



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – March 5, 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
Ron Lee, Planning Director
Jon Staiger, Natural Resources Manager
Ann Marie Ricardi, Finance Director
David Lykins, Community Svs. Director
Ralph LaCivita, Comptroller
Susan Golden, Planner
Terry Fedelem, Parks & Parkways Design Supt.
Karen Kateley, Administrative Specialist
Blair Foley
Chip Jones
George Varnadoe

Jeffrey Birr
Russell Bowles
Reverend Alan Green
Jim Boula
Russ Wimer
Brad Cornell
Gary Davis
Harry Timmins
Henry Kennedy

Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News

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

Reverend Alan Green, Berean Baptist Church

ANNOUNCEMENTSITEM 3

Introduction of Naples Preserve Volunteers

SET AGENDA.....ITEM 4

Add Item 17 – Committee to select City Manager search firm

MOTION by Russell to ADD ITEM 17; 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).

Add Item 18 – Resolution on SHIP funding

MOTION by Herms 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).

MOTION by Galleberg to SET AGENDA ADDING ITEMS 17 AND 18, REMOVING ITEMS 9-b AND 9-c FROM THE CONSENT AGENDA, SCHEDULING ITEM 13 AT 11 A.M., AND CONTINUING ITEM 9-a (2/5/03 MINUTES ONLY) UNTIL 3/19/03; 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.

ORDINANCE 03-9966.....ITEM 6
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 City Manager Kevin Rambosk (9:16 a.m.). This being a quasi-judicial proceeding, Council Members offered ex parte disclosures, each however indicating no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Planning Director Ron Lee affirmed that the rezone would amend the PD document to specify a slightly different location for signage. Mayor MacKenzie however recommended that the PD instead reflect the neighborhood and community shopping center signage regulations in Section 106-35(c).

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

MOTION by Russell to ADOPT ORDINANCE 03-9966 AS AMENDED IN THE PD “ALL SIGNAGE SHALL BE IN ACCORDANCE WITH SECTION 106-35 b (c) OF THE CODE OF ORDINANCES EXCEPT THAT THE SETBACK FOR ONE SIGN NOT TO EXCEED 32 SQUARE FEET SHALL BE PERMITTED, IN ACCORDANCE WITH THE PHOTOGRAPH ATTACHED AS EXHIBIT A.” 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).

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 9-a
February 3, 2003 Workshop, February 3, 2003 Special and February 17, 2003 Workshop Meeting Minutes.

RESOLUTION 03-9967.....ITEM 9-d
A RESOLUTION APPROVING WAIVING BIDS AND APPROVING AN AGREEMENT WITH CUSTOM PUMP & CONTROLS, INC., FOR THE PURCHASE OF A RETURNED MIXED LIQUOR (RML) PUMP; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-9968.....ITEM 9-e
A RESOLUTION APPROVING AN AGREEMENT FOR CURTAILABLE SERVICE BETWEEN FLORIDA POWER & LIGHT AND THE CITY OF NAPLES FOR THE CITY TO RECEIVE A RATE CREDIT FOR ELECTRICAL SERVICE AT THE WASTEWATER TREATMENT PLANT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE ITEMS 9-a (EXCEPT 2/5/03 REGULAR MEETING MINUTES), 9-d AND 9-e; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

SPECIAL EVENTITEM 9-b (1)
1) McCabe's Irish Pub & Grille – St. Patrick's Day Celebration (Sugden Plaza) 3/15, 3/17/03 (9:22 a.m.)

MOTION by Taylor to APPROVE ITEM 9-b (1) WITH THE UNDERSTANDING THAT LIVE ENTERTAINMENT ON MARCH 17, 2003 WOULD END AT 7:00 P.M.; 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).

SPECIAL EVENTITEM 9-b (2)
2) Teddy Bear Fair (Cambier Park) 10/18/03 (9:24 a.m.)

Council Member Russell expressed concern that this event would coincide with Octoberfest activities on Fifth Avenue South and result in parking congestion. City Manager Kevin Rambosk however pointed out that these two events had previously coincided, and Council Member MacIlvaine predicted that the two events would actually share attendees and therefore not significantly increase traffic.

MOTION by Herms to APPROVE ITEM 9-b (2); seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-9980.....ITEM 9-c
A RESOLUTION APPROVING A 2003 INTERLOCAL TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES REGARDING THE FOURTH OF JULY CELEBRATION; AND PROVIDING AN EFFECTIVE DATE. Title not read. (9:29 a.m.) Vice Mayor Galleberg noted that the Tourist Development Council (TDC) had questioned whether this request falls under its mandate and may therefore not approve funding. City Manager Kevin Rambosk clarified that this funding request addresses only the military components of the event, and that the City would manage all other aspects of the parade and fireworks. He added that he would not recommend that the City underwrite the military costs.

MOTION by Galleberg to APPROVE RESOLUTION 03-9980 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).

ORDNANCE (First Reading)ITEM 7
AN ORDINANCE GRANTING REZONE PETITION 02-R6 FOR PROPERTY LOCATED AT 4540 GORDON DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM R1-15 TO R1-15A; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:32 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie/viewed the Planning Advisory Board (PAB) meeting and drove by the property; Taylor/familiar with the property; and all other Council Members registered no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Petitioner's agent Blair Foley stated that the intent is to convert the subject property into the more restrictive R1-15A zoning in order to relieve the petitioner of time constraints relative to Port Royal Club membership. Council Member Herms predicted that this would improve potential development because of the more restrictive setbacks and spatial perception regulations.

Public Comment: None. (9:35 a.m.)

MOTION by MacIlvaine to APPROVE ITEM 7 AT FIRST READING;
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).

ORDNANCE (First Reading)ITEM 10
AN ORDINANCE AMENDING SECTION 106-71 (a) "APPLICABILITY OF ARTICLE", AND ADDING DEFINITIONS; ADDING NEW SECTIONS 106-76 PURPOSE AND INTENT AND 106-77, "LANDSCAPING STANDARDS FOR MAJOR REMODELING AND MAJOR ALTERATION OF EXISTING DWELLINGS AND NEW SINGLE FAMILY AND TWO FAMILY DWELLINGS" TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF PROVIDING MANDATORY REGULATIONS FOR LANDSCAPING; PROVIDING FOR PENALTIES; AND PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:35 a.m.). Vice Mayor Galleberg stated that the ordinance as submitted addresses ground covering as originally intended. Council Member MacIlvaine observed that the extensive revisions made from a prior version had greatly simplified and improved the ordinance. City Attorney Robert Pritt however noted language in Section 106-71 which had been amended for greater clarity. In response to Council, Planning Director Ron Lee affirmed that compliance with the proposed landscaping standards would be required before issuance of a certificate of occupancy. Council Member Taylor pointed out that the Planning Advisory Board (PAB) had proposed a higher Xeriscape landscaping standard to match that of Collier County. Vice Mayor Galleberg however questioned the effectiveness of Xeriscape landscaping, and said the PAB had created an ordinance which, he asserted, is not within its mandate. By consensus Council concurred with City Manager Rambosk's recommendation that PAB recommendations for changes in ordinances be enumerated separately from an ordinance being submitted.

Council Member Herms noted that Section 106-76 appears to limit front yards in driveways to 10 percent. Council Member Wiseman therefore suggested adding language that would clarify the uses excluded.

Public Comment: None. (9:50 a.m.)

MOTION by Galleberg to APPROVE ITEM 10 AS AMENDED IN SECTION 106-71 “SUCH OFF-STREET FACILITIES AND LAND SHALL CONFORM TO THIS ARTICLE, e. EXCEPT AS PROVIDED IN SECTION 106-76...” AND SECTION 106-76 (a) “EXCLUDED FROM THIS SECTION ARE BUILDING, SIDEWALKS, DRIVEWAYS, AND OTHER IMPERMEABLE SURFACES.” *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).*

In response to Council Member Wiseman, Planning Director Lee confirmed that a property owner could in fact pave an entire front yard as a driveway since no current standards exist setting forth the amount of impervious surface allowed for single family residential. Mrs. Wiseman therefore recommended creating such a standard to ensure appropriate greenery. It was the consensus of Council that staff create an ordinance that defines the maximum amount of impervious surface.

ORDNANCE (First Reading)ITEM 11
AN ORDINANCE AMENDING SECTION 86-141 OF THE CODE OF ORDINANCES IN ORDER TO EXPAND THE PLANNING ADVISORY BOARD MEMBERSHIP TO INCLUDE A NON-VOTING MEMBER REPRESENTATIVE OF THE COLLIER COUNTY PUBLIC SCHOOLS; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (9:57 a.m.). Commenting on the recommendation proffered by the Planning Advisory Board (PAB), City Attorney Robert Pritt explained that the City could not require that the representative appointed by the Collier County School Board be a City resident although the Council could include this as a recommendation. Council Member Wiseman also noted that the Council has no authority to remove the School Board representative, and suggested amended language. Council Member Russell requested that staff thoroughly examine the ordinance for legal sufficiency prior to second reading.

Public Comment: None. (10:06 a.m.)

MOTION by MacIlvaine to APPROVE ITEM 11 AS AMENDED IN SECTION 86-141 “THE CITY COUNCIL RECOMMENDS THAT THE SCHOOL BOARD APPOINTEE BE A CITY RESIDENT.”; AND “ANY MEMBER OR ALTERNATE OF THE PAB APPOINTED BY CITY COUNCIL MAY BE REMOVED...” *This motion was 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 03-9969.....ITEM 12
A RESOLUTION APPROVING AN AGREEMENT WITH SYMTRON SYSTEMS, INC. FOR THE PURCHASE OF A MOBILE FIRE SIMULATOR UNIT; APPROVING AN AMENDMENT TO THE 2002-2003 FISCAL YEAR BUDGET FOR THE FUNDING OF THIS PURCHASE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:06 a.m.) who said this unit would be safer and more technologically

advanced than the trailer currently in use, and that 90 percent of the cost would be underwritten by grant funding.

Public Comment: None. (10:20 a.m.)

MOTION by Russell to APPROVE RESOLUTION 03-9969 AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess: 10:08 a.m. to 10:20 a.m. It was noted for the record that the entire Council, except Council Member Taylor, was present when the meeting reconvened.

ORDINANCE 03-9970.....ITEM 14
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 (10:20 a.m.). Finance Director Ann Marie Ricardi stated that the final interest rate would be approximately 3.82 percent, but that it would be determined with certainty at closing. She added that the bond interest rate would be equal to 98.5 percent of the ten-year treasury.

Public Comment: None. (10:24 a.m.)

MOTION by MacIlvaine to APPROVE ORDINANCE 03-9970 AS SUBMITTED; seconded by Russell and carried 5-0-1 (Galleberg-yes, Herms-abstain, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes). (See Attachment 1, Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

RESOLUTION 03-9971.....ITEM 15
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, SUPPLEMENTING ORDINANCE NO. 03-9970 ENACTED BY THE CITY COUNCIL OF THE CITY ON MARCH 5, 2003, IN CERTAIN RESPECTS IN ORDER TO COMPLY WITH THE TERMS AND PROVISIONS OF THE COMMITMENT OF BANK OF AMERICA, N.A., TO PURCHASE THE CITY'S \$5,925,000 REDEVELOPMENT REVENUE BOND, SERIES 2003; APPROVING AND ACCEPTING THE COMMITMENT TO PURCHASE THE BOND; AWARDED THE BOND TO BANK OF AMERICA, N.A.; DESIGNATING THE BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION WITHIN THE MEANING OF THE INTERNAL REVENUE CODE; APPROVING THE FORM OF AN INTERLOCAL AGREEMENT WITH THE CITY'S COMMUNITY REDEVELOPMENT

AGENCY; AUTHORIZING ALL OTHER NECESSARY ACTION BY THE CITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:24 a.m.). Council Member Russell pointed out that this bond issue addresses the entire CRA district which may affect the percentage of property ownership held within the district by Council Member Herms. Council Member Herms however said that staff had identified certain limited areas for improvements which include Tenth Street and Central Avenue, and that he would therefore still be required to abstain. Mayor MacKenzie disclosed the existence of personal accounts with Bank of America which she said would constitute a contractual relationship. Although City Attorney Robert Pritt opined that having an account with a bank does not produce a conflict in this instance, Mayor MacKenzie however maintained that since she would accrue earnings because of her agreement with the bank, she believed she should abstain.

Public Comment: None. (10:27 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-9971 AS SUBMITTED; seconded by Galleberg and carried 4-0-2 (Galleberg-yes, Herms-abstain, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-abstain). (See Attachments 2 and 3, Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

RESOLUTION 03-9972.....ITEM 16
A RESOLUTION APPROVING A THREE-YEAR AGREEMENT WITH RUSSELLS CLAMBAKES AND COOKOUTS TO PROVIDE CONCESSION SERVICES FOR LOWDERMILK PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:28 a.m.) who noted that although there had been no formal complaints regarding the Russells Clambakes operations at the Naples Pier, there was some initial concern with regard to the quality of some food products which staff had addressed.

It is noted for the record that Council Member Taylor entered the meeting at 10:29 a.m.

In addition, he noted complaints regarding previous vendors' hours of operation at Lowdermilk Park, but said that hours of operation had been enumerated in the current contract. Mayor MacKenzie said she could not concur with the use of an electric griddle because of previous concern regarding cooking odors emanating from the Pier concession. Council Member Russell however observed the expanded kitchen facilities now present at Lowdermilk Park, as well as the demand for certain food varieties expressed by patrons. Russells Clambake owner Russell Bowles stated that he would serve sausages, grilled chicken sandwiches, hamburgers, and hot dogs which he would prepare on site to ensure freshness. In response to Council, City Attorney Robert Pritt asserted that the agreement prohibits assignment or termination without prior written approval by the City.

Public Comment: None. (10:39 a.m.)

MOTION by Russell to APPROVE RESOLUTION 03-9972 AS SUBMITTED; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

RESOLUTION (Withdrawn)ITEM 17
A RESOLUTION APPOINTING A CONSULTANT SELECTION COMMITTEE TO RANK EXECUTIVE SEARCH FIRMS FOR THE PURPOSE OF IDENTIFYING AND RECRUITING QUALIFIED INDIVIDUALS TO APPLY FOR THE CITY MANAGER POSITION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin

Rambosk (10:39 a.m.). It was determined that the resolution submitted would be unnecessary if City Council made the selection. City Manager Rambosk noted that the requests for proposals (RFP's) had been disseminated with submittals due by March 13.

Public Comment: None. (10:43 a.m.)

MOTION by Taylor to WITHDRAW ITEM 17; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes). (Council and City Manager to review search firm proposals on March 17.)

RESOLUTION 03-9973.....ITEM 18

A RESOLUTION SUPPORTING THE RETENTION OF THE DEDICATED DOCUMENTARY STAMP FUNDING SOURCE FOR AFFORDABLE HOUSING IN FLORIDA AND FULL FUNDING OF THE STATE HOUSING INITIATIVE PARTNERSHIP PROGRAM FROM THAT DEDICATED SOURCE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:43 a.m.). Planner Susan Golden stated that the City had been receiving State Housing Initiative Partnership (SHIP) funds since the early 1990's through an interlocal agreement with Collier County. She estimated that elimination of this funding would preclude 73 City households from receiving down payment or closing cost assistance or impact fee waivers or deferrals, and impact 163 local jobs. Additionally, she noted that the County Commission had submitted a similar resolution to the Governor the previous week.

Public Comment: None. (10:45 a.m.)

MOTION by MacKenzie to APPROVE RESOLUTION 03-9973 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).

CORRESPONDENCE & COMMUNICATIONS (10:45 a.m.).....

Council Member Taylor suggested that staff research grants to fund a three-week summer photography workshop at the River Park Community Center for children aged 10-18. She further suggested that the topic of the assignment be the local community, and that the children's photographs be displayed at the Center. It was the consensus of Council to allow Miss Taylor to work with the City Manager on this proposal.

Council Member Herms noted recent correspondence from a citizen requesting that the City address an alley drainage problem that is affecting several homes on Central Avenue. He therefore proposed either installing underground drainage in the alley or lowering the elevation of the alley. City Manager Rambosk said that staff would determine an appropriate remedial measure and request funding if necessary.

Mayor MacKenzie noted recent newspaper references to her being unavailable and clarified that no attempts had been made to reach her at City Hall on those occasions, and that only a brief message had been left on her home answering machine after 5 p.m.

City Manager Rambosk said staff is creating a request for proposals (RFP) to identify a private company to operate the City Dock. He explained that it would contain language that affirms the City's intent to maintain a viable mix of commercial, recreational, and transient slips at the facility, but that it would allow innovation that would provide the City with a cash return. In

response to Council, he affirmed that a number of cities have privatized their facilities and further that although the City could create a general policy statement, the company must be allowed to operate independently and privately. Vice Mayor Galleberg observed however that the Dock would remain a City facility, but privately managed, and City Manager Rambosk noted prior successful ventures of private companies operating City enterprises. Council Member Russell expressed support, but Council Member Herms noted that many of the previously established pricing parameters would require modification.

City Manager Rambosk then said staff recently analyzed the contract with Applied Technology and Management (ATM) for a waterfront facilities report, and had contacted company representatives with regard to documentation of the work performed. Although ATM had provided a written response, City Manager Rambosk said City staff was then performing a full and complete inspection of all the documents and that he would further investigate the complaints received. ATM is scheduled to provide a full presentation to Council on March 17. Council Member Russell urged that staff closely monitor contract compliance in the future before remitting payments.

Council Member Taylor noted a recent telephone call from a City Dock commercial lessee who indicated that a transient vessel had used her slip while her vessel had been away for repairs. City Manager Rambosk said that leases do allow this type of usage when slips are vacant, but that he would nevertheless address this matter further.

.....**ITEM 13**
REVIEW AND ACCEPT THE SEPTEMBER 2002 AUDIT AND COMPREHENSIVE ANNUAL FINANCIAL REPORT. (11:04 a.m.) City Manager Kevin Rambosk introduced Chip Jones of KPMG, the City Council's auditors, for a presentation on the Comprehensive Annual Financial Report (CAFR) a copy of which is contained in the file for this meeting in the City Clerk's Office.

Mr. Jones explained that governments are required to annually issue, publish, file with the State and make available to the public an in-depth review of the City's situation. Mr. Jones stated the CAFR contains information on each fund, a transmittal letter describing any unusual or significant events, information regarding the single audit on all federal and state grants and a management letter indicating KPMG's observations regarding the audit and other requirements of the Florida State Auditor General. Mr. Jones said he and other representatives from KPMG reviewed in detail the audit and management letter with the City Audit Committee. Mr. Jones then presented KPMG's findings (Attachment 4).

Mr. Jones stated that the City's audit was performed in accordance with generally accepted auditing standards as well governmental auditing standards that require extra levels of testing regarding internal controls and compliance. Stating that there were no issues to be addressed, Mr. Jones said that the management letter had nevertheless made four comments.

Mr. Jones also said that KPMG carefully examined the day-to-day processes of financial activity throughout the year and the balance sheet at the end of the fiscal year to ensure the processes utilized supply accurate information and display good internal controls. Mr. Jones stressed that significant transactions are examined closely and an analytical review performed. He continued

listing various components examined; namely, budget comparisons, financial information comparisons, an expectation analysis, City Council minutes, and procedural requirements in regards to Council approvals.

It was noted for the record Vice Mayor Galleberg left the meeting at 11:11 a.m.

Mr. Jones explained that GASB 34 (Governmental Accounting Standards Board 34) had not been implemented by the City for the fiscal year audited due to staff changes within the Finance Department but would be completed in subsequent years (see also Attachment 4, Page 3). Mr. Jones further reviewed GASB 34 requirements noting that all infrastructure expenses must be recorded as capital assets which historically had been recorded as expenses, and depreciation rates must be determined. Mr. Jones further explained the capital asset values reflected in the audit report are before depreciation (Attachment 4, Page 4). Mr. Jones said pension assets are however not included in the GASB 34 report but can be located in the CAFR (Comprehensive Annual Financial Report), nevertheless pension assets will not appear on the balance sheet because the funds are being held in a fiduciary capacity for pensioners. Mr. Jones said another requirement under GASB 34 is that original budgets and final budgets must be published in an effort to inform the citizenry of the final results in comparison to the original budget.

Mr. Jones continued his presentation with an overview of financial highlights (Attachment 4, Page 5) such as the significance of bond refunds with the sole purpose of realizing a savings due to the lower interest rates. He also pointed out significant declines in the pension investments but pointed out receipt of grant proceeds to reimburse the City for the purchase of the Naples Preserve.

Mr. Jones then noted the general fund undesignated fund balance (Attachment 4, Page 6) in which he said that a slight decrease had occurred although assuring the Council that a 22% balance is sound. Next, Mr. Jones explained the capital projects fund (Attachment 4, Page 7), which he said is a separate resource earmarked for capital improvement project activities from specific revenue sources. He added the only item that exhibited a significant increase was the land conservation fund which is a direct result of the reimbursement grant for the Naples Preserve purchase. Mr. Jones then said governmental revenues (Attachment 4, Page 8) showed a significant increase in ad valorem taxes, which Mr. Jones explained, has nearly doubled over the last five years, attributable to high property valuations and community growth even though the rate was lowered. In governmental expenditures (Attachment 4, Page 9) Mr. Jones noted two items of importance; namely, a decrease in public safety due to reclassifying expenses and the increase in general government is due to the settlement agreement reached regarding the Wilkinson House. Mr. Jones then noted enterprise funds (Attachment 4, Page 10), water and sewer fund operating statements and cash flows (Attachment 4, pp. 11-12) and the analysis of general government and enterprise debt (Attachment 4, Page 13) which he said had remained flat over the last two years and explained the enterprise debt reflects the state revolving fund loan.

It was noted for the record Mr. Galleberg returned to the meeting at 11:18 a.m.

Mr. Jones said the audit went well and expressed gratitude to the Finance Department staff members for their cooperation.

Council Member MacIlvaine noted a typographical error on page 43 of the CAFR which refers to Naples Preserve being a “national” rather than a “natural” preserve. Finance Director Ann

Marie Ricardi confirmed that the Sabal Bay reserves will be appropriated to underwrite Hamilton Harbor legal expenses.

In response to Council Member Herms, Mr. Jones said that the financial condition of the water/sewer fund shows a slight decline in the coverage ratio and cash generated from operating expenses; however, he characterized it in a healthy state at this point. Finance Director Ricardi explained that rates had been adjusted and the decrease is in part attributable to the reconstruction of a City facility which in turn increased depreciation. City Manager Rambosk also explained that in addition to depreciation, conservation measures had resulted in an expected loss. Mr. Rambosk also cited the ten-year meter change-out program and his efforts to ensure that it is current. He also noted that in the process of assuming meter reading functions, the staff had discovered the need to replace some meters. Mr. Rambosk said the need to register and account for every dollar of water consumed had been stressed to the Utilities Director.

Noting losses in sewer revenues in two consecutive years, Mr. Herms questioned whether the recent increase in water rates would offset these losses. Mr. Jones noted that positive cash flows from operations did not occur and the debt service ratio was down slightly, however, he characterized the rate increase as an appropriate measure and said that he did not feel there was foreseeable jeopardy in the water/sewer funds. Mr. Herms nevertheless maintained his concern relative to an evident trend of increasing costs against revenue and reiterated his inquiry as to whether sewer rates should be considered for an increase. Mr. Jones added the majority of the capital expenditures have been for upgrading the sewer system and added the water restrictions cause decreases in usage which reveals itself on both water and sewer billings.

In response to Council Member Taylor, City Clerk Tara Norman explained the Deputy City Clerk is not a position appointed by Council although the Council does designate the Deputy Clerk by resolution which provides greater strength in that position should the Deputy take over for the City Clerk.

Council Member Russell said that he had understood that the City would be implementing GASB 34 in 2002. Finance Director Ricardi advised that her department was not prepared to implement GASB 34 in part due to the transition of her position although staff is currently preparing for implementation.

City Manager Rambosk advised that although the City Dock Enterprise Fund had in fact been identified as an area for specific review in the previous year and although this topic arose again, funds for that degree of auditing were not available. However, Mr. Rambosk advised that he believed that the requesting party, James Boula, had been more interested in a quality assurance review. He said that he and Finance Director Ricardi had met with Mr. Boula on several occasions over the past year and recommended that a thorough quality assurance audit of the City Dock in fact be performed and disseminated for review. Council Member MacIlvaine characterized a quality assurance review as extremely valuable as it would answer questions on how operations proceed and how improvements could be made.

Council Member Taylor suggested that the City request that the County Clerk's office perform an audit of the City Dock as it had done for the Risk Management fund. City Manager Rambosk

advised that unlike the Risk Management audit the City has a quality assurance program in place and audits can be performed in-house. However, Council Member Taylor asked whether, due to vested interests on in-house audits, it might not be better for the City to utilize outside sources especially considering the questions being raised regarding the City Dock. Council Member Russell however said that instead of an audit of accounting practices, the question is whether the City should expend City Dock enterprise funds on Naples Landing and whether it is allocating slips appropriately. Council Member Herms said the audit indicates a \$740,000 positive reserve and he predicted that the questions would be resolved either by private enterprise or by the City's management of the facility.

Public Comment: (11:43 a.m.) **Jim Boula, 702 Broad Avenue South**, said that whether or not the City Dock is privatized, an audit is necessary to fairly evaluate any proposal. He urged that any enterprise fund include a substantial income stream, and asserted that the City may be required under GASBE 34 to separate Naples Landing, the Pulling property, and the City Dock. While concurring with the assertion on commingling of funds, Council Member Russell said that Council nevertheless must make this policy decision. Mayor MacKenzie explained that a previous Council had allowed the commingling of funds. **Russ Wimer, 2230 Jung Boulevard**, was not present when called.

Council Member MacIlvaine proffered a motion to accept the report; however, further discussion ensued. In response to Council, Mr. Jones expressed the opinion that GASBE 34 would however not require the separation of City Dock and Naples Landing funds although separating costs may be of value. However, Mr. Jones said that the City Dock Fund had always been deemed to encompass all of the City's waterfront activities, and that many enterprise funds include other closely-associated activities. Council Member Herms further pointed out that one fund produces a profitable revenue stream while another clearly needs to be supplemented either by a tax revenue or an enterprise fund. Mayor MacKenzie pointed out that the enterprise funds were originally established to demonstrate that the various entities are self-sufficient and to alert staff when a problem develops, although this does diminish clarity. Mayor MacKenzie therefore suggested that Council make a determination on continuing this procedure. Council Member Russell observed that the City remains in very sound financial condition, and therefore commended staff. In response to Council, Mr. Jones noted a \$39 million balance of unrestricted assets available in governmental and enterprise funds, and that the 22 percent fund balance is appropriate.

MOTION by MacIlvaine to ACCEPT THE REPORT; 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).

Recess: 11:52 a.m. to 1:32 p.m. It is noted for the record that the entire Council was present except Vice Mayor Galleberg who returned at 1:48 p.m.

**RESOLUTION 03-9974.....ITEM 8-a
A RESOLUTION DETERMINING PETITION 02-DSEI2, DEVELOPMENT OF
SIGNIFICANT ENVIRONMENTAL IMPACT ON ±175 ACRES OF PROPERTY
LOCATED ADJACENT TO AND SOUTH AND EAST OF BAYVIEW PARK, MORE
PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

Titles read by City Manager Kevin Rambosk (1:35 p.m.). This being a quasi-judicial

proceeding, Council Members made the following ex parte disclosures: MacKenzie/brief conversation with petitioner's attorney; Wiseman/brief conversation with petitioner's agents after last hearing and a brief conversation with petitioner's attorney; Russell/brief conversation with petitioner's attorney and telephone conversation with Jeff Birr of Collier Enterprises; MacIlvaine/conversations with petitioner's attorney and Jeff Birr; Herms/no contact; Taylor/brief conversation with petitioner's attorney; conversation with Brad Cornell and Eileen Arsenault and Harry Timmins directly before this meeting. When Mr. Galleberg returned to the meeting (1:48 p.m.) he disclosed no contacts since the last meeting. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

George Varnadoe, attorney for the petitioner, thanked Planning Director Ron Lee, Natural Resources Manager Jon Staiger and City Attorneys Fred Hardt and Robert Pritt. Mr. Varnadoe indicated that the text of an additional requested stipulation regarding the General Development Site Plan (GDSP) had been submitted which provides that if a die-off of more than ten mangroves occurs as a direct result of dredging, construction or operations the petitioner will replace the trees. Mr. Varnadoe indicated that the petitioner would consult with the City's Natural Resource Manager and The Conservancy of Southwest Florida to determine the cause; a procedure would address instances wherein the parties disagree on methods to repair.

Public Comment: (1:40 p.m.) **Harold Timmins**, President of Citizens to Preserve Naples Bay, requested that the revised versions of various pieces of supplementary material be substituted for that in the Development of Significant Environmental Impact (DSEI) which is dated November 6, 2002. He listed the following: acreage listed on Page 4; basin configuration site plan as in Figure 3; mangrove acreage impacted on Page 31; and Figure 9, Hamilton Harbor mitigation plan and basin configuration. Mr. Timmins asked the corrections be placed into the record at this time.

City Attorney Robert Pritt advised that it was however understood that all items had been amended and is reflected in the City Council meeting packets. City Planning Director Ron Lee confirmed that revised graphics had been provided for the record and that all documents and exhibits attached to the ordinances had been modified to correctly identify the revised marina basin. Mayor MacKenzie suggested Mr. Timmins review the meeting packet to ensure that the four items he mentioned are correct. Mr. Timmins agreed. **Russ Wimer, 2230 Jung Boulevard, Naples, Florida 34120** was not present when called. **Gary Davis**, representing The Conservancy of Southwest Florida, indicated his support of the GDSP resolution. Harry Timmins of Citizens to Preserve Naples Bay indicated that the aforementioned corrections were not found to be present in the materials and reiterated his earlier request regarding inclusion of amended documents into the record, although he indicated agreement with the items before Council for action. Council Member Russell and Mayor MacKenzie confirmed that the items referred to are in the public record; however, in response to Council Member Herms, Mr. Timmins reiterated the items he had proposed be amended in the November 16, 2002 DSEI, noting that the resolution before the Council does not specifically recognize, in writing, those changes, but refers only to the DSEI petition dated November 16, 2002.

It is noted for the record that Vice Mayor Galleberg entered the meeting at 1:48 p.m.

After additional discussion, the following motion was made.

MOTION by Russell to APPROVE RESOLUTION 03-9974 (ITEM 8-a)

AMENDING SECTION 1 “THAT PETITION 02-DSEI2 AS AMENDED THROUGH THE PUBLIC HEARING PROCESS IS HEREBY...” *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).*

ORDINANCE 03-9975..... ITEM 8-b
AN ORDINANCE DETERMINING REZONE PETITION 02-R7 FOR 4.73 ACRES OF PROPERTY LOCATED ADJACENT TO AND SOUTH AND EAST OF BAYVIEW PARK, MORE PARTICULARLY DESCRIBED HEREIN, REZONING FROM “C” CONSERVATION TO “TC” TRANSITIONAL CONSERVATION; AND PROVIDING AN EFFECTIVE DATE.

Public Comment: (1:54 p.m.) Harry Timmins of Citizens to Preserve Naples Bay reiterated his concerns relative to updating exhibits cited in Item 8-a above. However Collier Enterprises Attorney George Varnadoe clarified that the submittals are not incorrect, changes having been made during the hearing process, and characterizing the item under consideration as a strict rezoning from “C” Conservation to “TC” Transitional Conservation. City Attorney Pritt concurred. Council Member Herms received clarification that the acreage to which the rezone is applicable had remained the same; namely 4.73 acres. **Brad Cornell, 556 109th Avenue North,** read into the record a letter from the Collier County Audubon Society appended as Attachment 5. Mr. Cornell clarified that this statement was intended to be part of the record for each item considered relative to Hamilton Harbor.

MOTION by Galleberg to ADOPT ORDINANCE 03-9975 (ITEM 8-b) AS SUBMITTED; *seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes; Herms-yes; MacIlvaine-yes; Russell-yes; Taylor-yes; Wiseman-yes; MacKenzie-yes).*

RESOLUTION 03-9976..... ITEM 8-c
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 02-CU8 FOR A MARINA (AND OTHER USES DESCRIBED HEREIN) ON 4.73 ACRES LOCATED ADJACENT TO AND SOUTH AND EAST OF BAYVIEW PARK, 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.

Public Comment: None (2:01 p.m.)

MOTION by Russell to APPROVE RESOLUTION 03-9976 (ITEM 8-c) AS SUBMITTED; *seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes; Herms-yes; MacIlvaine-yes; Russell-yes; Taylor-yes; Wiseman-yes; MacKenzie-yes).*

ORDINANCE 03-9977..... ITEM 8-d
AN ORDINANCE DETERMINING REZONE PETITION 02-R8 FOR ±175 ACRES OF PROPERTY LOCATED ADJACENT TO AND SOUTH AND EAST OF BAYVIEW PARK, MORE PARTICULARLY DESCRIBED HEREIN, REZONING FROM “C” CONSERVATION AND “TC” TRANSITIONAL CONSERVATION TO “PD” PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

Public Comment: None (2:02 p.m.)

MOTION by Russell to ADOPT ORDINANCE 03-9977 (ITEM 8-d) 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 03-9978.....ITEM 8-e

A RESOLUTION DETERMINING PETITION 02-GDSP5, A GENERAL DEVELOPMENT AND SITE PLAN FOR ±26.6 ACRES OF PROPERTY LOCATED ADJACENT TO AND SOUTH AND EAST OF BAYVIEW PARK, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE.

Public Comment: (2:02 pm.) **Gary Davis**, The Conservancy of Southwest Florida, stated that he agrees with amendments to the GDSP resolution and supports this petition. **Harry Timmins**, President, Citizens to Preserve Naples Bay, also said that he supports this petition.

MOTION by Galleberg to APPROVE RESOLUTION 03-9978 (ITEM 8-e) 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 03-9979.....ITEM 8-f

A RESOLUTION DETERMINING PETITION 02-RIS11, A RESIDENTIAL IMPACT STATEMENT FOR ±175 ACRES OF PROPERTY LOCATED ADJACENT TO AND SOUTH AND EAST OF BAYVIEW PARK, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Public Comment: None (2:04)

MOTION by Russell to APPROVE RESOLUTION 03-9979 (ITEM 8-f) 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).*

PUBLIC COMMENT:

(2:04 p.m.) **Jeff Birr** of Collier Enterprises, Inc., said that after 15 years of this issue being before the City Council, a conclusion through compromise was welcome and expressed his company's appreciation to the City Council, the staff, the City's legal counsel as well as those objecting to the petition for working together to reach a valid and reasonable conclusion. Mayor MacKenzie thanked Collier Enterprises for their leadership in addressing serious concerns.

ADJOURN
2:06 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: 4/2/03