



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – February 19, 2003 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bonnie R. MacKenzie, Mayor
Gary Galleberg, Vice Mayor

Council Members:

Joseph Herms
William MacIlvaine
Clark Russell
Penny Taylor
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Victor Morales, Assistant to the City Manager
Jon Staiger, Natural Resources Manager
Ron Lee, Planning Director
Denise Perez, Human Resources Director
David Lykins, Community Svs. Director
William Overstreet, Building Official
Al Hogrefe, Senior Building Inspector
Randy Ward, Dockmaster
Susan Golden, Planner
Laura Spurgeon, Planner
Karen Kateley, Administrative Specialist
Tony Hassan Toema
Barton Mercer
James Stockman

Willie Anthony
Richard Yovanovich
John Passidomo
David Corban
Michael Lissack
Henry Kennedy
Joe Biasella
Robert Sullivan
Pastor Susan Diamond

Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News
Denes Husty, Ft. Myers News Press

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

Pastor Susan Diamond, First Christian Church

ANNOUNCEMENTSITEM 3

None.

SET AGENDA.....ITEM 4

Add Item 18 – Provide direction to staff on “D” Downtown zoning proposal.

MOTION by Galleberg to **ADD ITEM 18**; 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 19 – Discuss the status of ATM (waterfront facilities) report.

MOTION by Galleberg to **ADD ITEM 19**; 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 20 – City Manager recruitment.

MOTION by Galleberg to **ADD ITEM 20**; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Galleberg to **SET AGENDA WITHDRAWING ITEMS 9, 12-k AND 17; CONTINUING ITEMS 12-j, AND 13 (NO DATE SPECIFIED); AND ADDING ITEMS 18, 19 AND 20**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

PUBLIC COMMENT.....ITEM 5
None. (See also Page 10.)

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 12-a
January 22, 2003 Regular Meeting with clarification of the vote on Item 12.

SPECIAL EVENT ITEM 12-b
Dine for the dig – United Arts Council and Atlantic States Bank (Atlantic States Bank, 3055 Tamiami Trail North) 3/28/03

RESOLUTION 03-9950.....ITEM 12-c
A RESOLUTION APPROVING A PUBLIC ART FACT SHEET FOR THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title not read. Mayor MacKenzie recommended that the application include the submission standards enumerated in the brochure.

RESOLUTION 03-9951..... ITEM 12-d
A RESOLUTION APPROVING A SECOND AMENDMENT TO AN EXISTING CONSULTING SERVICES CONTRACT WITH AMERICAN CONSULTING ENGINEERS IN AN AMOUNT NOT TO EXCEED \$76,200.00 FOR CONSTRUCTION INSPECTION SERVICES FOR THE PARK SHORE DRIVE BRIDGE AND THE HARBOUR DRIVE BRIDGE IMPROVEMENT PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-9952.....ITEM 12-e
A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ARDAMAN & ASSOCIATES, INC. TO FURNISH CONCRETE SAMPLING AND TESTING AT THE HARBOR DRIVE BRIDGE PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-9953..... ITEM 12-f
A RESOLUTION IN SUPPORT OF CONTINUING THE STATE’S \$30 MILLION ANNUAL COMMITMENT TO BEACH MANAGEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-9954.....ITEM 12-g
A RESOLUTION APPROVING A 2003 AMENDED TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES REGARDING SAND-TIGHTENING THE GORDON PASS JETTY; AUTHORIZING THE MAYOR TO EXECUTE THE TOURISM AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-9955..... ITEM 12-h
A RESOLUTION FINDING THE MAINTENANCE DREDGING OF EXISTING CANALS AND NAVIGABLE CHANNELS TO BE IN THE PUBLIC INTEREST AND REQUESTING THE TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND TO ISSUE A PUBLIC NON-EXCLUSIVE SOVEREIGN SUBMERGED LANDS EASEMENT FOR THE CHANNELS EXTENDING FROM THE CANALS OF AQUALANE SHORES EAST TO THE FEDERAL CHANNEL IN NAPLES BAY, CITY OF NAPLES, FLORIDA, SECTIONS 10 AND 15, TOWNSHIP 50 SOUTH, RANGE 25 EAST; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-9956..... ITEM 12-i
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, MODIFYING THE TITLE OF CAPITAL IMPROVEMENT PROJECT 03R01 IN THE FY 2002-2003 ANNUAL BUDGET ADOPTED BY ORDINANCE 02-9825; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Continued – See Item 4.) ITEM 12-j
APPROVE AN INTERLOCAL AGREEMENT WITH COLLIER COUNTY FOR TOURIST DEVELOPMENT COUNCIL FUNDS FOR THE FOURTH OF JULY CELEBRATION. Editor’s note: No draft resolution was provided for this item.

RESOLUTION (Withdrawn – See Item 4.) ITEM 12-k
AUTHORIZE STAFF TO SUBMIT A REQUEST FOR TOURIST DEVELOPMENT COUNCIL FUNDS FOR THE NAPLES PRESERVE. Editor’s note: No draft resolution was provided for this item.

MOTION by Taylor to APPROVE ITEMS 12-a THROUGH 12-i; 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).

END CONSENT AGENDA

RESOLUTION (Continued – See Item 4.)ITEM 13
CONSIDER WAIVING THE COMPETITIVE BID PROCESS FOR LANDSCAPING PROJECTS WITH AN ESTIMATED COST OF \$100,000.00 OR LESS. (Editor’s note: No resolution was provided for this item.)

ORDINANCE 03-9957.....ITEM 14
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 (9:09 a.m.). Council Member Russell proffered a motion to approve; however, further discussion ensued. In response to Council, City Manager Rambosk said that while one family might use 5,000 gallons of water per month, the size of the meter and the gallonage used, especially for irrigation, would determine the actual cost. Council Member MacIlvaine suggested supplying information to the residents on the savings to be realized from using rain gauge irrigation meters.

Public Comment: None. (9:16 a.m.)

MOTION by Russell to ADOPT ORDINANCE 03-9957 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 03-9958.....ITEM 15
A RESOLUTION APPROVING A CONSTRUCTION MANAGEMENT CONTRACT BETWEEN THE CITY OF NAPLES AND O-A-K/FLORIDA, INC., dba OWEN-AMES-KIMBALL COMPANY, TO PROVIDE CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE CONSTRUCTION OF THE LOWDERMILK PAVILION IN AN AMOUNT NOT TO EXCEED \$325,617.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:16 a.m.) who said that this project would be contingent upon whether the Tourist Development Council (TDC) approves the funding.

Public Comment: None. (9:18 a.m.)

MOTION by Russell to APPROVE RESOLUTION 03-9958 AS SUBMITTED; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-9959.....ITEM 16
A RESOLUTION APPOINTING A CONSULTANT SELECTION COMMITTEE TO SELECT PROFESSIONAL ENGINEERING AND SURVEYING FIRMS FOR ANNUAL SERVICES ON AN AS NEEDED BASIS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:18 a.m.) who noted this process would be used for smaller projects throughout the City, although those above \$11,600 would still require Council approval.

Public Comment: None. (9:21 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-9959 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).

ORDINANCE (Withdrawn – See Item 4.)ITEM 17
PUBLIC HEARING TO CONSIDER ADDING A NEW SECTION 42-6, SQUIRREL MONKEY PROTECTION REGULATIONS, TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO PROTECT THE FREE-LIVING SQUIRREL MONKEYS. (Editor’s note: No draft ordinance was provided for this item.)

.....ITEM 18
DIRECTION TO STAFF REGARDING “D” DOWNTOWN PROPOSED ZONING. (9:21 a.m.) Council Member MacIlvaine proffered a motion to move the proposed ordinance to the Planning Advisory Board (PAB); however, further discussion ensued. Council Member Russell characterized this as a down zoning that should be handled carefully with respect to the current property owners. Council Member Herms however disagreed, saying this would produce high-density development and a pronounced negative effect upon the overall community. He further suggested imposing the Comprehensive Plan standards, which limit lot coverage to fifty percent and density to eight units per acre. Council Member Taylor noted that the consultant had indicated that the plan does not consider appropriateness and that the City would be required to build parking lots and parking garages. Further, she contended that by omitting the requirement for a supermajority density and intensity would increase. Council Member MacIlvaine said those opposed to the plan are misleading residents as to its intent and proposed impact, and clarified that there is in fact currently no limitation on density. Moreover, he said the purpose is to rejuvenate an area which had long been neglected, and to create a vital, important, local neighborhood consisting of retail, office and residential which he predicted would become an attractive addition to the City.

Public Comment: None. (9:32 a.m.)

MOTION by MacIlvaine to APPROVE MOVING FORWARD TO PLANNING ADVISORY BOARD REVIEW; *seconded by Wiseman and carried 5-1-1 (Galleberg-yes, Herms-abstain, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes). (See Attachment 1, Form 8B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)*

RESOLUTION 03-9960.....ITEM 6
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES, THE CITY OF MARCO ISLAND, THE CITY OF EVERGLADES CITY AND THE COLLIER COUNTY SCHOOL BOARD; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; DIRECTING THAT THE AGREEMENT BE SUBMITTED TO THE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:32 a.m.). Planner Susan Golden noted that Jean Rawson would be special counsel for the City on this matter. She then explained that the State requires all communities and school districts to enter into an interlocal agreement on school facility siting criteria, and that the final document must be submitted to the Department of Community Affairs by March 1.

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

MOTION by Russell to APPROVE RESOLUTION 03-9960 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).*

Recess: 9:35 a.m. to 9:45 a.m. It is noted for the record that the entire Council was present when the meeting reconvened.

RESOLUTION 03-9961.....ITEM 7
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 (9:47 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/no contact; Wiseman/telephone conversation and electronic mail message from petitioner's attorney Richard Yovanovich, telephone conversation with petitioner Jolene Navy but declined a request to view the space, and research to determine that the petitioner is a corporation in good standing with Ms. Navy being the only individual shown on the record; Russell/telephone conversation and meeting with Attorney Yovanovich regarding the waiver process, meeting with petitioner A.J. Black who spoke to him about receiving a fair hearing, conversation with Public Works Director Dan Mercer and various individuals within the community; MacIlvaine/conversation with the City Attorney; Galleberg/service on the Staff Action Committee (SAC) where he addressed many of the ancillary issues pertaining to this matter, conversation with Attorney Yovanovich, and contact with residents who registered opposition to violation of the Code at this location; Herms/conversation with Petitioner Black after the last Council meeting, Mr. Black expressing appreciation for comments Mr. Herms had made; and Taylor/ conversations with both Petitioners Black and Navy after the last meeting, tour of the building while they explained structural improvements, and contact with various members of the community. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Richard Yovanovich, attorney for the petitioners, expressed appreciation to staff for the time devoted to explaining the nature and history of the petition. After reviewing all the information, he said he doubted that either the petitioner or the staff had deliberately ignored the law but that there had simply been a misunderstanding regarding use of the building's second floor as a restaurant. He however said staff had in fact issued a building permit on September 25, 2002 for improvements for the aforementioned purpose. (A copy of all supporting materials is contained in the file for this meeting in the City Clerk's Office.) The City Manager later sent correspondence dated October 7, 2002 explaining that a June 2000 ordinance disallowed second floor restaurants, Mr. Yovanovich said, and at that point, the petitioner ceased all major work related to the second floor restaurant. Attorney Yovanovich further said that prior to passage of the ordinance prohibiting second floor restaurants, Council had indicated its intent to bring the building in question into compliance with the Code so the second floor restaurant could operate lawfully and that Mr. Black had in fact done so. He then said that Mr. Black had sought through the waiver process a fair and equitable resolution to what he described as an unusual set of circumstances. Attorney Yovanovich added that the petitioners have renovated this building and are simply trying to operate a successful restaurant. He further recommended that Council consider that, from a planning perspective, the building is ideally suited for a second floor restaurant due to its location on a busy intersection with no surrounding residential. Due to the circumstances involved in the petition, Attorney Yovanovich contended that the waiver process would be appropriate and would not establish a precedent for other second floor restaurants on Fifth Avenue. He added that Mr. Black had revised his original proposal and is willing to use only the second floor front room (facing Fifth Avenue South) as a restaurant, and to limit the hours of operation to 11:30 p.m. during the week and 12 midnight on weekends. Further, he said that Mr. Black is amenable to a yearly waiver review, and is willing to abide by all staff conditions imposed. Moreover, he noted that there were no public speakers opposed to the

waiver at the last City Council meeting, and therefore suggested there is support for use of this limited area on the second floor as a restaurant; he therefore requested that Council approve the request.

In response to Council, City Attorney Robert Pritt said that there had previously been a temporary certificate of occupancy and building permits issued to a previous petitioner, but that they had lapsed during which time the law had changed. He therefore said in his opinion there was no longer a right for a second floor restaurant use. However, because the petitioner continued to operate the restaurant, a stop work order had been issued and litigation ensued which was later dismissed. Vice Mayor Galleberg stated that the permit issued by the Building Department is not legislation, which he said he believed to be the determining factor. He then also expressed doubt that the appropriate process had consistently been followed. Contrary to information submitted, he explained that SAC did not address a first and second floor restaurant at its August 6, 2002 meeting but had in fact considered only a petition for paint colors and entryways, and discussed the terms of the lease. He added that the building permit issued in September, 2002 is for a new entry and doors and does not address a second floor restaurant. In addition, he noted the petitioners ignored advice given them at the SAC meeting to contact the City Manager with regard to ownership issues. He therefore said he could not support granting a variance in this case.

Attorney Yovanovich disagreed that the petitioners had intentionally violated the law to obtain a second floor restaurant. Although noting they had not approached City Manager Rambosk, he said they had in fact contacted the Building Department, upon which, he contended, citizens would assume they could rely. He surmised that the Building Department had made an error by issuing the permit because the attached plans clearly identified use of the second floor as a restaurant. He therefore reiterated his request for approval. Vice Mayor Galleberg nevertheless contended that the petitioners had in fact become willfully ignorant during the aforementioned process. In response to Council Member Herms, City Attorney Pritt noted that the temporary certificate of occupancy for limited use of the second floor restaurant had expired on March 31, 2000, and that the restaurant had ceased to operate for more than 12 months.

City Manager Rambosk said he believed the focus should be on the waiver request itself, but noted for the record that staff had nevertheless provided incorrect information to the petitioners. He added that after researching the issue, the Planning Department concluded that this location could in fact support this type of use, and further, predicted that the impact of this request would be minimal. Council Member Wiseman however said that unless Council amends the Code to specifically allow Viva to operate a restaurant on the second floor, it should not approve this waiver request. But Council Member Russell noted the existing waiver provision, and urged that Council discuss this use on its merits. He further suggested amending the Code to allow a second-floor restaurant as a conditional use within the district. In response to Council, Planning Director Ron Lee explained that the Code allows transient lodging and residential use on the second and third floors, but that Council had approved a waiver for McCabe's Inn on Fifth to operate a beauty salon on the third floor. Council Member Wiseman however expressed concern that approval of this particular petition would establish a precedent for waiver abuses in the district.

Building Official William Overstreet stated that staff had issued a certificate of occupancy for second floor retail, but not for restaurant use due to floor loading requirements. He explained that staff had granted a temporary certificate of occupancy for the second floor from December 1999 to February 2000 for an open house, after which time, he said staff had assumed that the area would return to retail use. Staff, however, later discovered the owner had built a kitchen and bar on the second floor and operated an illegal restaurant there until the City suspended it in October 2001. When the current petitioners later approached the Building Department, staff simply furnished a list of the pending building code violations to be corrected but had not informed the petitioners they could operate a second floor restaurant.

Public Comment: (10:58 a.m.) **Barton Mercer, 273 Tenth Avenue South**, Naples Leadership Council president and Community Services Advisory Board (CSAB) member, expressed support for the waiver noting that a variety of dining and shopping experiences on Fifth Avenue supports the economic stability of the district and provides additional jobs and business opportunities. Additionally, he contended that imposing restrictions on property uses increases rents, discourages local entrepreneurs, and invites large national chains which could destroy the unique charm of the area. In response to Council, Mr. Mercer said he believed the Code should be amended to allow second floor restaurants. **James Stockman, 110 Michigan Avenue**, said he perceived a need for growth and variety to enhance the overall Fifth Avenue experience. Specifically, he asserted that the late night fine dining and jazz lounge proposed for Viva's second floor would be a welcome addition, and submitted a petition of support, which he said, contained over 1,000 signatures. (This petition is contained in the file for this meeting in the City Clerk's Office.) Council Member Russell observed that Viva has the ability to offer late night dining on the first floor. **Tony Hassan Toema, 570 102nd Avenue**, Viva General Manager, noted the work, time, and money the petitioners had already invested in the building and urged that Council allow a second floor restaurant to ensure the capital for continued operations.

Council Member Russell said he did not favor rewriting the Code to allow an exception nor granting a conditional use since there is already a first floor restaurant on the premises. He however recommended making the waiver procedure more specific and asserted that the property is unique in that it is currently built to support second floor restaurant use and that its hours of operation have been limited. Moreover, he contended that this use would not harm the district and should be approved. Council Member MacIlvaine expressed concern about the impact of the proposed use on the residential units contained in the building across Ninth Street. In response to Vice Mayor Galleberg, Planner and SAC Chair Ann Walker stated that the purview of SAC concerns exterior changes, and that questions regarding the use of the property had never been presented to SAC. In further discussion, Senior Building Inspector Al Hogrefe stated that a certificate of occupancy does not specify an exact type of building use.

MOTION by Galleberg to DENY ITEM 7; seconded by Wiseman and carried 4-3, all members present and voting (Wiseman-yes, Herms-no, MacIlvaine-yes, Taylor-no, Russell-no, Galleberg-yes, MacKenzie-yes).

Council Member Herms took the position that due to some errors made by the staff, the petitioners were led to believe that they could in fact use the second floor as a restaurant. He predicted not only a negative impact on the viability of the business but also potential litigation. Council Member MacIlvaine and Vice Mayor Galleberg nevertheless asserted that a citizen must

follow the law. Council Member Taylor stated that the petitioners have offered a fair compromise, and that the business needs an opportunity to survive in the current difficult economic climate. Council Member Russell said that while he felt no sense of obligation to the petitioner, he supports the use of a waiver in this instance. Mayor MacKenzie noted that the law had been changed two years before the petitioner became involved with the property which afforded more than adequate time to research allowed building uses.

Recess: 11:46 a.m. to 11:52 a.m. It is noted for the record that the entire Council, except Council Members MacIlvaine and Taylor, was present when the meeting reconvened.

ORDINANCE (First Reading).....ITEM 8
AN ORDINANCE DETERMINING REZONE PETITION 03-R1, REZONING PROPERTY LOCATED AT 1400 GULF SHORE BOULEVARD NORTH AND 225 BANYAN BOULEVARD, MORE PARTICULARLY DESCRIBED HEREIN, FROM PD, PLANNED DEVELOPMENT, TO PD, PLANNED DEVELOPMENT, IN ORDER TO AMEND THE SIGNAGE REQUIREMENTS; REPEALING ORDINANCE 01-9142; AND PROVIDING AN EFFECTIVE DATE. Title read by Planner Ann Walker (11:46 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie, Wiseman/familiar with the site; Russell/no contact; Galleberg/familiar with the site, and viewed the Planning Advisory Board (PAB) meeting; and Herms/greeted the petitioner. When they later arrived at the meeting, Council Member MacIlvaine disclosed no contact, and Council Member Taylor said she was familiar with the site. City Clerk Tara Norman administered an oath to those intending to give testimony; all responded in the affirmative.

Capetown Development president Robert Sullivan stated that the project, Charleston Square, which contains 900 linear feet of frontage on Banyan Boulevard and Gulf Shore Boulevard, was rezoned to Planned Development (PD) in 2001 to allow for a mixed-use redevelopment.

It is noted for the record that Council Member MacIlvaine entered the meeting at 11:56 a.m.

He explained that this two-phased project contains 43,000 square feet of commercial space with residential condominiums on the second and third floors. Mr. Sullivan explained that the request is to amend the signage component of the current PD, which allows only wall canopies, awnings, marquee signs, and pedestrian shingles, in order to include ground directory signs, which would assist the numerous commercial tenants and their customers, as well as facilitate emergency response. Further, he explained that amending the PD would permit retention of a ground directory sign already installed. He also noted that the current sign is 19 feet from the edge of the road and separated from the road by a 10-foot bicycle path.

In response to Council, Mr. Sullivan said the current sign is located in a grassed median area, which separates a driveway from the parking spaces. Further, he said that all the utilities for the property run directly behind this sign to the interior of the parcel and that relocation within the median in order to achieve compliance is not possible.

It is noted for the record that Council Member Taylor entered the meeting at 12:02 p.m.

Building Official William Overstreet stated that staff had issued a permit for the sign on October 2 but determined during a October 10 inspection that it did not meet the required 10-foot setback from the property line. Mayor MacKenzie pointed out that the petitioner would still be subject to the requirements for PD zoning under the sign ordinance, which does not allow a ground sign.

She therefore recommended requiring that the signage comply with Section 106-35 (c), which governs signage for neighborhood and community shopping centers. Planner Ann Walker said this would accommodate all existing permitted signs as well as a ground sign. Council Member Herms however expressed concern that that section allows an 80 square foot maximum sign, saying the neighbors had not been notified; City Attorney Robert Pritt recommended inserting a maximum size in the ordinance. City Attorney Pritt further explained that the proposed ordinance would amend by implication a pre-existing ordinance, and would therefore apply, creating no conflict.

Public Comment: None. (12:19 p.m.)

MOTION by Wiseman to APPROVE ITEM 8 AS AMENDED IN SECTION 2(8) "ALL SIGNAGE SHALL BE IN ACCORDANCE WITH SECTION 106-35 (b) (c) OF THE CODE OF ORDINANCES EXCEPT THAT THE SETBACK MAY BE REDUCED TO THREE (3) FEET FOR ONE SIGN, NOT TO EXCEED 32 SQUARE FEET, WHICH SHALL BE PERMITTED IN EXISTING LOCATION AS DEPICTED ON EXHIBIT A." (EXHIBIT A IS TO BE ILLUSTRATION OF SIGN). This motion was 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).

It is noted for the record that Council Member Wiseman left the meeting at 12:19 p.m.

RESOLUTION (Withdrawn – See Item 4.).....ITEM 9-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 not read.

RESOLUTION (Withdrawn – See Item 4.)..... ITEM 9-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 not read.

PUBLIC COMMENT (Item 14; see Page 4)ITEM 5
Willie Anthony, 559 14th Street North, expressed concern with regard to the potential impacts to residents represented by rate increases for potable and reuse water and suggested creating an advisory board for utilities. Mayor MacKenzie noted that that the rates would not be effective until October 1, which should afford adequate preparation time.

Recess: 12:31 p.m. to 1:34 p.m. It is noted for the record that Vice Mayor Galleberg and Council Members Herms and Taylor were not present when the meeting reconvened.

ORDINANCE 03-9962.....ITEM 10-a
AN ORDINANCE DETERMINING REZONE PETITION 03-R2 FOR PROPERTY LOCATED AT 309 9TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM C-2 COMMERCIAL DEVELOPMENT AND D DOWNTOWN TO PD, PLANNED DEVELOPMENT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.).

RESOLUTION 03-9963..... ITEM 10-b
A RESOLUTION DETERMINING PETITION 03-AV1 FOR THE VACATION OF TWO ALLEYS AT 309 9TH STREET SOUTH IN ORDER TO DEVELOP A 2.3 ACRE MIXED USE PROJECT, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.).

RESOLUTION 03-9964..... ITEM 10-c
A RESOLUTION DETERMINING PETITION 03-PC1 TO IMPROVE THE PUBLIC RIGHT-OF-WAY AND OBTAIN CREDIT FOR PARKING SPACES IN THE D DOWNTOWN DISTRICT ADJACENT TO PROPERTY AT 309 9TH STREET SOUTH, LEGALLY DESCRIBED HEREIN, AS PROVIDED IN SECTION 102-856 OF THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.).

RESOLUTION 03-9965..... ITEM 10-d
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 03-RIS2 FOR PROPERTY LOCATED AT 309 9TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.).

It is noted for the record that Items 10-a, 10-b, 10-c, and 10-d were considered concurrently.

This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/no contact; Wiseman/telephone conversation with petitioner's attorney John Passidomo relative to the parking structure, and receipt of a message from Mr. Passidomo indicating that the scale model had been revised; Russell/correspondence from Attorney Passidomo regarding the petition, brief conversation with architect David Corban, and contact with various members of the community who expressed support for the project; and MacIlvaine/telephone conversation with Attorney Passidomo regarding the parking requirements and density. After arrival later in the meeting, Council Members Herms and Taylor registered no contact, and Vice Mayor Galleberg said he had spoken briefly to Attorney Passidomo. City Clerk Tara Norman administered an oath to those intending to give testimony; all responded in the affirmative.

It is noted for the record that Vice Mayor Galleberg entered the meeting at 1:37 p.m.

Attorney Passidomo stated that staff and the Planning Advisory Board (PAB) had both recommended approval of the petitions, and that that all affected public and private utility companies had provided letters of no objection to the proposed alley vacation. He added that the petitioners have agreed to abide by all the conditions contained in the staff report and embodied in the ordinance and resolutions. In response to a comment made at the last meeting, Attorney Passidomo asserted that the project does not exceed the building coverage standard in the Comprehensive Plan and that there is no such standard for the Downtown Mixed Use District where the property is located. (Attachment 2.)

It is noted for the record that Council Member Herms entered the meeting at 1:39 p.m.

He also observed the importance of reviewing market demand for residential parking spaces in a similarly situated downtown mixed use urban project, such as the Bank of America Building at 780 Fifth Avenue South because it appeared to be the last significant project of that kind built on Fifth Avenue (Attachment 3). Although that developer had reserved the right to assign additional parking spaces to residential unit owners, all 14 had acquired only the one parking

space assigned per unit. He therefore contended that the one parking space allotted to each residential unit contained in the “D” Downtown District is sufficient to meet the demand in downtown mixed use developments, and that the 1.375 parking spaces per residential unit proposed in this particular PD is appropriate.

It is noted for the record that Council Member Taylor entered the meeting at 1:42 p.m.

Mr. Passidomo then noted that architect David Corban would demonstrate how increasing the size of the parking deck to enhance parking capacity would diminish the quality of the residential experience. In further response to prior Council discussion of this petition, Attorney Passidomo said that City Code makes no provision for payment of consideration upon vacation of an alley. Further, he asserted that staff has found that all criteria for vacation of an alley had been met and that the alleys proposed to be vacated no longer serve any public purpose.

Further, Attorney Passidomo said that the petitions had achieved the three core principles espoused in the Comprehensive Plan for the Downtown District; namely, they encourage full-time residential use; reinforce the role of the downtown as a community center and meeting place; and provide open and public spaces in a pedestrian oriented, mixed use urban setting. He therefore requested that Council approve all four petitions.

Vice Mayor Galleberg questioned the relevance of the comparison to the Bank of America property saying that it described personal decisions on purchasing extra spaces rather than addressing actual parking needs. He also noted that approximately 16 of the proposed parking spaces are designated for residential use and are not available for sharing by commercial and further recommended that the petitioners grant an easement that assures legitimate legal public access to the open space they are providing in exchange for higher residential density. Attorney Passidomo said that he had however attempted to establish that demand does not generate a requirement for more than one parking space for each residential unit. He then explained that eight residential units would have a garage with two parking spaces, but that there would still be 39 parking spaces remaining for 32 units, resulting in an excess of seven spaces. In addition, Attorney Passidomo said the site plan would indicate the location of the aforementioned public space.

Architectural Network representative David Corban displayed photographs of the parking structure, copies of which are contained in the City Clerk’s Office in the file for this meeting. He then explained that the raised plaza atop the ground level parking is intended to serve the residential occupants of the property, and would include lawns, trees, planters, and water features. A public walkway would allow access from the residential units into the plaza area, he added. In response to a question raised at the last meeting, Mr. Corban explained that extending the second floor parking to provide two spaces per unit would eliminate open space and cause some second floor units to face the parking garage thereby eliminating their access to the plaza area. He therefore contended that the proposed 1.375 spaces per unit would be the maximum that would still permit an appropriate amount of landscaped area. Council Member Wiseman suggested he investigate underground parking; Mr. Corban however said that this is not a viable option due to the elevation of the property.

In response to Council, Planning Director Ron Lee said that the proposed new “D” Downtown Code however stipulates that properties over 100,000 square feet, including the subject property,

would be ineligible for right-of-way parking. Mayor MacKenzie expressed concern that the three-story buildings do not offer a recessed façade between the floors; Mr. Lee therefore recommended amending the PD document to require the second floor be recessed behind the first floor façade. Council Member Taylor said that the City's consultant had however indicated a preference for the boxed look, saying it maximizes profits. Mr. Lee pointed out that the Heart of Naples Committee (HONC) had rejected that idea, and recommended retaining the "D" Downtown standards, which do require a recessed façade on the second and third floors.

Attorney Passidomo asserted that the project does in fact comply with the design standards as currently incorporated in the Code but that it also adheres to the spirit of the proposal embodied in the HONC recommendations. Further, he said the project had simply requested an allocation of 12.9 percent of its parking needs from the public right-of-way, which he contended is lower than any other allocation in the district. Attorney Passidomo also contended that the parking deck over grade level parking significantly reduces lot coverage without affecting the number of residential units, the amount of commercial space, or number of parking spaces, and that a trip generation comparison had indicated the project would reduce overall traffic impact.

Mayor MacKenzie asked that the petitioners agree to a clause indicating that if the property were subdivided, an amount of square footage equivalent to the vacated alleys be rededicated. Council Member MacIlvaine commended the petitioners' efforts to combine both the "D" Downtown regulations as well as the HONC proposals, and recommended approving the project as a PD. Council Member Russell said he believed the project represents a good faith effort on the part of the petitioners, and that it would fulfill the vision for this area. He then proffered a motion to approve Item 10-a; however, further discussion ensued. Council Member Taylor characterized the project as a large, intensive PD, and expressed concern with the request for on-street parking. She further questioned whether the project actually constitutes a true mixed-use development.

MOTION by Russell to ADOPT ORDINANCE 03-9962 (ITEM 10-a) 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).

Council Member Herms said he believed this to be the most intense project approved by the City, and that it exceeds Code and Comprehensive Plan limitations with regard to units per acre and lot coverage. Vice Mayor Galleberg however asserted that there is no density limit in the Code.

MOTION by MacIlvaine to APPROVE RESOLUTION 03-9963 (ITEM 10-b) 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).

MOTION by Russell to APPROVE RESOLUTION 03-9964 (ITEM 10-c) 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).

Vice Mayor Galleberg expressed doubt whether Council had all relevant facts at that conceptual stage to approve the residential impact statement. Planning Director Lee however explained that Code requires a residential impact statement for any PD that incorporates commercial with

residential. He thereby recommended approval, but suggested requiring another residential impact statement for any additional applicable activity.

MOTION by Russell to APPROVE RESOLUTION 03-9965 (ITEM 10-d) 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).

ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING AND
RESTATING IN ITS ENTIRETY ORDINANCE NO. 97-8103, AS AMENDED,
PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$5,925,000
REDEVELOPMENT REVENUE BOND, SERIES 2003, OF THE CITY TO FINANCE A
PORTION OF THE COST OF THE DESIGN, INSTALLATION, CONSTRUCTION AND
RECONSTRUCTION OF STREET, PUBLIC RIGHTS-OF-WAY, DRAINAGE
IMPROVEMENTS AND RELATED IMPROVEMENTS WITHIN ITS COMMUNITY
REDEVELOPMENT AGENCY, AND TO REFINANCE THE OUTSTANDING
REDEVELOPMENT REVENUE BOND, SERIES 1998; PROVIDING THAT THE
BONDS ARE LIMITED OBLIGATIONS OF THE CITY PAYABLE FROM THE
PROCEEDS OF THE TAX INCREMENT REVENUES WHICH ARE RECEIVED BY
THE COMMUNITY REDEVELOPMENT AGENCY AND TRANSFERRED TO THE
CITY; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF THE BONDS;
MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION
THEREWITH; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION
AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:41 p.m.). Council Member MacIlvaine proffered a motion to approve. In response to Council Member Russell, Finance Director Ann Marie Ricardi stated that the bond ordinance and corresponding resolution, scheduled for presentation at the next meeting, would cover public improvements including landscaping, road maintenance, and drainage. City Manager Rambosk affirmed that this would fund the U.S. 41 project and the continuation of the avenues program south of First Avenue but that it may also include Central Avenue improvements.

Public Comment: None. (2:45 p.m.)

MOTION by MacIlvaine to APPROVE ITEM 11 AS SUBMITTED AT FIRST READING; seconded by Russell and carried 6-0-1 (Galleberg-yes, Herms-abstain, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 1, Form 8B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

Recess: 2:45 p.m. to 2:57 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.

.....ITEM 19
DISCUSSION OF THE STATUS OF APPLIED TECHNOLOGY AND MANAGEMENT
(ATM) WATERFRONT FACILITIES REPORT (2:57 p.m.) Natural Resources Manager Jon Staiger noted a draft summary prepared by ATM consultants detailing three scenarios for the proposed improvements to the City Dock; namely, a phased build, a full build, and a revised City Dock. In addition, he noted graphics that illustrate the most recent revisions to the Pulling property, the Naples Landing Park, and the City Dock as suggested by the Community Services Advisory Board (CSAB). (Copies of these materials are contained in the City Clerk's Office in

the file for this meeting.) He added that the consultants are currently in the process of preparing the final report, after which Council could provide staff with direction on these three facilities.

Council Member MacIlvaine said he did not believe Council had sufficient information at that time to proceed. Council Member Russell expressed concern about the intensity of ATM's proposals, as well as the slow pace of the consulting project. City Manager Kevin Rambosk noted that although Council could terminate the contract, he would suggest awaiting the final report. Council Member Taylor said she believed the consultants are striving to maximize the financial viability of the waterfront; however, City Manager Rambosk said Council must determine whether their findings met the original charge. Vice Mayor Galleberg pointed out that the consultants have not fulfilled many of the elements contained in the scope of services. City Manager Rambosk concurred, and said staff would identify and request that each unfinished component be submitted immediately.

Public Comment: (3:18 p.m.) **Joe Biasella, 860 12th Avenue South**, said he believed the ATM consultants have not performed their duties, and have not been responsive to the community. **Henry Kennedy, 2178 Tarpon Road**, contended that the consultants have shown no intention of listening to the public on this issue, and have not provided documents for which they had been paid.

While acknowledging other issues, Vice Mayor Galleberg recommended that Council focus on renovation of the City Dock and Pulling property. He however expressed concern that the consultants may have harmed the public process. Dr. Staiger stated that staff does in fact have a draft of the market survey the consultants had prepared, but that it was not yet ready for public dissemination. Mr. Kennedy however said he had been told this information does not yet exist, and contended that any information submitted to staff should be available to the public.

Staff to review each element of the contract to identify completed and uncompleted items, seeking any needed assistance from the City Attorney for immediate performance by ATM, and reporting back to Council, scheduling further Council action if necessary.

.....**ITEM 20**
DISCUSSION OF CITY MANAGER RECRUITMENT (3:43 p.m.) Noting that he had recently provided notice to Council of his retirement, City Manager Kevin Rambosk suggested that Council either use existing staff to recruit and appoint a blue ribbon panel or identify an employee recruitment firm that would provide appropriate candidates.

Human Resources Director Denise Perez estimated that the City would pay such a firm between 25-35 percent of the selected candidate's annual salary, as well as incur costs for the candidate travel, lodging, and moving expenses. She added that she is researching whether the City can take advantage of the bid process recently used by the cities of Ft. Myers and Cape Coral to select a firm.

Council Member MacIlvaine commented on the excellent performance of City Manager Rambosk, and said it would be difficult to replace him. He then recommended that staff prepare a request for proposals (RFP) and evaluate several recruitment firms. Mrs. Perez estimated that the entire process of selecting a new City Manager would entail from four to six months;

however, City Manager Rambosk said he anticipated leaving within approximately two months, and recommended proceeding with an RFP, which he asserted would take between 10 to 30 days. Council Member Herms suggested hiring an interim City Manager. Vice Mayor Galleberg expressed appreciation to Mr. Rambosk for his many years of service to the City, and received assurance that he would assist in the transition. Noting his intention to expedite the process, Council Member Russell suggested filling the position in-house; Mayor MacKenzie however predicted this may not save time. Council Member Wiseman also voiced appreciation to Mr. Rambosk, and said she was encouraged that he would continue to serve the community in his new position with Collier County. She then recommended adopting the language contained in the other jurisdictions' RFP, and authorizing the Mayor to approve the City's RFP in order to expedite the process.

City Manager authorized to prepare an RFP for recruitment firms, said RFP to be approved by Mayor MacKenzie and circulated by Friday, February 21, 2003.

PUBLIC COMMENT (5:02 p.m.).....

Mayor MacKenzie advised City Attorney Robert Pritt that the registered speaker is the party filing the lawsuit against the City on behalf of the North Naples Fire Department. Mr. Pritt advised the Council to not respond to or become involved in discussions concerning the litigation.

Michael Lissack, a resident of the North Naples Fire District, (4:03 p.m.) (but not a resident of the City of Naples) clarified that as a taxpayer he had filed the lawsuit in question, on behalf of the North Naples Fire District residents, along with the North Naples Fire District Pension Board as co-plaintiff. Mr. Lissack added the North Naples Fire District itself did vote to file amicus curiae and is not a co-plaintiff in the lawsuit. He said that rather than to discuss the lawsuit he had come to address questions raised during the Naples City Fire District Pension Board meeting on Friday, February 14 regarding his motives and integrity. He said he wished therefore to go on the record that he is available to answer any questions or appear before Council at its convenience. No questions were presented for Mr. Lissack.

Correspondence and Communication: (4:04 p.m.) Council Member Wiseman commented that the traffic lights on Sixth Avenue at Tenth Street and Ninth Street appear to be timed incorrectly causing serious traffic congestion onto U.S. 41. Mr. Rambosk advised that while contacts regarding the problem have been made in the past with the Florida Department of Transportation (FDOT), this matter should be revisited. Council Member Russell requested the status of an update on the Goodlette corridor and transportation network. Mr. Rambosk stated that this topic would be discussed in March and that the City Engineer had been asked to provide a final evaluation before solidifying plans for the intersection of Eighth Avenue at Eighth Street. In an effort to encourage traffic to proceed, he said, stop lines and stop bars had been covered, but the dividing lanes and the arrows remain.

Council Member Russell advised he received a casual contact by three representatives of Fun Time Nursery asserting quite strongly that all the questions posed by the City relative to relocation of the facility had been answered. He said despite the fact that he believes there are a number of significant issues to be resolved, he is nevertheless motivated to move forward. He asked for any available information and expressed concern that this subject had been verbal only and he had not been aware of a proper petition or application being made. Mr. Rambosk stated

he had submitted written questions to Fun Time, and that he has not received a response but that staff had received some verbal answers and requested that Council be informed of the process used to establish agreements with the Naples Players, the Girl Scouts, the Naples Art Association and the Naples Sailing and Yacht Club. Mr. Rambosk explained while a form is available, location of any new facility must be ascertained; namely whether the Riverside Circle property remains a viable alternative or another site off 12th Street is to be considered which site would entail the possible vacation of a portion of the alley and improvement of the right-of-way. Staff would support such a request, if received, he said. Council Member Taylor pointed out that should Fun Time not be relocated on City property answers to the aforementioned questions would be unnecessary. Mr. Rambosk stated that he had however learned from Fun Time Director Kim Long that the Fleischmann Park property was not a favored location although he said he anticipated hearing from Fun Time representatives in the near future. Mr. Russell asked whether the parcel across from Anthony Park was still being considered. Although he said he felt no parcel had been rejected at this point, City Manager Rambosk said that staff had had a significant amount of questions from the residents regarding possible traffic impact on Fifth Avenue North. Council Member MacIlvaine stated it appears that Fun Time must now respond to staff with answers to the questions posed. Mr. Rambosk suggested again contacting Fun Time representatives to discern their plans so the City could complete its investigation of such sites as Riverside Circle. Vice Mayor Galleberg also questioned whether the City is aware of necessary site remediation at Riverside Circle and requested information on what had been determined to date.

Vice Mayor Galleberg then raised concerns relative to the Planning Advisory Board (PAB) expressing the view that it should adhere to its directives, which are statutorily defined as rezoning and comprehensive planning. He cited three examples of PAB activity such as drafting a xeriscape landscape regulation, petition to City Council regarding the Boat Haven site, and pending discussions regarding the City's consumptive use water permit. He characterized the PAB as a shadow council and advised that he would be carefully considering appointments of candidates who understand the PAB's purpose.

Council Member Herms urged that the City address the issue of the impact of regulations regarding docks prompted by a lawsuit by the National Save the Manatee Club which could depress the values of waterfront property within the Naples area because of the inability to construct boat docks. Natural Resources Manager Jon Staiger explained that the lawsuit had been instigated by the Save the Manatee Club against the Department of the Interior of the United States Fish and Wildlife Service because of the Club's belief that the Department was unable to protect manatees. Dr. Staiger explained that it is not docks that kill manatees but vessel collisions, which account for approximately 25% of manatee deaths; however litigants believe that boats can be controlled through limitations on dock construction. Communities in the area, he said, had contacted Congressman Porter Goss and the marine industries associations statewide have contacted Governor Jeb Bush, he said, and indicated that Congressman Goss had met with the Secretary of the Interior, in an effort to remove Naples from the listing of areas in Southwest Florida with high manatee populations and had asked Naples to take such other measures as vessel control and public education.

Dr. Staiger indicated that he and Mayor MacKenzie would in the near future attend a meeting

with Congressman Goss and other leaders to discuss the issue. Council Member Herms encouraged all necessary actions to avert the potential for severe impacts to the area and requested a report from the meeting. Dr. Staiger pointed out that he has approved considerably more dock permits in the last month due to property owner concerns about devaluation of their property if dock construction is curtailed and also expressed concern whether local dock contractors would be able to survive a two year moratorium. Council Member Russell advised that the Southwest Florida Regional Planning Council had passed a motion to oppose the measures the U.S. Fish and Wildlife Service is taking because the Save the Manatee tactic is not based on solid environmental findings but merely litigation to force compliance by federal agencies. Council Member MacIlvaine asked whether manatees are indigenous or had been imported to consume water hyacinths. While confirming that this was a factor, Dr. Staiger explained that the range of the manatee is from the Gulf of Mexico, the coast, the Caribbean and the north coast of South America.

Council Member Herms said he had received a letter detailing the problems and requesting minor improvements at Putter Point Place Park. A copy was forwarded to City Manager Rambosk.

Council Member Taylor advised that a citizen had reported trimming of mangroves at the Windstar development and Dr. Staiger advised that this issue is being handled through a consent order with the Florida Department of Environmental Protection (DEP) because of permit violations. This however does not fall within the City's jurisdiction, he said.

Council Member Taylor then requested a consensus regarding Willie Anthony's suggestion that a board be established to review utility rates as an avenue to increase citizen participation. While concurring, Council Member Herms suggested deferring until the first water bills have been distributed with an invitation for customer feedback. Council Member Russell agreed that the issue is worth monitoring after the new rates become active in order to measure effectiveness. Council Member MacIlvaine agreed with monitoring rates but said he did not believe that another layer of government was necessary; however, he suggested a water bill insert explaining the price, the volume and how to save water. Mr. Rambosk noted that since one of the elements of the new rates was conservation, the only way to assist customers is to provide specific information on how to save.

It is noted for the record that Council Member Taylor left the meeting at 4:23 p.m.

With reference to the Viva Restaurant petition, Council Member Wiseman cited what she described as vague allegations of racial discrimination or ethnic discrimination against one or more of the petitioners by staff and/or individual Council Members. However she asserted that her decision had been based upon facts applied to the law and not the identity of the petitioner or agent. She also pointed out that in the wake of the Marvin Harris shooting, various racially insensitive comments had been made by Council.

Regarding the location of Fun Time Nursery, Ms. Wiseman indicated that there were also allegations that PAB members and/or City Council were being racially motivated which she said leads her to conclude that diversity training may be needed for City Council members. Also with reference to training for City Council Members, Ms. Wiseman said that she considers the \$1,000 per Council Member budget for this purpose for classes with Leadership Florida Local

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Government. She stated Naples is an anomaly in comparison to other communities similar to Naples, where their council members are encouraged to obtain leadership and other topics of education. Ms. Wiseman therefore recommended examining this issue and Council Member Russell concurred, citing in particular a lack of training with reference to the Sunshine Law. City Manager Rambosk explained training is available through the Florida League of Cities or the National League of Cities and/or the local government groups and indicated a willingness to make the Council aware of what training/education is available. Council Member Herms noted the helpfulness of previous trips to Tallahassee regarding the impacts but said he feels there is no cohesive understanding of what is available.

Mayor MacKenzie said former Council Member Arnold Lamb is celebrating his 95th birthday and had been delighted with greetings conveyed..

Mayor MacKenzie then suggested implementing a graphic on the City's television channel that informs the viewers of the City Manager's newsletter and she suggested a direct link to the newsletter on the City's website for people to directly access. Vice Mayor Galleberg suggested advertising the newsletter at the Town Hall meetings. Council Member Herms said he would like to see e-mail capabilities available to the public.

ADJOURN.....
4:30 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Jessica R. Rosenberg, Recording Specialist

Pamela M. Koepke, Recording Specialist

Minutes Approved: 3/19/03