



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – November 6, 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 (arrived 9:07 a.m.)
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Robert Pritt, City Attorney
Ron Lee, Planning Director
James Rivard, Fire Marshall
Steven Moore, Police Chief
David Lykins, Community Services Director
Jon Staiger, Natural Resources Manager
Robert Devlin, FEMA Coordinator
Ann Walker, Senior Planner
Susan Golden, Planner
Terry Fedelem, Parks & Parkways Design Supt.
James McEvoy, Fire Commander
Karen Kateley, Administrative Specialist
Jessica Rosenberg, Recording Specialist
Ted Soliday
Eric West
Natasha Alveshire
William Doyle
Gary Carlson
Arlene Guckenberger

Father Timothy Navin
Larry Farese
Leonard Claggett
Vin DePasquale
Todd Turrell
David Corban
Christian Spilker
John Passidomo
Fred Hardt
Garrett Beyrent
Falconer Jones
William Barnett

Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News

INVOCATION & PLEDGE OF ALLEGIANCEITEM 2

Father Timothy Navin, St. Peter's Catholic Church

ANNOUNCEMENTSITEM 3

The Great Florida Fire School Training Symposium Proclamation

SET AGENDA.....ITEM 4

Natasha Alveshire, Meridian Broadcasting Event Coordinator, distributed a special event permit application, apologizing for the short notice. She described the event as a tropical street dance concert featuring a 14-piece horn band at the Bayfront Center from 5 to 8 p.m. on November 15, with all proceeds benefiting the scholarship program of the Polo Club of Collier County. Ms. Alveshire further said that this would be a family oriented event and that she would adequately address all attendant issues such as security, trash disposal, and parking, and requested that Council place this request on its agenda. Council Member Herms suggested postponing the event; however, Ms. Alveshire said that this would be the most advantageous date due to the band's availability and other events planned at Bayfront. Mayor MacKenzie noted that because this item had not been on the advertised agenda, it could be added only with a 5/7 vote of Council.

Public Comment: None. (9:10 a.m.)

MOTION by Taylor to ADD THE SPECIAL EVENT AT BAYFRONT TO THE AGENDA; seconded by Herms. This motion failed 2-5, all members present and voting (Russell-no, Galleberg-no, Herms-yes, Wiseman-no, Taylor-yes, MacIlvaine-no, MacKenzie-no).

Several Council Members commented on the necessity for a more adequate review and noted concern regarding the sale of alcohol.

Add Item 17 (a, b, c) River Park Recreation Center wall panels, painting, and fencing.

MOTION by Galleberg to ADD ITEM 17 (a, b, c); 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).

MOTION by Galleberg to SET THE AGENDA SCHEDULING ITEM 9 AT 2:00 P.M., WITHDRAWING ITEMS 14 AND 16-a, AND REMOVING ITEMS 10-b(2), 10-c, 10-e and 10-g FROM THE CONSENT AGENDA; 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).

PUBLIC COMMENT.....ITEM 5

None.

.....ITEM 6

PRESENTATION OF WILKINSON HOUSE OFFERS RECEIVED TO DATE. (9:22 a.m.) City Manager Kevin Rambosk noted a proposed sales contract contained in the Council packet, a copy of which is contained in the file for this meeting in the City Clerk's Office. Garrett Beyrent, realtor for potential buyer Lawrence Talbot, proposed that the City sell the house in its current condition, except for the removal of contaminants, to the highest bidder.

In response to Council Member Russell, Mr. Beyrent said he was unaware that the City had compiled deed restrictions but that he would include them in the offer. City Manager Rambosk said staff had reviewed the sales contract, but would not recommend proceeding at this time. Council Member MacIlvaine proffered a motion to not accept the offer; however, further discussion ensued. Council Member Herms noted that the contract is contingent upon all legal claims against the property being extinguished and the buyer being given clear title which is impossible due to current litigation on appeal. Attorney Larry Farese, representing the City in

this matter, said that the plaintiff's (Sibcy's) attorney had indicated an offer of \$4.3 million but did not however extend the offer in light of Council's recently stated interest in receiving an amount approximating the appraised value. He nevertheless said that the Sibcy offer would exceed the one currently under discussion, and would also settle the lawsuit. Council Member Herms added that the City has a carrying cost of 4-5 percent per year which could otherwise be invested, and Council Member Taylor noted a 9 percent annual cost which the City must reimburse the Collier County Historical Society according to the judgment.

Public Comment: None. (9:38 a.m.)

MOTION by MacIlvaine to NOT ACCEPT THE OFFER; 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).

CONSENT AGENDA

APPROVAL OF MINUTESITEM 10-a
September 30, 2002 Workshop, October 2, 2002 Regular, and October 16, 2002 Regular Meetings.

APPROVE THE FOLLOWING SPECIAL EVENTITEM 10-b (1)
1) Naples Philharmonic Orchestra Concert – Cambier Park Bandshell – 11/24/02

RESOLUTION 02-9848..... ITEM 10-d
A RESOLUTION DETERMINING PRELIMINARY SUBDIVISION PLAT PETITION 02-SD2 FOR PRELIMINARY PLAT APPROVAL TO SUBDIVIDE PROPERTY KNOWN AS TRACT G AT THE ESTUARY AT GREY OAKS, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.
Title not read.

RESOLUTION (Reconsidered – See Page 5) ITEM 10-f
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND VIC'S PAINTING, INC. FOR THE PAINTING OF TRAFFIC SIGNAL POLES AND SIGN STRUCTURES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by MacIlvaine to APPROVE CONSENT AGENDA ITEMS 10-a, 10-b(1), 10-d, and 10-f; 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).

END CONSENT AGENDA

APPROVE THE FOLLOWING SPECIAL EVENTITEM 10-b(2)
Edgewater Beach Hotel and Club Fall Celebration w/ Bonfire on Beach – 11/29/02 and 12/27/02 (9:39 a.m.) City Manager Kevin Rambosk stated that Police & Emergency Services and the Fire Marshall had recommended denial. Mayor MacKenzie voiced concern regarding a bonfire in addition to the one sponsored by the City, and Council Member Taylor raised objection to the commercialization of such an event. Vice Mayor Galleberg proffered a motion to deny; however, further discussion ensued. Fire Marshall James Rivard stated that the petitioner had provided neither site plans nor other relevant information, and expressed the view that adjacent beach is insufficient for this activity and that parking is also inadequate.

Petitioner Bill Doyle said he had however brought the site plans to the meeting, apologizing for the delay. He however clarified that his request is for a 30-inch wide self-contained portable

fireplace on the beach behind the high tide line for the enjoyment of hotel guests. Mr. Doyle further asserted that the hotel would supply parking and that the residential impact would be minimal. Council Members Russell and Herms suggested that the petitioner re-apply, meeting all criteria, and providing a more complete description of the request.

Public Comment: None. (9:47 a.m.)

MOTION by Galleberg to DENY ITEM 10-b; 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 02-9849.....ITEM 10-c
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES AND THE NAPLES AIRPORT AUTHORITY FOR AIRPORT RESCUE FIREFIGHTING STAFFING; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:47 a.m.). Police Chief Steven Moore stated that since built in 1989, Fire Station #3 at the Naples Airport had been staffed through an interlocal agreement which provides for two firefighters on site during flight hours. These firefighters are also the first responders for the commercial and residential areas just west of the airport. The airport provides the station, the two emergency vehicles, and pays all maintenance costs while the City provides staffing only. The reimbursement would increase from \$125,000 to \$275,000 for the first year of the new agreement, an increase of 120 percent, with any additional increases in the second and third years of the contract to be based on salary and benefit increases.

In response to Council, Chief Moore explained that, pursuant to prior agreement, the U.S. Transportation Security Administration pays the police officers an overtime rate with a maximum of \$476,000 which includes a 10 percent administrative fee. City Manager Rambosk added that although the City could remove one firefighter from the station between 10 p.m. and 6 a.m., staff did not deem this a safe environment for the firefighters, so the City itself underwrites the additional staff cost. Chief Moore estimated the fire staffing cost at the airport facility for 2003 at \$347,000, or approximately \$70,000 to provide fire service to residents in the area surrounding the airport.

Public Comment: None. (9:54 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9849 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 02-9850.....ITEM 10-e(1)
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND TRUTWIN INDUSTRIES, INC., FOR THE FURNISHING AND INSTALLATION OF TRAFFIC SIGNS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:54 a.m.).

RESOLUTION 02-9851.....ITEM 10-e(2)
A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND MUNICIPAL SUPPLY & SIGN CO. FOR THE FURNISHING OF TRAFFIC SIGNS; AUTHORIZING THE CITY

MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:54 a.m.).

It is noted for the record that Items 10-e(1) and 10-e(2) were considered concurrently.

City Manager Kevin Rambosk described these items as staff's normal traffic sign and control usage request. Two vendors had been recommended so as to provide backup for immediate sign replacement if necessary, to enable staff to choose the vendor which offered the more cost-effective sign, and because Trutwin Industries also has installation capability. Council Member Herms however said that he believed Vulcan, Inc., had been the low bidder, and asked that staff provide all the bids.

Public Comment: None. (10:00 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTIONS 02-9850 AND 02-9851 AS SUBMITTED; seconded Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

(Reconsideration) RESOLUTION 02-9852 ITEM 10-f

In response to Mayor MacKenzie, City Manager Kevin Rambosk said staff would address the painting of traffic lights at the intersections of Sixth Avenue with both Ninth and Tenth Streets.

MOTION by Galleberg to RECONSIDER ITEM 10-f; 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).

City Manager Rambosk explained that the signal poles and sign structures at the intersection of U.S. 41 and Davis Boulevard would be painted green with a galvanized finish, and would require repainting every five years. He added that although the contract price is \$66,000, the Florida Department of Transportation (FDOT) has funded \$60,000. Council Member Herms expressed concern that the paint may not adhere to the galvanized surface.

Public Comment: None. (10:02 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9852 AS SUBMITTED; seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

RESOLUTION 02-9853.....ITEM 10-g

A RESOLUTION GRANTING A 10 FOOT EASEMENT TO FLORIDA POWER & LIGHT FOR THE INSTALLATION OF UNDERGROUND ELECTRICAL SERVICE TO THE NEW TRANSFORMER LOCATED AT THE NAPLES PRESERVE FOR SERVICE TO THE HEDGES FAMILY VISITORS CENTERS; AUTHORIZING THE MAYOR TO EXECUTE THE EASEMENT; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Manager Kevin Rambosk (10:02 a.m.) who noted that Florida Power & Light (FPL) had determined the easement prior to any work on the boardwalk in order to reduce cost. He added that Parks and Parkways Design Superintendent Terry Fedelem had outlined the site to avoid any impact to the habitat areas, and that no trees had been removed in the process. Council Member Taylor observed that this was discussed at length at the Naples Preserve Steering Committee.

Public Comment: None. (10:05 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9853 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 Russell took exception to the fact the Naples Preserve Steering Committee and staff had discussed and later proceeded with this action without Council approval.

RESOLUTION 02-9854.....ITEM 11
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 read by City Manager Kevin Rambosk (10:06 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: Council Members registered no contact except Mayor MacKenzie who indicated a visit to the site. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Petitioner's representative Leonard Claggett stated that the proposed ornamental gate and masonry gatepost would significantly improve safety, specifically by eliminating unauthorized vehicles. He then observed a sloping drive that is approximately two feet above the crown of Gordon Drive at the property line, and said that a gate similar to the six foot high south gate, which is essentially at the level of Gordon Drive, would be eight feet high. Therefore, he said, the height of the gate had been reduced to five feet so the actual height above the crown of Gordon Drive would be six feet 11.5 inches, or some 11.5 inches higher than that allowed by Code. Mr. Claggett however pointed out that the gate is surrounded by extensive landscaping which mitigates the impact on views from Gordon Drive, is designed to comport with the character of the neighborhood, and is compatible with existing structures on adjacent properties.

In response to Council, Mr. Claggett stated the gate is approximately 31 feet from the road. Planning Director Ron Lee confirmed that the installation would comply with the proposed Port Royal gate ordinance, which is scheduled for Council review in December.

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

MOTION by MacIlvaine to APPROVE RESOLUTION 02-9854 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).

ORDINANCE 02-9855.....ITEM 12
AN ORDINANCE AMENDING SECTION 66-49, "YEAR ROUND LANDSCAPE IRRIGATION RESTRICTIONS" FOR THE PURPOSE OF CLARIFYING THE SCOPE OF EXEMPTIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:12 a.m.).

Public Comment: None. (10:13 a.m.)

MOTION by Galleberg to ADOPT ORDINANCE 02-9855 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).

Recess 10:13 a.m. to 10:37 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 02-9856.....ITEM 17-a
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND TAMIAMI BUILDERS, INC., FOR REPLACING CEILING AND WALL PANELS AT THE RIVER PARK BASKETBALL PAVILION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:37 a.m.). Community Services Director David Lykins stated that Tamiami Builders is currently performing the facilities maintenance additions at Fleischmann Park, and that staff believes the firm's proposal for this project to be fair and reasonable. He also noted that other vendors indicated no interest due to the size of the project and current backlogs. In further discussion, Mr. Lykins reported that the panels had been damaged by vandalism.

Public Comment: None. (10:40 a.m.)

MOTION by Herms to APPROVE RESOLUTION 02-9856 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).

RESOLUTION 02-9857.....ITEM 7-a
A RESOLUTION DETERMINING PETITION 02-LE3 FOR LIVE ENTERTAINMENT AT RIVERWALK AT TIN CITY LOCATED AT 1200 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 (10:40 a.m.).

RESOLUTION 02-9858.....ITEM 7-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 02-RIS9 FOR THE RIVERWALK AT TIN CITY LOCATED AT 1200 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 (10:40 a.m.).

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

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/received letters from property owners and phone calls concerning noise, and had visited the site; Wiseman/received the aforementioned letters and visited the site; Russell/greeted the petitioner, and received the aforementioned letters and one phone call concerning noise; MacIlvaine, Galleberg, and Herms/received the aforementioned letters and several phone calls; and Taylor/received the aforementioned letters and visited the site. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Petitioner's representative Vin DePasquale stated that Riverwalk has been offering live occasional entertainment over the last several years, and is now requesting it on weekends and holidays from 5 p.m. until 9 p.m. on a regular basis. Vice Mayor Galleberg and Council Member MacIlvaine noted citizen complaints; however, Mr. De Pasquale said he would ensure that the music would be directed toward the restaurant, and that it would be complementary to dining. Planning Director Ron Lee outlined the City's noise measurement procedures, explaining that in

this case measurement would occur at the seawall which is the property line. Mayor MacKenzie pointed out the existence of ambient noise in the area from boat, bridge, and air traffic, and therefore expressed approval for the proposed hours. She further suggested having a police officer demonstrate the use of the noise meter as well as acceptable noise levels so petitioners could operate effectively within the Code.

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

MOTION by Russell to APPROVE RESOLUTION 02-9857 (ITEM 7-a) AS SUBMITTED; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Herms to APPROVE RESOLUTION 02-9859 (ITEM 7-b) 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).

RESOLUTION 02-9859..... ITEM 17-b
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND COASTAL CUSTOM PAINTING, INC. FOR PAINTING OF THE RIVER PARK BASKETBALL PAVILION AND RESTROOMS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:02 a.m.).

Public Comment: None. (11:03 a.m.)

MOTION by Taylor to APPROVE RESOLUTION 02-9859 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 02-9860..... ITEM 17-c
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND AFFORDABLE FENCE AND SCREEN, INC., FOR FURNISHING AND INSTALLING FENCING AT THE RIVER PARK RECREATION COMPLEX; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:03 a.m.) who said the City would also install this type of black, powder-coated chain link fence at a number of other facilities because it is considered more attractive than aluminum fencing and blends more easily with landscaping. He however said that the plaza area would contain a decorative, aluminum fence with the appearance of wrought iron.

Public Comment: None. (11:10 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9860 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).

..... ITEM 16-b
DISCUSSION OF OPERATION OF THE NAPLES PRESERVE (11:10 a.m.) City Manager Kevin Rambosk provided a presentation on the Naples Preserve, a copy of which is contained in

the file for this meeting in the City Clerk's Office. (See also Attachment 1.) In response to Council Member Herms, Mr. Rambosk noted that staff would in the coming year consider the recommended educational maps and exhibits depicting native animals and plants, and Mayor MacKenzie suggested instead borrowing these types of exhibits from area environmental groups. Due to inquiries regarding plans for the south end of the property, after conferring with Council Member Taylor, Mr. Rambosk said he had asked staff to develop a landscaped border that would both preserve and screen the meadow area while still presenting a finished appearance from the highway. In further discussion, Mr. Rambosk said staff had discussed including restrooms that would be accessible when the Preserve is open, and Community Services Director David Lykins suggested also posting a notice of restroom facilities at Fleischmann Park. Council also learned that having been lighted for the past several months, no incidents of vandalism had occurred at the Preserve. Mayor MacKenzie expressed appreciation for the presentation, and suggested retaining flexibility in the floor plan.

RESOLUTION 02-9861.....ITEM 8-a
A RESOLUTION DETERMINING VARIANCE PETITION 02-V7 FROM SECTION 102-121 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES THAT A DOCK MUST BE 20 FEET FROM THE SIDE PROPERTY AND IF IT EXTENDS MORE THAN 22 FEET INTO THE BAY IN ORDER TO REACH 5 FEET OF WATER DEPTH, THE SIDE YARD SETBACK INCREASES 2 FEET FOR EVERY 1 FOOT BEYOND THE 22 FEET IN ORDER TO PERMIT THE CONSTRUCTION OF A DOCK WITH BOAT LIFT EXTENDING TO WITHIN 7.5 FEET OF THE SIDE LOT LINE AT 1787 GALLEON DRIVE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:39 a.m.).

RESOLUTION 02-9862.....ITEM 8-b
A RESOLUTION DETERMINING VARIANCE PETITION 02-V8 FROM SECTION 102-121 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES THAT A DOCK MUST BE 20 FEET FROM THE SIDE PROPERTY AND IF IT EXTENDS MORE THAN 22 FEET INTO THE BAY IN ORDER TO REACH 5 FEET OF WATER DEPTH, THE SIDE YARD SETBACK INCREASES 2 FEET FOR EVERY 1 FOOT BEYOND THE 22 FEET IN ORDER TO PERMIT THE CONSTRUCTION OF A DOCK WITH BOAT LIFT EXTENDING TO WITHIN 7.5 FEET OF THE SIDE LOT LINE AT 1801 GALLEON DRIVE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:39 a.m.).

It is noted for the record that Items 8-a and 8-b were considered concurrently.

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/visited the site and watched the Planning Advisory Board (PAB) meeting; Russell/acquaintance with the petitioner's representative; and Wiseman, MacIlvaine, Galleberg, Herms, and Taylor/no contact. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Petitioner's representative Gary Carlson stated that both property owners deem it prudent to position the docks together and not locate them in the center of their properties so as to produce less neighborhood impact. Mr. Carlson however clarified that a common dock was not feasible but that the docks would be compatible in design. Mayor MacKenzie suggested, however, that a new owner may wish to relocate one of the docks; Mr. Carlson said that in this case the property owner could reposition the dock in the center of the property.

Natural Resources Manager Jon Staiger explained that a dock in Port Royal can extend into the canal 22 feet from the tow of the riprap, and that in this area without dredging, the property owners must extend dockage 88 feet offshore in order to reach a depth of minus five feet, which is the depth defined as navigable. They may not, however, approach within 75-100 of the federal channel, he added. Mr. Carlson further said the docks are 25 feet from the property line with 15 feet between the boat lifts, and affirmed that the docks would extend no farther than existing installations. Dr. Staiger confirmed support by the Port Royal Property Owners Association noting that it is advantageous to the neighbors on either side for the docks not to be centered on the property.

Council Member Russell however pointed out that according to variance approval standards, the plight of the applicant must be due to unique circumstances not self-created. Planner Ann Walker stated that staff had admittedly not found special circumstances in this case which had not been created by the petitioners, but had instead relied heavily on the intent paragraph which she said she had found to have originated in a Council discussion centered on the rationale for a text change. This would allow some flexibility in cases where special circumstances exist, regardless of whether they met the letter of the law but are in harmony with the intent of the Code. She further noted that the dock should not become a nuisance to neighbors by virtue of its location, that it should be the most practical or logical solution, and that it should yield greater aesthetic character. Each of these conditions had been met in this case and staff therefore recommends approval, Ms. Walker added. Vice Mayor Galleberg said he believed the special circumstance to be the mutual interest of the neighbors and the fact that properties would be enhanced. Mayor MacKenzie said that while she concurred, she did not however agree with the Planning Advisory Board's (PAB's) suggestion to approve such variances administratively.

Public Comment: None. (11:54 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 02-9861 (ITEM 8-a) AS SUBMITTED; *seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

MOTION by Galleberg to APPROVE RESOLUTION 02-9862 (ITEM 8-b) AS SUBMITTED; *all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Recess 11:54 a.m. to 1:28 p.m. It is noted for the record that Council Member Taylor and Council Member Herms returned at 1:30 p.m. and 1:31 p.m. respectively.

.....**ITEM 13**
DISCUSSION OF RECOMMENDATIONS FOR THE COLLIER LEGISLATIVE DELEGATION (1:28 p.m.) City Manager Kevin Rambosk stated that staff had identified Council's main issues of interest, and provided a brief overview of each along with the requested action. (See Attachment 2.)

Council Member Russell expressed approval of the proposed topics, and suggested crafting resolutions due to their greater impact. Mayor MacKenzie said she believed Collier County had proposed two issues that directly affect the City; namely, the County's support for discretionary real estate transfer tax, which is a tax on the resale of homes, as well as the discretionary document stamp surcharge. She said she would support neither option, but would in fact support

expanding the Tourist Development Tax to a fourth cent for road improvements. Council Member MacIlvaine said he believed a master flood insurance program to be of key importance but that he believed the requirement to retrofit high-rise buildings with fire sprinklers to be overly expensive and unnecessary. He also expressed the view that the residential pool safety act is unenforceable, and State enforcement of automatic sprinkler system requirements to be of limited importance. Mr. MacIlvaine then recommended prioritizing and summarizing the main points of each item. Vice Mayor Galleberg stated his concurrence with Mr. MacIlvaine's comments and observed that, unlike the County's proposals, the City's proposals seem to be directed toward less government. He then said he had served on the Tourist Development Council (TDC) but had not supported the fourth cent tax for roads. Council Member Herms however said he believed a fourth cent to be a reasonable funding source, saying the tourists should share the burden for the significant amount of congestion they create. He also voiced support of the master flood insurance program and the retrofitting of the high-rise buildings with fire sprinklers, and said the residential pool safety act should however be addressed. Council Member Taylor concurred but also suggested discussing the recently enacted school class size amendment, characterizing it a burden to the taxpayers. Council Member Wiseman expressed support for the retrofitting amendment, predicting that it has the greatest chance for success of all the proposed items. City Manager Rambosk said he would summarize the items including the major pros and cons and distribute a draft to Council for review and recommendations. In further discussion, Vice Mayor Galleberg suggested contacting the Florida League of Cities in order to gather support for the master flood insurance program. While concurring that Council should consider every perspective, he observed a much greater capacity to address this problem at the State level.

RESOLUTIONS (Withdrawn – See Page 2.)ITEM 14
CONSIDER AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF
NAPLES AND CARVER FINANCE, INC. CONSIDER APPROVAL OF AMENDMENT
TO LEASE AGREEMENT BETWEEN CARVER FINANCE, INC. AND G.W. CARVER,
LIMITED. Editor's Note: No draft resolutions were provided for this item.

CORRESPONDENCE AND COMMUNICATIONS (1:47 p.m.)

In response to Council Member Taylor, City Manager Kevin Rambosk confirmed that no letter of intent had been forwarded to the Lake Park neighborhood association with regard to locating the Fun Time Nursery in Fleischmann Park; however, he said that he would contact the association with relevant information so it could offer public comment at the Community Services Advisory Board (CSAB) and Council Meetings. He further said that the Norris Community Center is on schedule and that staff would provide a full presentation, including final design and funding, at the next Council Workshop and Regular Meeting. He added that the renovations at Lowdermilk Park are also on schedule, but that staff is awaiting another guaranteed maximum price which it would in turn present to Council.

Vice Mayor Galleberg noted that beach raking had not yet begun, although Council had recently enacted a resolution relative to raking on an as-needed basis which was also approved by the Collier County Coastal Advisory Committee (CCCAC). Council then concurred with Mr. Galleberg's proposal that the City Manager correspond with the County Manager, restating the City's wishes, and sending copies to both the County Commissioners and the CCCAC. Mr. Galleberg then clarified for the record that, contrary to a statement he had made at the November

4 Workshop Meeting, Council had in fact received and discussed the Public Art Advisory Committee (PAAC) by-laws.

Referring to Item 7 (see Page 8), Council Member MacIlvaine recommended demonstrating via the City's noise meter the legal noise limits on the property line of all new businesses receiving live entertainment or extended hours permits.

Council Member Russell expressed appreciation to Staff Action Meeting (SAC) members including Vice Mayor Galleberg for their efforts during a recent SAC meeting. He then said that he had not received all the PAAC minutes and requested that staff place minutes from all committee meetings on the web site. In addition, he questioned whether all art submissions receive CSAB review prior to Council review, noting he had seen no CSAB recommendation regarding the recently discussed park bench sculpture.

Council Member Wiseman stated that she had requested the City Manager to provide information on the City's possible discretion with regard to the proposed AT&T/Comcast merger. She explained that other Florida cities are attempting to revoke their franchises, and that others have been able to secure concessions for their residents during the process of approving the merger.

ORDINANCE (First Reading).....ITEM 9
AN ORDINANCE DETERMINING REZONE PETITION 02-R5 FOR PROPERTY LOCATED AT 896 RIVERPOINT DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO REZONE THE SUBJECT PROPERTY FROM PD, PLANNED DEVELOPMENT, TO PD, PLANNED DEVELOPMENT IN ORDER TO ALLOW FOR THE CONSTRUCTION OF A NEW TWO-STORY CLUBHOUSE FACILITY, THE ADDITION OF 24 BOAT SLIPS, AND IMPROVEMENTS TO THE STORMWATER SYSTEM AND THE LANDSCAPING; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:57 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/received numerous letters and phone calls both for and against the petition, viewed the Planning Advisory Board (PAB) meeting, met twice with former mayor Bill Barnett and once with representations from the Club in order to understand both points of view, the substance of which is contained in the public record; Wiseman/received numerous letters which she said she would place in the public record, had phone conversations with former Council Member John Nocera who supported the petition and Mr. Barnett who opposed the slip addition, and received a written request for a meeting with the Club, but had been unable to attend; Russell/received numerous letters, had phone conversations from Messrs. Barnett and Nocera, and met on site with the leadership of the Club; MacIlvaine/studied the Council packet, watched the PAB meeting, met with officials of the Club, Mr. Barnett, and several others, visited the docks, and observed the site and the marking stakes in the water; Galleberg/received numerous letters, watched the PAB meeting, met with three members of the Club who supported the petition, spoke to Mr. Barnett, and observed the site; Herms/observed the site, had a telephone conversation with last year's commodore, Tony Maio, who supported the petition and with Mr. Barnett, was contacted by Mr. Nocera but had been unable to return his call, and received correspondence from a number of parties; and Taylor/familiarity with the property, received aforementioned correspondence, received a request from Mr. Maio to attend a meeting but was unable to attend, had telephone conversations with

Messrs. Nocera and Barnett, spoke to David Parrish who supported the petition, and Bob Geroy who did not voice an opinion, and listened to the PAB meeting audiotape. Notary Public Jessica Rosenberg then administered an oath to those intending to offer testimony; all responded in the affirmative.

Naples Sailing and Yacht Club attorney John Passidomo stated that after his remarks, Turrell & Associates would address the regulatory scheme for marina expansion under the City's marina siting criteria, as well as riparian lines, navigability, and the method by which the City had determined that the 605 feet of club shoreline creates a right to as many as 109 wet slips on the property. They would then illustrate the process undertaken to exhaust all reasonable alternatives and ensure that the dock design for the new 24 wet slips proposed would produce the least impact on the surrounding natural resources. In addition, he said they would discuss their investigation of the bay bottom and the Development of Significant Environmental Impact (DSEI) submittal.

Attorney Passidomo then explained that the planned development (PD) petition complies with all the dimensional and performance standards in the underlying C2-A Waterfront District, and requests no variances or waivers, and cited DSEI requirements, which include encouraging flexibility in the use of land and ensuring that the proposed uses or activities are compatible with the natural resources of the site. To that end, he observed that the club intends to operate its facilities in the same manner after redevelopment with no change in usage, but noted the requirement for a residential impact statement and an extended hours permit.

Mr. Passidomo then stated that the Club has operated a boating and sailing club on the property for over 30 years. As one of only two significant yacht clubs on Naples Bay, the other being the Naples Yacht Club, the Club provides a significant water-dependent and water-related use facility in the waterfront commercial district. The Club proposes to extend only 400 feet into Naples Bay, as opposed to the Naples Yacht Club which extends 800 feet, he said, and further noted that the Club is unusual in the waterfront mixed use district in that it is not physically connected to any other land in any other part of the district. Furthermore, reaching the Club by land requires traversing a significant part of the downtown mixed-use district and clarified that there is no integrated, comprehensive network of public access to the water in this part of the waterfront commercial district. Mr. Passidomo therefore said that he respectfully submitted that the appropriate time to require a mixed use of the property or public access to the waterfront is upon abandonment of the Club use and submittal of a mixed commercial use proposal.

He then said the plan currently under consideration is intended to better serve the approximately 400 members of the Club with a larger building of some 6,200 square feet, and cited the following significant public benefits derived from the proposal: encourages the retention and development of marine related facilities on Naples Bay; brings a 30-year old facility into compliance with current Codes; eliminates an antiquated stormwater system improving stormwater runoff and stormwater quality pre-treatment; requires installation of dock pump-out facilities; relocates the clubhouse to approximately 70 feet to the west away from the waterfront; introduces landscaping meeting Codes and planning policies; improves City right-of-way adjacent to the property; provides a boat slip free of charge to local law enforcement; expands an existing marina facility; situates a marina in or near well-flushed, deep channels in natural

waterways; and dredges and marks a channel to enhance navigability around the site. Attorney Passidomo also noted that the plan has been revised and improved based upon comments received from City staff as well as neighboring property owners, and that staff has recommended approval.

In response to Council, Attorney Passidomo stated that slips are typically used on an infrequent, but extended basis, and that the parking requirements for the dock facilities are computed at the rate of one space per eight slips which generates excess spaces. Council Member Wiseman requested a thorough analysis comparing this petition and the Naples Yacht Club. After learning that the Club had not discussed constructing the new clubhouse without the proposed expansion, and that no other plan had been presented to the membership, Mrs. Wiseman took the position that Council should then not craft a compromise unacceptable to the Club.

Todd Turrell, ocean engineer and principal of Turrell & Associates, stated that he had been retained to analyze the marina expansion to the extent of the property limits, noting there are currently 81 slips which are concrete floating docks. He then said the Manatee Protection Plan and the City's marina siting criteria allow a particular number of slips per 100 feet of shoreline. Since there is sufficient depth and no marine resources being impacted, he said this would allow a total of 109 slips, although the proposal is for 105 (81 existing plus 24 additional). He added that these additional slips would extend less than 200 feet into the bay, and would be 75 feet from the federal channel. He expressed the opinion that this is the only way to expand this facility, from an ocean engineering standpoint, since other alternatives considered only extended the club farther into the bay. The riparian rights line, once approved by the State and federal government agencies, would run to the center of the channel on the east side of the property, he added. In response to Mayor MacKenzie, Mr. Turrell said a 50 foot boat emerging from the southeastern-most slip heading south would travel within 164 feet of the closest property and that there would be no navigational issue. Further, he said the new channel being created would have a significant public benefit, expressing the opinion that the present channel is ill defined and contains navigational hazards, and that he had contacted the Army Corps of Engineers with regard to interfacing the project with the federal channel. Noting that the recently approved Boat Haven plan includes a significant reduction in boat slips, he predicted less boat traffic in this corridor despite the Club's expansion.

Christian Spilker, Turrell & Associates marine biologist, noted that in preparing the DSEI for this project, he had researched potential impacts to natural resources and found there to be no submerged resources such as sea grasses or oyster beds. In fact, the water, which currently contains metals, would greatly benefit from the proposed stormwater retrofit, he said, and further suggested use of a sewage pump-out facility. In addition, Mr. Spilker said he had recommended concrete floating docks since they would produce the least impact, facilitate mooring, and attract oysters and beneficial algae.

David Corban of Architectural Network said that in providing computerized visualizations depicting how the proposed wet slips would affect views of properties on the east side of the bay, he had photographed from three different locations and inserted some boats to show the impact and location of the docks. (Copies of these documents are contained in the file for this meeting in the City Clerk's Office.) While the new slips can be seen from each view, Mr. Corban

contended that the panorama of the bay would remain intact. In response to Council Member MacIlvaine, he however conceded that an eight-foot hedge on one property would in fact impede one owner's view across the neighboring property onto the bay.

In response to Council, City Attorney Robert Pritt confirmed the existence of certain legal principles dealing with views as part of a riparian right, but that common law riparian rights are those incident to land bordering on navigable waters and include rights of ingress, egress, boating, bathing, fishing and, to some extent, the enjoyment of a view. While noting no absolute right in Florida to an unobstructed view, Mr. Pritt said that erecting a structure so close as to totally obscure a view may constitute a basis for a claim.

In further discussion, Natural Resources Manager Jon Staiger stated that by dredging a channel, the Club would provide the access it would otherwise interrupt with this project. He added that the Naples Yacht Club did not require Council approval because there was no associated dredging activity, and that it had simply obtained a building permit after receiving Department of Environmental Protection (DEP) and the Army Corps of Engineers (ACOE) permitting.

Planner Ann Walker affirmed that the petitioner is proposing one parking space for eight slips which is based on actual usage of the docks the previous year. However, Vice Mayor Galleberg recommended adherence to the underlying Code requirement in the C2-A district of one space per four slips. Planner Walker further noted she could find no rationale for requiring public access onto this isolated piece of property. Mayor MacKenzie however pointed out that existing uses may nevertheless change, and noting the City's upcoming plans to master plan the waterfront, Council Member Russell cautioned against foregoing an opportunity to accommodate greater public access.

Public Comment: (3:28 p.m.) **David Nordhoff, 8420 Abbington Circle**, current Club Commodore, read a prepared statement into the record (see Attachment 3) requesting Council's approval of the expansion. **Tony Maio, 515 Third Street North**, former Club Commodore and present Building Committee Chair, explained that the new clubhouse would not increase dining space and would instead be devoted to improved Dockmaster facilities, a chart room, library, showers, locker facility, and additional storage and office space. He further commented on the necessity of the additional dockage, noting 36 people currently on the slip waiting list, and said 70 percent membership had voted in favor of the proposed expansion. **Charlene Allen, 2717 Buckthorn Way**, Executive Board Member and former Fleet Captain, provided information on the membership's boating activities and events. She then asserted the Club's commitment to being a good neighbor, and said it would carefully maintain its facilities and constitute no adverse effect on Naples Bay. Ms. Allen however voiced frustration over the lack of suitable dock space, and requested Council's approval of the petition. **Bill Kroeschell, 272 Mooring Line Drive**, Club member and Collier County Coastal Advisory Committee representative, said that newer homes along Mooring Line Drive have greatly restricted the views once enjoyed, but that he had not objected observing that views are not in fact a right. He then asked that Council approve this petition, saying it is important to the future of the Club. **Falconer Jones, 620 Sandpiper Street**, (Planning Advisory Board Member) said he did not believe the proposed plan to be the best possible slip layout characterizing it as too large. He then submitted an alternative sketch, (Attachment 4). Mr. Jones further urged the Council to determine a location it deems

most appropriate for the docks and then allow the petitioner to fit in the docks therein. **Joseph Frizella, 1350 Curlew Avenue**, expressed concern about the project greatly obscuring his view of the bay, noting also its potentially negative impact on property values. **Theresa La Forge De Baun, 1300 Curlew Avenue**, introduced into the record a sample of live oysters from the area (photographs of which are contained in the file for this meeting in the City Clerk's Office). She then stated that her diminishing view of the bay would be further greatly reduced by the proposed project, and urged Council not allow a private club to take precedence over City residents. **John De Baun, 1300 Curlew Avenue**, distributed pictures of his home, copies of which are contained in the file for this meeting in the City Clerk's Office. He then pointed out that the Club's facility had expanded seven times since 1974 without a permit, and expressed concern regarding further expansion. In response to Council, Planner Walker said she had not researched previous expansions. **John Kletkowitz, 1343 Osprey Avenue**, expressed concern about the new docks obscuring his view of the bay, future maintenance of the channel being created, and the concept of using public lands for the convenience of a private club. **Ron Palmer, 1333 Osprey Avenue**, voiced opposition to the dock expansion, saying it would alter his views, further congest the bay, alter boat traffic flow, and degrade water quality. He disputed the Club's assertion of the distance from the new docks to the property owners' seawalls, stating that he had actually found it to be 141 feet based upon the Club's own marker. In addition, he said the distance from the end of his dock to the Club's dock would be 95 feet, which he predicted would present a hazardous situation. In conclusion, Mr. Palmer said that the substantial amount of dredging required would not benefit the public, and that over 40 percent of the Club members had actually expressed opposition to the expansion due to concerns regarding increased membership and dockage fees. **Rick Marchisio, 3115 Gulf Shore Boulevard North**, said that with respect to a previous request for comparisons, the depth of the water between the land and the Club would be greater than that between the Naples Yacht Club's boats and the channel. In addition, he noted the position of the slips and commented favorably on the views of boats. Former Mayor **Bill Barnett, 1320 Osprey Avenue**, said that although he did not object to the clubhouse, he could not support the proposed additional slips. He contended that there could be no comparison between this club and the Naples Yacht Club because the Yacht Club docks are not at all close to other properties. Mr. Barnett added that views would be dramatically altered, most residents would not appreciate those items of public benefit enumerated by Mr. Passidomo, and that the proposed docks would seriously impede navigation.

Attorney Passidomo said that after working with staff, the Club had determined its entitlement to 109 slips on the property, and instructed its consultants to design a facility that would produce the least impact. He then suggested having Mr. Turrell testify as to the suggested layout proposed by Falconer Jones about moving the facility 10-15 feet west into the setback in the federal channel, as well as channel maintenance, and navigation issues. Council Member Herms said he however believed this additional testimony to be unfair if residents were not extended the same courtesy. City Attorney Pritt said that the petitioner typically presents a rebuttal and then a summary. Mr. Passidomo also asserted that questions had been raised that the consultants could address, but that he had no objection to further refutation of their testimony.

Mr. Turrell confirmed that he had in fact considered redesigning the existing facility as suggested by Mr. Jones; however matching the standard engineering criteria would produce a much larger facility because some of the existing slips do not meet the 1.5 backing space criteria.

Mr. Turrell further said the channel would be as wide or wider than the existing waterway and clearly marked, and that he did not foresee any navigational issues. He also voiced doubt that placing the facility closer to the federal channel as suggested would be permitted by the ACOE. Mr. Corban then explained that the bay views for two houses mentioned are actually across other people's property, and that various factors including property redevelopment and an 8-foot hedge could block their views. Mr. Spilker also said he did not dispute the likelihood of live oysters in front of Mrs. De Baun's home due to the shallow water, but that he had found none in the project area.

In response to Council Member Taylor, Planner Walker said there is nothing in the petition guaranteeing continued maintenance of the channel, but that it is in fact necessary for the Club to be able to move a number of its boats out from the eastern property line. In further response to Council, Ms. Walker stated that a prior Council deliberation of a request by the Charter Club had dealt with how to determine riparian lines if the property lines could not be extended straight into the water. Planning Director Ron Lee added that the Charter Club had also projected the most advantageous area of riparian rights which infringed upon the City's riparian rights. Natural Resources Manager Staiger said that with regard to the Club, there is no delineated channel, and the normal procedure is to extend the riparian rights lines from the property corners to the thread of the channel, which is the centerline of the navigable width of the waterway. In further discussion, he said that the Club would be required to obtain a submerged land lease as well as permits from the DEP and the ACOE to construct the marina.

Council Member MacIlvaine proffered a motion for approval; however, Vice Mayor Galleberg suggested that parking requirements in the PD revert to one space per four slips and stipulating that the clubhouse be built as presented with two stories plus cupolas. Mr. MacIlvaine concurred saying the Club should be required to obtain another PD to construct a three story building in the future.

MOTION by MacIlvaine to APPROVE ITEM 9 WITH THE SITE PLAN AND ELEVATIONS AS PRESENTED WHICH REFLECT A TWO-STORY BUILDING INCLUDING THE CUPOLAS NO MORE THAN 42 FEET IN HEIGHT, AND SPECIFYING ONE PARKING SPACE FOR FOUR SLIPS; seconded by Galleberg. This motion failed 2-5, all members present and voting (Galleberg-yes, Taylor-no, Russell-no, Wiseman-no, Herms-no, MacIlvaine-yes, MacKenzie-no).

Council Member Taylor expressed concern regarding both the intensity and maintenance requirements of the marina, as well as the impact on views of the bay. Although he said he believed the Club and the surrounding property owners to be good citizens, and commended the proposal, Council Member Russell said that he nevertheless was concerned about the lack of connection to the waterfront, and therefore could not lend his support. Council Member Wiseman said she ascertained no significant public benefit to be derived from this project, and expressed concern regarding the effect on navigation. Although commenting favorably on the clubhouse redesign and proposed landscaping, Council Member Herms voiced concern regarding the impact upon residents and property values and suggested exploring alternate designs. Mayor MacKenzie expressed concern regarding repercussions to neighboring properties and to navigation, and suggested a smaller facility.

Mayor MacKenzie then suggested approving the clubhouse and inviting the Club's Board of Directors to submit an alternate design for the dock proposal. Council Member Wiseman however recommended continuing the petition asserting that all components are integrated and should be reviewed as a whole. Planning Director Lee noted that a petitioner can resubmit only after 12 months if a rezone petition is denied. With respect to continuance, Mr. Passidomo said he would work with his client to craft a proposal that would be acceptable to Council and the community.

Public Comment: (5:04 p.m.) previous speaker **John De Baun** requested that Council conclude this matter during the winter season when he and other residents would be present. In response to previous speaker **Bill Barnett**, City Attorney Pritt confirmed the petitioner would not be required to again go before the PAB.

MOTION by MacIlvaine to CONTINUE ITEM 9 TO THE DECEMBER 4, 2002 REGULAR MEETING; seconded by Wiseman and unanimously carried, all members present and voting

Recess 5:06 p.m. to 5:21 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 02-9863.....ITEM 15
A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AGREEMENT FOR PROVISION OF LEGAL SERVICES WITH THE LAW FIRM OF ROETZEL & ANDRESS, ROBERT D. PRITT AS LEAD ATTORNEY; AND PROVIDING AN EFFECTIVE DATE. Title not read. Mayor MacKenzie characterized the proposed three-year contract as straightforward, pointed out that it is based on the City's current agreement with the firm, and takes into consideration concerns expressed by Council, including bringing more specialist legal work in-house. She added that the City's labor attorney had reviewed the contract and submitted suggestions which have been incorporated into the revised version. All attorney services except for litigation would be performed at a cost of \$175 per hour, Mayor MacKenzie noted, representing a significant savings in cable, personnel, and labor issues. Litigation services would be performed by partners at the following rates: FY 2002-03 - \$200 per hour; FY 2003-04 - \$225 per hour; and FY 2004-05 - \$235 per hour. This too represents a savings as other litigation attorneys had charged significantly more, she added.

Council Member Wiseman questioned the necessity of a three-year agreement, noting the annual contract review would allow either party to revise hourly rates. Because of the option for either party to cancel the agreement with 60 days' notice, she suggested simply allowing the contract to proceed until terminated. Attorney Fred Hardt said however that although there is an option for an annual review, he would prefer not to negotiate each year and instead retain the above rates for the entire three-year period. In further response, City Attorney Pritt said Roetzel & Andress would give the City an annual multi-page briefing on any new legislation affecting Florida cities after legislation is passed. Council Member Wiseman however recommended early identification of any issues that may adversely impact the City in order to involve the local legislative delegation. She also suggested omitting the first sentence in Paragraph 8 regarding conflict of interest as awkward and further said that Council should be cognizant of the overall fiscal impact as a result of the increased rate. City Manager Kevin Rambosk explained that the City would be able to accommodate the increase; however, funds must be specifically allocated during the budgeting process.

Council Member Russell observed that the increased rate is still below market, and commented favorably on the firm's representation of the City. Council Member MacIlvaine said he believed the non-general legal services would be costly as it is not included under the cap; Mayor MacKenzie pointed out that the Council itself is however the arbiter of these issues. City Attorney Pritt further affirmed that Roetzel & Andress has telecommunications specialists. Vice Mayor Galleberg expressed support of the contract noting only modest past increases. Council also learned that savings would accrue through representation by the firm in cable TV matters and in labor issues that would greatly offset the cap increase. Upon analysis, Council Member Herms said he nevertheless predicted increases in the coming years of \$100,000, \$142,000 and \$157,000 respectively. Noting that the firm had performed 2,800 hours of service the prior year, he predicted that two in-house attorneys would save the City approximately \$300,000.

In response to Council Member Taylor, City Attorney Pritt said the firm would maintain the City's files as long as is required under the public records law and therefore agreed that Paragraph 7 can be stricken. Council Member Wiseman proffered a motion to approve with conditions specified below. Responding to Council Member Herms, Vice Mayor Galleberg took the position that two in-house attorneys would not match the breadth of services available from Roetzel & Andress. Mayor MacKenzie added that the contract accrues to only a two percent increase over the next three years. Further, she characterized the contract as fair and said she believed it would yield a cost savings to the City in the long run.

Public Comment: None. (5:56 p.m.)

MOTION by Wiseman to APPROVE RESOLUTION 02-9863 CHANGING IN PARAGRAPH 2 "ANNUAL ASSESSMENT OF NEW PROPOSED AND ADOPTED LEGISLATION," DELETING PARAGRAPH 3 (ANNUAL CONTRACT REVIEW), AND DELETING THE FIRST SENTENCE IN PARAGRAPH 8; seconded by Galleberg and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

Although commenting favorably on the firm's legal services, Council Member Herms said this would accrue to a 20-35 percent increase in fees, and said an in-house attorney would be financially prudent. Vice Mayor Galleberg expressed appreciation to Mayor MacKenzie for her efforts in the negotiation.

**RESOLUTION (Withdrawn – See Page 2.)ITEM 16
CONSIDER SUBMITTING A GRANT APPLICATION FOR COLLIER COUNTY
TOURIST DEVELOPMENT COUNCIL GRANT FUNDING. (Editor's Note: No draft
resolution was provided for this item.)**

PUBLIC COMMENT (5:56 p.m.).....

Falconer Jones, 620 Sandpiper Street, said the Wilkinson House should be sold without deed restrictions. He further suggested informing potential buyers that it is located in the historic district and therefore exempt from Federal Emergency Management Agency (FEMA) renovation guidelines. Mr. Jones also recommended expanding the historic district to include as many historic structures as possible and expressed appreciation regarding Council's decision on the Naples Sailing and Yacht Club (See Item 9), predicting a satisfactory resolution.

Council Member Herms expressed support for expanding the historic district into other areas of the community saying it would minimize changes to the FEMA elevations. City Manager Kevin

City Council Regular Meeting – November 6, 2002 – 9:00 a.m.

Rambosk said he would direct the Building Official to distribute information on the allowed renovations to anyone requesting information on the Wilkinson House, and Mayor MacKenzie suggested asking the PAB to research relevant information regarding historic districts.

ADJOURN
6:03 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Jessica R. Rosenberg, Recording Specialist

Minutes Approved: 12/04/02