



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – December 18, 2002 – 9:00 a.m.**

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Mayor MacKenzie called the meeting to order and presided.

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**ROLL CALL .....ITEM 1**

**Present:**

Bonnie R. MacKenzie, Mayor  
Gary Galleberg, Vice Mayor

**Council Members:**

Joseph Herms  
William MacIlvaine  
Clark Russell  
Penny Taylor  
Tamela Wiseman

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**Also Present:**

Kevin Rambosk, City Manager  
Robert Pitt, City Attorney  
Ron Lee, Planning Director  
Tara Norman, City Clerk  
David Lykins, Community Services Director  
Jon Staiger, Natural Resources Manager  
Ron Clarke, Deputy City Clerk  
Karen Kateley, Administrative Specialist  
Sharon Kenney  
Don Garrett  
John Passidomo  
Tony DiFoggia  
Mimi Wolok  
Falconer Jones  
Bill Barnett

Bill Kroeschell  
Mark Muller  
Henry Kennedy  
Georgia Mosier  
Arlene Guckenberger  
Pastor Gene Scott

**Media:**

Dianna Smith, Naples Daily News

Other interested citizens and visitors.

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

Pastor Gene Scott, Celebration Community Church

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

Purple Martin Week Proclamation

**SET AGENDA.....ITEM 4**

Add Item 6-b – Development of Sensitive Environmental Impact (DSEI) for Naples Sailing and Yacht Club

Add Item 6-c – Residential impact statement for Naples Sailing and Yacht Club

***MOTION by MacIlvaine to ADD ITEMS 6-b AND 6-c; seconded by Russell  
and unanimously carried, all members present and voting (Galleberg-yes,***

*Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Add Item 17-b – Authorization to request additional funding from Tourist Development Council (TDC) for Lowdermilk Park Pavilion project

**MOTION** by Russell to **ADD ITEM 17-b**; 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).

Add Item 23 – Scheduled start time for Hamilton Harbor petition (Special Meeting of January 21, 2003 at 9:00 a.m.)

**MOTION** by Russell to **ADD ITEM 23**; 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 **SET AGENDA ADDING ITEMS 6-b, 6-c, 17-b, AND 23, CONTINUE ITEM 9-d TO THE JANUARY 22, 2003 REGULAR MEETING, AND WITHDRAW ITEM 14**; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**PUBLIC COMMENT.....ITEM 5**  
None.

#### CONSENT AGENDA

**APPROVAL OF MINUTES.....ITEM 9-a**  
September 4, 2002 Special, September 9, 2002 Special, November 20, 2002 Regular, and December 2, 2002 Workshop Meetings.

**SPECIAL EVENTS.....ITEM 9-b**  
1) Meridian Broadcasting outdoor street dance to benefit the P.O.L.O. Club of Collier County – Bayfront – 1/10/03.

**RESOLUTION 02-9896.....ITEM 9-c**  
**A RESOLUTION DETERMINING RENEWAL OF LIVE ENTERTAINMENT PERMIT APPROVAL FOR THE ISLAND CLUB OF NAPLES, INC., LOCATED AT 600 NEAPOLITAN WAY, UNIT 159, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION (Continued – See Item 4).....ITEM 9-d**  
**A RESOLUTION APPROVING THE PLACEMENT OF AN ETCHED GLASS PIECE OF ART IN CITY HALL PROVIDED BY THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 2174 AND THE FRATERNAL ORDER OF POLICE LODGE 38; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 02-9897.....ITEM 9-e**  
**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND COMARK GOVERNMENT & EDUCATION SALES, INC., FOR THE PURCHASE OF EIGHTEEN PANASONIC TOUGHBOOK 28 LAPTOP COMPUTERS FOR THE POLICE AND EMERGENCY SERVICES DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 02-9898.....ITEM 9-g**  
**A RESOLUTION APPROVING A FIRST AMENDMENT TO THE CONSTRUCTION MANAGEMENT AGREEMENT BETWEEN THE CITY OF NAPLES AND O-A-K/FLORIDA, INC., dba OWEN-AMES-KIMBALL COMPANY, FOR ADDITIONAL WORK AT THE RIVER PARK COMMUNITY CENTER; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**MOTION by Galleberg to APPROVE CONSENT AGENDA ITEMS 9-a, 9-b, 9-c, 9-e, AND 9-g; 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).**

**END CONSENT AGENDA**

**RESOLUTION 02-9899.....ITEM 10**  
**A RESOLUTION ACCEPTING THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT AS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); DIRECTING THE CITY MANAGER TO SUBMIT THE REPORT TO HUD; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:08 a.m.). Planner Susan Golden explained that the report being submitted outlines the carryover funds from 2000.

**Public Comment:** None (9:09 a.m.).

**MOTION by Russell to APPROVE RESOLUTION 02-9899 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 02-9900.....ITEM 13**  
**A RESOLUTION APPROVING A ONE-YEAR RENEWAL PROPOSAL BETWEEN THE CITY OF NAPLES AND SUN LIFE ASSURANCE COMPANY OF CANADA, TO PROVIDE STOP-LOSS (SPECIFIC AND AGGREGATE) INSURANCE FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN FOR THE PLAN YEAR JANUARY 1, 2003, THROUGH DECEMBER 31, 2003; AUTHORIZING THE CITY MANAGER TO EXECUTE THE RENEWAL; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:09 a.m.) who explained that stop-loss insurance commences in the event that an employee's medical expenses reach \$75,000; the City's aggregate stop-loss insurance commences when the total claims reaches \$4,161,888. In response to Council, City Manager Rambosk affirmed that the City had in fact previously drawn upon this policy.

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

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9900 AS SUBMITTED; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION (Withdrawn – See Item 4).....ITEM 14**  
**A RESOLUTION CONSIDERING THE DONATION AND PLACEMENT OF TWO**  
**BRONZE SCULPTURES TO BE LOCATED IN THE CITY OF NAPLES; AND**  
**PROVIDING AN EFFECTIVE DATE. Title not read.**

**ORDINANCE 02-9901.....ITEM 18**  
**AN ORDINANCE AMENDING SECTIONS 58-132 AND 58-133 (b) OF THE CODE OF**  
**ORDINANCES OF THE CITY OF NAPLES PERTAINING TO THE ADDITIONAL**  
**HOMESTEAD EXEMPTION; PROVIDING A SEVERABILITY CLAUSE, A**  
**REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin**  
**Rambosk (9:11 a.m.) who explained that this would provide consistency with Florida State**  
**Statutes.**

**Public Comment:** None (9:11 a.m.).

**MOTION by Galleberg to ADOPT ORDINANCE 02-9901 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 02-9902.....ITEM 19**  
**AN ORDINANCE AMENDING SECTION 46-36 (a) OF THE CODE OF ORDINANCES**  
**OF THE CITY OF NAPLES, FLORIDA, IN ORDER TO ALTER THE MEMBERSHIP**  
**OF THE COMMUNITY SERVICES ADVISORY BOARD; AND PROVIDING A**  
**SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**  
**Title read by City Manager Kevin Rambosk (9:12 a.m.).**

**Public Comment:** None (9:12 a.m.).

**MOTION by Russell to ADOPT ORDINANCE 02-9902 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 02-9903.....ITEM 20-a**  
**A RESOLUTION APPOINTING A MEMBER TO THE BOARD OF APPEALS FOR A**  
**FOUR-YEAR TERM; AND PROVIDING AN EFFECTIVE DATE. Title read by City**  
**Manager Kevin Rambosk (9:13 a.m.).**

**Public Comment:** None (9:13 a.m.).

**APPOINT RICHARD MORRIS (nominated by Herms) via Resolution 02-9903.**  
***This motion was unanimously carried, all members present and voting***  
***(Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-***  
***yes, MacKenzie-yes).***

**RESOLUTION 02-9904.....ITEM 20-b**  
**A RESOLUTION APPOINTING A MEMBER TO THE CODE ENFORCEMENT**  
**BOARD FOR THE BALANCE OF AN UNEXPIRED THREE-YEAR TERM; AND**  
**PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:14**  
**a.m.).**

**Public Comment:** None. (9:14 a.m.).

**APPOINT PAMELA STEWART (nominated by Galleberg) via Resolution 02-**  
**9904. *This motion was unanimously carried, all members present and voting***  
***(Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-***  
***yes, MacKenzie-yes).***

**RESOLUTION 02-9905.....ITEM 20-c**

**A RESOLUTION APPOINTING A CITY RESIDENT TO THE PUBLIC ART ADVISORY COMMITTEE FOR THE BALANCE OF AN UNEXPIRED TWO-YEAR TERM; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:15 a.m.). Council Member MacIlvaine nominated Pamela Stewart; however, it was determined that she could not hold office on both the Code Enforcement Board and the Public Art Advisory Committee.

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

***APPOINT EUGENE BURKE (nominated by Galleberg) via Resolution 02-9905. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

Council Member Russell noted there were applicants not interviewed, but Mayor MacKenzie pointed out that additional committee vacancies exist.

**RESOLUTION 02-9906.....ITEM 11**

**A RESOLUTION AMENDING THE HEART OF NAPLES COMMITTEE PROCEDURES TO EXTEND THE SUNSET PROVISION FROM DECEMBER 31, 2002 TO MARCH 31, 2003.** Title read by City Manager Kevin Rambosk (9:16 a.m.) who stated that the committee had requested an extension so it could finalize the landscape master plan recommendations. In response to Council, he explained that the master plan consists of an inventory and streets assessment of the entire Heart of Naples area, a U.S. 41 corridor plan, a Four Corners plan, an avenues plan, and a priority street plan for Tenth Street, Central Avenue and Eighth Street.

Council Member and Heart of Naples Committee Chairman MacIlvaine proffered a motion to approve; however, further discussion ensued. Council Member Russell recommended that the Committee retain the present membership until the work is complete, and Vice Mayor Galleberg urged that the Committee finish its work within the next 90 days. Mr. MacIlvaine concurred.

Although recognizing the Committee's dedication, Council Member Taylor expressed doubt as to whether it had in fact followed its intended scope of work or mission statement which she ~~read indicated~~ was to facilitate a mixed-use low intensity residential and business area with services for local residents. ~~Further, she said, it was to~~ and provide a detailed analysis which would result in a series of recommended modifications that would facilitate redevelopment at the level and scale currently permitted by Code with the goal of establishing a stable, understandable zoning framework. (Attachment 1-a) Based on the Committee's previous submission to Council, Miss Taylor suggested re-evaluating the recommendations or changing the Committee's mission statement.

Noting no current standards in place, Council Member MacIlvaine said the Committee had recommended introducing a restriction on the number of residential units per acre. He further predicted that the ordinance, currently being evaluated by urban planners and consultants, would prove successful in this self-contained neighborhood and not generate additional traffic, but produce a mixture of residences and local businesses which would accrue to a neighborhood feeling. Mr. MacIlvaine added that the second part of the Committee plan involves beautification of the streetscapes and landscaping in order to make the area more attractive and

inviting. He further asserted that the Committee had in fact followed the Council's commission to study various issues regarding the 41-10 corridor and to make specific recommendations with the primary objectives being to restore economic viability, enhance redevelopment efforts, establish a viable commercial and residential neighborhood, and improve the aesthetics through right-of-way improvements, landscaping, and building upgrades. Mayor MacKenzie recommended reviewing Committee recommendations in light of Code and Comprehensive Plan requirements; Planning Director Ron Lee said this comparison would be presented to the Community Redevelopment Agency (CRA) and the Committee within the next several weeks. Vice Mayor Galleberg observed that compared to the "D" Downtown District standards, the proposed plan offers less density due to additional green space, less intensity due to the emphasis on residential, and a cap on residential units and building heights. He predicted this would be a more effective plan for market demand, as well as less intense and intrusive.

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

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9906 AS SUBMITTED; seconded by Russell and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).**

Council Member Herms however took the position that the plan is drastically different from the existing zoning. He added that the potential of attracting up to 3,000 additional people into this small area along with an intensification of the commercial zoning would allow up to 12 million square feet of additional development and change the character of the community.

**ORDINANCE 02-9907.....ITEM 6-a  
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 20 BOAT SLIPS, AND IMPROVEMENTS TO THE STORMWATER SYSTEM AND THE LANDSCAPING; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.).

**RESOLUTION 02-9908.....ITEM 6-b  
A RESOLUTION DETERMINING PETITION 02-DSEI1 FOR A DEVELOPMENT OF SIGNIFICANT ENVIRONMENTAL IMPACT AT THE NAPLES SAILING AND YACHT CLUB, 896 RIVERPOINT DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.).

**RESOLUTION 02-9909.....ITEM 6-c  
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 02-RIS7 FOR ACTIVITIES AT THE NAPLES SAILING AND YACHT CLUB LOCATED AT 896 RIVERPOINT DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.).

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**It is noted for the record that Items 6-a, 6-b, and 6-c were considered concurrently.**

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/had a telephone conversation with former Mayor Bill Barnett clarifying his December 4, 2002 letter to Council, met with Bill Kroeschell who presented several water depth

charts and maps and discussed the petition as viewed from aerial photographs, and received additional correspondence; Wiseman/had a telephone conversation with former Club Commodore Tony Maio regarding her support at first reading, and received additional correspondence; Russell/had a telephone conversation with Mr. Maio regarding his support at first reading, a telephone conversation with Mr. Barnett, a brief conversation with one citizen who opposed the proposal, and received additional correspondence; MacIlvaine/visited the site to ascertain the view represented as being lost, had a telephone conversation with Club Commodore David Nordhoff, spoke to petitioner attorney John Passidomo regarding encroachment upon public waters as compared to other locations; spoke to Mr. Kroeschell, and received additional correspondence; Galleberg/had a brief telephone conversation with Mr. Maio, spoke to Mr. Kroeschell several times regarding unrelated matters, and had a telephone conversation with Mr. Barnett clarifying his own statements at first reading; Herms/received additional correspondence, and had a telephone conversation with Mr. Barnett regarding his position on this issue; Taylor/had a telephone conversation with Mr. Barnett, and requested that staff distribute a letter from Frank LaForge. Mayor MacKenzie noted that she had allotted time over and above the five-minute limit to an attorney who had been retained by property owners opposed to the Yacht Club petition. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Petitioner's attorney John Passidomo noted that from the outset, the Club's objective was to provide balance in its right to as many as 109 slips under the City's marina siting criteria and other factors such as the Comprehensive Plan goal of retaining, upgrading and developing marine oriented uses in or close to well flushed deep channels, and the Club's desire to remain financial viable and expand its marine related facilities while remaining a good neighbor. The Club, he said, had therefore made the following changes to its plan: reduce the number of stories in the clubhouse from three to two; increase the parking requirement to one parking space for every four boat slips; reduce the overall number of boat slips from 109 to 101; reconfigure the dock design by expanding the area of open water thereby improving navigability and visual accessibility around the site; provide public access to Naples Bay through and along the northern and western perimeters of the property; and dredge, mark, and maintain the commonly used channel for the benefit of the public.

Mr. Passidomo then stated that the petitioner's consultants had previously testified that all reasonable alternatives had been exhausted to ensure the docks would cause the least impact, including impact to the views from adjacent properties, and that public access to the waterfront could be provided. He asserted that nothing in the record controverts this testimony, and that the Club had achieved its objectives while being responsive to the questions, concerns and recommendations offered by Council. He therefore requested Council's approval on each of the three petitions presented and, in addition, pointed out that Boat Haven President Cottie Morse had expressed the belief that the proposed dock design would improve navigability at and around the site.

Council Member Russell noted that previous testimony indicated that the footprint of the marina was actually larger than the property to which it is attached. Planning Director Ron Lee explained that the Code establishes regulations only for the number of slips and does not control their location or configuration. He added that the marina siting criteria specifies preferred

alternatives to providing additional dockage, the first of which being the expansion of existing marinas.

**Public Comment:** (9:46 a.m.) **Mimi Wolok, 1112 Trail Terrace Drive**, explained that she is representing eight property owners along Naples Bay who would be affected by the proposed dock expansion. She pointed out that City Attorney Robert Pritt had asserted there was no common law right to a view in Florida, and that Mr. Passidomo had said at the October 9 Planning Advisory Board (PAB) hearing that obstruction of views is not legally relevant. Ms. Wolok however asserted that it has been unequivocal in Florida since 1918 that waterfront property owners have a riparian right to an unobstructed view across the water (see Attachment 1). She then detailed the 1998 inverse condemnation award (*Lee County v. Kiesel*) wherein riparian rights of view were found to have been obstructed by bridge construction. This case, Ms. Wolok stated, further found that owners of uplands along navigable waters enjoy common law riparian rights, one of which is the right to an unobstructed view over the water to the channel; these rights constitute property which the government may not take or destroy without paying just compensation to the owners. Ms. Wolok said a preliminary estimate of this type of lost value relative to her clients' properties is \$2 million.

Ms. Wolok then explained that the 35-foot proposed wet slips would allow dockage of boats 12-15 feet high and represent a view by her clients of a one-story warehouse across the 208-foot marina. Council Member MacIlvaine expressed doubt that these property owners would lose as much of their view as the aforementioned Lee County plaintiffs, but Ms. Wolok contended that a material and substantial obstruction of a waterway view could entitle property owners to compensation. Vice Mayor Galleberg said he believed any position prohibiting marinas on waterways to be illogical.

Ms. Wolok then said she would detail the inconsistencies between this project and the City's Comprehensive Plan and Comprehensive Development Code; namely, that the proposal does not meet the marina siting criterion, and that expansion of a current facility is preferred, provided it meets all environmental criteria, standards and concerns. She also asserted that this project would further degrade Naples Bay by metal contamination caused by additional boats and fuel loading. Piecemeal analysis of the project without also taking into consideration the impacts of floating concrete docks and the impacts of dredging upon manatees, she said, thwarts the purpose of the Development of Significant Environmental Impact (DSEI) process and does not protect Naples Bay. Manatee deaths have also prompted the Army Corps of Engineers (ACOE) to cease issuing new dock or dock expansion permits, Ms. Wolok pointed out and suggested that Council await the new boat facility siting plan before approving additional wet slips. In addition, she pointed out that the Club did not address applicable PD zoning standards which stipulate that land uses shall be appropriate in their relationship with uses and activities on adjacent and nearby properties. Further, she noted that the Comprehensive Development Code calls for a cost/benefit analysis in the DSEI, but that no such analysis had been performed with regard to the potential loss of property values. Ms. Wolok also read into the record a letter from Sweet Liberty owner Leonard Wasmer who advised against the expansion due to his concerns regarding safe navigation (Attachment 2). Council Member MacIlvaine disagreed with this later representation and asserted that the right-turning angle into the Federal Channel would remain unchanged.



Ms. Wolok then introduced into the record the minutes from the October 3, 2001 Council Meeting wherein a proposed Charter Club expansion had been denied because the dock layout would have unreasonably interfered with the riparian rights of other property owners, including those of the City-owned property of Naples Landing. (See Attachment 3.) Ms. Wolok also noted that during the Charter Club discussion, Council Member MacIlvaine had indicated his belief that the riparian rights belonging to Naples citizens should not be relinquished to private enterprise and urged that Council deny the three petitions as to the marina expansion only in order to protect the property rights of its citizens.

Vice Mayor Galleberg however distinguished the Charter Club proposal in that it would have intruded onto the navigable riparian rights of Naples Landing, and that it would have precluded the City or any future owner from having appropriate water access. Ms. Wolok nevertheless asserted that riparian rights exist regardless of what entity owns them. Council Member MacIlvaine also pointed out that the Charter Club proposal would have encroached upon property that could be used for dock space by other entities, which is not the case with the Yacht Club's proposal.

In response to Council, Planning Director Ron Lee stated that staff is currently preparing the new boat facility siting plan which will be presented to the PAB in February and Council in March, noting also that this was part of the Hamilton Harbor settlement agreement. Council Member Taylor said she could not support any additional marinas on Naples Bay without information on these proposed regulations, and Council Member Herms requested a copy of the draft.

**Public Comment:** (10:27 a.m.) **Falconer Jones, 620 Sandpiper Street**, expressed support for the project because of its benefit to the City and the boating community, but nevertheless voiced concern regarding the dock expansion and suggested that the Club incorporate provisions for a future boardwalk. He also reported that Natural Resources Manager Jon Staiger had indicated to him that approval of this project would in a sense constitute a submerged land lease suggesting that Council define an area that it would approve for a submerge land lease and allow the petitioner to design a marina that would fit within it. Mr. Jones however said that he could support extension of docks to a point approximately in line with the south end of the canal between Curlew and Osprey Avenues; he also recommended that Council allow the affected property owners an opportunity to comment so as to avoid a potential legal challenge. **Bill Barnett, 1320 Osprey Avenue**, stated that contrary to his letter of December 4, 2002, he had in fact briefly spoken to Mayor MacKenzie. (See Attachment 4) In response to a recent citizen question, he explained that the Oyster Bay Property Owners Association had not supported the property owners in this petition because its president, Al Kriss, is a member of the Club's Board of Directors. Mr. Barnett then asked that the Council in its decision consider the problems faced by its constituents and further pointed out that the recreational boaters occupying the 20 proposed boat slips would mostly likely be either part time or non-residents who do not pay City taxes. Club member **Bill Kroeschell, 272 Mooring Line Drive**, stated that the Club would not seek anything beyond the current proposal and provided clarification on the height of the clubhouse and the improvement to navigation to be realized from dredging the channel to a depth of six feet. **Mark Muller, 1390 Curlew Avenue**, said that not only is he opposed to expansion of the docks but noted that the marina siting criteria requires Council to discourage expansions of marine facilities where extensive dredging would be required. Therefore, he said, Council has

the legal basis upon which to deny this request. He added that he believed navigation would be impaired, and that his view would also be obstructed by the dockage as proposed.

City Attorney Pritt stated that although the Kiesel's Second District Court of Appeal case is binding, the Supreme Court cases that bear on this subject however prevail. The common law riparian right, although including a right to a view, is in the Supreme Court's opinion the right to view the channel. He therefore contended that there is no absolute right to a full panoramic view of Naples Bay. City Attorney Pritt also noted that development should be compatible with the surrounding area, according to the standards for PD zoning approval, and that Council can make that determination.

In response to Council, Planner Ann Walker clarified that the marine siting criteria discourages marinas that require extensive dredging to create entrance or flushing channels, which is not being done in this case. Noting Ms. Wolok's retention by the affected property owners, Council Member Taylor urged that Council avoid involvement in litigation. City Attorney Pritt explained that Council's granting of a permit to build this project would not in his opinion constitute a taking, but that its action must be defended if challenged. Miss Taylor further said she believed the photographs submitted by the petitioner were in fact taken with a wide-angle lens in order to make the channel appear larger. Council Member MacIlvaine nevertheless asserted that the channel is situated between the property owners and the docks, and that the project would not obstruct views to the channel.

(City Clerk Tara Norman then administered an oath to Natural Resources Manager Jon Staiger, who responded in the affirmative.) Dr. Staiger reviewed the issue relative to the Charter Club proposed expansion which, he said, was one of three potential riparian lines: one extended from the axis of the channel at right angles to the alignment of the channel back to the property corner; another extended from the property corner out to the channel at right angles to the alignment of the shoreline; and another essentially a compromise between the aforementioned two. He added that the most beneficial line to the Charter Club encompassed a large area in front of the view of Naples Landing Park, and that the line that extended from the channel back to the property corner gave the Charter Club far less riparian area in which to place its proposed marina. The Council ultimately made a decision based on the line that would be the most advantageous to the City, he added. Dr. Staiger then explained that the present proposal presents what he described as a completely different situation because the alignment of the channel is almost parallel to the shoreline and a line straight out from the property corners clearly defines the riparian area. If the project were constructed without creating the channel, however, navigation to the Federal Channel would be restricted.

**Public Comment:** (11:10 a.m.) **Henry Kennedy, 2178 Tarpon Road**, (who responded in the affirmative to an oath administered by City Clerk Tara Norman.) predicted that although the channel would greatly increase the navigability of the entire area, the boats would extend significantly farther into the channel than depicted. He added that the required dredging would be massive and disagreed with Planner Walker's assertion that this would not constitute entrance dredging. While complimenting the Club on its presentation and clubhouse design, Mr. Kennedy nevertheless urged that Council first represent its constituency.

Attorney Passidomo said that he respectfully submitted that any legal arguments be made in a court of law. He then said that according to a December 3 memo to Council Member Taylor, both Dr. Stagier and the planning staff had indicated that the marina siting criteria preference is given to marina development projects like the Club that are situated in or close to well-flushed deep channels or natural waterways, and that extensive dredging would not be required for this project. Mr. Passidomo then distributed to Council his December 18 memo to City Attorney Pritt detailing the Supreme Court cases that dealt with riparian rights to a view (Attachment 5). These cases, he said, indicate that the right to an unobstructed view over the waterway is restricted solely to the channel. He added that the Kiesel case was substantially different and the findings are not applicable in this case. Mr. Passidomo also concurred with Vice Mayor Galleberg's prior observation that there could be no marina on Naples Bay due to the interference with the riparian right of view under interpretation of the law presented by Attorney Wolok. Moreover, he added, that the riparian right of view to the channel is in fact being preserved in this instance and explained that the Charter Club proposal was a clear violation of the City's riparian right of dockage at the Naples Landing. He reiterated his request for Council's vote of approval.

In response to Council's question, Mr. Passidomo asserted that despite statements to the contrary, there would be no encroachment into the channel by boats moored in the new slips. Council Member Russell suggested adding an amendment to the PD stipulating that the petitioner would not seek additional slips. Mr. Passidomo explained that while there was no concern regarding the number of slips, some minor modifications to the southern extension of the dock design as currently depicted could be required during the State and Federal permitting process. Council Member Taylor nevertheless noted the importance of choosing developments wisely as the area intensifies, and of carefully considering citizens' rights. Mayor MacKenzie recommended inserting stipulations in the residential impact statement requiring events to occur indoors or outdoors with appropriate limitations; Mr. Passidomo concurred.

Council Member MacIlvaine proffered a motion to approve; however, further discussion ensued. In response to Council, City Attorney Pritt said he did not believe that case law requires a view to a federal channel, and Council Member Wiseman said that she surmised that the view specified is to the nearest navigable waterway. Mrs. Wiseman further said that since testimony indicates no obstruction to navigation or views to the channel, she could not see how riparian rights would apply. Vice Mayor Galleberg seconded the motion with stipulations regarding the southerly expansion and encroachment into the channel. Council Member Herms pointed out however that a future Council could amend these provisions; Vice Mayor Galleberg nevertheless urged including these items to reflect the majority of the present Council's intent. Attorney Passidomo concurred.

**MOTION by MacIlvaine to ADOPT ORDINANCE 02-9907 (Item 6-a) AS AMENDED IN SECTION V BY ADDING A NEW SUBSECTION (4) UNDER USES PERMITTED: "AS DEPICTED ON THE DIAGRAMS, MOORED VESSELS WILL NOT ENCROACH UPON THE CHANNEL. SECONDLY, IT IS HEREBY UNDERSTOOD THAT FURTHER EXTENSIONS IN A SOUTHERLY DIRECTION WILL NOT BE PERMITTED." This motion was seconded by Galleberg and carried 4-3, all members present and voting (Herms-**

*no, Galleberg-yes, Taylor-no, MacIlvaine-yes, Wiseman-yes, Russell-yes, MacKenzie-no).*

Council Member Herms predicted a decrease in the property values of the surrounding residents which would precipitate a legal challenge; Council Member Taylor concurred. Vice Mayor Galleberg said he believed it to be the role of Council to properly observe and implement the planning process as well as the citizen's property rights which he said that Council had in fact done. He added that many of the Club's members are also tax-paying residents of the City, and that he believed the correct legal, planning, and human decision is to approve the proposal. Council Member Wiseman noted the difficulty in attaining an appropriate balance in light of competing interests, adding that Council must apply the requirements in its ordinances and Comprehensive Plan as well State and common law while relying on its legal counsel and its own judgment. Although noting that Council should refine its waterfront plans, Council Member Russell said he relies on staff and counsel for their professional advice and that he therefore supports the proposal. Mayor MacKenzie said that other than the dock extension into Naples Bay, she fully supports the project.

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9908 (Item 6-b) AS SUBMITTED;** *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).*

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9909 (Item 6-c) REQUIRING THAT OUTDOOR ACTIVITIES CEASE AT 10:30 P.M.;** *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).*

Mayor MacKenzie said she hoped the City would consider installing two left turn lanes from River Point Drive onto U.S. 41 to aid traffic flow.

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**It is noted for the record that Council Member Taylor left the meeting at 12:00 p.m.**

**ORDINANCE 02-9910.....ITEM 7**  
**AN ORDINANCE REPEALING SECTION 102-116 (7), AMENDING SECTION 110-37 (b), AND ADDING SECTION 102-124, "DRIVEWAY ENTRIES, WALLS, AND FENCES," IN THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO ESTABLISH REGULATIONS FOR THE R1-15A ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (12:00 p.m.).

**Public Comment:** None (12:01 p.m.).

**MOTION by Herms to ADOPT ORDINANCE 02-9910 AS SUBMITTED;** *seconded by Russell and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).*

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**Recess 12:01 p.m. to 1:28 p.m.** It is noted that all Council was present when the meeting reconvened with the exception of Council Member Taylor who returned at 1:33 p.m.

**RESOLUTION (Continued) .....ITEM 15-a**  
**A RESOLUTION APPROVING A PUBLIC ART FACT SHEET AND APPLICATION FORM FOR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (1:28 p.m.).

**RESOLUTION 02-9911..... ITEM 15-b**

**A RESOLUTION ACCEPTING A PUBLIC ART INVENTORY AND OPEN SPACE MAP FOR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.**

Title read by City Manager Kevin Rambosk (1:28 p.m.). Public Art Advisory Committee (PAAC) Chairman Sharon Kenny stated that the fact sheet being submitted is the result of the Committee's efforts over the last year to devise general guidelines and selection criteria for works of art to be considered by the City. She added that the Committee had selected criteria from a variety of sources such as other cities and the Florida Arts Council. Ms. Kenny then briefly detailed the applications for loaned and donated artwork, the application review forms to be used by the Committee, its recommendation form, and a Council review form. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.

Mayor MacKenzie expressed appreciation for the Committee's work; however, she suggested also incorporating State requirements which specify that the content and presentation be appropriate for the majority of viewers. Council Member MacIlvaine concurred.

**It is noted for the record that Council Member Taylor entered the meeting at 1:33 p.m.**

Council Member Russell however predicted that the Committee would receive many petitions once Council declares public spaces available for the display of loaned art, and cautioned against the potential for conflicts. Vice Mayor Galleberg recommended amending the fact sheet to indicate that the City is not soliciting or recruiting for public art, and Council Member MacIlvaine suggested changing the word "encourages" to "allows." Council Member Wiseman suggested omitting the reference in the fact sheet to donations being "tax-deductible" due to many possible ramifications for individual donors. Council Member Taylor said the Committee felt it important that the subject matter be local and further assured Council that the Committee intends only to streamline the process and not solicit nor promote art. Mayor MacKenzie noted that the fact sheet does not identify the entity responsible for installation, electricity, water piping, or site reconstruction once a loaned piece is removed. She also pointed out that there was no minimum length of time specified for a loaned piece of work; however, Ms. Kenny said the Committee preferred to keep that open saying it would depend on the work and location. Council Member Wiseman suggested including a stipulation exempting exhibits on display in City Hall from the Committee's review.

Committee Chairman Kenny then explained that the PAAC had recognized the need to inventory City-owned artwork before making recommendations on new pieces, noting that instead of being distributed to the public, this inventory would in fact have widespread internal use by the Community Services Advisory Board (CSAB) as well as by staff and Council. Mayor MacKenzie recommended including in the inventory the name of the donor and the year acquired whenever possible. Ms. Kenny explained that the open space map identifies the location of the pieces, and that it would be updated as new sites become available or are acquired. Mayor MacKenzie recommended making the map available to homeowner associations to ascertain interest in particular sites, and Council suggested discussing the matter at Town Hall or Presidents Council meetings.

Council Member Russell expressed opposition to accepting loaned artwork characterizing it as inherently problematic as well as inviting self-promotion and controversy. Council Member MacIlvaine also pointed out that such a loan can present the potential for a conflict of interest

since the City becomes a type of gallery loaning its facilities for private enterprise. Vice Mayor Galleberg nevertheless said Council has instructed the PAAC to create a framework to deal with these issues, urging reliance on the process so that pieces may be considered on a case-by-case basis. After further discussion, Chairman Kenny said the Committee would make appropriate revisions to the fact sheet as discussed.

**Public Comment:** None (2:08 p.m.).

**MOTION by Taylor to CONTINUE ITEM 15-a TO THE FEBRUARY 5, 2003 REGULAR MEETING; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**MOTION by Russell to APPROVE RESOLUTION 02-9911 AS AMENDED TO CORRECT LOCATION OF “JAKE THE FRIENDLY DRAGON” SCULPTURE TO CAMBIER PARK; 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 02-9912.....ITEM 16  
A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF NAPLES AND D. GARRETT CONSTRUCTION, INC., TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE CONSTRUCTION OF THE NORRIS CENTER IN AN AMOUNT NOT TO EXCEED \$1,950,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:08 p.m.) who said that subsequent to Council’s approval of the design plan, the contractor had been asked to provide a guaranteed maximum price (GMP) so that the project could proceed. The architect and contractor could then meet to review the design and determine the best means for efficient construction.

Don Garrett of D. Garrett Construction then detailed the summary budget estimate including specifics on the base building, building options and exterior site (or hardscape) options. He noted a total air conditioned area of 12,461 square feet, a budget estimate of \$1,950,000, with a unit cost of \$156.49. (A copy of this summary is contained in the file for this meeting in the City Clerk’s Office.)

Council Member Herms stated that the new 11,600 square foot River Park Recreation Center cost just \$134 per square foot, or \$22 per square foot less than the Garrett estimate. He also noted what he described as a significant cost differential between Owens-Ames-Kimball (OAK) and D. Garrett Construction in the areas of concrete masonry work and rough carpentry, as well as the general contractor fee. Moreover, he predicted the cost would in fact increase with inclusion of such items as the builder’s risk insurance, handicapped lift, kitchen appliances, and pavers. City Manager Rambosk explained that the contractor would later include and incur all costs for the performance and payment bond. He added that the kitchen would be significantly smaller than that of the River Park Recreation Center, and that the architect and contractor had eliminated the need for the handicapped lift by making the building accessible via ramps.

Mr. Garrett explained that the City has generally provided the builder's risk insurance as part of its master insurance policy, and Mayor MacKenzie pointed out that Garrett had renovated the bandshell on time and under budget. Council Member Russell observed substantial differences between the Norris Center and River Park Recreation Center with different functions and uses. Community Services Director David Lykins also pointed out that the River Park building merely features an elevated platform auditorium that doubles as a stage while the Norris Center would include a theatrical-style performing area where acoustics are a primary consideration. In addition, the Norris Center would have additional restrooms in several different sections of the building, he said.

Mr. Garrett then explained that the proposed general contractor fee of \$147,000 represents eight percent of the estimated \$1,950,000 budget, although this figure would decrease if the overall price decreases. Council Member Herms suggested that Garrett either lower its fee to the six percent that OAK charged, or OAK should be allowed to provide a bid for the project; Mr. Herms also noted the high quality of OAK's previous work. Council Member Russell however urged that Council proceed with its choice of Garrett. Mayor MacKenzie stated that the City had budgeted \$1.1 million from its bond issue, the County had pledged \$300,000, and a private contributor had pledged \$150,000 which would leave a \$400,000 shortfall, although the City had pledged to loan the project the necessary funds pending continued private donations. City Manager Rambosk concurred, noting the goal is have the building completed by December 31, 2003.

**Public Comment:** None (2:32 p.m.).

**MOTION by Russell to APPROVE RESOLUTION 02-9912 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).**

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**It is noted for the record that Council Member Herms left the meeting at 2:32 p.m.**

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**RESOLUTION 02-9913.....ITEM 8-a**  
**A RESOLUTION DETERMINING PETITION 02-LE6 FOR LIVE ENTERTAINMENT**  
**AT L'AUBERGE ON FIFTH LOCATED AT 602 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 (2:32 p.m.)

**RESOLUTION 02-9914.....ITEM 8-b**  
**A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION**  
**02-RIS13 FOR L'AUBERGE ON FIFTH LOCATED AT 602 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 (2:32 p.m.)

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

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This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Wiseman, Russell, MacIlvaine, Taylor/visited the restaurant; and Galleberg/no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Owner Tony DiFoggia explained that his request is to provide soft music for patrons provided by one pianist and that all doors and windows would be closed during performances. Council Member MacIlvaine suggested excluding Sundays from the four nights per week permitted so as to maintain consistency with other approvals previously granted. Council Member Taylor however recommended approving the request as submitted, noting Council could take further action if problems ensue.

**Public Comment:** None (2:39 p.m.).

**MOTION by Taylor to APPROVE RESOLUTION 02-9913 AS AMENDED (SECTION 2-1) "...BETWEEN THE HOURS OF 6:30 P.M. AND 9:30 P.M. UP TO FOUR NIGHTS PER WEEK." This motion was seconded by Wiseman and carried 5-1 (Galleberg-yes, Herms-absent, MacIlvaine-no, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**MOTION by Wiseman to APPROVE RESOLUTION 02-9914 AS AMENDED (SECTION 2-1) "...BETWEEN THE HOURS OF 6:30 P.M. AND 9:30 P.M. UP TO FOUR NIGHTS PER WEEK." This motion was seconded by Russell and carried 6-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**It is noted for the record that Council Member Herms returned to the meeting at 2:41 p.m.**

**RESOLUTION (Continued) .....ITEM 17-a  
CONSIDER APPROVAL OF A CONSTRUCTION MANAGEMENT CONTRACT FOR  
THE CONSTRUCTION OF THE LOWDERMILK PARK CONCESSION / RESTROOM  
PAVILION / VENDOR: O-A-K / FLORIDA, INC., NAPLES FLORIDA / COST:  
\$325,000.00 (NOT TO EXCEED) / FUNDING: TDC FUNDS AND UTILITY TAX. (2:39  
p.m.) (Editors Note: No draft resolution was provided for this item.)**

**..... ITEM 17-b  
AUTHORIZATION TO REQUEST ADDITIONAL FUNDING FROM TOURIST  
DEVELOPMENT COUNCIL (TDC) (2:39 p.m.)** City Manager Kevin Rambosk stated that staff was prepared to submit to Council a request for funding and a guaranteed maximum price (GMP) for the Lowdermilk Park pavilion. Over the past year, however, the City changed its plans from a restoration to a rebuild and that although the Tourist Development Council (TDC) had approved the City's request of over \$200,000 for a restoration, it must now approve the amended project scope. He added that the request would be discussed at the January 27 TDC meeting. Mr. Rambosk also requested authorization to submit to the TDC a request for an additional \$120,000, making the total TDC request \$325,000. In further discussion, Mr. Rambosk said that the City could apply funds available in utility tax reserves if it did not receive the additional funds from the TDC. He added that County staff had indicated they believed this to be an appropriate request which would be seriously considered.

**Public Comment:** None (2:47 p.m.).

**MOTION by Herms to CONTINUE ITEM 17-a TO THE FEBRUARY 5, 2003 REGULAR MEETING; 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 Herms to AUTHORIZE THE CITY MANAGER TO REQUEST ADDITIONAL FUNDS (Item 17-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 02-9915..... ITEM 9-f**  
**A RESOLUTION APPROVING THE TREE PROGRAM PLAN FOR THE YEAR 2003 AS REQUIRED IN SECTION 70-1(d) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:47 p.m.) who noted that every December the City Council must approve the updated tree plan submitted by the Community Services Advisory Board. Council Member Herms suggested that Council consider proceeding with the tree in-fill program currently on hold. Mayor MacKenzie concurred, noting that although the current year's funding through bond proceeds is currently experiencing a shortfall, the City had never before used bond proceeds to underwrite this program. City Manager Rambosk said staff could set aside funds in the Capital Improvement Program (CIP) for the current year, and Council Member Herms suggested also using reserve funds or contingency CIP funds. Mayor MacKenzie recommended that the program continue even on a smaller scale. In response to Council, Community Services Director David Lykins said staff considers the trees planted in the Heart of Naples area as a component of the overall program and maintains these trees. Council Member Herms pointed out that the City had invested approximately \$50,000 in a computerized tree inventory several years ago, and had identified all potential in-fill areas. He therefore urged that the City proceed with the in-fill program in the coming year.

**Public Comment:** None (2:57 p.m.).

**MOTION by Herms to APPROVE RESOLUTION 02-9915 AS AMENDED IN NAPLES URBAN FORESTRY PLAN 2003 (PLAN GOALS AND OBJECTIVES, 3-A) CONTINUE IN-FILL PROGRAM WITH ANY FUNDS IDENTIFIED AS APPROPRIATE;** *seconded by MacKenzie and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**RESOLUTION 02-9916..... ITEM 12**  
**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE ARCHITECTURAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND A. GAIL BOORMAN & ASSOCIATES TO PROVIDE FOR ADDITIONAL COMPENSATION FOR ADDITIONAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:57 p.m.) who stated that the U.S. 41 corridor project and the Central Avenue and Eighth Street redesigns have yet to be completed. Council Member Herms said he would abstain from voting as he owns property in the 41-10 area.

**Public Comment:** None (3:00 p.m.).

**MOTION by Russell to APPROVE RESOLUTION 02-9916 AS SUBMITTED;** *seconded by MacIlvaine and carried 6-0-1 (Galleberg-yes, Herms-abstain, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 6, Form 8B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)*

**ORDINANCE (Changed to First Reading)..... ITEM 21**  
**AN ORDINANCE ADDING A NEW SECTION 42-6, SQUIRREL MONKEY PROTECTION REGULATIONS, TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES, FOR THE PURPOSE OF PROTECTING THE FREE-LIVING SQUIRREL**

**MONKEYS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:00 p.m.) who indicated that research had determined that State Statutes prohibiting cruelty to captive exotic animals would apply to the squirrel monkeys but does not prohibit trapping of free-ranging animals. City Manager Rambosk however pointed out that property owners can also have trespassers engaged in trapping or otherwise harassing these animals removed. Moreover, he determined that the City could enact legislation to better protect these animals without conflict with State Statutes.

Council Member MacIlvaine said he recommended against enacting legislation that may impose additional restrictions on property owners absent definitive information on the occurrence of trapping in the City. Council Member Wiseman concurred, noting that the ordinance as proposed would foreclose the City's ability to relocate the animals to a more remote mangrove location should increasing development also jeopardize them. She further asserted that the population is most likely declining and characterized the ordinance as overly bureaucratic. Council Members Russell and Wiseman also agreed that rather than a complete ban, approval for trapping might be conveyed by the City Manager or designee. In response to Council, City Attorney Robert Pritt explained that the penalty for unlawful trapping would be a fine of \$500 and/or 60 days in jail. Natural Resources Manager Jon Staiger confirmed that the monkey population had diminished over the years due to trapping and proposed additional language that would allow the City Manager to approve removal of the animals if they are creating a problem for a private property owner. Council Member Herms proffered a motion to approve; however, Council Member MacIlvaine proffered a motion to table until Council could receive additional information on the animals and whether it is practical to capture and relocate them to nearby Caribbean Gardens.

**Public Comment:** None (3:18 p.m.).

***MOTION by MacIlvaine to TABLE ITEM 21; seconded by Wiseman. This motion failed 2-5, all members present and voting (Taylor-no, Wiseman-yes, Galleberg-no, Herms-no, MacIlvaine-yes, Russell-no, MacKenzie-no).***

Dr. Staiger then further detailed the amendment he had proposed, a copy of which is contained in the file for this meeting in the City Clerk's Office. City Attorney Pritt suggested that if interested in the amendment, Council could approve this ordinance at first reading. Vice Mayor Galleberg concurred noting the importance of this section, and Council Member Herms subsequently amended his motion to include it.

***MOTION by Hems to APPROVE ITEM 21 AT FIRST READING AS AMENDED BY ADDING A NEW SUBSECTION 42-6(c) "RELOCATION OR REMOVAL. IN THE EVENT THAT IT BECOMES NECESSARY TO RELOCATE OR REMOVE THE SQUIRREL MONKEYS BECAUSE OF HABITAT DESTRUCTION OR OTHER FACTORS, THE CITY MANAGER, OR HIS DESIGNEE, IS AUTHORIZED TO INVESTIGATE THE SITUATION ON PUBLIC AND PRIVATE PROPERTY, TO ASSESS WHETHER CONDITIONS HAVE CREATED THE NEED FOR RELOCATION. AFTER SUCH DETERMINATION, THE CITY MANAGER, OR HIS DESIGNEE, MAY TAKE APPROPRIATE ACTION, CONSISTENT WITH STATE ANTI-CRUELTY LAWS." This motion was seconded by Taylor***

*and carried 4-3, all members present and voting (Wiseman-no, MacIlvaine-no, Russell-no, Galleberg-yes, Herms-yes, Taylor-yes, MacKenzie-yes).*

Council Member Wiseman maintained that the ordinance is unnecessary, and said government should seek the least restrictive method to deal with these animals. Council Member MacIlvaine also reiterated his position that private property rights would be compromised without sufficient cause, and recommended against drafting legislation without thorough review. Council Member Herms however expressed the view that it is a simple process to protect the animals present in the community.

**RESOLUTION 02-9917.....ITEM 22-a**

**A RESOLUTION APPROVING AN AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF NAPLES AND CARVER FINANCE, INCORPORATED RELATING TO THE GEORGE WASHINGTON CARVER APARTMENTS PROPERTY; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT TO LEASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:31 p.m.).

**RESOLUTION 02-9918..... ITEM 22-b**

**A RESOLUTION APPROVING AN AMENDMENT TO LEASE AGREEMENT BETWEEN CARVER FINANCE, INCORPORATED AND G.W. CARVER, LIMITED RELATING TO THE GEORGE WASHINGTON CARVER APARTMENTS PROPERTY FOR THE SOLE PURPOSE OF ACKNOWLEDGING THE RIGHTS, RESPONSIBILITIES AND LIABILITIES OF THE CITY OF NAPLES; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT TO LEASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:31 p.m.).

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**It is noted for the record that Items 22-a and 22-b were considered concurrently.**

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City Manager Rambosk said this would eliminate the City's encroachment on leased property bordering on Third Avenue North and Tenth Street to allow for the plaza attached to the River Park Recreation Center. In response to Council, he affirmed that a licensed surveyor had been used and that the property descriptions are proper.

**Public Comment:** None (3:38 p.m.).

**MOTION by MacIlvaine to APPROVE RESOLUTIONS 02-9917 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).**

**MOTION by MacIlvaine to APPROVE RESOLUTION 02-9918 AS SUBMITTED; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**.....ITEM 23**

**SCHEDULE START TIME FOR HAMILTON HARBOR PETITION REVIEW ON TUESDAY, JANUARY 21, 2003.** (3:38 p.m.) After a brief discussion, Council proffered the motion below:

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

**MOTION by MacIlvaine to SET MEETING AT 9:00 A.M. ON JANUARY 21, 2003; seconded by Wiseman and unanimously carried, all members present and**

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

**PUBLIC COMMENT**.....  
None.

**CORRESPONDENCE AND COMMUNICATIONS** .....

Noting its recent sunset, Council Member Taylor expressed appreciation to the Naples Preserve Steering Committee for its efforts. She then suggested that Council consider acknowledging in all documents relating to Naples Preserve that the voters had approved taxation to acquire the property; Mayor MacKenzie recommended placing this discussion on Council's next meeting agenda. It was also the consensus of Council to allow the broadcast of the Naples Preserve video with a request for volunteers to staff the Hedges Visitors Center.

Council Member Herms noted what he described as a significant amount of neon lighting being used on U.S. 41 and other commercial areas and requested clarification of the applicable Code provisions. Mayor MacKenzie said an interior neon sign visible through an open window is permitted, although exterior neon is not. City Manager Kevin Rambosk said he would submit to each Council Member an analysis of both City and County sign codes, particularly regarding the use of neon.

Vice Mayor Galleberg requested clarification of a recent news report that the Public Art Advisory Committee had agreed to appoint a member to a county-wide committee that would advocate for an ordinance regarding art in public places. This, he noted, is however not within the scope of this committee. Council Member Taylor confirmed that although the Committee had discussed the matter, no motion had been taken since this decision would be within the purview of Council.

Vice Mayor Galleberg noted that although he had previously requested that the City Manager draft an ordinance to require residential landscaping, a later proposal drafted by the Building Official had been submitted to the Planning Advisory Board (PAB). This latter proposal, he said, had then been amended to the extent that it had changed his intent and addressed many other improvements. City Manager Rambosk said staff could separate Mr. Galleberg's original request and allow the PAB to make recommendations on the other issues.

Council Member MacIlvaine said he recently noticed sandwich board signs in the center of Sugden Plaza; City Manager Rambosk said staff would investigate to determine if they conform to Code. Council Member Russell and Mayor MacKenzie asked that Council be provided all board and committee meeting minutes; City Manager Rambosk said he would address this issue. City Clerk Tara Norman said many of these minutes are however available in her office only after approved and signed by the respective group. Mayor MacKenzie also noted that the agenda packets are available in Council Chamber.

Council Member Wiseman suggested not allowing speakers to address Council who had not registered prior to commencement of a public hearing characterizing this practice as disruptive and unfair to those who followed the correct procedure. Mayor MacKenzie said that at a recent County Commission meeting it was announced that the Florida Department of Environmental Protection (FDEP) and Rookery Bay would invite Naples as well as the Cities of Marco Island

**City Council Regular Meeting – December 18, 2002 – 9:00 a.m.**

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and Everglades along with the Collier County Commissioners to an ecosystem tour on May 8 by boat to view the state of the coast and related ecosystems. Council also wished all a happy holiday.

**ADJOURN** .....

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Bonnie R. MacKenzie, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

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Jessica R. Rosenberg, Recording Specialist

Minutes Approved: 1/22/03