it does not have to discuss the same information. Mayor MacKenzie pointed out however that the majority of the current PAB members were not serving during the last Comprehensive Plan revision, and she suggested that they could quickly become overburdened. She then said she appreciated the work of the PAB, but she maintained a need to focus on more long-range planning.

Vice Mayor Galleberg said he would favor workshop discussions on this issue. Council Member Wiseman expressed support for a joint workshop where the Council and PAB would address the future of planning in the City. She however voiced uncertainty as to whether adding additional committees would be of benefit, noting that it may in fact place an inordinate burden on the staff. Mrs. Wiseman further said the Council should make policy decisions within a 25-year time frame but further recommended enumerating those Comprehensive Plan items which have not yet been complied with before determining with the PAB on how best to proceed. Council Member Russell however recommended that Council review the Comprehensive Plan with the staff and later conduct a joint workshop with the PAB; City Manager Rambosk said staff is prepared for that discussion. Council Member Herms referred to visioning as of primary importance and recommended that Council prioritize important issues, only some of which are in the Comprehensive Plan. He indicated support for a meeting with the PAB in order to identify specific goals, commending the current PAB for its performance. Council Member Taylor said she was encouraged by the dedication and attitude expressed by the PAB but opposed dividing and stressed that Council set appropriate policy. Mayor MacKenzie however noted that the PAB had not provided recommendations on improving the Code of ordinances as directed by Council at a joint meeting with the PAB in January 2001. In response to Council, City Attorney Pritt affirmed that the Code should be periodically updated and that there are some conflicting areas needing resolution. Mayor MacKenzie asked that Council agree to expend up to \$5,000 for Municipal Code Corporation to conduct such a review.

MOTION by Taylor to BEGIN THE PROCESS OF PLANNING AT THE COUNCIL LEVEL BY REVIEWING THE COMPREHENSIVE PLAN, AND AFTER DEFINING APPROPRIATE POLICY, CONDUCTING A JOINT WORKSHOP WITH THE PAB; seconded by Herms. This motion failed 3-4, all members present and voting (MacIlvaine-yes, Taylor-yes, Russell-no, Galleberg-no, Herms-yes, Wiseman-no, MacKenzie-no).

MOTION by Wiseman to DIRECT STAFF TO PROVIDE A STATUS REPORT ON THE COMPREHENSIVE PLAN FOR FUTURE WORKSHOP DISCUSSION; seconded by Russell and unanimously carried, all members present and voting (Wiseman-yes, Russell-yes, Taylor-yes, Galleberg-yes, Herms-yes, MacIlvaine-yes, MacKenzie-yes).

Mayor MacKenzie again suggested review of the Code of Ordinances. Council Member Wiseman however pointed out that this issue was not on the agenda and she wanted further information on the specific work Municipal Code Corporation would perform. At the company's rate of \$125 per hour, she said the work would most likely entail some legal work and suggested receiving a quote from the City Attorney. Mayor MacKenzie therefore suggested placing the matter on a future agenda.

Mayor MacKenzie then recommended that because City Council is the only venue for boaters to resolve their concerns, Council should hold a workshop discussion on establishing a Boating & Waterways Committee. Council Member Taylor expressed opposition to such a committee, and Council Member Herms stated that such issues as stormwater management and bay cleanup are major expenditures and should be identified by Council as priorities. He therefore said he could not support creation of another committee that would make recommendations which the City cannot fund. Vice Mayor Galleberg expressed the view that such a committee, if properly defined, would in fact perform a useful function. Council Member MacIlvaine however said he believed this topic is sufficiently broad so as to encompass many other functions of committee, groups, and programs and that he did not perceive a great need for another committee. Council Member Russell said he believed the idea to have some merit because the issue seems to fall outside the jurisdiction of other advisory boards. The City, he said, should improve the manner in which it deals with the waterfront. Council Member Wiseman said there may be water issues in the Comprehensive Plan the Council is overlooking, and that she would recommend beginning with the visioning process. Council Member MacIlvaine suggested inviting the boating community to write the Council on problems it would like addressed, rather than conducting a meeting.

RESOLUTION (Continued)..... ITEM 16-b
A RESOLUTION DIRECTING THE NORRIS CENTER SELECTION COMMITTEE TO PREPARE AND DISTRIBUTE A REQUEST FOR PROPOSALS FOR A CONSTRUCTION MANAGEMENT AT RISK AGREEMENT FOR RENOVATION AND EXPANSION OF THE NORRIS COMMUNITY CENTER; TO RECEIVE AND ANALYZE RESPONSES AND TO PREPARE A PRIORITIZED LISTING OF RESPONSES AND COSTS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:52 p.m.) who recommended continuance until May.

Public Comment: None. (6:52 p.m.)

MOTION by Herms to CONTINUE ITEM 16-b FOR ONE MONTH (MAY 1, 2002 REGULAR MEETING); 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).

ORDINANCE (First Reading) ITEM 18
AN ORDINANCE ADOPTING THE 2001 LEVEL OF SERVICE REPORT; DIRECTING STAFF TO TRANSMIT SAID REPORT TO THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:53 p.m.) who said that staff had provided the requested chart and related information, a copy of which is contained in the file for this meeting in the City Clerk's Office. In response to Council, Natural Resources Manager Jon Staiger explained that all the City wells predate the ordinance requiring a conditional use except for the two at Calusa Bay which still belong to Wilson Miller, project engineers.

Public Comment: None. (6:58 p.m.)

MOTION by Wiseman to APPROVE ITEM 18 AS SUBMITTED AT FIRST READING; 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 02-9585.....ITEM 21-a(1)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2002, AND EXPIRING APRIL 30, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:58 p.m.). Vice Mayor Galleberg nominated Falconer Jones and Council Member Taylor nominated Samuel Noe.

Public Comment: None. (6:58 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9585 APPOINTING FALCONER JONES. *This motion carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).*

There was no action on the motion to appoint Mr. Noe.

RESOLUTION 02-9586.....ITEM 21-a(2)
A RESOLUTION APPOINTING ONE ALTERNATE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2002, AND EXPIRING APRIL 30, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:59 p.m.). Council Member Taylor nominated Margaret Sulick and Vice Mayor Galleberg nominated Samuel Noe.

Public Comment: None. (6:59 p.m.)

MOTION by Taylor to APPOINT MARGARET SULICK. *This motion failed 2-5, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-no, Russell-no, Taylor-yes, Wiseman-no, MacKenzie-no).*

MOTION by Galleberg to APPROVE RESOLUTION 02-9586 APPOINTING SAMUEL NOE. *This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 02-9587.....ITEM 21-b(1)
A RESOLUTION APPOINTING ONE MEMBER TO THE CODE ENFORCEMENT BOARD FOR THE BALANCE OF A THREE-YEAR TERM, EXPIRING MAY 6, 2003; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:00 p.m.).

Public Comment: None. (7:00 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9587 APPOINTING RUSTY BATCHER; *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).*

RESOLUTION 02-9588.....ITEM 21-b(2)
A RESOLUTION APPOINTING ONE MEMBER TO THE CODE ENFORCEMENT BOARD FOR A THREE-YEAR TERM, COMMENCING APRIL 3, 2002, AND EXPIRING APRIL 2, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:00 p.m.).

Public Comment: None. (7:01 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 02-9588 APPOINTING TERRY GREEN. *This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 02-9589.....ITEM 21-c(1)
A RESOLUTION APPOINTING ONE MEMBER TO THE MOORINGS BAY SPECIAL TAXING DISTRICT ADVISORY COMMITTEE FOR A THREE-YEAR TERM,

COMMENCING APRIL 3, 2002 AND EXPIRING APRIL 2, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:01 p.m.). Vice Mayor Galleberg nominated Michael Williams, Council Member MacIlvaine nominated Ron Pennington, and Council Member Herms nominated Dan Spina; however, Mayor MacKenzie pointed out that there are four vacancies and four applicants.

Public Comment: None. (7:03 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9589 APPOINTING MICHAEL WILLIAMS. *This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 02-9590.....ITEM 21-c(2)
A RESOLUTION APPOINTING ONE MEMBER TO THE MOORINGS BAY SPECIAL TAXING DISTRICT ADVISORY COMMITTEE FOR A THREE-YEAR TERM, COMMENCING APRIL 3, 2002 AND EXPIRING APRIL 2, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:03 p.m.).

Public Comment: None. (7:03 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9590 APPOINTING DAN SPINA. *This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 02-9591.....ITEM 21-c(3)
A RESOLUTION APPOINTING ONE MEMBER TO THE MOORINGS BAY SPECIAL TAXING DISTRICT ADVISORY COMMITTEE FOR A THREE-YEAR TERM, COMMENCING APRIL 3, 2002 AND EXPIRING APRIL 2, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:04 p.m.). Council Member Taylor nominated Doug Finlay and Council Member MacIlvaine nominated Ron Pennington.

Public Comment: None. (7:04 p.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9591 APPOINTING DOUG FINLAY. *This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

(See below for action on a motion to appoint Ron Pennington.)

RESOLUTION 02-9592.....ITEM 21-c(4)
A RESOLUTION APPOINTING ONE MEMBER TO THE MOORINGS BAY SPECIAL TAXING DISTRICT ADVISORY COMMITTEE FOR A THREE-YEAR TERM, COMMENCING MAY 13, 2002 AND EXPIRING MAY 12, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:05 p.m.).

Public Comment: None. (7:05 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 02-9592 APPOINTING RON PENNINGTON. *This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 02-9593.....ITEM 21-d(1)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING APRIL 21, 2002, AND EXPIRING APRIL 20, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:06 p.m.).

Public Comment: None. (7:06 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9593 APPOINTING KIMBERLY KELLEY. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 02-9594.....ITEM 21-d(2)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING MAY 6, 2003; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:07 p.m.).

Public Comment: None. (7:07 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 02-9594 APPOINTING MARTHA DYKMAN. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 02-9595.....ITEM 21-e
A RESOLUTION ENDORSING ONE CANDIDATE TO FILL THE UNEXPIRED TERM OF ROBERT GREY, A REPRESENTATIVE OF THE CITY OF NAPLES ON THE COLLIER COUNTY COASTAL ADVISORY COMMITTEE; DIRECTING THAT THE APPLICATION/RESUME OF THE CANDIDATE BE FORWARDED TO THE BOARD OF COLLIER COUNTY COMMISSIONERS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (7:08 p.m.). Council Member MacIlvaine nominated David Craig and Vice Mayor Galleberg nominated Ron Pennington.

Public Comment: None. (7:08 p.m.)

MOTION by MacIlvaine to APPOINT DAVID CRAIG. This motion failed 3-4, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Russell-no, Taylor-yes, Wiseman-no, MacKenzie-no).

MOTION by Galleberg to APPROVE RESOLUTION 02-9595 APPOINTING RON PENNINGTON. This motion was carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

City Clerk Tara Norman said Code Enforcement Board alternate member G. Robert Smith is interested in being converted to regular membership and that she would provide a resolution for the April 17, 2002 Consent Agenda converting him to a regular position.

CORRESPONDENCE & COMMUNICATIONS (7:10 p.m.).....
Council Member Wiseman noted a letter from a Curlew Avenue condominium resident which she said she would forward to the City Manager. She also questioned whether approval was conveyed for residents to access a home under construction via the City Hall parking lot. Natural Resources Manager Jon Staiger stated that the previous house on the site also had its driveway off the parking lot and had access into the alleyway behind Fire Station 1.

City Manager Rambosk reported completion of an overview of the process and procedure for recruiting a City Attorney. Mayor MacKenzie said she had asked Council to submit any suggestions they had regarding desired specialties or qualifications to the City Manager, but Council Member Wiseman recommended expressing the criteria in broad terms.

Council Member Taylor suggested adding text to signs at City limits denoting the achievements of Olympic bronze medallist Brian Shimer and the Naples Eagles. It was the consensus of Council to schedule this item on the April 17, 2002 Regular Meeting agenda.

Council Member Herms noted a prior request that the City Attorney request from the State information regarding future raw water availability and asked whether it had been received. City Attorney Robert Pritt affirmed that Public Works Director Dan Mercer is addressing the response the City received from the State, and that he would provide Mr. Herms with a copy.

Vice Mayor Galleberg suggested that a representative of the Naples Botanical Garden make a presentation to Council at a future workshop.

Council Member MacIlvaine said he received a call from Samuel Noe, newly approved Planning Advisory Board (PAB) alternate, indicating that he had been accepted into the Greater Naples Leadership Program for next year and would have a conflict on three PAB meeting dates.

Mayor MacKenzie suggested replaying a video on the City's cable television channel regarding fire code revisions and fire sprinkler information; Council concurred. She then asked that Council coordinate their attendance at a Naples Players premier with the Mayor and Council secretary.

City Manager Rambosk said that a sign placed in the right-of-way by the Hofgarten Brauhaus has been removed and that staff is in the process of determining whether additional tables placed by the restaurant had been approved by the Staff Action Committee.

PUBLIC COMMENT (7:24 p.m.).....
None.

ADJOURN
7:24 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 8/20/02