



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – September 4, 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
Steven Moore, Chief of Police
Denise Perez, Human Resources Director
Ann Marie Ricardi, Finance Director
Ron Wallace, Development Services Director
Samuel Cadreau, Fire Lieutenant
Karen Ball, Accountant
Laura Spurgeon, Planner
Jessica Rosenberg, Recording Specialist
Ron Clarke, Administrative Specialist
Karen Kateley, Administrative Specialist
Arlene Guckenberger

Henry Kennedy
Kevin Stoneburner
David Corban
Gail Boorman
Richard Yovanovich
John Passidomo
Reverend Jay Kawolski

Media:

Dianna Smith, Naples Daily News

Other interested citizens and visitors.

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

Reverend Jay Kawolski, First United Methodist Church

ANNOUNCEMENTSITEM 3

City of Naples flag to be presented to FDNY for 9/11 Remembrance

Recognition of City employee Karen Ball

SET AGENDAITEM 4

Item 9-b(9) – Macedonia Community Male Chorus concert

MOTION by Herms to ADD ITEM 9-b(9); 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).

Item 9-l – sidewalk repairs at the River Park Pavilion

MOTION by Taylor to ADD ITEM 9-l; 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 19 – request for Hamilton Harbor executive session

MOTION by Galleberg to ADD ITEM 19; 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 – request for reconsideration of mandatory rain gauges

MOTION by MacKenzie to ADD ITEM 20; 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).

MOTION by Galleberg to SET AGENDA WITHDRAWING ITEMS 9-j AND 9-k AND ADDING ITEMS 9-b(9), 9-l, 19, AND 20; 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).

PUBLIC COMMENTITEM 5

Henry Kennedy, 2178 Tarpon Road, distributed pictures of a recent diesel spill in Naples Bay which he said had not been cleaned up and would contaminate the Bay. (Copies of these pictures are contained in the file for this meeting in the City Clerk's Office.) City Manager Kevin Rambosk said that he had identified the source of the spill and would follow the City's ordinance relative to hazardous clean-up.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 9-a

June 17, 2002 Budget Workshop, June 18, 2002 Special, and June 18, 2002 Budget Workshop Meetings.

SPECIAL EVENTSITEM 9-b

- 1) Collier Food & Beverage grand reopening of Harold's Place – 09/07/02
- 2) Boy Scouts of America (Alligator District of Collier County) U.S. Flag Retirement Ceremony Lowdermilk Park – 09/13/02
- 3) Dawes wedding reception – Pelican Avenue – 10/12/02
- 4) Youth Sailing Regatta – Naples Community Sailing Center – 11/09/02
- 5) Fun Time Nursery fundraiser – Sugden Plaza – 11/18/02
- 6) Third Street South Merchant Association – Christmas Shoppers Evenings – 12/5, 12/12, 12/19, & 12/26/02
- 7) Third Street South Merchants Association street entertainment – 1/16/03, 2/20/03, 03/20/03, 04/17/03
- 8) Naples National Art Festival – Naples Art Association – in and around Cambier Park - 0/21-23/03
- 9) Macedonia Community Male Chorus Concert – Cambier Park bandshell – 09/14/02

RESOLUTION 02-9763.....ITEM 9-c

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND CONTRACT CONNECTION, INC. TO FURNISH AND INSTALL A PLAYGROUND, WATER PLAY AREA AND GAZEBO AT RIVER PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

- RESOLUTION 02-9764.....ITEM 9-e**
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE STORM AND SANITARY SEWER INSPECTIONS AND CLEANING SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND VIDEO INDUSTRIAL SERVICES, INC. FOR THE PURPOSE OF PROVIDING ADDITIONAL INSPECTION AND CLEANING SERVICES FOR CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.
- RESOLUTION 02-9765..... ITEM 9-f**
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH HARLEY DAVIDSON OF NAPLES, INC., FOR THE PURCHASE OF TWO POLICE MOTORCYCLES; AND PROVIDING AN EFFECTIVE DATE. Title not read.
- RESOLUTION 02-9766.....ITEM 9-g**
A RESOLUTION ACCEPTING A FISCAL YEAR 2002 LOCAL LAW ENFORCEMENT BLOCK GRANT FROM THE U.S. DEPARTMENT OF JUSTICE IN THE AMOUNT OF \$22,764; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AWARD; WAIVING COMPETITIVE BIDS PURSUANT TO CITY CODE, SECTION 2-356 (4) AND APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS FOR CAMERAS AND ACCESSORIES FOR USE IN POLICE VEHICLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.
- RESOLUTION 02-9767..... ITEM 9-h**
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND PAVERS & STONE, INC. OF AN AS-NEEDED BASIS FOR A PERIOD OF TWO YEARS, WITH THE OPTION OF TWO ONE-YEAR RENEWALS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. In response to Council, Development Services Director Ron Wallace said that this east coast based vendor had assured staff that it has other jobs in the City.
- RESOLUTION 02-9768..... ITEM 9-i**
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO ENTER INTO A SUBGRANT AGREEMENT FOR EQUIPMENT FOR FLORIDA STRATEGY BETWEEN THE CITY OF NAPLES AND THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING AN EFFECTIVE DATE.
- (Withdrawn) ITEM 9-j**
APPROVE AN INTERLOCAL AGREEMENT WITH THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY FOR REVIEW AND INSPECTION SERVICES BY THE BUILDING AND ZONING DIVISION FOR CONSTRUCTION OF ALL EDUCATIONAL FACILITIES. (Editor's note: No draft resolution was provided for this item.)
- (Withdrawn) ITEM 9-k**
APPROVE AN INTERLOCAL AGREEMENT WITH THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY TO PROVIDE RAW WATER TO AN ELEMENTARY SCHOOL TO BE CONSTRUCTED IN EAST GOLDEN GATE. (Editor's note: No draft resolution was provided for this item.)
- RESOLUTION 02-9769..... ITEM 9-l**
A RESOLUTION RATIFYING AND CONFIRMING THE ACTIONS OF THE CITY MANAGER TO CONTRACT WITH BROOKS MASONRY & CONCRETE, INC. IN THE AMOUNT OF \$12,425.00 FOR EMERGENCY REPAIRS TO SIDEWALKS AT THE RIVER PARK PAVILION; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE CONSENT AGENDA ITEMS 9-a, 9-b, 9-c, 9-e, 9-f, 9-g, 9-h, 9-i, and 9-l; 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 02-9770..... ITEM 9-d
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER IN APPROVING ADDITIONAL WORK AS PART OF THE CITY'S CRAYTON ROAD SIDEWALK CONSTRUCTION AGREEMENT WITH NEUBERT CONSTRUCTION SERVICES, INC., APPROVING A FIRST AMENDMENT TO THE CITY'S CRAYTON ROAD SIDEWALK CONSTRUCTION AGREEMENT WITH NEUBERT CONSTRUCTION SERVICES, INC. TO INCREASE THE CONTACT AMOUNT BY \$29,416.20; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE CONSTRUCTION AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Taylor expressed concern that this cost had not been built into the original price. Development Services Director Ron Wallace explained that for safety reasons sidewalks had been extended through driveways. The additional cost per linear foot represented merely an extension of the original price.

Public Comment: None. (9:26 a.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9770; 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).

ORDINANCE 02-9771.....ITEM 6-1
AN ORDINANCE AMENDING SECTION 1.2 OF THE CHARTER OF THE CITY OF NAPLES, FLORIDA, IN ORDER TO ANNEX A 6.16-ACRE PARCEL; CONSISTING OF PORTIONS OF ESTUARY DRIVE, THE ESTUARY CLUBHOUSE AND GOLF COURSE; WHICH WAS NOT INCLUDED IN THE ORIGINAL GREY OAKS ANNEXATION APPROVED BY ORDINANCE 89-5766; MORE PARTICULARLY DESCRIBED HEREIN, AND TO REDEFINE THE BOUNDARIES OF THE CITY OF NAPLES TO INCLUDE SAID PROPERTY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:26 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, MacIlvaine, Taylor indicated that they had visited the site; other Council Members registered no contact. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Public Comment: None. (9:27 a.m.)

MOTION by Galleberg to ADOPT ORDINANCE 02-9771 (ITEM 6-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).

ORDINANCE 02-9772.....ITEM 6-2
AN ORDINANCE GRANTING SMALL SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 02-CPASS1, ASSIGNING LOW DENSITY RESIDENTIAL FUTURE LAND USE DESIGNATION FOR APPROXIMATELY 6.16 ACRES OF THE ESTUARY AT GREY OAKS, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:27 a.m.).

Public Comment: None. (9:28 a.m.)

MOTION by Galleberg to ADOPT ORDINANCE 02-9772 (ITEM 6-2) 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).

ORDINANCE 02-9773.....ITEM 6-3
AN ORDINANCE GRANTING REZONE PETITION 02-R1 IN ORDER TO DESIGNATE AS “PD” AND INCLUDE AS PART OF THE GREY OAKS PLANNED DEVELOPMENT, ADOPTED BY ORDINANCE 90-6210 AND AMENDED BY ORDINANCE 00-8971, A 6.16-ACRE PARCEL, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:28 a.m.). While Council Member Herms suggested enacting a time limitation, City Attorney Robert Pritt noted that any legislation on this subject to be considered later in the meeting would not apply to this approval. Vice Mayor Galleberg pointed out that this particular petitioner had already undertaken substantial construction with the project being nearly completed.

Public Comment: None. (9:30 a.m.).

MOTION by Galleberg to ADOPT ORDINANCE 02-9773 (ITEM 6-3) AS SUBMITTED; seconded by Taylor and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Herms nevertheless recommended a time limitation for consistency.

ORDINANCE 02-9774.....ITEM 10
AN ORDINANCE ADDING SECTION 102-720 TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ESTABLISHING TIME LIMITATIONS FOR COMMENCEMENT OF CONSTRUCTION FOR APPROVED PLANNED DEVELOPMENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:30 a.m.). Vice Mayor Galleberg proffered a motion to approve. Although Planning Director Ron Lee said that staff had amended the time limitations and provided the City Manager with authorization to grant six-month extensions, Council Members Herms and Wiseman noted that at first reading the Council had discussed allowing the City Manager to grant one-year extensions. Vice Mayor Galleberg amended his motion accordingly.

Public Comment: None. (9:34 a.m.)

MOTION by Galleberg to ADOPT ORDINANCE 02-9774 AUTHORIZING THE CITY MANAGER TO GRANT A ONE-YEAR EXTENSION; 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).

Council Member Herms said he believed this would result in a desirable reduction in planned developments, noting that developers would adhere to existing zoning in order to afford a level of consistency.

ORDINANCE (First Reading)ITEM 11
AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING THE CITY OF NAPLES CODE OF ORDINANCES BY AMENDING SECTIONS 50-286 AND 50-337 OF ARTICLE V FIREFIGHTERS’ PENSION AND RETIREMENT SYSTEM TO COMPLY WITH CURRENT COLLECTIVE BARGAINING AGREEMENT BY PROVIDING FOR THE PURCHASE OF PRIOR MILITARY AND FIREFIGHTER SERVICE AND PROVIDING FOR COST OF LIVING ADJUSTMENTS FOR RETIRED FIREFIGHTERS; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:34 a.m.) who said this is a negotiated agreement with the applicable bargaining unit and had been deemed by an actuary to be sound with no impact to the City.

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

MOTION by Taylor to APPROVE ITEM 11 AT FIRST READING 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 02-9776.....ITEM 12-a
A RESOLUTION RATIFYING AND CONFIRMING THE CONTRACT BETWEEN THE CITY OF NAPLES AND FLORIDA STATE LODGE FRATERNAL ORDER OF POLICE, COLLIER COUNTY LODGE NO. 38; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:36 a.m.) who stated that this two-year term extends from October 1, 2002 to September 30, 2004. He said there were a number of changes including cost of living increases, all of which have been funded within the budget presented earlier in the year.

Public Comment: None. (9:37 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 02-9776 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).

RESOLUTION 02-9777.....ITEM 12-b
A RESOLUTION RATIFYING AND CONFIRMING THE CONTRACT BETWEEN THE CITY OF NAPLES AND FLORIDA STATE LODGE FRATERNAL ORDER OF POLICE, SUPERVISOR'S BARGAINING UNIT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:38 a.m.) who stated this is similar to Item 12-a. In response to Council, Human Resources Director Denise Perez stated that the fiscal impact would total \$39,871.

Public Comment: None. (9:39 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 02-9777 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).

ORDINANCE 02-9778.....ITEM 13
AN ORDINANCE ADDING SECTIONS (7) a., b. AND c. TO SECTION 86-210 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF PROVIDING THE CITY COUNCIL AUTHORIZATION TO REVOKE PERMITS AND PROVIDING NOTICE AND HEARING; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:40 a.m.).

Public Comment: None. (9:40 a.m.).

MOTION by Galleberg to ADOPT ORDINANCE 02-9778 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).

ORDINANCE (First Reading)ITEM 7-1
AN ORDINANCE DETERMINING REZONE PETITION 02-R2 FOR PROPERTY LOCATED AT 401-499 BAYFRONT PLACE, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM PD TO PD; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:40 a.m.).

RESOLUTION (Continued).....ITEM 7-2
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 02-RIS4 FOR FOOD AND BEVERAGE SERVICE AT A WATERFRONT GAZEBO AT

BAYFRONT LOCATED AT 401-499 BAYFRONT PLACE, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:40 a.m.).

It is noted for the record that Items 7-1 and 7-2 were considered concurrently.

This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie/visited the site and watched the Planning Advisory Board (PAB) meeting; Wiseman/visited the site and met with petitioner's attorney Richard Yovanovich to discuss the merits of the petition and the PAB's discussions and decision; Russell/visited the site, watched the PAB meeting, and met with Attorney Yovanovich to discuss all aspects of the project; MacIlvaine, Herms/visited the site; Galleberg/visited the site, met with Attorney Yovanovich, and watched the PAB meeting; and Taylor/visited the site and received a phone call from the petitioner's representative. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Attorney Yovanovich said that the requested PD amendment would reduce the commercial area by approximately 17,000 square feet and add seven residential units resulting in 689 fewer trips per day and 67 fewer peak hour trips as well as reduce the overall intensity of the PD. In addition, the 1,000 square foot gazebo would move to waterfront for outdoor dining. Attorney Yovanovich noted that the PAB recommended approval of the gazebo with the condition that the background music cease at 10:00 p.m. and food service at 11:00 p.m. He then said the petitioner is also requesting some changes to the façade of the Goodlette-Frank Road parking structure with corresponding landscaping plan changes, and a fountain feature that would encroach 15 feet into the setback. He affirmed that he had worked with staff to incorporate as many canopy trees around the parking structure as possible as opposed to the bougainvillea vines contained in the original landscaping plan. In further discussion, Attorney Yovanovich noted that the petitioner is also asking for the ability to sell boat slips to non-residents.

Planning Director Ron Lee said that staff has concerns regarding the landscaping plan, noting that the petitioner's landscape architect had proposed to replace the palm trees at the fountain with black olive trees, which however would not be sufficient to comply with the Goodlette Road Overlay requirements. In response to Vice Mayor Galleberg, Attorney Yovanovich said that the physical changes apparent from Goodlette-Frank Road would be new buildings 6 and 7, the architectural changes to the parking structure, and the gazebo from the waterfront. Council Member Russell said he believed the architectural embellishments to the parking deck would improve the overall design and create a significant benefit to the community. He however asked for further clarification on the landscaping plan.

Bayfront landscape architect Gail Boorman stated that the façade embellishment would create a more street-friendly presentation and function as part of the City's gateway statement. Ms. Boorman further said that an archway system with bougainvillea would integrate the fountain with the northern part of the garage and that the spacing of the royal palms would coordinate with the spacing of the façade elements. No changes would however be made to the area immediately to the south of the parking structure. Ms. Boorman further recommended reevaluating the Goodlette overlay ordinance south of Central Avenue in light of new redevelopment projects which are currently more pedestrian-oriented and street-friendly.

Planning Director Lee explained that the Goodlette Road Overlay, which extends from U.S. 41 to Seventh Avenue North, requires that canopy trees be placed every 30 feet within the 10-foot buffer from the right-of-way into the property. Many projects have already installed this system, he said,

and staff feels the petitioner's proposal would disrupt the integrity and consistency of the landscaping along that corridor. While she said that she disagreed, Ms. Boorman noted her offer to replace the bougainvillea and royal palms at the fountain with canopy trees such as black olives in order to lend consistency to that corridor. She however said that the royal palms should continue as part of theme for Bayfront, which she said would tie into a theme she is developing for the Heart of Naples area. She said she however believed that the canopy trees would interrupt the view of the embellishments.

Mayor MacKenzie said she had favored the original landscaping plan because canopy trees favor a pedestrian scale on Goodlette whereas palms only emphasize the scale of the buildings. Ms. Boorman said that the wall façade being created would actually be a two-story element which would not overwhelm the pedestrian. Planning Director Lee said that staff would likely not support the new compromise plan, saying he would prefer placing canopy trees at 35-40 foot intervals in order to continue the gateway theme. The petitioner, he said, could nevertheless make the proposed architectural improvements while retaining adequate landscaping.

In further discussion, Mr. Lee affirmed that the lot coverage and density calculations were based on 11.5 acres. Council Member Herms however pointed out that another property owner has 2.1 acres of this site while this smaller parcel has a lot coverage only 16 percent causing calculations to be skewed. Mr. Lee stated that staff had however considered this as a unified project. Council Member Herms nevertheless contended that the other property owner had not consented to this project and expressed concern regarding the increased square footage and massing created by the addition of Buildings 6 and 7 representing approximately 15,000 square feet of additional space. Mr. Lee however said the increase in the building massing is towards the east side where it would be less apparent from Goodlette Road. Mr. Lee suggested that the petitioner provide a comparison between the old and new building square footage prior to second reading but pointed out that although there is a slight increase in lot coverage, the petitioner is replacing commercial with residential thereby reducing intensity and traffic. Council Member Herms nevertheless characterized this as one of the highest density projects in the City.

In response to Council, Mr. Lee said that the petitioner is not requesting any modifications to the setbacks for the buildings, and that the only encroachment is for the fountain, but Council Member Herms said that in the Goodlette Road corridor a one-story building requires a 50-foot setback, a two-story building 75 feet, and a three-story building 100 feet. Pointing out that the fountain is the only exception the petitioner is requesting from the original PD document, Council Member Russell suggested working out the landscaping issue with the petitioner so the project could proceed. Council Member MacIlvaine however recommended against compromising the established, integrated tree program, and Council Member Wiseman recommended that the petitioner provide computer aided graphics of the proposed landscaping changes at the next meeting. Although expressing support for the gazebo, Mrs. Wiseman voiced concern regarding the proposed gondola. Mr. Lee said that the PAB had supported this concept but that the staff, however, is neutral.

Due to what he described as potential for substantial changes, City Attorney Robert Pritt suggested continuing this item until outstanding issues are resolved. Mayor MacKenzie concurred saying the information is unorganized and the landscaping proposals unclear. Attorney Yovanovich however said that a delay would be a hardship and that all relevant information had in fact been presented. He further emphasized the requested changes were not substantive and that this is an existing PD with established setbacks. Attorney Yovanovich further said the petitioner is requesting a less intense project and is replacing commercial space with residential units.

Mayor MacKenzie further said that this project would reduce what she called an already inadequate green space within the Bayfront PD, and Vice Mayor Galleberg acknowledged the need for greater clarity on some of the issues raised by Council. In further discussion of landscaping Mr. Galleberg recommended proceeding without determining the landscape plan, although he said he believed royal palms would be an effective gateway treatment and would create a distinct improvement. Council Member MacIlvaine however said he believed canopy trees should be included as part of the integrated treatment on this street with greater spacing if necessary.

It was then the consensus of Council to disapprove the gondolas; however, Council Member Wiseman said she could support using them as a decorative treatment only. The entire Council also expressed approval for the gazebo concept; however, Council Member MacIlvaine and Mayor MacKenzie recommended a 10 p.m. cessation for music and food service while Council Member Taylor recommended no music be permitted. Although observing the need for greater clarity, Council also expressed approval for selling boat docks; however, Council Member MacIlvaine and Mayor MacKenzie recommended sale to City residents only and Council Member Wiseman observed the need for adequate parking. With regard to the landscaping plan, Council Member Wiseman said she felt comfortable with the petitioner's proposal. Council Member Russell recommended determining a suitable compromise that has elements from the plan as a function of the evolution of the district. Council Member MacIlvaine said the City should maintain the integrity of the landscaping of the Tenth Street corridor and reiterated the need for canopy trees in addition to some royal palms for decoration; he however clarified that he favored a compromise. Vice Mayor Galleberg expressed approval for the plan although agreed that Council needs additional information. Council Member Herms recommended providing shade trees in order to encourage an area for pedestrians. Although voicing approval for the design presented by Ms. Boorman, Council Member Taylor said she, too, could not support changing a landscaping plan to accommodate a development, suggesting a compromise. Council then discussed amending the conditions in the resolution to indicate its preferences relative to the landscaping plan, sale of boat slips, the gondolas, and the gazebo. Although saying he favored sale of slips to City residents, Vice Mayor Galleberg said that Council should not dictate this to a private property owner, and Mayor MacKenzie cited potential difficulty with enforcement. Attorney Yovanovich said the petitioner voluntarily agrees to this stipulation but noted the ensuing loss of control if the buyer later resells the slip. Council Member Wiseman said she believed imposing this type of requirement to be a mistake, and City Attorney Pritt expressed doubt that it would be upheld. Vice Mayor Galleberg recommended leaving this as a thought rather than a legislative action. In further discussion, Attorney Yovanovich said the petitioner is planning to construct the gazebo immediately after obtaining the building permit. Council Member Wiseman therefore suggested that the permit not be delayed due to the landscaping plan.

Public Comment: None. (11:35 p.m.)

MOTION by Galleberg to APPROVE ITEM 7-1 AT FIRST READING DELETING (IN SECTION 1) PARAGRAPH 9, RESTATING PARAGRAPH 3 "A LANDSCAPING PLAN SHALL BE SUBMITTED TO AND APPROVED BY COUNCIL PRIOR TO ISSUANCE OF A BUILDING PERMIT," AND STRIKING THE LAST SENTENCE IN PARAGRAPH 5. THERE IS NO REQUIREMENT TO SELL SLIPS TO CITY RESIDENTS; THE GAZEBO PERMIT SHALL NOT BE DELAYED DUE TO LANDSCAPING PLAN;
seconded by Russell and carried 4-3, all members present and voting (Wiseman-yes, MacIlvaine-yes, Russell-yes, Galleberg-yes, Herms-no, Taylor-no, MacKenzie-no).

While acknowledging improvements such as the gazebo and façade changes, Council Member Herms nevertheless expressed concern regarding the increase in density. Council Member Taylor

also noted concern regarding density, the landscaping plan, and the proposed music in the gazebo. Mayor MacKenzie said she would have preferred greater green space.

MOTION by Galleberg to CONTINUE ITEM 7-2; 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).

Recess: 11:38 a.m. to 11:45 a.m. It is noted for the record that Council Member Wiseman was absent when the meeting reconvened.

ORDINANCE (First Reading)ITEM 8-a
AN ORDINANCE DETERMINING REZONE PETITION 02-R3 FOR PROPERTY LOCATED AT 1001 10TH AVENUE SOUTH MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO AMEND A PREVIOUSLY APPROVED PD IN ORDER TO REDEVELOP THE EASTERN PORTION OF THE SITE AND ALLOW ONE ADDITIONAL RESIDENTIAL UNIT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:45 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, MacIlvaine, Galleberg, Taylor/visited the site; Russell/spoke to David Corban about the project; and Herms/no contact. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Attorney John Passidomo, representing Old Naples Seaport, said that this request is to amend the existing PD document to allow one additional residential unit and to approve a residential impact statement. He then explained that the Olde Naples Seaport was rezoned to PD several years ago to redevelop what was then a struggling retail commercial complex. Earlier this year the restaurant tenant who occupied the entire eastern portion of the site comprising some 12,000 square feet vacated the premises, he added. The property owner therefore took the opportunity to assess how to create an integrated plan for the redevelopment of the entire site. Attorney Passidomo said the plan is to retain the existing 40 wet slips in the marina and the public access easement that circumvents the property which, he said, has a residential density lower than any other within a six-block area. The plan will eliminate the restaurant and the structure which housed it, the western one-half of the parking lot, and the existing non-conformities which were accommodations to existing uses. The plan will add one residential unit, a yacht broker, a yacht club, and a Dockmaster as permitted uses. Attorney Passidomo also said that the proposed changes would result in significant public benefits; namely, a material reduction in the size of the paved, impervious area on the west side of the property, the replacement of that area with 11,000 square feet of open and green space, a 48 percent reduction in the number of vehicular trips generated by the project per day, increased diversity in the mix of water related and water dependent uses, and an integrated architectural plan encompassing the entire site. In addition, Mr. Passidomo noted both the staff and Planning Advisory Board (PAB) recommendations for approval, agreed to abide by all the proposed conditions in the ordinance, and requested Council's approval.

In response to Council, Attorney Passidomo stated that the buildings, although different, would be architecturally integrated and driven by function. Council Member Taylor observed that removing a parking lot would hinder public access to the waterfront, but Attorney Passidomo said that replacing a highly intense use such as a restaurant would diminish the need for the lot, and that public parking would still be available. Council Member Herms noted that a two-story building would become three story; acknowledging this, Mr. Passidomo however pointed out that the proposal is a less intense use and, in further discussion, said that docks are individually owned and are managed by an association. Council also learned from architect David Corban that the exception to the 0.5 foot candle requirement was necessary at the lot lines for safety reasons, noting the public access

easement surrounding the building does not have railings. Also, the petitioner believes that higher illumination would not disturb neighbors because of Naples Bay on the east side and a 100-foot wide canal to the north.

Mayor MacKenzie noted her opposition to further concessions with reference to this site, noting a significant number of petitions in the past in order to create a successful commercial venture. Public view, she said, and a public boardwalk had been encroached. Attorney Passidomo however said that nothing in the current proposal constitutes an encroachment and pointed out that the boardwalk is being retained, and that public accessibility would likely be enhanced. In response to Council Member Taylor, City Attorney Robert Pritt clarified said easements could include air space or ground but that if public access is being maintained, the easement is not being diminished. Mayor MacKenzie however maintained that the encroachment of the boardwalk is being expanded upward with the third story. Planning Director Ron Lee also explained that while the rear yard setback from the water in the C2-A zoning district is 25 feet, the PD allows a zero setback on the east, south, and north sides and a 14-foot setback on the west, which is Tenth Street. The proposal would not expand the setbacks beyond those already authorized by the PD.

Although observing there to be no actual encroachment into the easement, Vice Mayor Galleberg questioned whether the easement would be apparent to the public. Mayor MacKenzie said she believed this to be an attractive project which would likely enhance the area, but expressed concern regarding the projection of the easternmost building towards the water. Attorney Passidomo affirmed that the projections currently existing over the easement (identified as permitted uses in Items 26 and 27 of the PD document) are not being deleted; however, he maintained there to be no encroachments resulting from this project and that public access would be improved as the overhang which had been previously provided to shelter pedestrians is being preserved. He added that the existing setbacks in the PD would not change in any way and that the petitioner is simply asking that the existing footprint, except for the aforementioned encroachments identified, be allowed to remain as it currently exists.

Council Member Herms asked that staff provide further information on the setbacks for an adjacent project to the north. Vice Mayor Galleberg said that although a third floor would be a dominant feature, the tradeoff in uses would result in reduced traffic, the issue being whether Council wished to grant a third floor without changing the setbacks; Council Member Russell concurred.

Public Comment: None. (12:22 p.m.)

MOTION by Taylor to APPROVE ITEM 8-a INCORPORATING THE CONDITIONS CONTAINED IN THE ORDINANCE; seconded by MacIlvaine. This motion failed 3-3 (Taylor-yes, Wiseman-absent, Galleberg-no, Herms-no, MacIlvaine-yes, Russell-yes, MacKenzie-no.)

Council Member Herms said this would bring the intensity and massing directly over the water, and suggested that the petitioner use a stepped setback. Although saying he would prefer a two-story building on the waterfront, Council Member MacIlvaine said that the cover over the easement would shelter pedestrians from the elements. He also pointed out other three-story buildings in the area and noted the increase in green space. Council Member Russell said he too would prefer a building which is stepped back, but that significant benefits would also accrue. Mayor MacKenzie noted concerns already stated and suggested reconsidering this item later in the meeting. Council Member Herms said that since she had been absent for the above discussion, Council Member Wiseman should be provided the same information received by Council. Attorney Passidomo said he would make an abbreviated presentation after which Mrs. Wiseman could hear all of Council's comments. City Attorney Pritt said a motion for reconsideration must be made by a Council Member who had

voted in the majority which, would mean in this case, a Council Member who voted against the proposal.

MOTION by MacKenzie to RECONSIDER ITEM 8-a AT 2:30 P.M.; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

Recess 12:27 p.m. to 1:31 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.

**.....ITEM 19
ATTORNEY/CLIENT SESSION WITH REFERENCE TO HAMILTON HARBOR**

LITIGATION (1:31 p.m.) Mayor MacKenzie read the following into the record: The City Attorney has advised the City Council that he desires advice of the Council concerning the following pending Hamilton Harbor litigation (multiple cases as follows)

1. COLLIER ENTERPRISES, LTD. V. CITY OF NAPLES, CASE NO. 00-1562-CA, (20th Judicial Circuit, Collier County (LAW SUIT #4).
2. CITY OF NAPLES V. COLLIER ENTERPRISES, LTD., ET AL., (Second District Court of Appeal) CASE #00-2634 (APPEAL #3).
3. JAMES K. KESSLER, ET AL. V CITY OF NAPLES; CASE NO 99-1743-CA (20th Judicial Circuit, Collier County) (Law Suit #1)
4. JAMES K. KESSLER V. CITY OF NAPLES; (Second District Court of Appeal) CASE NO. 99-2132 (Appeal #1).
5. JAMES K. KESSLER, ET AL. V CITY OF NAPLES, ET AL.; (Second District Court of Appeal) CASE NO. 99-4327 (APPEAL #2).
6. JAMES K. KESSLER, ET AL. V CITY OF NAPLES, ET AL.; (Second District Court of Appeal) CASE NO. (pending assignment) (APPEAL #4).
7. THE CONSERVANCY OF S.W. FLORIDA V. CITY OF NAPLES, CASE NO. 99-2809-CA (20th Judicial Circuit, Collier County) (LAW SUIT #2).
8. JAMES K. KESSLER, ET AL. V CITY OF NAPLES, CIRCUIT CASE NO. 99-2812-CA (20th Judicial Circuit, Collier County) LAW SUIT #3).
9. THE CONSERVANCY OF S.W. FLORIDA V. CITY OF NAPLES, ET AL., (DOAH CASE #99-2599).
10. SAVE THE MANATEE CLUB, ET AL. V CITY OF NAPLES, ET AL., (DOAH CASE #99-2600-GM).
11. Collier Enterprises - Related Bert J. Harris Claims.
12. Collier Enterprises - Related Vested Rights Claims.

Mayor MacKenzie advised that the City Council would then commence an attorney/client session to discuss settlement negotiations and/or strategy relating to litigation expenditures. The estimated time for this session is one hour after which the meeting will be re-opened. The persons 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 J. Rambosk; City Attorney Robert Pritt and Fred Hardt of the law firm Roetzel & Andress; and Emily Underwood 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, termination of the session would be announced and the meeting reopened.

Executive Session 1:34 p.m. to 2:57 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Mayor MacKenzie announced the termination of the executive session and the reopening of the Regular Meeting.

MOTION by Wiseman to AUTHORIZE ATTORNEY FRED HARDT AND ROETZEL & ANDRESS TO CONTINUE TO NEGOTIATE ON BEHALF OF THE CITY WITH REGARD TO ALL MATTERS OF LITIGATION AND ASSOCIATED ADMINISTRATIVE PROCEEDINGS BETWEEN THE CITY OF NAPLES AND THE COLLIER ENTERPRISES RELATED ENTITIES; 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).

Recess 2:59 p.m. to 3:08 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

(Continued from Page 12)ITEM 8-a

Mayor MacKenzie noted that the motion to approve had failed, and that Council had voted to reconsider this item. This being a quasi-judicial proceeding, City Attorney Robert Pritt advised Council to disclose any ex parte communications they may have had since the morning session. MacKenzie/spoke to Attorney Passidomo regarding factors concerning neighboring properties, including the Turner property; Wiseman/brief conversation with Attorney Passidomo about her absence earlier in the meeting; Russell/no contact; MacIlvaine/toured the project and listened to Attorney Passidomo's presentation during the morning session; Galleberg/conversations with Attorney Passidomo and Landscape Architect Corban regarding massing and height matters; Herms/spoke with Attorney Passidomo regarding the northern building setbacks; and Taylor/conversation with two citizens. City Attorney Pritt noted that those already sworn remain under oath.

Attorney Passidomo then presented an abbreviated version of the comments he had made earlier in the meeting. He also indicated that increasing the setback to 25 feet would result in an area of the site which could not be used. In response to a previous question, he explained that a zero waterfront setback is allowed under the C2-A waterfront commercial district regulations due to the marina. In addition, Mr. Corban provided clarification on the building height, noting it would comply with the commercial height charter amendment and would be eight feet lower than allowed by the PD.

Various Council Members reiterated their previous concerns. In response to Vice Mayor Galleberg, Planning Director Ron Lee said it would be the Building Official's determination as to whether the petitioner could build a third floor within the provisions of the existing PD without Council approval, noting the determining factor would be whether there was substantial deviation from the originally approved plan.

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

MOTION by Taylor to APPROVE ITEM 8 AT FIRST READING; seconded by Russell and carried 5-2, all members present and voting (Russell-yes, Galleberg-yes, Herms-no, Wiseman-yes, Taylor-yes, MacIlvaine-yes, MacKenzie-no).

RESOLUTION (Continued)..... ITEM 8-b

A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 02-RIS5 FOR A WAIVER FROM THE MAXIMUM ILLUMINATION LEVEL OF .5 FOOT-CANDLES ON THE NORTH AND EAST PROPERTY LINES FOR PROPERTY LOCATED AT 1001 10TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:41 p.m.)

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

MOTION by Wiseman to **CONTINUE ITEM 8-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).

RESOLUTION 02-9779.....ITEM 14

A RESOLUTION RANKING THE TOP THREE FIRMS IN ORDER OF PREFERENCE TO PROVIDE ARCHITECTURAL SERVICES FOR THE RENOVATION OF FIRE STATION TWO AND THE CONSTRUCTION OF A TACTICAL EVOLUTION BUILDING FOR THE NAPLES FIRE TRAINING CENTER; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT WITH THE TOP-RANKED FIRM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:43 p.m.). In response to Council Member Taylor, City Manager Rambosk said the training center could be placed at any location.

Public Comment: None. (3:45 p.m.)

MOTION by MacIlvaine to **APPROVE RESOLUTION 02-9779 AS SUBMITTED**; seconded by MacKenzie and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Herms said he believed this project to be unnecessary. Council Member Wiseman noted for the record that the ranking contained in the resolution is the same as in the executive summary.

RESOLUTION 02-9780.....ITEM 15

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND BADGER METER, INC. FOR THE PURCHASE OF WATER METERS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:46 p.m.) who said this would be for replacements or additions to existing systems.

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

MOTION by Herms to **APPROVE RESOLUTION 02-9780 AS SUBMITTED**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 02-9781.....ITEM 16

A RESOLUTION APPROVING AN ELECTRICAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND BENTLEY ELECTRIC COMPANY, INC. ON AN AS-NEEDED BASIS FOR A PERIOD OF TWO YEARS, WITH THE OPTION OF TWO ONE-YEAR RENEWALS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:47 p.m.)

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

MOTION by Herms to **APPROVE RESOLUTION 02-9781 AS SUBMITTED**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 02-9782.....ITEM 17

A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH PETROLEUM TRADERS CORPORATION FOR THE PURCHASE OF GASOLINE AND DIESEL FUEL; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:48 p.m.) who affirmed that staff had found this new vendor to be a capable supplier.

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

MOTION by *Herms* to **APPROVE RESOLUTION 02-9782 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*).

ORDINANCE 02-9783.....ITEM 18
AN ORDINANCE AMENDING SECTION 110-34 (b), (c) (1) a.1., AND (d) OF THE CODE OF ORDINANCES, CITY OF NAPLES, FLORIDA, AND ADDING SUBSECTION (g) TO SECTION 110-34 TO PROVIDE FOR STORAGE OF BOATS ON THE BEACH FOR CITY RESIDENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:49 p.m.). City Attorney Robert Pritt noted a minor change in the ordinance since first reading clarifying the definition of residency.

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

MOTION by *Herms* to **ADOPT ORDINANCE 02-9783 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*).

.....ITEM 20
REQUEST FOR RECONSIDERATION OF MANDATORY RAIN GAUGES (requested by Mayor MacKenzie) (3:52 p.m.). Mayor MacKenzie stated that staff is researching information on available grants to underwrite the cost and is considering options for enforcement. She added that the entire irrigation ordinance would be provided to Council during the reconsideration.

Public Comment: None. (3:53 p.m.)

MOTION by *Russell* to **RECONSIDER THIS ITEM AT THE SEPTEMBER 18, 2002 REGULAR MEETING;** seconded by *Wiseman* and carried 6-1, all members present and voting (*Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes*).

CORRESPONDENCE & COMMUNICATIONS (3:52 p.m.)
Mayor MacKenzie sent get well wishes to John Norman, husband of City Clerk Tara Norman. In response to Council Member Taylor, City Manager Kevin Rambosk said he had sent Code Enforcement personnel to investigate the piling of furniture behind the house at Eighth Terrace North. He also affirmed that the School Board is responsible for maintenance of the right-of-way adjacent to the Lake Park School.

.....ITEM 21
REQUEST FOR ATTORNEY/CLIENT SESSION. (4:00 p.m.) (This item was added to the agenda by the motion below.)

MOTION by *Wiseman* to **ADD ITEM 21 TO THE AGENDA;** 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*).

City Attorney Robert Pritt then read the following into the record: Pursuant to Section 286.011 (8) Florida Statutes, I am informing the City Council that I desire the Council's advice and consequently am requesting that the City Council of the City of Naples, Florida, conduct an executive or closed (attorney/client) session at 1:30 p.m. during a Special Meeting of Monday, September 9, 2002 to discuss settlement negotiations and strategy related to litigation expenditures in reference to pending Hamilton Harbor litigation which consists of multiple cases as follows:

1. COLLIER ENTERPRISES, LTD. V. CITY OF NAPLES, CASE NO. 00-1562-CA, (20th Judicial Circuit, Collier County (LAW SUIT #4).

2. CITY OF NAPLES V. COLLIER ENTERPRISES, LTD., ET AL., (Second District Court of Appeal) CASE #00-2634 (APPEAL #3).
3. JAMES K. KESSLER, ET AL. V CITY OF NAPLES; CASE NO 99-1743-CA (20th Judicial Circuit, Collier County) (Law Suit #1)
4. JAMES K. KESSLER V. CITY OF NAPLES; (Second District Court of Appeal) CASE NO. 99-2132 (Appeal #1).
5. JAMES K. KESSLER, ET AL. V CITY OF NAPLES, ET AL.; (Second District Court of Appeal) CASE NO. 99-4327 (APPEAL #2).
6. JAMES K. KESSLER, ET AL. V CITY OF NAPLES, ET AL.; (Second District Court of Appeal) CASE NO. 02 (TO BE ASSIGNED) (APPEAL #4).
7. THE CONSERVANCY OF S.W. FLORIDA V. CITY OF NAPLES, CASE NO. 99-2809-CA (20th Judicial Circuit, Collier County) (LAW SUIT #2).
8. JAMES K. KESSLER, ET AL. V CITY OF NAPLES, CIRCUIT CASE NO. 99-2812-CA (20th Judicial Circuit, Collier County) LAW SUIT #3).
9. THE CONSERVANCY OF S.W. FLORIDA V. CITY OF NAPLES, ET AL., (DOAH CASE #99-2599).
10. SAVE THE MANATEE CLUB, ET AL. V CITY OF NAPLES, ET AL., (DOAH CASE #99-2600-GM).
11. Collier Enterprises - Related Bert J. Harris Claims.
12. Collier Enterprises - Related Vested Rights Claims.

The following persons are proposed to be present for the executive session: 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 Roetzel & Andress, LPA by Robert D. Pritt and Frederick Hardt; and Emily Underwood of AAF Reporting or other certified court reporter. Estimated duration of the attorney/client session is one hour.

Public Comment: None. (4:02 p.m.)

MOTION by Galleberg to **CONDUCT AN EXECUTIVE SESSION AT SEPTEMBER 9, 2002 AT 1:30 P.M.**; *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

None. (4:02 p.m.)

ADJOURN

4:02 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 10/2/02