



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – January 22, 2003 – 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 (arrived 9:47 a.m.)  
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  
Denise Perez, Human Resources Director  
Jon Staiger, Natural Resources Manager  
William Taylor, Fire Inspector  
Ann Walker, Senior Planner  
Laura Spurgeon, Planner  
Michael O'Reilly, Police Officer  
Jessica Rosenberg, Recording Specialist  
Karen Kateley, Administrative Specialist  
Gene Scott  
Guy Fracasso  
A. J. Black

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Vincent Montagnino  
Jane Wasilewski  
James Clark  
Tom Yeager  
Bill Kroeschell  
Dick Rockwell  
Richard Nye  
Kenneth Abernathy  
Byron Tracy  
Richard Grant  
Norman Thomson  
Ray Schauster

Other interested citizens and visitors.

**Media:**

Dianna Smith, Naples Daily News

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

Dr. Richard Nye, Naples United Church of Christ

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

Presentation to Naples Women's Club  
Employee Recognition Awards

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

**MOTION by Galleberg to SET AGENDA REMOVING ITEM 13-d FROM  
THE CONSENT AGENDA FOR SEPARATE DISCUSSION AND  
CONTINUING ITEM 16 UNTIL THE FEBRUARY 5, 2003 REGULAR**

**MEETING**; seconded by Wiseman and carried 6-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

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

**CONSENT AGENDA**

**APPROVAL OF MINUTES**.....**ITEM 13-a**  
December 4, 2002 Regular and December 18, 2002 Regular, the latter being amended on Page 5 (with Attachment 1-a added) to clarify Council Member Taylor's remarks regarding the Heart of Naples mission statement.

**RESOLUTION 03-9929**..... **ITEM 13-b**  
**A RESOLUTION APPROVING AN AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF NAPLES AND EXPRESS SCRIPTS INC., (ESI) TO PROVIDE FOR THE ADDITION OF PERFORMANCE STANDARDS AND A PENALTY CLAUSE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 03-9930**.....**ITEM 13-c**  
**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.

**MOTION** by Wiseman to **APPROVE ITEMS 13-a (AS AMENDED), 13-b, and 13-c**; seconded by Russell and carried 6-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**END CONSENT AGENDA**

**RESOLUTION 03-9931**..... **ITEM 13-d**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 02-CU6 TO PERMIT CELEBRATION COMMUNITY CHURCH TO CONDUCT SUNDAY CHURCH SERVICES AT CAMBIER PARK, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:13 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: each Council Member registered no contact except for Council Member Wiseman who disclosed that she had occasionally attended services. Notary Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Reverend Gene Scott outlined a two-phase project, the first being purchase of a 3.5 acre parcel which currently contains a parsonage and also accommodates various church programs, and a future second phase to acquire additional property on which to build a church park. Council Member Russell suggested that as a conditional of approval Reverend Scott document these plans and provide an expected timetable. Characterizing the church as a service to the community, Reverend Scott pointed out that all regulations imposed by Council had been followed and that the church had been a good neighbor. He further asserted that the church has a right to use the facility equal to any other group or organization, and requested continued use of the park until the above stated plans could be realized. Council Member MacIlvaine noted that further delay in land acquisition would prove increasingly costly. Council Member Wiseman

proffered a motion to approve until January 1, 2004, and Mayor MacKenzie suggested that the Church provide an update of its progress and plans at that time. Reverend Scott assured a continuing dialog with staff and Council. Council Member MacIlvaine said he believed the majority of Council does not support a permanent use at Cambier Park and urged Reverend Scott to proceed with his plans. Council Member Wiseman however said she believed this to be a low impact and appropriate use of the park.

**Public Comment:** (9:33 a.m.) **Byron Tracy, 120 Rookery Road**, stated that the Constitution guarantees freedom of religion and that he believed Naples may be the only city in the country that assesses a fee to a church for use of public property. Mayor MacKenzie however asserted that other City churches pay similar fees, and Council Member MacIlvaine observed the appropriateness of any organization contributing to maintenance costs.

**MOTION by Wiseman to APPROVE RESOLUTION 03-9931 AS SUBMITTED; seconded by MacIlvaine and carried 5-1 (Galleberg-no, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Vice Mayor Galleberg said he found it disconcerting to discover that the church had acquired land for a different purpose from what Council had previously been told.

**RESOLUTION 03-9932.....ITEM 6-a**  
**A RESOLUTION DETERMINING VARIANCE PETITION 02-V10 FROM SECTION 102-506(1) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES A MINIMUM SETBACK OF 10 FEET FROM THE PROPERTY LINE TO PERMIT THE PLACEMENT OF COLUMNS WITHIN THE 10 FOOT SETBACK, LOCATED AT 800 6<sup>TH</sup> AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID VARIANCE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:36 a.m.).

**RESOLUTION 03-9933.....ITEM 6-b**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 02-CU7 TO ALLOW FOR A TOTAL OF 28 PARKING SPACES RATHER THAN THE 51 SPACES REQUIRED BASED ON A PARKING NEEDS ANALYSIS FOR A RESTAURANT, DRY CLEANING ESTABLISHMENT AND ADDITIONAL RETAIL LOCATED AT 800 6<sup>TH</sup> AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:36 a.m.).

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

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This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/visited the site, viewed the Planning Advisory Board (PAB) meeting, is a customer of Jerry's Cleaners, and read the correspondence from petitioner's agent; Wiseman/visited the site, had a brief conversation with Attorney Richard Grant before she left his firm informing her that he would be undertaking this representation, the building to be affected, and the requirement for variances; Russell and Galleberg/viewed the PAB meeting, and visited the site; and MacIlvaine and Taylor/visited the site. (After his arrival as noted below, Council Member Herms disclosed a meeting with Messrs. Fracasso and Grant where he said they had discussed the petition, the parking issue, and the potential for replacing the existing restaurant.) Notary

Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Attorney Richard Grant, representing the petitioner explained that the building currently has a cantilevered overhang that projects over a sidewalk used by the public which extends eight feet into the ten-foot setback. The building owner, Guy Fracasso, is planning to renovate the building by adding support columns under the overhang, Mr. Grant noted, and pointed out that despite the lack of a hardship, the positioning of the building is unique since it has no functional front setback and no space for landscaping to enhance the façade. In addition, he said that granting the proposed variance would not result in the establishment or enlargement of any use or structure not currently permitted in the district and that the enhancements would achieve equal or greater aesthetic character than would a literal interpretation of the ordinance. Noting the PAB review, Mr. Grant said that he did not believe the columns would interfere with the public's ability to use the sidewalk.

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**It is noted for the record that Council Member Herms entered the meeting at 9:47 a.m.**

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In response to Council Member Wiseman, Mr. Grant confirmed that although the petitioner had contracted to acquire both the property on Eighth Street as well as the adjacent property on Sixth Avenue (the Jerry's Cleaners site), he had since acquired only the building on Eighth along with the parking behind it. The owner of Jerry's Cleaners has consented to this petition, and the two entities have a cross-parking agreement, he added.

Council Member MacIlvaine expressed concern that the proposed columns would create an outdoor dining opportunity for the restaurant and further reduce the available sidewalk; Mr. Grant however affirmed that Mr. Fracasso has no such plans.

In further discussion, Mr. Grant also requested approval of a parking needs analysis to allow provision of fewer parking spaces than required by the Code. (See staff analysis below.) Mr. Grant then pointed out that the petitioner is asking permission to add 2,000 square feet of restaurant space when the current restaurant operator vacates the building at the expiration of the current one-year lease resulting in a total of 2,675 feet of restaurant space currently slated for a June, 2003 opening.

Planning Director Ron Lee explained that the site plan indicates a total of 28 parking spaces between the petitioner's property and the adjacent Jerry's Cleaners site and that the petitioner is requesting right-of-way credit for 12 spaces on Eighth Street and Sixth Avenue for a total of 40 spaces. However, he said, staff had calculated that a deficiency of six parking spaces remains, according to Code requirements. This deficit would be relieved, Mr. Lee pointed out, should Council approve a future proposed reduction in the required parking for Jerry's Cleaners from 15 to five. However, this would not delete the 12-space credit being sought on Eighth Street and Sixth Avenue South.

Petitioner Fracasso stated that no improvements had been made to the building in 30 years and that his proposed renovation would include parking lot striping, that employees would be required to use the least desirable parking, and that additional parking is located at a City lot across from the site on Sixth Avenue South.

In response to Council, Mr. Lee noted that while the current overhang is a legal nonconformity which cannot be expanded, columns on the edge of the sidewalk essentially replace the overhang and may pose difficulty for pedestrians. Staff, he said, does not perceive a hardship in this case, and believes the building could in fact function without the columns. Mr. Lee also noted that some of the traffic counts had been taken on Sundays when the activity level was low. However, he said that due to use of the drive-through at the dry cleaners and customer parking on Sixth Avenue, three to four spaces are generally sufficient as opposed to the 15-space Code requirement. Mr. Lee affirmed that the petitioner is requesting 22 fewer spaces than required by Code. Council Member MacIlvaine expressed concern regarding the impact to an area that he characterized as already congested. In further discussion, Mr. Lee affirmed that either maintaining a 675 square foot restaurant or later converting to retail would further reduce but not totally eliminate a parking deficit; however the petitioner can totally eliminate the deficit by not using the 675 square foot space. Conversely, he said that converting the existing restaurant to retail and reducing the proposed 2,000 square foot restaurant to 1,800 square feet would also alleviate the deficit.

Attorney Grant stated for the record that only one or two of the parking counts was done on a Sunday and reiterated that the petitioner is attempting to improve and modernize the building. He also expressed doubt that the proposed columns would affect the functionality of the sidewalk and further noted that the Code allows property owners to request a parking needs analysis to demonstrate that requirements are sometimes unnecessary, such as has been shown in this instance. He also reiterated that the parking deficit is offset by considering use of the parking spaces in the right-of-way adjoining the properties on Eighth Street and Sixth Avenue. He therefore requested approval. In response to Council, Mr. Fracasso said that two trash containers are located in the rear center against the western edge of Jerry's Cleaners. He added that these containers have not impacted parking; however, Council Member Herms recommended they be shown on the site plan. Mr. Fracasso also clarified that he would utilize the present overhang for support on the north and south edge of the building, but that he would reduce the overhang to two feet in the center section.

Council Member Russell proffered a motion to deny Item 6-a, but nevertheless stated that he supports renovation of the building in some manner. Council Member Wiseman agreed and seconded the motion, citing violation of the Code. While noting the importance of encouraging this property owner to improve the building, Council Member Herms pointed out that the proposed plans would not necessitate Council approval if fairly simple alternatives to the proposed plans were made. City Attorney Robert Pritt recommended that Council declare a reason for denial; Council Member Russell clarified that this motion was based on failure to meet the variance standards.

**Public Comment:** None. (10:47 a.m.)

**MOTION by Russell to DENY ITEM 6-a (RESOLUTION 03-9932); seconded by Wiseman and unanimously carried, all members present and voting (Herms-yes, Galleberg-yes, Taylor-yes, MacIlvaine-yes, Wiseman-yes, Russell-yes, MacKenzie-yes).**

Council Member Russell proffered a motion, seconded by Council Member Herms, to approve Item 6-b limiting the property to 1,800 square feet of restaurant space with the balance to be used as retail. Planning Director Lee clarified that such a limitation would be effective after

December 31, 2003, and that because the existing restaurant has a lease until the end of the year, Council must recognize that from June to December there would be a parking deficit with the two restaurants operating. City Attorney Pritt suggested that Council require that prior to the issuance of building permits, the petitioner should provide the City with covenants between and among all of the property owners for the use of the parking spaces. Vice Mayor Galleberg expressed the opinion that this location is the least appropriate one in the City to allocate off-street parking, noting that the use of the building would coincide with Cambier Park's highest use. Council Member Wiseman concurred, observing frequent traffic congestion already occurring on Sixth Avenue, and Council Member MacIlvaine cautioned against revising the resolution without adequate review. After further discussion, Council Member Herms withdrew his second.

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

**MOTION** by MacIlvaine to **DENY ITEM 6-b (RESOLUTION 03-9933)**; *seconded by Wiseman and unanimously carried, all members present and voting (Wiseman-yes, Russell-yes, Taylor-yes, Galleberg-yes, Herms-yes, MacIlvaine-yes, MacKenzie-yes).*

Mayor MacKenzie said she would prefer that the building be renovated less intensely.

**Recess: 10:59 a.m. to 11:11 a.m.** It is noted for the record that the entire Council was present when the meeting reconvened.

**ORDINANCE (First Reading).....ITEM 7**  
**AN ORDINANCE AMENDING SECTION 102-121 OF THE CODE OF ORDINANCES, CITY OF NAPLES BY AMENDING SUBSECTION (4)c AND ADDING A SUBSECTION (4)d; AND AMENDING SECTION 102-122(b), IN ORDER TO MODIFY PROVISIONS FOR PIERS AND BOAT LIFTS IN 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 (11:11 a.m.). Natural Resources Manager Jon Staiger stated that these regulations were proposed to minimize the impact on views caused by various structures currently permitted in the waterways. In addition, another regulation would keep structures in the dead-end waterways as close to the shoreline as possible to avoid any impediment to maneuvering. He added that the Port Royal Property Owners Association assisted in the drafting and supports these regulations, and that the Planning Advisory Board (PAB) recommended approval. In response to Council, Dr. Stagier confirmed that the submerged mooring pennants would create no navigational hazard under normal boating conditions.

**Public Comment:** None. (11:17 a.m.)

**MOTION** by Russell to **APPROVE ITEM 7 AS SUBMITTED AT FIRST READING**; *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 (Continued) .....ITEM 8-a**  
**A RESOLUTION DETERMINING PETITION 03-LE3 FOR LIVE ENTERTAINMENT AT JOE'S CRAB SHACK LOCATED AT 1355 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:17 a.m.).

**RESOLUTION (Continued) ..... ITEM 8-b**  
**A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION**  
**03-RIS5 FOR JOE’S CRAB SHACK LOCATED AT 1355 5TH AVENUE SOUTH, MORE**  
**PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED**  
**HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:17 a.m.).

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

City Manager Rambosk said he had informed the petitioner that staff would recommend denial of these petitions based on the public concern regarding potential impacts. He added that the petitioner indicated his intent to request continuance, saying he would consider revisions to the proposal and would contact the neighbors. In response to Council, Mr. Rambosk affirmed there is no entertainment permitted at this time, and that he would meet with the petitioner regarding amplified sound at the rear of the building. Petitioner’s agent Dick Rockwell confirmed for the record his request to continue for four weeks.

**Public Comment:** (11:22 a.m.) Ray Schauster, 309 Goodlette Road, Vincent Montagnino, 307 Goodlette Road, and Jane Wasilewski, 307 Goodlette Road #501B, all concurred with the proposed continuance.

**MOTION by Galleberg to CONTINUE ITEMS 8-a AND 8-b TO THE**  
**FEBRUARY 19, 2003 REGULAR MEETING; 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 03-9934.....ITEM 14**  
**A RESOLUTION APPROVING AN AGREEMENT WITH HALL-MARK FIRE**  
**APPARATUS, INC., FOR THE PURCHASE OF A CUSTOM PUMPER FIRE TRUCK;**  
**AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND**  
**PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:22 a.m.) who stated that the current truck is 20 years old, is in need of replacement, and that Hall-mark Fire Apparatus was the recommended vendor among eight bidders at \$238,000, which is within budget.

**Public Comment:** None. (11:24 p.m.)

**MOTION by Russell to APPROVE RESOLUTION 03-993 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 03-9935.....ITEM 15**  
**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE**  
**CITY OF NAPLES AND THE BOARD OF COUNTY COMMISSIONERS OF COLLIER**  
**COUNTY, FLORIDA AS THE EX-OFFICIO GOVERNING BOARD OF THE COLLIER**  
**COUNTY WATER-SEWER DISTRICT TO PROVIDE FOR METER READING,**  
**BILLING AND COLLECTION OF WASTEWATER FEES AND CHARGES IN SPECIFIC**  
**AREAS OF UNINCORPORATED COLLIER COUNTY AND TO PROVIDE FOR**  
**PAYMENT OF SERVICES RENDERED; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:24 a.m.) who noted ongoing customer service inefficiencies in the current interlocal agreement between the County and City for water and wastewater service billing. He added that under this proposal, the County would pay the City \$36,000 per year to provide billing and collection services for its wastewater customers.

**Public Comment:** None. (11:27 a.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 03-9935 AS SUBMITTED;** *seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**DISCUSSION REGARDING WILKINSON HOUSE (Continued – See Item 4).....ITEM 16 RESOLUTION 03-9936.....ITEM 9-a A RESOLUTION DETERMINING PETITION 03-LE2 FOR LIVE ENTERTAINMENT AT NAPLES YACHT CLUB LOCATED AT 700 14TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:27 a.m.).

**RESOLUTION 03-9937..... ITEM 9-b A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 03-RIS4 FOR NAPLES YACHT CLUB LOCATED AT 700 14TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:27 a.m.).

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**It is noted for the record that Items 9-a and 9-b were considered concurrently.**

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This being quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/visited the site; Wiseman/read the correspondence; Russell/read the correspondence and spoke with Naples Yacht Club member Bob Tiffany who lives within 180 feet of the property and registered his support of the petition; MacIlvaine/visited the site and one of the waterways across from the south side of the Naples Yacht Club; Galleberg and Taylor/familiarity with the site, and Herms/no contact. Notary Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Council Member Wiseman proffered a motion to approve; however, Council Member MacIlvaine suggested inserting language specifying that all live entertainment would be contained inside. Naples Yacht Club general manager Jim Clark concurred saying he would apply for a special event permit for any outdoor entertainment. In response to Council, City Manager Rambosk said the entertainment had been ongoing but that the petitioner had previously been unaware of the approval process.

**MOTION by Wiseman to APPROVE RESOLUTION 03-9936 (ITEM 9-a) AS AMENDED TO STIPULATE THAT ENTERTAINMENT MUST BE INDOORS;** *seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**Public Comment:** (11:33 a.m.) Tom Yeager, 684 15<sup>th</sup> Avenue South, expressed no objection to the petition nor with the Club's ability to request occasional outdoor entertainment.

**MOTION by MacIlvaine to APPROVE RESOLUTION 03-9937 (ITEM 9-b) AS AMENDED WITH THE CONDITION STATED ABOVE;** *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).*

**CORRESPONDENCE AND COMMUNICATIONS (11:35 a.m.) .....**

Vice Mayor Galleberg recommended that Council explore the possibility of instituting a delay in the demolition of homes deemed to be historic so that interested parties would be afforded an opportunity to intervene. Council Member Herms concurred and Council Member Wiseman suggested linking the building permit with the demolition permit. Mayor MacKenzie noted that there are 65 properties designated historic under the Comprehensive Plan, although others may also qualify. Council Member Taylor suggested inviting the Collier County Historical Society (CCHS) and other interested parties to a Council Workshop to discuss historical preservation. Council Member Russell however said that the CCHS is working on that issue and would contact the City when ready to proceed.

In response to Council Member Herms, City Manager Kevin Rambosk said there would be an upcoming workshop on the use of neon signage throughout the City. He then noted the installation of upgraded computer software in Council Chamber, and said that staff is researching alternatives to the portable microphone to make presentations more effective. (See Page 10.)

**Recess 11:43 a.m. to 1:29 p.m. It is noted for the record that, except for Council Member Wiseman who returned at 1:30 p.m., the entire Council was present when the meeting reconvened.**

**RESOLUTION 03-9938.....ITEM 10**

**A RESOLUTION DETERMINING EXTENSION OF RENEWAL OF CONDITIONAL USE APPROVAL OF A KINDERGARTEN AND GRADE SCHOOL WITHIN THE EXISTING FACILITIES OF EMMANUEL LUTHERAN CHURCH IN ACCORDANCE WITH SECTION 102-743(7), “CONDITIONAL USES, SCHOOLS AND COLLEGES,” OF THE CODE OF ORDINANCES, AT 777 MOORING LINE DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (1:29 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/visited the site, read the correspondence; Russell and Wiseman/visited the site; MacIlvaine and Galleberg/no contact; Herms/spoke to the petitioner and Taylor/familiar with the site. Notary Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Petitioner’s agent John Kuerschner indicated that a one-year extension to the conditional use would allow construction of its facility on the northwest corner of Collier Boulevard at Wolf Road until Collier County completes expansion of Collier Boulevard. Mr. Kuerschner further noted that no complaints about the school had been received and, in response to a previous citizen query, indicated that although the school had accepted the church’s offer to extend its lease for one year, the school is fully committed to relocate.

**Public Comment:** (1:34 p.m.) **Bill Kroeschell, 272 Mooringline Drive,** registered his full support of the petition.

**MOTION by Galleberg to APPROVE RESOLUTION 03-9938 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).**

**CORRESPONDENCE AND COMMUNICATIONS (1:34 p.m.) .....**

Mayor MacKenzie stated that there would be a City Council Workshop with Florida Department of Transportation representatives on February 17 to discuss the upcoming U.S. 41 repaving project, a summary of which is contained in the file for this meeting in the City Clerk's Office.

**Recess: 1:35 p.m. to 1:45 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.**

**RESOLUTION (To be reconsidered) .....ITEM 11**

**A RESOLUTION DETERMINING SAC WAIVER 03-02 FROM SECTION 102-1095(c)(2) OF THE CODE OF ORDINANCES WHICH REQUIRES THAT RESTAURANTS OR COCKTAIL LOUNGES NOT BE LOCATED ON THE SECOND FLOOR OF BUILDINGS WITHIN THE FIFTH AVENUE SOUTH SPECIAL OVERLAY DISTRICT, IN ORDER TO ALLOW A RESTAURANT AND BAR ON THE SECOND FLOOR OF THE GATEHOUSE BUILDING, 898 5TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE.**

Title read by City Manager Kevin Rambosk (11:45 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/viewed the Staff Action Committee (SAC) meeting, is familiar with the site exterior, read an article on the subject, and asked Assistant to the City Manager Victor Morales for information including the certificate of occupancy and seating capability, all of which is contained in the public record; Wiseman/visited the site, although not recently on the second floor; Russell/met with the petitioner on site on two occasions, spoke to several individuals on Fifth Avenue, and read an article on the subject; MacIlvaine/familiar with the site exterior, and read correspondence; Galleberg/spoke to staff; and Herms and Taylor/no contact. Notary Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Owner A. J. Black indicated that the City had required renovation of both the first and second floors although due to serious structural problems, renovation was therefore difficult. To that end, he noted an August 8, 2002 letter from the Building Department listing requirements he had yet to complete to operate the second floor as a restaurant (Attachment 1) and asserted a recent complaint regarding exceeding seating capacity had been unfounded. Moreover, he said that he had complied with all the City's requirements and questioned the City Attorney's determination that a second floor restaurant is unlawful. He assured Council of the quality of the restaurant, and that he had expended approximately \$1.5 million on the total renovation, \$800,000 of which was allocated to the second floor primarily for floor enforcement, lighting, and electrical upgrades.

Mayor MacKenzie noted that City Attorney Robert Pritt had found that a temporary certificate of occupancy for the second floor had expired in March, 2000. On June 21, 2000, Council adopted an ordinance that prohibited restaurant use on the second floor in that district. Since required renovations were not completed, the second floor did not receive a final certificate of occupancy, and its use was therefore illegal. (Attachment 2.) Being that the facility was not used as a restaurant within the last year, it could not be deemed a legal non-conformity.

In response to Vice Mayor Galleberg, Mr. Black said he planned a retail clothing operation in the second floor middle room in order to minimize the seating capacity, and a sushi bar with seating in the other second floor rooms.

City Manager Rambosk then explained that staff had worked on this building with previous owner Hans Schache over three years and ultimately deemed it unsafe citing second floor electrical, fire sprinkler, and floor loading violations. He further said that staff could not support this waiver request noting Council's previous concern about Fifth Avenue becoming an entertainment district. Mr. Rambosk also noted an instance where a celebrity appearance had drawn a crowd of hundreds in front of the restaurant and questioned whether that type of activity would continue.

Police Officer Michael O'Reilly said he had recently verified Viva's compliance with its live entertainment permit and affirmed that although no noise meter reading had been taken, no noise complaints had been received. City Manager Rambosk said he would review the noise ordinance to ascertain whether police officers could cite violations on their own initiative, and would ensure a sufficient number of officers are trained in the use of the meter.

City Manager Rambosk said staff believes a mix of dining and retail on the second floor may be a worthwhile alternative, and suggested issuing the waiver for a one-year period after which Council could evaluate the operation. If the restaurant is later sold, staff recommended that the new operator request the same approval, he added. Vice Mayor Galleberg nevertheless questioned how a misunderstanding regarding the use of the second floor restaurant could have occurred. City Manager Rambosk said he surmised that the Building Department had made an error and had been unaware of the change in ownership.

Council Member Taylor proffered a motion to approve the waiver with staff recommendations, although acknowledging what she characterized as unfortunate miscommunications. She said she believed the building's renovation and direction to be very positive. There was, however, no second to this motion.

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**It is noted for the record that Council Member Wiseman left the meeting at 2:58 p.m.**

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Vice Mayor Galleberg asserted that there had been sufficient notice that this use would be prohibited before Mr. Black had completed renovations and that the regulation is in fact contained within the Code. (See Attachment 3.) With respect to setting a precedent for second floor restaurant use, City Attorney Pritt said that this is actually a policy matter and that each request would stand on its own merits. He added that Council could find there were special and unique circumstances in this case, and expressed doubt it would set a precedent. Council Member MacIlvaine however pointed out there had never been a legal restaurant on the second floor, and that such uses would be the wrong direction for Fifth Avenue. He further predicted it would in fact lead to a number of similar requests. Although expressing similar concern regarding the street, Council Member Herms pointed out that this owner had committed significant funds and had worked diligently with the City to obtain his certificate of occupancy. He therefore agreed with the concept of issuing a one-year waiver. Vice Mayor Galleberg nevertheless said the financial commitment was made knowing it was at risk. He further said neither the petitioner's ignorance of the Code nor the Building Department's error compels the Council in any way. Council Member Russell nevertheless said he would not object to a restaurant in that space noting Council could establish appropriate limits.

**Public Comment:** None. (3:25 p.m.)

**MOTION by Taylor to APPROVE ITEM 11 WITH STAFF RECOMMENDATIONS; HOWEVER THE CENTER BAY AREA AS**

**REFERENCED IN THE CONCEPT PLAN SUBMITTED JANUARY 22, 2003**  
**MAY HAVE ANY LEGAL USE OTHER THAN A RESTAURANT.** This  
motion was seconded by Herms and failed 3-3 (Russell-yes, Galleberg-no,  
Herms-yes, Wiseman-absent, Taylor-yes, MacIlvaine-no, MacKenzie-no).

**MOTION by Herms to RECONSIDER ITEM 11 AT THE FEBRUARY 5, 2003**  
**REGULAR MEETING;** seconded by Taylor and carried 5-1 (Galleberg-yes,  
Herms-yes, MacIlvaine-no, Russell-yes, Taylor-yes, Wiseman-absent,  
MacKenzie-yes).

City Attorney Pritt recommended that Council proffer a motion to keep the public hearing open so speakers could present additional information to which staff could respond.

**MOTION by Herms to KEEP THE PUBLIC HEARING OPEN;** seconded by  
Taylor and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-no, Russell-yes,  
Taylor-yes, Wiseman-absent, MacKenzie-yes).

In response to Vice Mayor Galleberg, Planning Director Ron Lee explained that the computerized version of the Code on the City's network should be used and also noted that the Code book is updated quarterly through the Municipal Code Corporation, and that City Council annotated agendas are available. Mr. Galleberg urged that staff become fully cognizant of the Code. Mr. Black asked whether Council would allow him to operate the second floor restaurant until the next meeting to assist his financial situation; Council Member Herms however said there was insufficient support on Council at that time.

**ORDINANCE (Continued) .....ITEM 12**  
**AN ORDINANCE REVISING SECTIONS 66-2, "DEFINITIONS" AND 66-140(1).**  
**"RECLAIMED WATER RATES" OF THE CODE OF ORDINANCES OF THE CITY OF**  
**NAPLES FOR THE PURPOSE OF SETTING A RECLAIMED WATER RATE**  
**STRUCTURE AND FEE SCHEDULE; AMENDING APPENDIX A – FEE SCHEDULE,**  
**CODE SECTION 66-26, WATER SERVICE RATES – RATE SCHEDULE FOR THE**  
**PURPOSE OF MODIFYING THE WATER RATES AND THE WATER RATE**  
**STRUCTURE; ADDING SECTION 66-140, RECLAIMED WATER RATE FEES TO**  
**APPENDIX A – FEE SCHEDULE; REPEALING THE DEFINITION OF RECLAIMED**  
**WATER IN SECTION 66-61; REPEALING SECTION 66-132, "DEFINITIONS"; AND**  
**PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN**  
**EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:36 p.m.). Mayor  
MacKenzie noted that several condominiums, cooperatives, and bulk rate users had expressed  
concern about how these changes would affect them and had requested an extension. Council  
Member MacIlvaine noted for the record that this item had been approved at first reading.

**Public Comment:** None. (3:37 p.m.)

**MOTION by MacKenzie to CONTINUE ITEM 12 TO THE FEBRUARY 5,**  
**2003 REGULAR MEETING;** seconded by Herms and carried 6-0 (Galleberg-  
yes, Herms-absent yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes  
absent, MacKenzie-yes)

City Manager Rambosk said all customers were given proper notice, but that he would communicate further with the bulk rate users.

**PUBLIC COMMENT(3:37 p.m.)** .....

**Ken Abernathy, Belair Lane**, noted there had been second floor dining at the 8-11 restaurant for a number of years; however, Vice Mayor Galleberg noted that that use had been properly grandfathered.

**ADJOURN** .....

3:38 p.m.

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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: 2/19/03