



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – September 18, 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 (arrived 9:03 a.m.)
William MacIlvaine
Clark Russell (arrived 9:06 a.m.)
Penny Taylor
Tamela Wiseman (arrived 9:05 a.m.)

Also Present:

Kevin Rambosk, City Manager
Robert Pritt, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
Jon Staiger, Natural Resources Manager
Dan Mercer, Public Works Director
David Lykins, Community Services Director
Ron Wallace, Development Services Director
Ann Marie Ricardi, Finance Director
Robert Middleton, Utilities Director
Laura Spurgeon, Planner
Karen Kateley, Administrative Specialist
Jeannette Kessler
Doug Finlay

Henry Kennedy
Brian Smith
Jim Rideoutte
Gloria Kovacs
Don Wingard
Richard Yovanovich
Karen Van Arsdale
Larry Farese

Media:

Dianna Smith, Naples Daily News

Other interested citizens and visitors.

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

Council Member MacIlvaine

ANNOUNCEMENTSITEM 3

None.

SET AGENDA.....ITEM 4

Item 12-b (9) – fireworks special event

MOTION by Taylor to ADD ITEM 12-b(9); seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

Item 20 – City Attorney request for waiver of conflict of interest relative to the School Board

MOTION by Taylor to ADD ITEM 20; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

It is noted for the record that Council Member Herms entered the meeting at 9:03 a.m.

MOTION by Galleberg to SET AGENDA WITH CHANGES NOTED, CONTINUING ITEM 8 TO THE 10/16/02 REGULAR MEETING AND WITHDRAWING ITEM 11; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

It is noted for the record that Council Member Wiseman entered the meeting at 9:05 a.m., and Council Member Russell at 9:06 a.m.

PUBLIC COMMENT.....ITEM 5
Jeanette Kessler, 525 Anchor Road Drive, Naples Art Association (NAA) representative, responded to a previous concern expressed by Mayor MacKenzie relative to closure of Park Street because it interferes with the business of the Naples Women's Club. Mrs. Kessler however explained that the street closure occurs when the NAA hosts one of its fund raising events, important to underwrite operations of the Art Center. The NAA pays the Naples Women's Club \$500 for use of its parking lot during each event; however, the south parking lot has been offered for \$1,000 per month for the coming year for day classes. Mrs. Kessler said that street closure in this case occurs just for NAA fund raising events and noted the importance of these events in underwriting the cost of art programs open to the public, especially those provided for youth. Although acknowledging the appropriateness of these particular street closures, Mayor MacKenzie nevertheless urged Council to carefully consider the impact of street closures on surrounding businesses. **Doug Finlay, 3430 Gulf Shore Boulevard,** distributed photographs of what he described as beach erosion between Horizon and Vedado Way in Park Shore. (Copies of these photographs are contained in the file for this meeting in the City Clerk's Office.) He then noted the need for additional sidewalks in the City, especially on Gulf Shore Boulevard from Fifth Avenue to the Naples Pier. **Henry Kennedy, 2178 Tarpon Road,** distributed invitations to Council Members for the annual Girls' Softball League banquet.

ORDINANCE 02-9790.....ITEM 6-1
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 (9:15 a.m.).

RESOLUTION 02-9791.....ITEM 6-2
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 02-RIS5 FOR A WAIVER FROM THE MAXIMUM ILLUMINATION LEVEL OF .5 FOOT-CANDLE 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 (9:15 a.m.).

It is noted for the record that Items 6-1 and 6-2 were considered concurrently.

This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: Council Member Taylor indicated that she had visited the site while other Council Members

registered no contact. City Clerk Tara Norman then administered an oath to those intending to offer testimony; all responded in the affirmative.

In response to Council Member Taylor, petitioner's attorney John Passidomo said that he would submit a plan indicating retention of the public benches at the site of the former restaurant. Miss Taylor also suggested that the petitioner minimize large posts located in front of the restaurant in order to enhance the appearance.

Public Comment: None. (9:17 a.m.)

MOTION by Russell to ADOPT ORDINANCE 02-9790 (Item 6-1) TO INCLUDE CONDITION AGREED TO BY PETITIONER RELATIVE TO NOT VIOLATING PUBLIC PEDESTRIAN INGRESS AND EGRESS BY EASEMENT (J. PASSIDOMO LETTER OF SEPTEMBER 17, 2002), AND PETITIONER TO SUBMIT PLAN TO RETAIN BENCHES PROVIDED THAT THE BENCHES DO NOT BLOCK A PUBLIC ACCESS; seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

MOTION by Russell to APPROVE RESOLUTION 02-9791 (Item 6-2) AS SUBMITTED; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

CONSENT AGENDA

APPROVAL OF MINUTESITEM 12-a

August 15, 2002 Informal Discussion (Boards/Committees), August 19, 2002 Workshop, August 19, 2002 Budget, August 20, 2002 Budget, and August 21, 2002 Regular Meetings.

SPECIAL EVENTS ITEM 12-b

- 1) Ridge Lakes Neighborhood Association Halloween Party – Palm Circle – 10/31/02.
- 2) Fifth Avenue South Association annual Evenings on Fifth – 1/9, 2/13, 3/13, 4/10, 5/8, 6/12, 7/10, 8/14, 9/4, 10/9, 11/13 and 12/11/03.
- 3) Fifth Avenue South annual Naples Downtown Art Festival – 3/22-23/03
- 4) Fifth Avenue South annual Mother's Day Weekend – 5/10-5/11/03
- 5) Fifth Avenue South annual Firecracker Festival – 7/5-7/6/03
- 6) Fifth Avenue South annual Oktoberfest – 10/18-10/19/03
- 7) Fifth Avenue South Main Street Christmas Walk, Tuba Christmas and Avenue of Lights – 12/04/03
- 8) Fifth Avenue South annual New Years Art Festival – 12/27/03

RESOLUTION 02-9792.....ITEM 12-c

A RESOLUTION APPROVING A PROJECT GRANT AGREEMENT BETWEEN THE CITY OF NAPLES AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REGARDING THE FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM MATCHING GRANT OF \$200,000 FOR PHASE II OF THE FLEISCHMANN PARK REDEVELOPMENT PLAN; AUTHORIZING THE MAYOR TO EXECUTE THE GRANT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9793..... ITEM 12-d

A RESOLUTION APPROVING A REVISED AGREEMENT BETWEEN THE CITY OF NAPLES AND RJN GROUP, INC., FOR AN UPDATE TO CASS WORKS COMPUTER SOFTWARE FOR THE PUBLIC WORKS DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; REPEALING RESOLUTION 02-9662; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9794.....ITEM 12-e
A RESOLUTION AUTHORIZING ANN MARIE S. RICARDI, FINANCE DIRECTOR, TO PARTICIPATE IN THE DEFERRED COMPENSATION PLAN THROUGH THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION; PROVIDING THAT SHE SHALL BE EXEMPTED FROM PARTICIPATING IN THE RETIREMENT CORPORATION; PROVIDING THAT SHE SHALL BE EXEMPTED FROM PARTICIPATING IN THE RETIREMENT SYSTEM OF THE CITY; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9795..... ITEM 12-f
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND MR. CLEAN – GULF COAST, INC. FOR MONTHLY JANITORIAL SERVICES AT THE DEVELOPMENT SERVICES BUILDING FOR A PERIOD OF ONE YEAR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9796.....ITEM 12-g
A RESOLUTION APPROVING A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION TRAFFIC SIGNAL AND MAINTENANCE COMPENSATION AGREEMENT WITH THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9797..... ITEM 12-h
A RESOLUTION APPROVING A REVISED PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND LAW ENGINEERING AND ENVIRONMENTAL SERVICES, INC. TO PROVIDE GROUND WATER SAMPLING IN THE VACANT AREA BOUND BY RIVERSIDE CIRCLE, GOODLETTE-FRANK ROAD, CENTRAL AVENUE, AND THE DEVELOPMENT SERVICES BUILDING, AS WELL AS SOIL SAMPLING IN THE AREA SOUTH OF THIS SITE; REPEALING RESOLUTION 02-9710; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Herms recommended cleaning the site prior to proceeding with this contract. City Manager Kevin Rambosk, however, said that staff believes examining the soil is necessary prior to determining any future uses of the property.

RESOLUTION 02-9798..... ITEM 12-i
A RESOLUTION APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND BERRY'S BARBELL AND EQUIPMENT, INC. FOR THE PURCHASE AND INSTALLATION OF FITNESS CENTER EQUIPMENT AT THE NEW RIVER PARK COMMUNITY CENTER; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 02-9799..... ITEM 12-j
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND FISHER SCIENTIFIC INTERNATIONAL, INC. FOR THE PURCHASE OF A THERMAL IMAGING CAMERA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

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

MOTION by Galleberg to APPROVE CONSENT AGENDA EXCEPT ITEM 12-b (9); seconded by MacIlvaine and unanimously carried, all members present and

voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

At this point in the meeting, Gloria Kovacs, Fifth Avenue South Association President, invited the Council to the Sugden Theatre at 5:00 p.m. that evening when retiring Police Officer Ron Mosher would be recognized for his work in the community.

RESOLUTION 02-9800.....ITEM 13-1

A RESOLUTION APPROVING THE RENEWAL OF THE CITY'S SELF-INSURANCE PROGRAM, PROVIDING FOR PREMIUMS AND THE LOSS FUND FOR FISCAL YEAR 2002-03 WITH ARTHUR J. GALLAGHER AND COMPANY AS THE BROKER OF RECORD; AUTHORIZING THE CITY MANGER TO ISSUE PURCHASE ORDERS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:26 a.m.).

RESOLUTION 02-9801.....ITEM 13-2

A RESOLUTION EXTENDING THE CONTRACT WITH GALLAGHER BASSETT SERVICES, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:26 a.m.).

It is noted for the record that Council considered Items 13-1 and 13-2 concurrently.

City Manager Rambosk explained that based on assistance by the Collier County Clerk of Courts in providing direction in the process of selecting insurance providers, Council had later directed staff to formulate the bid/proposal process. After reviewing the proposals received, the Risk Management Selection Committee had recommended that a new proposal for a five-year contract be developed in the best interest of the City. Because the City's insurance portfolio must, however, be effective October 1, Mr. Rambosk said, staff recommended extending the current provider's contract for 12 months. In response to Council, City Manager Rambosk said that bids would be sought from the estimated 10-12 companies providing this type of service.

Finance Director Ann Marie Ricardi further explained that while the top two applicants, Marsh and Arthur J. Gallagher, were assigned insurance markets in June, a misunderstanding among vendors resulted in some incorrect bidding. Moreover, she said, staff had later lost communication with those vendors and therefore intends to conduct a pre-bid meeting with all proposed vendors in the future in order to avoid this type of confusion.

In further discussion, City Manager Rambosk said that the City could terminate the proposed one-year contract at any time, although there would be substantial penalties. Pointing out that not only had there been a change in Finance staff in the past year, Vice Mayor Galleberg noted also that the fiscal impact appeared to be minimal and that Marsh, one of the bidders, had indicated agreement with staff's recommendations. City Manager Rambosk confirmed that both vendors had conveyed reluctance to write commercial property coverage due to the threat of terrorism. In addition, he pointed out that for the first time in this process, additional staff time had been required to assemble facility information which had delayed the process.

Public Comment: None. (9:41 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTIONS 02-9800 (Item 13-1) AND 02-9801 (Item 31-2) 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).

ORDINANCE 02-9802.....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 (9:41 a.m.).

**RESOLUTION 02-9803.....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 (9:41 a.m.).

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

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacIlvaine/visited the site, Russell/spoke to the petitioner's landscape architect, Herms/spoke to Darlene Lofgren, one of the principals, regarding the project and visited the site; other Council Members registered no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

In response to Council Member Herms, Planning Director Ron Lee explained that staff had revised its building calculations after receiving additional information from the petitioner. He further explained that the Planned Development (PD) document allows the petitioner to allocate five unbuilt units to Buildings 6 and 7 provided it does not exceed the maximum number of allowed residential units (Attachment 1). Mr. Lee also affirmed an increase of approximately 5,000 square feet of lot coverage, but noted a reduction of 2,300 square feet of habitable space due to the building design. Council Member Herms nevertheless pointed out that the building would appear larger due to the number of covered areas extending to the sidewalk. In further discussion, Mr. Lee acknowledged that the new landscaping plan is not altogether compliant with the Goodlette Road Overlay requirements, but that it strikes a good balance between the City's goals and the objectives of the petitioner's building design.

Petitioner's attorney Richard Yovanovich stated that although there is an increase in lot coverage due to the walkways, there is a reduction in the intensity over the original PD. He also said the petitioner is requesting the same hours of operation at the gazebo as are permitted at the adjacent Comfort Inn, and concurred with the Planning Advisory Board (PAB) recommendations to cease background music at 10:00 p.m. and the serving of food at 11:00 p.m.

Vice Mayor Galleberg said he believed the proposal to be a clear improvement, and would become less intense and better aesthetically. Council Member Russell concurred, noting that while there is a massing issue, the parking deck and landscaping would realize a substantial enhancement. In addition, he said the gazebo would enhance public waterfront access. While expressing concurrence with the aforementioned improvements, Council Member MacIlvaine said there would nevertheless be a greater visual impact from Goodlette Road, albeit from residential, which would generate less traffic. Mr. Lee said that if Council approves the landscape plan, the ordinance should be amended to reflect adoption of the plan prepared by landscape architect Gail Boorman dated September 12. Council Member MacIlvaine then proffered a motion for approval with this stipulation, seconded by Council Member Russell; however, further discussion ensued.

Council Member Herms maintained that the parking garage addition would nevertheless appear to be a two-story building from the street and would therefore violate the required setback for this area. In addition, he said he could not support the proposal since the project would substantially exceed the maximum allowable Code PD density of eight units per acre.

In response to Council, City Attorney Robert Pritt indicated that if Council determines the landscaping plan to be a substantial and substantive change, another reading of the ordinance should be scheduled. Council Member Wiseman however took the position that it is in fact not substantial but suggested omitting the landscaping plan from the ordinance. Mr. Lee however pointed out that Council must eventually approve the landscaping plan because it is inconsistent with the Goodlette Road Overlay.

Public Comment: None. (10:12 a.m.)

MOTION by MacIlvaine to ADOPT ORDINANCE 02-9802 (ITEM 7-1) AS AMENDED, TO INCLUDE THE LANDSCAPE PLAN DATED SEPTEMBER 12, 2002, AND CORRECTION OF EXHIBIT B SQUARE FOOTAGE CALCULATIONS AS SUBMITTED BY THE CITY MANAGER IN THE MEMO OF SEPTEMBER 17, 2002; seconded by Russell and carried 4-3, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-no).

Although expressing support for the retention of canopy trees and a larger residential element, Mayor MacKenzie said she could not support this project, and Council Member Taylor characterized the enormity of the project as an affront to the community. While voicing approval for the concept of changing commercial uses to residential, Council Member Herms he said he could not support increasing the density or the size of the buildings. He added that Council would never consider violating a charter amendment, but is however willing to violate an ordinance which contains a density for PD's. City Attorney Pritt explained that this action involves an ordinance and a provision of the Code, not of the Charter and, as such, can be amended or repealed by another ordinance. He therefore said he saw no legal impediment to taking the action contemplated. City Attorney Pritt also pointed out that some ordinances are codified because they have a general application as opposed to an individual area, but suggested that Council determine whether the codified provision is appropriate or should be amended.

MOTION by Russell to APPROVE RESOLUTION 02-9803 (ITEM 7-2) AS SUBMITTED; seconded by Wiseman and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-no, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member MacIlvaine recommended following staff rather than PAB recommendations with regard to the permitted hours for music at the gazebo.

**RESOLUTION (Continued – See Item 4)ITEM 8
A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 02-FWW8
FROM SECTION 110-37 (b) (1) c. OF THE CODE OF ORDINANCES WHICH REQUIRES
MAXIMUM GATE AND GATEPOST HEIGHT OF SIX FEET AND MAXIMUM
GATEPOST WIDTH OF TWO FEET IN THE FRONT YARD AT 3980 GORDON DRIVE,
MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE
DATE. Title not read.**

Recess 10:20 a.m. to 10:36 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**.....ITEM 12-(b)9
PRIVATE FIREWORKS DISPLAY – OFF LOWDERMILK PARK SPONSORED BY THE
BEACH CLUB HOTEL – 9/30/02. (10:36 a.m.)** Melanie Kennedy, representing petitioner, Naples Transportation and Tours, affirmed that she would coordinate the transportation of a convention group to view the proposed private fireworks display, which she said would begin at approximately 9:30 p.m. and last no longer than 20 minutes. Mayor MacKenzie expressed concern about the time schedule; however, Ms. Kennedy said staff had indicated that the show must nevertheless be

completed by 10:30 p.m. Council Member Herms recommended a community announcement so that the public may also attend; however, City Manager Kevin Rambosk said that attracting additional spectators would demand additional services, such as police patrol. Council Member Wiseman pointed out that Council had approved other private fireworks displays, but Council Member Taylor recommended notifying the neighbors surrounding Lowdermilk Park. Vice Mayor Galleberg expressed concern regarding the immediacy of the request and the lack of supporting information. In further discussion, Ms. Kennedy said she has ensured appropriate staffing and had met all the requirements stipulated by the Fire Marshal.

Public Comment: None. (10:48 a.m.)

MOTION by Russell to APPROVE ITEM 12-b(9) WITH STAFF TO COORDINATE ANY ANCILLARY ISSUES AND NOTIFY NEIGHBORS OF LOWDERMILK PARK; seconded by Taylor and carried 5-2, all members present and voting (Galleberg-no, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Herms said that there should be notice to surrounding residents before the event in order to determine their concurrence.

RESOLUTION 02-9804.....ITEM 14

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND BONNESS, INC. FOR THE PURPOSE OF PROVIDING ROADWAY OVERLAY, STREET AND ALLEY CONSTRUCTION, ROADWAY CAPITAL IMPROVEMENTS AND MISCELLANEOUS CONCRETE WORK ON AN ANNUAL BASIS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:50 a.m.) who explained that staff recommended proceeding with the low bidder, Bonness, Inc., the City's current contractor.

Public Comment: None. (10:50 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9804 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).

Council Member Taylor observed that a factor requiring street overlays is the amount of construction traffic, and suggested that Council consider assessing a fee to help underwrite the cost of these impacts. City Manager Rambosk stated that staff believes the City to be unable to do that but had not to date researched alternatives. Mayor MacKenzie noted that the City is investigating the possibility of imposing fees for construction projects that close public streets. In further discussion, City Attorney Robert Pritt said he believed a road depreciation fee attached to a building permit would be deemed unlawful because roads are to be open and subject to use by everyone. City Manager Rambosk said staff would in the coming year research all means of increasing revenue.

RESOLUTION 02-9805.....ITEM 15

A RESOLUTION APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND CREEL TRACTOR COMPANY FOR THE PURCHASE OF TWO BACKHOE/LOADERS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:54 a.m.) who said staff had found that the equipment exceeds all of its expectations and that staff would sell its two 13-year-old tractors at auction.

Public Comment: None. (10:56 a.m.)

MOTION by Wiseman to APPROVE RESOLUTION 02-9805 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 02-9806.....ITEM 17-1
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND GENERAL CHEMICAL CORPORATION FOR THE PURCHASE OF ALUMINUM SULFATE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:56 a.m.).

Public Comment: None. (10:56 a.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9806 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 02-9807.....ITEM 17-2
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND TANNER INDUSTRIES, INC. FOR THE PURCHASE OF ANHYDROUS AMMONIA; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:56 a.m.).

Public Comment: None. (10:56 a.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9807 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 02-9808.....ITEM 17-3
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND POLYDYNE, INC. FOR THE PURCHASE OF ANIONIC POLYMER, CATIONIC POLYMER, AND EMULSION POLYMER; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:57 a.m.).

Public Comment: None. (10:57 a.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9808 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 02-9809.....ITEM 17-4
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND US FILTER/DAVIS PROCESS FOR THE PURCHASE OF AQUEOUS FERROUS SULFATE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:57 a.m.).

Public Comment: None. (10:57 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9809 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 02-9810.....ITEM 17-5
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ASTOR CHEMICAL COMPANY, INC. FOR THE PURCHASE OF CARBON DIOXIDE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT;

AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:58 a.m.).

Public Comment: None. (10:58 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9810 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 02-9811.....ITEM 17-6
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND ALLIED UNIVERSAL CORPORATION FOR THE PURCHASE OF CHLORINE AND
SULFUR DIOXIDE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:58 a.m.).

Public Comment: None. (10:58 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9811 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 02-9812.....ITEM 17-7
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND SHANNON CHEMICAL CORPORATION FOR THE PURCHASE OF ORTHO-
POLYPHOSPHATE; AUTHORIZING THE CITY MANGER TO EXECUTE THE
AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:59 a.m.).

Public Comment: None. (10:59 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9812 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 02-9813.....ITEM 17-8
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND CHEMICAL LIME COMPANY OF AL., INC. FOR THE PURCHASE OF QUICK
LIME; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND
PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:59 a.m.).

Public Comment: None. (10:59 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9813 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 02-9814.....ITEM 17-9
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND BRENNTAG MID SOUTH FOR THE PURCHASE OF SODIUM FLUOROSILICATE
AND SODIUM HYDROXIDE; AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:00 a.m.).

Public Comment: None. (11:00 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9814 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 02-9815.....ITEM 18

A RESOLUTION RESCHEDULING THE JANUARY 1 AND JANUARY 15, 2003 REGULAR CITY COUNCIL MEETINGS TO THE REGULAR CITY COUNCIL MEETINGS OF JANUARY 8, 2003 AND JANUARY 22, 2003; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:01 a.m.).

Public Comment: None. (11:01 a.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9815 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 02-9816.....ITEM 19

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 (11:02 a.m.).

Public Comment: None. (11:02 a.m.)

MOTION by MacIlvaine to ADOPT ORDINANCE 02-9816 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).

.....ITEM 20

REQUEST FOR WAIVER OF OBJECTION TO CONFLICT OF INTEREST – SCHOOL DISTRICT RELATIVE TO GROWTH MANAGEMENT ACT ISSUES. (11:03 a.m.). City Attorney Robert Pritt stated that his firm, Roetzel & Andress, represents the Collier County School Board as well as the City; however, some dealings between the two inevitably produce a conflict in legal representation. In this instance, the Florida Growth Management Act requires the School Districts and the local governments therein to enter into or to update their interlocal agreements in order to meet various growth management criteria. He therefore said he that if Council were not willing to grant a full waiver, it might consider allowing his firm to represent the School Board and the City locate alternative counsel. In further discussion, he said the City's role would be that of review while the School Board would have the responsibility for the planning process. The School Board has already waived its objection, he added.

While expressing no objection to the firm representing the School Board, Council Member Wiseman said the amendments to the Growth Management Act contemplate an ongoing relationship with the School Board and therefore it would be appropriate to select a firm with the experience and the background to assist the City with implementation of this agreement. She therefore recommended a partial waiver.

Vice Mayor Galleberg said he believed the only issue to be whether there should be a group or separate interlocal agreement. He therefore suggested that Council allow Roetzel & Andress to

create this agreement, and seek alternate counsel only in the event the City is faced with a specific growth management matter. Council Member Wiseman, however, said she believed that as a general policy, Council should look at waiver requests cautiously and grant them only in the rarest circumstances.

Public Comment: None. (11:15 a.m.)

MOTION by Wiseman to APPROVE A PARTIAL WAIVER; 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 02-9817.....ITEM 9-a
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 02-LE1 FOR EL PAMPA ARGENTINEAN GRILLE LOCATED AT 699 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:15 a.m.).

RESOLUTION 02-9818.....ITEM 9-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 02-RIS6 FOR PROPERTY LOCATED AT 699 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:15 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Wiseman, Russell, MacIlvaine, and Galleberg/visited the site; and Herms and Taylor/no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Council Member Russell expressed concern that the activity for which approval is being sought had actually been ongoing. Petitioner Anthony Duran explained that he had submitted his application approximately one month before, but had not previously been aware special permission for the disc jockey was needed. Council Member Herms observed that the petitioner is requesting live entertainment until 2:00 a.m. which is later than other nearby establishments. City Manager Rambosk explained that recorded music through a sound system is permitted until closing, but that a disc jockey is considered live entertainment and would therefore be regulated by Council with respect to hours. Vice Mayor Galleberg suggested that all new businesses receive an information sheet listing applicable City regulations. Council Member MacIlvaine concurred, but said it is also the petitioner's responsibility to ascertain these requirements. City Manager Rambosk said staff would prepare an information sheet for those obtaining occupational licenses addressing such key issues as the noise ordinance and licensing requirements, and Mayor MacKenzie also suggested providing this information with renewals.

Public Comment: (11:20 a.m.) **Brian Smith, 411 Sixth Street South, Unit 304**, representing the nearby Majorca Homeowners Association, stated that several residents have registered complaints over the last month mainly to the proposed time frame, saying that the establishment's late entertainment hours will draw many patrons and create excessive noise. Mr. Smith affirmed that an 11:30 p.m. restriction would be more reasonable. **James Rideoutte, 701 Fifth Avenue**, Naples Players Executive Director, stated that when El Pampa opens its doors during the entertainment, the music disturbs Naples Players patrons and adversely affects business.

City Manager Rambosk explained that staff recommends limiting live entertainment to two tango dancers and a piano player between the hours of 7:30 p.m. and 11:30 p.m. with doors and windows

remaining closed, and Mayor MacKenzie noted recent passage of a permit revocation ordinance. Council Member Russell said other establishments seeking late night entertainment have encountered difficulty with their liquor licenses as well as other issues. He therefore suggested amending the resolution to allow the tango dancers, a piano player or a disc jockey but only to 11:30 p.m. Council Member Wiseman concurred, but suggested an ending time of 10:30 p.m. on Sunday nights. However Mayor MacKenzie suggested a 10:00 p.m. for all nights noting its proximity to a residential area. Previous speaker **Brian Smith** clarified that it was not intended that this establishment experience a competitive disadvantage.

Council Member Russell then suggested allowing a disc jockey on Friday and Saturday nights. Mr. Duran concurred saying that he wished to concentrate on the dining room, and that he had offered the entertainment only to meet expenses during the summer season. He further said that he had added some building insulation to reduce the noise, and Council Member Wiseman suggested including notice of the permit revocation ordinance into the standard clauses in the resolution.

MOTION by Russell to APPROVE RESOLUTION 02-9817 (ITEM 9-a) AS AMENDED: SECTION 2-1 “LIVE ENTERTAINMENT IS LIMITED TO TWO TANGO DANCERS AND A PIANO PLAYER BETWEEN THE HOURS OF 7:30 P.M. AND 11:30 P.M. WEDNESDAY THROUGH SUNDAY-SATURDAY AND UNTIL 10:30 P.M. ON SUNDAY, OR A DISC JOCKEY ON FRIDAY AND SATURDAY UNTIL 11:30 P.M.” AND SECTION 2-3 “NOISE LEVELS SHALL COMPLY WITH THE CITY NOISE ORDINANCE AND PERMIT REVOCATION CRITERIA.” This motion was 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).

City Attorney Robert Pritt recommended amending Section 2 of the residential impact statement resolution to reflect the same conditions.

MOTION by Russell to APPROVE RESOLUTION 02-9818 (ITEM 9-b) AS AMENDED IN SECTION 2-1 AND 2-3 AS NOTED IN RESOLUTION 02-9817 ABOVE; 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 11:56 a.m. to 1:34 p.m. It is noted that the same Council Members were present when the meeting reconvened except Council Member Herms who returned at 1:36 p.m.

.....**ITEM 10**
PROPOSAL REGARDING THE WILKINSON HOUSE (1:34 p.m.). City Manager Kevin Rambosk stated that after reviewing the current submission, he said he realized he had not received direction from Council regarding deed restrictions. Mayor MacKenzie clarified with Attorney Larry Farese that the figures attached to his letter to Council are public record and may be discussed.

Karen Van Arsdale of Premier Properties stated that her client Mitch Willey is a unique buyer in that he seeks, as he has done with other properties elsewhere across the country, to preserve and restore historic homes and is willing to work with the deed restrictions so long as a garage, carriage house, and open pool may be added. Mr. Willey, she said, also wished to restore the widow's walk and a balcony that would encircle the second story and is willing to accept the house in its present condition.

In response to Council, Mrs. Van Arsdale explained that a contract of \$3.8-million with an escrow of \$10,000 is being offered, and that a second deposit would be remitted in 60 days pending a decision on the deed restrictions. Ten percent interest would accrue on the total and Mr. Willey requests that

the interest be assigned to him at closing. The offer period would expire at 5:00 p.m. on September 20, with closing and possession subject to the closing on the sale of Mr. Willey's house on Broad Avenue. In addition, she noted that this would be a cash purchase. An inspection period and a 60-day time period is being requested in order to conduct a feasibility study relative to the pool and garage structure. Mrs. Van Arsdale indicated that Mr. Willey would be willing to open the home to the public twice per year; once to benefit the Collier County Historical Society and the other to benefit any charity that the City would deem appropriate for a public or charity event.

While expressing appreciation for Mr. Willey's willingness to open the home, various Council Members expressed reservations due to concerns for possible liability on the part of the City as well as possible disturbance of neighbors. Council Member MacIlvaine also pointed out that, if accepted, the offer should not be contingent upon the selling of the buyer's house; Council Member Herms concurred. Vice Mayor Galleberg said there are many issues yet to be addressed such as if the litigation could harm the title. In response to Council, Mrs. Van Arsdale said she believed Mr. Willey would remove the contingency and feasibility study stipulations if the offer were accepted. She then explained that the market for beachfront real estate had been in a downward trend during the past year and noted that a home on Fifth Avenue South on a site measuring 130 by 165 feet, at \$5.1 million, had sold for \$4.5 million, which equates to just under \$33,000 per foot of frontage.

Vice Mayor Galleberg noted that imposing deed restrictions would result in a significant difference in price than if the property were unrestricted. Council Member Taylor expressed disappointment that Council had not been provided with the deed restriction documents that it had previously discussed, and Council Member MacIlvaine recommended that the property be re-appraised to show how much would be lost in a deed-restricted sale. Concurring with re-appraisal, Council Member Wiseman expressed appreciation for the offer, characterizing the terms as generally reasonable, citing her main concern as not imposing an undue burden on the taxpayers rather than saving the house. Council Member Taylor nevertheless expressed support for preserving the City's history.

In further discussion Council continued to express the need for information on the price differential if no deed restrictions were imposed, taking into consideration the fact that time would be of the essence for consideration of the current offer and also considering the likelihood of settlement of the current litigation and the desirability of saving the structure.

Attorney Farese expressed the belief that the proposed contract price would make City taxpayers whole, although restrictions imposed would be key. He recommended that verbal acceptance of restrictions be enumerated in the contract and that the pending litigation be disclosed including an indemnification clause. Attorney Farese however questioned the advisability of accepting any offer without opening the property for bid, expressing doubt regarding whether adequate public notice of the sale had been provided. He therefore recommended that Council determine deed restrictions and re-advertise the availability of the house through a request for proposals.

Mrs. Van Arsdale however said that her client would be uncomfortable having his offer publicly held out to bid, and noted that the intention of the proposed 60-day contingency period was also to settle the specifics of the deed restrictions. In response to Council regarding the current litigation, Attorney Farese noted that it was anticipated that Judge Hayes would sign the order that week which would begin a 30-day appeal period. He predicted that an appeal would in fact be entered regarding whether the license agreement was constitutional, which he estimated would encompass another 10-12 months.

Vice Mayor Galleberg characterized the process to date has having been orderly noting that efforts to sell the property with deed restrictions had been suspended two years earlier due to litigation. Council Member Taylor suggested that the buyer could undertake re-platting the land if Council imposes deed restrictions. Council Member MacIlvaine noted that Council's efforts to avoid litigation through deed restrictions had been unsuccessful and therefore recommended considering the potential loss to taxpayers. Council Member Wiseman cited the uniqueness of receiving an offer from someone clearly interested in historic preservation and that the plaintiffs may desist if the home were to be preserved and their view easement protected. She therefore recommended that Council not reject Mr. Willey's offer in what she described as a possible futile quest for additional return noting the recent decline in the real estate market.

In response to Council, Mrs. Van Arsdale said this would not be Mr. Willey's primary residence, and after further discussion of the implications of deed restrictions, City Manager Rambosk explained that while the current offer had been unsolicited and outstanding issues had yet to be resolved, he had nevertheless deemed it appropriate to present it to Council. Attorney Farese predicted that if the City were to sell the property subject to restrictions, he was confident it could settle the lawsuit. He however recommended that Council not accept the offer at this time.

In response to Council, Mrs. Van Arsdale said that while she did not believe Mr. Willey would leave the offer open-ended, he would extend the time so long as the City was working toward a resolution. Further, she said that he had expected the City to extend a counter offer. Although Council Members Russell and Galleberg cited the need to resolve outstanding issues and obtain additional appraisals, Council Member Wiseman said she believed only limited information would result. She also said a sale should not be couched in terms of money lost as long as the City breaks even, imposes some deed restrictions, the house is not demolished, and the lawsuit is dismissed. City Manager Rambosk noted for the record that the appraisal received in August 2001 indicated an unrestricted value of \$6.6-million and a restricted value of \$2.3-million.

Attorney Farese explained that the City is required to obtain appraisals if it intends to purchase property, but not when it intends to sell property and that he had found no legal requirement to advertise the property. Mayor MacKenzie therefore said she believed the Council could give Mr. Willey an answer at the next regular meeting.

Public Comment: (2:42 p.m.) **Don Wingard, 130 11th Avenue South,** Collier County Historical Society (CCHS) president, stated that the CCHS encourages residents to maintain an interest in historical preservation in Collier County, and said it engages in a number of activities to achieve this goal. He then suggested that Council consider any offer that would preserve the house, satisfy the neighbors, and thus bring closure to this issue.

Mayor MacKenzie suggested giving direction to the City Manager to obtain answers to legal questions, update the appraisals if necessary, and provide a summary of deed restrictions agreed to by the former Council. She also recommended requesting an extension of the Willey offer until the meeting of October 2. Council Member Wiseman however said the legality of accepting the offer must first be ascertained after which Council could proceed to the contract stage. City Manager Rambosk said staff should negotiate as many deed restrictions as possible. Council Member Wiseman suggested obtaining information on comparable sales. Noting escalating costs to the City, Council Member Taylor said that the offer may bring an end to the litigation. Mayor MacKenzie recommended re-evaluation of the property without restrictions by one of the prior appraisers used.

Attorney Farese noted a 1996 attorney general opinion indicating that in the absence of a charter provision or ordinance specifying a procedure, the method of disposing of surplus municipal real property is left to the discretion of the governing body which is required to act in good faith and in the best interests of the municipality. Council Member Herms however said the Charter may deal with City property; City Manager Rambosk said staff would review it.

After further discussion, Council Member Wiseman proffered the following motion below.

MOTION by Wiseman to DIRECT THE CITY MANAGER TO: OBTAIN AN EXTENSION OF THE MITCH WILLEY OFFER PERIOD UNTIL OCTOBER 2, 2002; WORK WITH ATTORNEY LARRY FARESE AND CITY ATTORNEY ROBERT PRITT TO REVIEW CITY CHARTER AND OTHER OPINIONS TO ASSURE THE LEGALITY OF ALL ASPECTS OF THE PROCESS CONTEMPLATED BY THE CONTRACT; IF DETERMINED TO BE LEGAL IN ALL RESPECTS, REQUEST THAT ONE OF THE PRIOR APPRAISALS PERFORMED ON THE PROPERTY BE UPDATED ONLY TO THE EXTENT OF THE VALUE WITHOUT DEED RESTRICTIONS; AND RETURN TO COUNCIL FOR CONSIDERATION OF A CONTRACT, THE SIGNING OF WHICH WOULD START A PERIOD IN WHICH THE PARTIES WOULD NEGOTIATE PRIMARILY BETWEEN KAREN VAN ARSDALE AND HER CLIENT AND THE CITY MANAGER AS TO THE APPROPRIATE DEED RESTRICTIONS UTILIZING THE WORK PREVIOUSLY DONE BY COUNCIL ON THE SUBJECT; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Taylor-yes, Russell-yes, Galleberg-yes, Herms-yes, Wiseman-yes, MacKenzie-yes).

Recess 3:16 p.m. to 3:27 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION (Withdrawn – See Item 4).....ITEM 11
A RESOLUTION DETERMINING VARIANCE PETITION 02-V6 FROM SECTION 110-45 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHED UNROOFED POOLS OR POOLS ENCLOSED WITH OPEN MESH SCREENING SHALL NOT BE LOCATED IN A REQUIRED FRONT YARD OR SIDE YARD IN ORDER TO PERMIT THE CONSTRUCTION OF A POOL IN THE FRONT YARD AT 1079 7TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

ORDINANCE (First Reading)ITEM 16
AN ORDINANCE ADDING SUBSECTION (d) TO SECTION 66-49, “YEAR ROUND LANDSCAPE IRRIGATION RESTRICTIONS” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF PROVIDING MANDATORY RAIN SENSOR REGULATIONS; AND PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (3:27 p.m.). Mayor MacKenzie stated that when the irrigation ordinance was enacted earlier this year, the portion addressing automatic rain sensors was omitted pending information on available grant funding and an enforcement plan. She however said that she had since discovered that state law had since 1991 required a rain sensor device which overrides the irrigation cycle on automatic systems. She therefore expressed support for adding this provision locally.

Council Member Taylor said she believed this would however represent a hardship to residents, but Mayor MacKenzie clarified that this requirement would not be imposed on those without automatic irrigation systems, but that all automatic systems installed after 1991 should be in compliance. Council Member Herms noted potential difficulties with rain sensor systems, enforcement, as well as

what he deemed significant costs to some residents. City Manager Rambosk said enforcement staff would check to determine whether a sensor was present that would adjust to accommodate one inch of rain, which he said was necessary irrigation in a given week. Council Member Herms received clarification from City Attorney Robert Pritt that violators among County customers of the City's water system could be referred to the appropriate Collier County or other agency. Vice Mayor Galleberg said he did not agree with retrofitting existing systems; Council concurred. City Manager Rambosk suggested establishing a program to retrofit as many systems on a voluntary basis as funding would allow. After further discussion, Vice Mayor Galleberg proffered the motion that appears below:

Public Comment: None. (3:46 p.m.)

MOTION by Galleberg to APPROVE ITEM 16 AT FIRST READING AS AMENDED TO REVISE (d) "ALL AUTOMATIC WATER IRRIGATION SYSTEMS...; (d) (1) "A RAIN SENSOR DEVICE OR SWITCH SHALL BE ..."; DELETE SECTION (d) (2) AND RENUMBER (d) (3); AND REVISE NEW (d) (2) "THE RAIN SENSOR DEVICE OR SWITCH SHALL..."; 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).

CORRESPONDENCE & COMMUNICATIONS (3:47 p.m.)

Mayor MacKenzie clarified for the record that all exhibits provided for the September 4 first reading of Items 6 and 7 are to be considered a part of the September 18 record. With reference to upcoming City Attorney interviews, Council Member Wiseman suggested that applicants be asked for samples of ordinances they had drafted. Mayor MacKenzie then noted ~~that a citizen had proposed a pizza parlor at Merrihue Mini Park; however, it was the consensus of Council to not pursue this.~~ she had been asked to determine whether the City Council would consider allowing Merrihue Mini-Park to be developed into a proposed pizza parlor with other amenities; however, it was the consensus of Council to keep the park as is.

Council Member Herms then requested information on the maintenance of a landscaped area on property owned by John Pulling. City Manager Kevin Rambosk explained that the City had approached Mr. Pulling to make improvements which were funded in part by Mr. Pulling; however, the City is performing maintenance. Council Member Herms however said that all City property owners are required to maintain to the right-of-way. Acknowledging the uniqueness of the Pulling situation, City Manager Rambosk said that he was nevertheless not inclined to bill Mr. Pulling for the maintenance costs unless instructed otherwise.

Council Member MacIlvaine noted the repainting of the restaurant at Fifth Avenue South and Ninth Street, and Vice Mayor Galleberg questioned whether the colors had been approved. Mr. MacIlvaine also noted a large black fence encircling a house at the corner of Belair and Park Shore Drive. City Manager Rambosk said he would ensure that appropriate permitting had taken place.

Council Member Russell suggested that Council enact policy relative to repaying inter-fund and Tax Increment Financing (TIF) borrowing. Mayor MacKenzie suggested allowing staff to provide recommendations for discussion at a future workshop.

PUBLIC COMMENT (4:03 p.m.).....
None.

ADJOURN
4:03 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes approved: 10/16/02