



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – April 16, 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 (arrived 9:03 a.m.)
William MacIlvaine
Clark Russell
Penny Taylor
Tamela Wiseman (arrived 9:08 a.m.)

Also Present:

Robert Pritt, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
Steven Moore, Police Chief
David Lykins, Community Services Director
Ron Wallace, Development Services Director
Laura Spurgeon, Planner
Adolfo Martinez, Communications Manager
Kristin Fitts, Telecommunicator
Jessica Rosenberg, Deputy City Clerk
Karen Kateley, Administrative Specialist
Arlene Guckenberger
Brian Leiding

Andy Wahlberg
Lawrence Schultz
Henry Kennedy
Tim Flock
Pastor Susan Diamond
Ted Soliday
Joseph McMackin
Robert Navarre
Jim Anderson
Elizabeth Anderson
Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News

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

Pastor Susan Diamond, First Christian Church

It is noted for the record that Council Member Herms entered the meeting at 9:03 a.m.

ANNOUNCEMENTSITEM 3

Telecommunicators Week Proclamation

SET AGENDA.....ITEM 4

Add Item 8-b (8) National Day of Prayer at Cambier Park Bandshell on 5/1/03

MOTION by Galleberg to ADD ITEM 8-b (8); seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

MOTION by Galleberg to SET AGENDA CONTINUING ITEM 12 TO THE MAY 7, 2003 REGULAR MEETING; WITHDRAWING ITEM 16, REMOVING ITEMS 8-b (5), 8-b (7), 8-c, AND 8-d FROM THE CONSENT AGENDA; AND ADDING ITEM 8-b (8). This motion was seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

It is noted for the record that Council Member Wiseman entered the meeting at 9:08 a.m.

PUBLIC COMMENT.....ITEM 5
None.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 8-a
March 17, 2003 Workshop, March 17, 2003 Special (as amended on Page 3), March 19, 2003 Special, and March 19, 2003 Regular Meetings.

SPECIAL EVENTS ITEM 8-b

- 1) Summer Jazz Concert Series – Naples Beach Hotel & Golf Club – 8/23/03, 9/20/03.
- 2) Sprint Tropicool 5K Road Race – Gulf Coast Runners – 5/4/03.
- 3) “Walk America” March of Dimes – 4/26/03.
- 4) National Alliance for the Mentally Ill Walkathon – 5/3/03.
- 6) 34th Annual City of Naples Tennis Championships Players/Sponsors
Celebration – Cambier Park Bandshell 5/22/03.
- 8) National Day of Prayer – Cambier Park Bandshell – 5/1/03.

RESOLUTION 03-10028.....ITEM 8-e

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT FOR REVIEW AND INSPECTION SERVICES FOR DISTRICT CONSTRUCTION PROJECTS BETWEEN THE CITY OF NAPLES AND THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10029..... ITEM 8-f

A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER IN ACCEPTING A “COPS MORE 2002 TECHNOLOGY” GRANT FROM THE U.S. DEPARTMENT OF JUSTICE IN THE AMOUNT OF \$93,862.00; WAIVING COMPETITIVE BID REQUIREMENTS; APPROVING A PURCHASE AND SALE OF GOODS AGREEMENT FOR TWENTY PANASONIC TOUGHBOOK 28 LAPTOP COMPUTERS FROM INSIGHT PUBLIC SECTOR IN THE AMOUNT OF \$83,660.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE CONSENT AGENDA ITEMS 8-a, (as amended, 8-b (1,2,3,4,6,8), 8-e, AND 8-f; 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 8-b (5)
Harris Family Remembrance Memorial Gathering and March – 5/3/03. (9:08 a.m.) Council Member Taylor suggested postponing the discussion until later in the meeting so a representative of the petitioner could be present. In response to Council, Police Chief Steven Moore stated that while he is not opposed to the proposed events, he believed the requested street closure for the

May 3 gathering to be unnecessary; he therefore recommended that the entire event remain on River Park Recreation Center property where it can be properly supervised. He then noted that the petitioner had not provided all necessary information relative to the request for amplified music. Chief Moore also raised questions relative to the location for the May 4 march, noting that the previous year's event had been held on the sidewalk with two police officers stationed at the intersection at Goodlette-Frank Road and Fifth Avenue North. A street march would, however, require a number of police officers in order to maintain traffic control, he added, and also expressed concern regarding the destination of the march, noting that the management of Jasmine Cay objects to any participants entering the property. (A copy of the aforementioned Jasmine Cay correspondence is contained in the file for this meeting in the City Clerk's Office.) Community Services Director David Lykins explained that the May 3 event would be covered by the City's insurance policy if it remained on City property. Chief Moore also noted that conducting the event on City property would allow coordination with staff relative to the stage, music volume, and other issues, and that containing the May 4 march on the sidewalk would reduce the petitioner's costs.

Public Comment: None. (9:24 a.m.)

MOTION by MacIlvaine to APPROVE ITEM 8-b (5) STIPULATING THAT THE MAY 3 EVENT BE CONTAINED ON RIVER PARK RECREATION CENTER GROUNDS, AND THAT AMPLIFIED MUSIC END AT 6 P.M.; ALSO THAT THE MAY 4 EVENT REMAIN ON THE SIDEWALK AND ATTENDEES RESPECT JASMINE CAY'S PRIVATE PROPERTY RIGHTS.
This motion was seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

It is noted for the record that Items 10 and 11 were considered concurrently.

RESOLUTION 03-10030.....ITEM 10
A RESOLUTION APPROVING AN AGREEMENT BETWEEN BEAR'S PAW COUNTRY CLUB AND THE CITY OF NAPLES FOR THE INSTALLATION OF A NEW STREET LIGHTING SYSTEM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:25 a.m.).

RESOLUTION 03-10031.....ITEM 11
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND BENTLEY ELECTRIC CO., INC., TO INSTALL NEW STREET LIGHTING IN BEAR'S PAW COUNTRY CLUB; AUTHORIZING A PURCHASE ORDER FOR PURCHASE AND SALE OF GOODS TO LUMEC, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND PURCHASE ORDER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:25 a.m.). Development Services Director Ron Wallace confirmed that the City, working with the Bear's Paw Country Club, had secured bids based on its annual lighting contracts, but that the Club would reimburse all costs through a special assessment district. City Attorney Pritt said he had had initial concerns about this project, noting prohibitions against using taxpayer funds for private property, but said that this is in fact permissible due to the requirement for full reimbursement.

Public Comment: None. (9:27 a.m.)

MOTION by Galleberg to APPROVE RESOLUTION 03-10030 (ITEM 10) AS SUBMITTED; *seconded by MacIlvaine and unanimously carried, all members*

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

MOTION by Galleberg to **APPROVE RESOLUTION 03-10031 (ITEM 11) 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).

RESOLUTION (Continued – See Item 4.)ITEM 12
A RESOLUTION APPROVING A SECOND AMENDMENT TO THE PROFESSIONAL ENGINEERING AND HYDROGEOLOGICAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND HARTMAN & ASSOCIATES, INC. TO UPDATE THE CITY’S WATER MASTER PLAN AND CREATE A REUSE WATER MASTER PLAN TO PROVIDE FOR ADDITIONAL COMPENSATION FOR ADDITIONAL SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

SPECIAL EVENTITEM 8-b (7)
Eckert Fine Art – Naples, Inc. and Drake Designs – 4/29/03. (9:28 a.m.) Community Services Director David Lykins explained that the overtime hours charged to petitioners are actually billed to the City’s Special Events fund, which in turn reduces Police & Emergency Services Department (PESD) expenses. Council Member Taylor suggested imposing more stringent parameters for considering co-sponsorship requests from commercial interests. Council Member MacIlvaine concurred, noting that only 10 percent of this particular event proceeds would be donated to charity. Although observing no formal co-sponsorship policy, Mr. Lykins noted that the City co-sponsors several special events such as the Swamp Buggy Parade and the Great Dock Canoe Race. It was the consensus of Council to develop co-sponsorship policy based on the type of request, with the requirement that private companies donate a minimum percentage of their proceeds to charity. Mr. Lykins said he would present that information to the Community Services Advisory Board for discussion and recommendations.

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

MOTION by Herms to **APPROVE ITEM 8-b (7) AS SUBMITTED**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION (Withdrawn)ITEM 8-c
A RESOLUTION DETERMINING A REQUEST BY THE NAPLES AIRPORT AUTHORITY TO HAVE THE CITY COUNCIL WAIVE GENERAL DEVELOPMENT SITE PLAN APPLICATION FEES, AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:35 a.m.) who explained that this request is administrative in nature, and that although any petitioner may ask Council to waive fees, there is no waiver provision contained in the Code of Ordinances. In response to Council, Planning Director Ron Lee said that the costs incurred by the City are only for staff time involved in the review of the request. Council Member MacIlvaine said that he opposed waiving the fee so as not to deviate from prior efforts to maintain the separation between the City and the Naples Airport Authority (NAA), an autonomous body. Council Member Wiseman concurred, noting that she did not view Council appointment of NAA members as a reason to deviate from the established fee structure. She therefore proffered a motion to deny, seconded by Council Member MacIlvaine.

Mayor MacKenzie however said she believed this to be a reasonable request, noting the NAA's significant expenditures relative to the Stage I and II jet bans and its contribution to the City's fire stations. Council Member MacIlvaine stressed that the City should, however, avoid any appearance that its taxpayers are subsidizing the airport.

Executive Director Ted Soliday explained that the NAA staff, not the Board of Commissioners, had requested the waiver. Mr. Soliday also noted that the airport utilization plan update is the continued implementation of the airport master plan that was established prior to the NAA's establishment by the City. However, citing Council's comments, Mr. Soliday withdrew the request.

In further discussion, Council Member Russell said he was not inclined to implement a waiver process, and Council Member Herms observed that it would set a precedent for many more requests. Council Member Wiseman withdrew her motion to deny.

.....**ITEM 14**
CONSIDER REQUEST FROM THE NAPLES AIRPORT AUTHORITY TO HAVE THE CITY INTERVENE OR FILE A FRIEND OF COURT BRIEF IN THE STAGE II JET BAN ADMINISTRATIVE ACTION. (9:48 a.m.) Council Member MacIlvaine said he believed this request to be appropriate, noting the City's commitment in supporting the Stage II jet ban, and proffered a motion to approve, seconded by Vice Mayor Galleberg.

F. Joseph McMackin of Bond, Schoeneck & King, P.A. noted that he had provided a petition to participate in the Federal Aviation Administration (FAA) hearing, which he said should be filed that week (Attachment 1). The actual amicus curiae brief in support of the position of the Naples Airport Authority (NAA) would, however, not be due until after the FAA hearing in Federal Court in June. Attorney McMackin then explained that this issue pertains to whether the FAA should set local standards for noise levels at 65 decibels, or whether the local community has the right to impose a more stringent standard. He expressed appreciation for Council's position, noting that the Collier County Commissioners had also agreed to execute a similar petition.

In response to Council, Executive Director Ted Soliday stated that all FAA required procedures had been followed and two court cases had been won. City Attorney Pritt said that, without further research, he had been reluctant for the City to intervene as a party, but that he perceived no liability in a request to participate which would indicate community support. In response to Council Member Wiseman, Attorney McMackin said he would work with the City Attorney to draft language relative to the basis for the request contained in the petition, and would provide technical assistance with regard to the drafting of the amicus brief.

Council Member MacIlvaine however confirmed that his motion was simply to allow participation in the FAA hearing. He then expressed objection to the FAA's preliminary decision, and noted the importance of ambient noise when measuring sound. Moreover, he asserted that many airports throughout the country are interested in whether the City of Naples can sustain the Stage II ban, which he contended would be an important benefit to citizens. Council Member Herms urged maintaining a historical perspective in that NAA's actions had in fact been prompted by the involvement of a significant number of citizens in the airport noise

issue. Council Member MacIlvaine however contended that the NAA had nevertheless been proactive in its attempt to ban Stage II jets.

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

MOTION by MacIlvaine to **APPROVE ITEM 14 (LIMITED TO REQUEST TO PARTICIPATE IN THE FAA HEARING)**; 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 03-10032..... ITEM 8-d
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND PYRO ENGINEERING, INC., dba BAY FIREWORKS, TO PROVIDE A FOURTH OF JULY 2003 FIREWORKS DISPLAY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:02 a.m.). Noting the \$25,000 cost, Council Member Russell requested information on the City's efforts to obtain private sponsorship. Community Services Director David Lykins explained that, unlike previous years, staff had been able to raise just \$15,000, but would continue to contact previous sponsors. In further discussion, Mr. Lykins asserted that the Beach Fund monies allocated for this purpose are generated from parking meters and traffic citations.

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

MOTION by Russell to **APPROVE RESOLUTION 03-10032 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).

ORDINANCE 03-10033..... ITEM 9
AN ORDINANCE ADOPTING THE 2002 LEVEL OF SERVICE REPORT; DIRECTING STAFF TO TRANSMIT SAID REPORT TO THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:05 a.m.).

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

MOTION by Wiseman to **ADOPT ORDINANCE 03-10033 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 (First Reading)..... ITEM 13
AN ORDINANCE PERTAINING TO DESIGN REVIEW; CREATING A NEW ARTICLE X1. CHAPTER 2 OF THE CODE OF ORDINANCES, CITY OF NAPLES, FLORIDA, IN ORDER TO ESTABLISH A DESIGN REVIEW BOARD FOR THE REVIEW OF COMMERCIAL, INDUSTRIAL AND MULTI FAMILY DEVELOPMENT IN THE CITY; PROVIDING FOR APPLICABILITY, MEMBERSHIP, POWERS AND DUTIES, RULES OF PROCEDURE, PROCEDURE FOR REVIEW AND FEES; PROVIDING FOR APPEALS OF DECISIONS; AMENDING SECTION 82-10 TO ADD DEFINITIONS OF COMMERCIAL BUILDINGS AND STRUCTURES, MULTI FAMILY BUILDINGS AND STRUCTURES AND PRINCIPAL BUILDINGS AND STRUCTURES; CREATING AND ADDING A NEW ARTICLE X1. DESIGN REVIEW STANDARDS OF CHAPTER 106, PROVIDING FOR DESIGN REVIEW STANDARDS AND CRITERIA; CREATING AND ADDING A NEW ARTICLE VIII. DESIGN

REVIEW FEES, OF CHAPTER 118 TO PROVIDE FOR FEES FOR PETITIONS, PROVIDING FOR A DESIGN REVIEW HANDBOOK; PROVIDING FOR SUNSET REVIEW; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:06 a.m.). Mayor MacKenzie expressed appreciation to City Attorney Pritt and Planning Director Ron Lee for their work on this ordinance, noting that changes made since the last meeting had produced a significant improvement. She however recommended expanding the responsibility of the Design Review Board (DRB) to include review of landscaping and lighting plans along with review of building conditions, structures, and associated signage. Council Member Herms however pointed out that the DRB could not prohibit signage permitted under the Code. City Attorney Pritt concurred, noting that the DRB must exercise its authority in accordance with all standards contained in the Code; Mr. Lee also pointed out that the DRB may nevertheless determine a better location for a petitioner's signage.

Council Members Herms and Wiseman also expressed concern with regard to requiring petitioners to undertake both a preliminary and final review due to additional expenses for attorney and architect representation. City Attorney Pritt pointed out that a petitioner may submit a project for a combined preliminary and final review. Council Member Wiseman also voiced concern about Section 2-496(8) regarding the design review handbook to be prepared by the DRB, warning both of possible conflict with the Code and the homogenization of design within the City. Mr. Lee however noted that Section 2-493(e) indicates that the handbook would be approved by City Council and updated annually. Council also discussed various other additions and changes embodied in the motion below.

Public Comment: (10:40 a.m.) **Henry Kennedy, Tarpon Road**, stated that while the DRB is needed by the City, the Council should render final approval on every project. Additionally, he contended that the City should provide notice to property owners within at least 1,000 feet of each development petition. Mr. Kennedy further said he believed the proposed DRB would be expensive, that it should not operate until the handbook had been completed and approved by Council, and that all its members should be City residents.

Council Member MacIlvaine proffered a motion to approve the ordinance with changes; however, further discussion ensued. In response to Council, City Attorney Pritt said the Code has general provisions with regard to board meeting attendance, and that Council could remove a member without cause. Council Member Herms noted that the City could issue building permits in many cases without using this process, such as for commercial district building additions that are smaller than 1,000 square feet. City Attorney Pritt noted that Section 2-494(a) describes which projects would be subject to this process, and recommended appropriate references in Sections 2-494(d) and (e). Council Member Wiseman noted the possibility of legal challenge if the DRB makes a decision prior to the adoption of the guidelines which Council later upholds during the appeal procedure. Council Member Herms however took the position that the handbook was unnecessary due to the existence of established standards and said that the City residents on the DRB could be absent from a meeting thereby allowing decisions to be made by representatives with County residency. City Attorney Pritt recommended that Council make decisions on board composition at that time, noting that each member would have equal status. Council Member MacIlvaine, however, declined to amend his motion.

MOTION by MacIlvaine to APPROVE ITEM 13 AT FIRST READING WITH THE FOLLOWING REVISIONS: SECTION 2-491 (4) “ELIMINATE CONDITIONS, STRUCTURES AND ASSOCIATED LANDSCAPING, LIGHTING, AND SIGNAGE...”; 2-493 (a) “THE BOARD SHALL MEET MONTHLY OR AS NEEDED AT REGULARLY SCHEDULED INTERVALS, AT LEAST ONE TIME PER MONTH WHEN THERE ARE PETITIONS TO REVIEW EXCEPT DURING THE CITY COUNCIL’S SUMMER RECESS...”; SECTION 2-493 (e) “THE BOARD MAY NEVERTHELESS OPERATE PRIOR TO DEVELOPMENT OF THE DESIGN REVIEW HANDBOOK.”; SECTION 2-494 (d) “AS DESCRIBED IN THIS SECTION...”; SECTION 2-494 (e) “AS DESCRIBED IN THIS SECTION...”; SECTION 2-495 (d) “OR WITHIN 30 DAYS AFTER THE CITY COUNCIL’S SUMMER RECESS...”; SECTION 2-495 (e) (3) “ FOR A PERIOD OF ONE CALENDAR YEAR...”; AND DELETING SECTION 2-496 (8), AND INCLUDING THE PUBLIC SERVICE ZONING DISTRICTS.

This motion was seconded by Taylor and carried 5-2, all members present and voting (MacIlvaine-yes, Taylor-yes, Russell-yes, Galleberg-yes, Herms-no, Wiseman-no, MacKenzie-yes).

Although expressing support for the DRB concept, Council Member Herms said he could not support the ordinance as written. Council Member Wiseman said she believed Council had improved the ordinance, and that she would continue to raise issues in order to enhance the process. She however said she believed the City’s projects could be improved by establishing better design standards.

Recess: 11:14 a.m. to 11:25 a.m. It is noted that the entire Council was present when the meeting reconvened.

RESOLUTION 03-10034.....ITEM 6-a
A RESOLUTION DETERMINING PETITION 03-LE4 FOR LIVE ENTERTAINMENT AT THE VILLAGE PUB LOCATED AT 4360 GULF SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:25 a.m.).

RESOLUTION 03-10035..... ITEM 6-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 03-RIS6 FOR THE VILLAGE PUB LOCATED AT 4360 GULF SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:25 a.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: MacKenzie and Wiseman/visited the site, and heard Andy Wahlberg’s performances; Russell/visited the site and received communications distributed to Council; MacIlvaine/visited the site, and evaluated the area; and Galleberg, Herms, and Taylor/no contact. Notary Public Jessica Rosenberg then administered an oath to those intending to give testimony; all responded in the affirmative.

Village Pub owner Tim Flock stated that his live entertainment permit request was merely to continue the same entertainment (solo guitarist and vocalist) which had been present in his establishment since it opened in the fall of 1995. He added that guitarist Andy Wahlberg plays

inside the pub on Thursday, Friday, and Saturday nights from 8 p.m. until 11 p.m. during the winter season, and from 7:30 to 10:30 p.m. during the rest of the year. He further explained that the Village Pub is a small restaurant with most of its revenue derived from food sales, and that it does not have a full liquor license. Mr. Flock assured Council that he has no plans to convert the facility into a nightclub. In addition, he stressed that live entertainment had been an integral part of the ambience of the neighborhood, and noted the importance of providing a venue for high quality local talent at no cost to the public.

In response to Council, Mr. Flock said the restaurant doors and windows would be closed during the performances and that he had not received a complaint from neighbors in the past two years.

Public Comment: (11:32 a.m.) **Brian Leiding, 235 Bahia Point**, said he lives in the neighborhood, and that his family often visits the restaurant and enjoys the entertainment. **Andy Wahlberg, 5154 Hickory Wood Drive**, said the Village Pub has provided quality entertainment for over seven years, while being respectful to the neighborhood, and expressed concern about losing customers if the hours were curtailed. He then noted that the neighboring property owners who submitted letters in opposition to the request did not appear to know that the entertainment had already been occurring. (Copies of the referenced letters are contained in the file for this meeting in the City Clerk's Office.) He further noted that the small stage faces the center of the restaurant away from residences, and that the two small speakers are designed to cover only the room in which the music is occurring. **Elizabeth Anderson, 205 Park Shore #421**, stated that she does not enjoy hearing the music which travels from the restaurant across the bay to her home three nights per week. **Jim Anderson, 205 Park Shore Drive #421**, did not speak when called.

In response to Council Member Russell, Planner Laura Spurgeon said staff recommended that the music cease at 10 p.m. on Thursday, Friday, and Saturday nights to be consistent with the practice in that area. In addition, she said that in order to establish a limit, staff had at the request of the petitioner incorporated into the resolution the one 50-watt amplifier. Council Member Wiseman verified the accuracy of Mr. Wahlberg's representation, and said that she found his performance to be an innocuous form of entertainment. She therefore proffered a motion to approve with the requested hours of 7 p.m. to 11 p.m. on Thursday, Friday, and Saturday nights. Noting the later permitted hours of several downtown establishments, Council Member Taylor said she could not support granting the downtown an advantage over the Park Shore area. She added that the noise ordinance would protect the neighborhood from unreasonable disturbance. Council Member Herms urged that those residents disturbed by noise call Police & Emergency Services (PESD) and file a complaint. Council Member Russell said he could support 11 p.m. with the petitioner exercising appropriate control, and seconded Mrs. Wiseman's motion. Council Member MacIlvaine however pointed out that this is a residential area, and that testimony indicates the music is disturbing. He therefore expressed support for staff's recommendation to curtail the entertainment at 10 p.m.; Vice Mayor Galleberg, Council Member Herms, and Mayor MacKenzie concurred. Council Member Wiseman withdrew her motion, but said she would vote in favor of the petition to express support for the entertainment.

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10034 (ITEM 6-a) WITH STAFF RECOMMENDATIONS (7 P.M. TO 10 P.M. THURSDAY, FRIDAY, AND SATURDAY NIGHTS); seconded by Russell and unanimously

carried, all members present and voting (Galleberg-yes, Taylor-yes, Russell-yes, Wiseman-yes, Herms-yes, MacIlvaine-yes, MacKenzie-yes).

MOTION by Russell to **APPROVE RESOLUTION 03-10035 (ITEM 6-b) WITH THE SAME CONDITIONS AS ABOVE**; *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).*

.....ITEM 7
ATTORNEY/CLIENT SESSION RELATING TO PENDING LITIGATION AS FOLLOWS: ACCESS NOW, INC., DANA LAMB V. CITY OF NAPLES; CASE NO. 2:02-CV-212-FTM-289DNF, FILED IN THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, FT. MYERS DIVISION. (11:54 a.m.) Mayor MacKenzie stated that whereas City Attorney Robert Pritt had advised the City Council that he desired its advice concerning the following pending litigation: Access Now, Inc., Dana Lamb v. the City of Naples; Case No. 2:02-CV-212-FTM-289DNF filed in the U.S. District Court Middle District of Florida, Ft. Myers Division, the City Council would commence an attorney/client session to discuss settlement negotiations and/or strategy relating to litigation expenditures. The estimated time for this session is 20 minutes after which the meeting would be reopened. The persons attending the attorney/client session are the following: Mayor Bonnie R. MacKenzie; Vice Mayor Gary Galleberg; Council Members Joseph Herms, William MacIlvaine, Clark Russell, Penny Taylor, and Tamela Wiseman; Attorney Robert Pritt; Pam Arsenault of AAF Reporting, Court Reporter. The City Council had given notice of the time and date of the attorney/client session at the conclusion of which she would announce the termination of the session and would reopen the meeting.

Attorney/client session: 11:54 a.m. to 12:17 p.m. It is noted for the record that the entire Council was present when the meeting reconvened.

Mayor MacKenzie announced the termination of the attorney/client session.

MOTION by Russell to **APPROVE THE STIPULATED SETTLEMENT AGREEMENT PROPOSED BY ACCESS NOW, reviewing Items 7 and 9 to ensure they are not redundant and, if so, to amend them accordingly; and change the reference to Dockmaster's "house" to Dockmaster's "office."** *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).*

.....ITEM 15-a
DISCUSSION REGARDING THE ELIMINATION OF THE PLANNING ADVISORY BOARD ALTERNATE POSITION. (12:19 p.m.) Vice Mayor Galleberg said he believed alternate board or committee positions to be a waste of a resource since they function only for the purpose of achieving a quorum. Although alternates presently participate in discussions and proffer motions, they are generally unable to vote, he said, and disputed the contention that serving as an alternate provides a learning curve. As an example, Mr. Galleberg noted that most of the current Planning Advisory Board (PAB) members had never served as alternates.

Council Member MacIlvaine however pointed out that during his service as an alternate on the PAB, he had studied all the materials, visited the sites, and participated in the discussions. This, he said, had provided him a thorough educational experience at no cost to the City; therefore he

expressed support for retaining the alternate position. Council Member Herms concurred, noting many alternate members obtain a valuable education and are later appointed to a regular position on the board.

Public Comment: (12:24 p.m.) PAB Chairman **Robert Navarre, address not given**, agreed that the alternate position provides valuable training. Apart from the alternate position, he noted that the state mandated appointment of a non-voting representative of the Collier County School Board would add further complexity to the voting structure prompting him to endorse the concept of eliminating the PAB alternate. In response to Council, Mr. Navarre estimated that PAB alternates had voted during his tenure on approximately 25 percent of the issues.

Mayor MacKenzie said she believed that denying the ability to vote is a disservice to a volunteer committed to serving the City and therefore recommended eliminating the alternate position. If this does not prove effective, it can however be reconsidered, she added. Since each board member cannot be required to serve as an alternate, Council Member Russell expressed the hope that Council could recruit the best members possible and eliminate alternates to streamline the process.

Citing instances wherein Council Members must sometimes abstain from voting while being allowed to participate in the discussions, Council Member Taylor said she perceived no inconsistent or subjective policy by utilizing alternates. City Attorney Robert Pritt also explained that Council could not eliminate the alternate positions from all boards and committees, such as the Code Enforcement Board which is also governed under state law. Council Member MacIlvaine proffered a motion to retain the alternate position on PAB, seconded by Council Member Taylor. However, due to questions regarding the applicability of State Statutes to various boards, Mr. MacIlvaine withdrew his motion and substituted the motion below. Vice Mayor Galleberg noted that he was not advocating removing any individual currently serving as a board alternate, and recommended instead waiting until the seat is vacant if Council determines to take action.

MOTION by MacIlvaine to CONTINUE ITEM 15-a TO THE MAY 21, 2003 REGULAR MEETING DIRECTING THE CITY ATTORNEY TO PROVIDE AN ANALYSIS OF WHICH COMMITTEES COULD ELIMINATE THEIR ALTERNATE POSITIONS; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10036.....ITEM 15-b (1)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE YEAR TERM; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Attorney Robert Pritt (12:43 p.m.).

Public Comment: None. (12:43 p.m.)

MOTION by Galleberg to APPOINT SAM NOE; unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION (Continued)ITEM 15-b (2)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR A THREE-YEAR TERM; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt. (12:44 p.m.) Vice Mayor Galleberg suggested continuing the appointment and recruiting more applicants.

Public Comment: None. (12:44 p.m.)

MOTION by Galleberg to **CONTINUE ITEM 15-b (2) FOR READVERTISEMENT**; 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 (Withdrawn)ITEM 15-b (3)

A RESOLUTION APPOINTING ONE ALTERNATE MEMBER TO THE PLANNING ADVISORY BOARD FOR THE BALANCE OF A THREE YEAR TERM EXPIRING APRIL 30, 2005; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10037.....ITEM 15-c

A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR A THREE-YEAR TERM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (12:45 p.m.). Council Member Russell nominated Diane Mayberry-Hatt. City Attorney Pritt confirmed that Mrs. Mayberry Hatt is not prohibited from serving because her husband works for the Cambier Park Tennis Center, but that a situation may arise where she would be required to abstain from voting.

Public Comment: None. (12:46 p.m.)

MOTION by Russell to **APPOINT DIANE MAYBERRY-HATT**; unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

(Continued – See Item 4.)ITEM 16

DISCUSSION OF COVERED PARKING IN THE 5TH AVENUE OVERLAY DISTRICT AS REQUESTED FOR THE ANTARAMIAN BUILDING LOCATED AT 780 5TH AVENUE SOUTH.

RESOLUTION 03-10038.....ITEM 17

A RESOLUTION AFFIRMING SUPPORT FOR THE PRESENT ALLOCATION OF FUNDS FROM THE TOURIST DEVELOPMENT TAX AND THE IMPORTANCE OF BEACH RELATED PROJECTS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (12:46 p.m.). Vice Mayor Galleberg said he had recently learned that the Collier County Commissioners decided not to change the present allocation of Tourist Development Tax funds unless they could secure other funds for beaches. He however recommended Council nevertheless convey its position on the matter. In further discussion, Vice Mayor Galleberg explained that to grant 50 percent of the available funding to tourist promotion would deplete beach funding and that beach grants are generally difficult to obtain. He confirmed that although increasing promotion would attract more tourists and potentially increase the beach fund, it would in no way provide adequate replenishment.

Public Comment: None. (12:51 p.m.)

MOTION by MacIlvaine to **APPROVE RESOLUTION 03-10038 AS SUBMITTED**; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

.....ITEM 18

DISCUSSION/APPOINTMENT TO THE COLLIER COUNTY REVENUE COMMISSION (12:51 p.m.) Council Member Russell said that he would serve on the

commission in order to protect the City's interests but expressed strong concern regarding the scope of this body. Council Member Taylor noted a lack of representation by such entities as the Taxpayers Action Group and said that she believed that Mr. Russell would accurately represent Council's sentiments.

Public Comment: None. (12:52 p.m.)

MOTION by Galleberg to RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THE APPOINTMENT OF COUNCIL MEMBER RUSSELL TO FILL THE CITY'S SEAT; 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 03-10039.....ITEM 19
A RESOLUTION SETTING THE DATES OF MAY 29TH AND MAY 30TH 2003 FOR SPECIAL MEETINGS TO INTERVIEW APPLICANTS FOR THE CITY MANAGER POSITION AND POTENTIALLY MAKE AN OFFER TO THE MOST QUALIFIED CANDIDATE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (12:52 p.m.). Council Members Herms and Taylor noted their unavailability for part of the day on May 30, and Mr. Herms pointed out that Council may be able to reach a consensus at the end of the day on May 29 if it identifies an outstanding candidate.

Public Comment: None. (12:57 p.m.)

MOTION by Taylor to APPROVE RESOLUTION 03-10039 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).

PUBLIC COMMENT (12:58 p.m.)

Lawrence Schultz, 408 16th Avenue South, noted what he described as the failure of public aviation at the Naples Airport, and recommended that Council consider other more profitable uses of the land. Council Member Herms recommended posing this issue to the voters. Council Member MacIlvaine pointed out that Naples Airport Authority (NAA) is attempting to attract more commuter service, and predicted that many citizens would object to development of the airport parcel.

CORRESPONDENCE & COMMUNICATIONS (1:10 p.m.)

Council Member Herms noted that a citizen had contacted him regarding equipment on the right-of-way along Crayton Road in the Moorings belonging to Sprint. City Attorney Robert Pritt confirmed that staff is addressing this issue, and would provide an update to Council. Council Member Taylor requested an update from staff regarding Council's recent direction to initiate discussions with the Fleischmann's regarding their cooperation in renovating the City Dock.

ADJOURN
1:13 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Jessica R. Rosenberg, Deputy City Clerk

Minutes Approved: 5/21/03