



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – May 7, 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
Steven Moore, Chief of Police
Tara Norman, City Clerk
Jessica Rosenberg, Deputy City Clerk
David Lykins, Community Services Director
Laura Spurgeon, Planner
Jon Staiger, Natural Resources Manager
Dan Mercer, Public Works Director
Bob Middleton, Utilities Director
George Archibald, Traffic Engineer
Bonnie McNeill, Recording Specialist
Karen Kateley, Administrative Specialist
Reverend Jay Kowalski
Gary Davis
George Varnadoe
Fred Hardt
Christopher Brown
Jim Kramer
Fred Tarrant

Anthony Verderamo
Bill Kroeschell
Dale Chlumsky
Alan Ryker
Martha Dykman
Sharon Patti
Virginia Clement
Paul Lindaberry
James Kessler
Peter Van Arsdale
Mary Brett
Jacques Groenteman
Joe Sfara
Phil McCabe
Gloria Kovacs
Henry Kennedy
Tim Flock
Debra Newman
Other Interested Citizens & Visitors
Media:
Dianna Smith, Naples Daily News

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

Reverend Jay Kowalski, First United Methodist Church

ANNOUNCEMENTSITEM 3

Drinking Water Week Proclamation and Law Enforcement Appreciation Day

SET AGENDA.....ITEM 4

Add Item 6-a - public hearing procedure as requested by City Attorney.

MOTION by Galleberg to ADD Section (a) to Item 6; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)

MOTION by Galleberg to SET AGENDA, ADDING ITEM 6(a); CONTINUING ITEM 7 UNTIL 5/21/03; WITHDRAWING ITEMS 12 AND 15; REMOVING ITEMS 9-b (1), 9-b (2), 9-b (4), 9-e (4) AND 9-f FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION; INCLUDING ITEM 9-e (4) IN THE CONSIDERATION OF ITEM 14; AND SCHEDULING ITEM 21 AT 1:30 PM. This motion was seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)

PUBLIC COMMENT.....ITEM 5

Jim Kramer, 180 Cape Sable Drive, described as excessive a towing bill that he had received. However, Steven Moore, Chief of Police and Emergency Services, indicated that Collier County code enforcement, which has jurisdiction in this matter, reviewed the towing bill and found it accurate. Chief Moore further noted that the City would however be amending its towing policy so that mileage fees would commence at the site of the tow rather than from the towing/storage company's point of origin. **Anthony Verderamo, 1275 Cobia Court**, requested that the City Manager review the building permit for his neighbor's two boatlifts. He said he believes neither are in compliance with City Code and interfere with navigation from his property. City Manager Kevin Rambosk stated that he would meet with Mr. Verderamo and Natural Resources Manager Jon Staiger to resolve this matter before the contractor resumed construction. **Bill Kroeschell, 272 Mooring Line Drive**, stated that a second Gordon River bridge would be necessary for additional access to downtown. Mayor MacKenzie advised that a joint meeting between the City and Collier County was scheduled later that month to address this issue.

RESOLUTION (Withdrawn)ITEM 6-a

A RESOLUTION ESTABLISHING PUBLIC HEARING PROCEDURES FOR AN ORDINANCE PERTAINING TO AMENDING DIVISION 29, D DOWNTOWN DISTRICT, OF ARTICLE II OF CHAPTER 102 OF THE CODE OF ORDINANCES IN ORDER TO MODIFY PROVISIONS OF THE D DOWNTOWN ZONING DISTRICT AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:39 a.m.). Council Member Russell recommended conducting this discussion at a regular Council meeting at 5:01 p.m. in order to maximize public comment. Council concurred; therefore, City Attorney Robert Pritt agreed that no action was necessary on that item. (See Item 6-b, Page 10).

ORDINANCE.....ITEM 6-b

AN ORDINANCE AMENDING DIVISION 29, D DOWNTOWN DISTRICT, OF ARTICLE II OF CHAPTER 102 OF THE CODE OF ORDINANCES IN ORDER TO MODIFIY PROVISIONS OF THE D DOWNTOWN ZONING DISTRICT; PROVIDING FOR CODIFIDICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:41 a.m.) who announced that a staff overview would be followed by comments by Christopher Brown of Civic Design Associates. He noted that the "D" Downtown zoning district extends

from Fifth Avenue South to Seventh Avenue North and from Eighth Street on the west to Goodlette-Frank Road on the east. Mr. Rambosk further explained that because this area had been determined to be blighted, a Community Redevelopment Agency (CRA) was created in 1993, beginning its work in the portion of the redevelopment area encompassing Fifth Avenue. In October 1997 the 41-10 plan by consultant Ray Gindroz was developed and presented; in 1998 the “D” Downtown Plan drafted by a committee headed by former Council Member Fred Coyle was adopted; and in 2001 the Heart of Naples Committee (HONC) was created to review additional revisions. The HONC membership, Mr. Rambosk explained, incorporated a wide cross-section of stakeholders including the 41-10 Business Association, local area architects, surrounding residential areas (Lake Park, Coquina Sands, Royal Harbor, River Park, Oyster Bay and Old Naples), Naples Community Hospital, the Gateway Committee, and the Planning Advisory Board (PAB), with Council Member William MacIlvaine serving as chair.

City Manager Rambosk continued by noting that the HONC was to serve in an advisory capacity making specific recommendations on strategies to restore the commercial and residential viability, enhance redevelopment efforts, and improve neighborhood aesthetics through right-of-way improvements, landscaping, and building upgrades. Mr. Rambosk listed the following specific goals of the “D” Downtown ordinance developed by the HONC; streetscaping; U.S. 41 bypass; zoning changes; mechanisms for first-floor residential; and various parking mechanisms. He said that all would be under consideration as part of the ordinance then before Council, although additional objectives such as architectural regulation and a park and recreation plan are being completed and would be considered at a later date.

The HONC held 33 meetings and gathered pertinent information to be used to formulate recommendations to the Council, City Manager Rambosk continued, and pointed out that the Council had then approved a \$3-million bond issue which had been initially proposed by HONC encompassing landscaping and other improvements for the district. In 2001 the Comprehensive Plan was amended to allow first-floor residential use in the “D” Downtown mixed-use area. In 2002 a professional evaluation of the HONC recommendations was obtained from Civic Design Associates, Mr. Rambosk said, which addressed whether the recommendations would facilitate positive change in the community and stimulate redevelopment in the downtown area. Additionally, he stated that HONC had appeared often before the CRA and the City Council, allowing significant opportunities for dissemination of information or questions. The PAB reviewed the “D” Downtown rezoning recommendations at its March 21, 2003, workshop and April 9, 2003, regular session, and the ordinance resulting from this processing being currently before Council for approval. In addition, Mr. Rambosk reported that the staff had notified 447 property owners and merchants by mail on both March 5, and April 16, 2003. These advance mailings gave the downtown property owners and merchants the opportunity to ask questions at the meetings or request information from City staff, he said.

Planning Director Ron Lee summarized the major changes to “D” Downtown zoning proposed by the HONC: the combining of four previously identified sub-districts; approval of parking structures by a simple majority of Council; providing that a minimum lot size of 30,000 square feet for parking garage sites; first floor residential uses permitted under certain circumstances; and a density cap of 14 units per acre. Additionally, he said, the 40 residential units recently approved, as part of the Trail’s End/Bomark project would be subtracted from the proposed

district maximum of 1,652 units, resulting in a 1,612 cap available for future residential purposes.

In addition to providing public open space, Mr. Lee further noted that any building greater than 150 feet in length would be required to provide a pedestrian passageway or via. If an owner chooses to exceed the 14-unit per-acre proposed maximum density, 500 square feet of open space with recorded public easement in perpetuity must also be granted; conversely, the owner could contribute \$35,000 for acquisition of green space by the City for every unit above the 14-unit maximum. In response to Council Member Herms, Planning Director Lee advised that the PAB had deleted an option that would have allowed construction of additional residential capacity by incorporating units of less than 1,200 square feet.

Mr. Lee summarized two public parking options; namely, access to a parking pool or through Payment In Lieu of Parking (PILOP). Depending on parcel size, he said, owners could obtain parking from the approximately 600 public parking spaces within the district, divided north and south of Central Avenue. The smaller the lot, the more parking a proprietor would be able to obtain at a lower cost. However, any property greater than 100,000 square feet would be ineligible for parking pool spaces. PILOP would allow up to 25 percent of required parking spaces to be purchased by a property owner contributing to a parking trust fund that would be used by the City to purchase and construct public parking facilities.

Mr. Lee further stated that a Downtown Improvement Redevelopment Committee (DIRC) would serve as a reviewing body, similar to the Staff Action Committee (SAC) on Fifth Avenue South, and would evaluate each project, assign parking, and consider various waivers that would be brought before City Council. Another major change Mr. Lee cited was relative to placing public sidewalks on private property along U.S. 41, Tenth Street, and the avenues in the 41-10/Heart of Naples district. Additionally, nonconforming signs, which had previously been grandfathered must now be removed in five years. Mr. Lee then presented the results of a trip generation study, noting that multi-family units generated far fewer trips than retail (Attachment 1). Traffic Consultants Kimley-Horn determined two conclusions; namely, that there will be surplus capacity on the roadways in both 2005 and 2025 based on the proposed zoning ordinance and that capacity is considered sufficient to accommodate the redevelopment anticipated.

Christopher Brown of Civic Design Associates noted that the HONC's purpose was to economically revitalize the "D" Downtown area, to establish a mixture of commercial and residential, and to develop an urban neighborhood. He complimented the HONC and characterized Naples' redevelopment codes as conservative in comparison to other similar city projects such as in Delray Beach, although he specifically described Naples' open space and parking sections as creative. Nevertheless, he said, the proposed code is protective of the owners of small properties by affording them adequate parking. Mr. Brown said that he envisioned highly skilled workers without children to be the likely inhabitants of what he depicted would be a sophisticated, urban area with opportunities for dining, shopping, and entertainment. He further stated that he believed that Naples' redevelopment would follow the trend of Delray Beach wherein many residents had chosen to relocate to the downtown area. Additionally, Mr. Brown stressed that the quality of life would advance, that people would again choose to locate their offices downtown, and that mixed usage of residential and commercial would grow until

the neighborhood encompassed such businesses as retail bakeries, gourmet groceries, cleaners, pet shops, and other retail establishments offered in the suburbs.

Vice Mayor Galleberg emphasized that, in contrast to a 118-acre development, the City is proposing to rezone a district that he described as the community's weakest link in comparison to other districts, in order to provide owners with the opportunity to enhance their properties. Mr. Brown also noted that the code actually assists the small property owner, and maintained that small rather than large buildings represent a city's charm and that codes provide incentives and ensure quality. Mr. Galleberg concluded by stating that it is the City's intention to create a small-town neighborhood or district as opposed to one massive development that would be characterized as either urban or suburban in character.

Recess: 10:12 to 10:24 a.m. It is noted for the record that the entire Council was present when the meeting reconvened.

Mayor MacKenzie recommended the following changes in the proposed "D" Downtown regulations: 1) inclusion on Page 26 with reference to the entire scope of DIRC's duties; 2) amendment to DIRC deleting its ability to approve waivers on more significant land use issues; and 3) any structures which reach the build-to line must provide for a setback of stories above the first by some means such as a porch/balcony or other outdoor use.

In response to Council Member Taylor, Mr. Lee indicated that approximately 1.4-million square feet of building area currently exists in the Heart of Naples area; approximately 2.2-million square feet of commercial could be added to the allowable 1,652 residential units. Although total residential square footage would depend on the size of the units constructed, Mr. Lee said that the residential area could encompass 3.3-million square feet by applying an average residential unit size of 2,000 square feet. In further discussion, it was indicated that the staff's computations had been based on redevelopment results in the Fifth Avenue South Overlay District. Miss Taylor however questioned the basis for this computation since, she said, Fifth Avenue South might have had more allowed square footage if an additional parking garage had been permitted on the west end of that street.

Miss Taylor then expressed concern regarding a lack of information relative to fiscal and infrastructure requirements of the anticipated growth in the 41-10 redevelopment area. City Manager Rambosk, however, pointed out that any increase in population would not elevate the City above what had been anticipated at build-out, although various amenities such as landscaping, lighting and sidewalks in the area in question would be funded through tax increment financing (TIF). Mr. Rambosk also noted that the staff recommended drainage improvements in the area be likewise funded and noted that TIF funds, which are now being collected at approximately \$1-million per year, would also reimburse any loans for the stated public purposes. As redevelopment occurs, the respective increased dollar generation would be used to retire indebtedness, Mr. Rambosk advised. In reply to Miss Taylor's questions regarding the cost of the Fifth Avenue parking garage, Mr. Rambosk stated that the parking garage cost was approximately \$5-million with an estimated \$1.8-million remaining in outstanding bonds. Mr. Lee clarified for Miss Taylor that parking garages would be built either by private property owners or from the City's parking trust fund that, he noted, would have no financial impact to the City.

Consultant Brown also responded to Council Member Taylor to the effect that the PILOP program was originated to serve small redevelopment projects such as those in West Palm Beach, Delray Beach, and Stuart by offering small business owners the ability to pay into a fund to address future parking needs; however, he said, Naples would most likely not call for a parking garage unless the on-street parking demand exceeded availability, which he said he envisioned as occurring only at the conclusion of its redevelopment. Mr. Brown also assured Miss Taylor that although on-street parking spaces would be considered for public use rather than for the business nearest those parking spots, people tend to park no farther than one block from their destination.

Council Member Taylor then requested that additional consideration be given to the suggestion made in a letter from Carl Kuehner that medical facilities should be required to provide ten parking spaces per 1,000 square feet rather than five. Miss Taylor further noted that a Collier County School Board representative would be placed on the Planning Advisory Board (PAB) that would oversee Heart of Naples area development, and said she envisioned the district would include children in the residential areas. In further discussion, Planning Director Lee affirmed that developers would pay County impact fees, and City Manager Rambosk pointed out that a portion of that impact fee would be paid to the City, which is proportionately reimbursed like other groups such as the school system.

Council Member Wiseman questioned whether suggestions regarding floor-area ratio embodied in the aforementioned Kuehner letter had been considered at the committee level. Consultant Brown explained that the use of floor-area ratios would limit the amount of space that could be built relative to the size of a site and is commonly used in very large cities such as Miami, New York and San Francisco. He further referred to the complexity of the concept and pointed out that floor-area ratios do not distinguish between residential and commercial. The proposed ordinance limitations are however based on height, parking, and setback and are easily understood by the citizens and petitioners, he said. Council Member MacIlvaine confirmed that floor-area ratio had in fact been considered but deemed inappropriate, as the HONC had felt that density would be controlled by the units per acre and by parking.

Vice Mayor Galleberg referred to Section 102-846A regarding the dedication of green space and stated that the square footage of green space should be required to be contiguous. Mr. Lee agreed that this correction should be made.

Council Member Russell recommended deleting Section 102-853(10) relative to nonconforming signage text. This, he said, is in conflict with other sections of the existing signage code which should also be followed for redevelopment. Mr. Rambosk acknowledged that some businesses might relocate due to signage restrictions, but stated that redevelopment regulations nevertheless afford many signage options where repositioning would be physically challenging.

Mr. Russell suggested that the premium paid for additional density (increased from \$25,000 to \$35,000 per unit recommended by the PAB) be studied further when the district's open space plan had been developed. In response to Mr. Russell, Planning Director Lee advised that the 42-foot residential height limitation was intended to realize uniformity in commercial and residential building heights. Mr. Lee also confirmed that a small parcel might not be subject to any

landscaping requirement if it is not part of the parking pool and is build on a zero lot line. Also in response to Mr. Russell, Mr. Lee characterized the 14-unit-per-acre HONC density limit as conservative.

Council Member MacIlvaine pointed out that the HONC goal was to develop a village within a city that would complement the character of the area, the sign issue having been addressed within that context. A five-year grandfathering for current pole signs had therefore been established by the HONC, he said.

Citing recently approved projects in the redevelopment area (Bellasera and Trail's End/Bomark), Council Member Herms asked Mr. Brown to clarify whether projects on the East Coast also covered 80-90 percent of the land. While Mr. Brown characterized the Trail's End/Bomark plan as a good example of larger site development, he said that Delray Beach however has a zero percent open-space requirement. Additionally, he noted, the lot in the aforementioned project is not entirely covered because of on-site parking.

Council Member Herms then pointed out that he had determined that 63 pole and/or ground signs would become nonconforming under the "D" Downtown regulations. He also said he believed that the new River Park Recreation Center sign did not appear to meet code; however, Planning Director Lee clarified that different zoning requirements applied to River Park. Mr. Herms further questioned Mr. Lee as to whether a developer could construct a structure greater than three stories by utilizing a Planned Development (PD) rezone. Mr. Lee replied that a developer would be able to make that application and that it would require a majority vote of Council.

Mr. Herms then confirmed with Planning Director Lee that the total redevelopment area acreage could exceed 118 acres if the approximately three to six acres of alleys were vacated to developers, although the proposed code caps residential at 1,652 units. Mr. Lee further noted that there would be a lot coverage standard of 30-50 percent but confirmed that Fifth Avenue has no lot coverage requirement. Mr. Lee also stated that in a conventional zoning district, 18 units per acre is the current maximum residential density allowed for new construction; however, Mr. Herms noted that there could be the potential of 14-30 units per acre if a developer chose to pay for additional density. Mr. Herms then inquired about the applicability of a property owner's eight-to-ten foot sidewalk requirement when a building was placed at the property line, without landscaping. Mr. Lee stipulated that the landscaping provided would be from the edge of the sidewalk to the right-of-way; Mr. Herms however noted that this is in fact the City's property.

Council Member Herms then requested clarification regarding property owners and/or the City being given the opportunity to pay respective developers for any extra parking provided in excess of the developer's needs. Mr. Brown responded that this procedure would encourage private developers rather than the City to build and provide public parking. If funds were available and approved by the DIRC, then parking spaces could be purchased by the City's parking fund, Mr. Brown noted.

Council Member Herms predicted that commercial square footage in the district would increase from 1.4 million to 2.2 million with another 3.3 million of residential (including additional

parking garage square footage). Mr. Herms also theorized that Grand Central Station (at Goodlette-Frank Road and U.S. 41) could conceivably accommodate as many as 525 residential units on its 17.5 acres by paying the additional \$35,000 per unit fee. Council Member MacIlvaine however reminded Council that only 710 residential units could be constructed south of Central Avenue, some of which had already been earmarked. City Manager Rambosk also stated that the type of redevelopment request cited by Council Member Herms must come before the City Council.

Traffic Engineer George Archibald indicated that the traffic consultant's report determined that the future build-out traffic volumes resulting from the current or proposed zoning regulations would be in compliance with the level-of-service (LOS) requirement set forth in the City's Comprehensive Plan. The only exception would be that northern segments of Goodlette-Frank Road could decrease from LOS (D) to (E), or possibly (F) by 2025. Confirming with staff that the 118 acres could accommodate the traffic generated by three-story commercial buildings, Mayor MacKenzie also received assurances from Mr. Archibald that traffic is reduced when commercial square footage is lowered.

In further discussion of LOS issues, Council Member Taylor expressed the view that heavy traffic on Fifth Avenue South in fact had worsened by adding the residential component. She further asserted that special events are now needed to ensure the commercial viability of Fifth Avenue; therefore, she questioned the theory that traffic would be reduced by the residential component being added to the "D" Downtown district.

Vice Mayor Galleberg stressed that despite assertions that 30 units per acre is unprecedented, there is currently unlimited residential density in the "D" Downtown district, although the proposed plan would impose a cap of 14 units per acre which could not be exceeded without Council review. Should the Council concur with the additional density, the total residential units in the district can nevertheless not exceed the district-wide limit contained in the ordinance. He therefore characterized assertions of 30 units per acre as inappropriate. With reference to statements that there could be properties containing no green space, Mr. Galleberg said that while theoretically possible on a small lot, properties of this size would not determine the character of the neighborhood. He said he also disagreed with a response by Planning Director Lee to Council Member Herms to the effect that there would be virtually no change in the current level of green space in the district since there would in fact be significant additional green space in the rights-of-way alone. He also asserted that total square footage estimates are misleading and inflammatory because all properties would not be developed to the extent of the law.

Council Member Russell received clarification from Mr. Lee that the six acres to be purchased as open space would be deducted from the 118 total acreage.

Public Comment: (11:20 a.m.) **Fred Tarrant, 175 Third Street South**, commended the Heart of Naples Committee (HONC) but took the position that the proposed rezoning would negatively affect the community. He cited lot coverage increases from 50 percent to 90 percent, allowing as many as 30 units per acre, and allowing parking garages as reasons for the Council to consider including this issue on the February 2004 ballot, a petition for which had already been signed by

hundreds of Naples residents. **Dale Chlumsky, 3345 Fort Charles Drive**, owner of Treasure Island Antique Mall at 950 Central Avenue, commented on his concern regarding the possibility of the 17 perpendicular on-street spaces in front of this building being reduced through parking reconfiguration that he said would negatively affect not only business generation but safety. While conveying support for upgrading district landscaping, Mr. Chlumsky nevertheless requested that the City allow the aforementioned 17 parking spaces to remain in conjunction with any future landscaping efforts. **Alan Ryker, 300 Fifth Street South**, said he preferred to live in a smaller, village-type community, characterizing growth in the surrounding county as urban sprawl. Mr. Ryker therefore expressed full support for revitalizing what he described as a desolate section of the city. **Martha Dykman, 5040 Seashell Avenue**, urged the Council to schedule a separate November election on the Heart of Naples redevelopment zoning and include a second Gordon River bridge so that redevelopment would not become a further political issue. She stressed that the 41-10/Heart of Naples area is blighted, and asserted that the plan would beautify the City by increasing property values, particularly in Lake Park. **Sharon Patti, 1045 Eighth Avenue North**, advised that she represented the Lake Park neighborhood and that the Board of Directors of the neighborhood association had stated its opposition to the 41-10/Heart of Naples redevelopment plans due to the proposed lot coverage and, in particular, density. **Virginia Clement, 1020 – 13th Street North**, a HONC member and a Lake Park resident, said that while she praised many portions of the HONC proposal, she felt that applying an urban definition to a small, village-type development was inappropriate. Future traffic problems and density issues were also of concern, Ms. Clement said, since developers would maximize usage of property thereby creating traffic problems for Lake Park and River Park similar to those experienced on Fifth Avenue South. She therefore urged decreasing the density requirement. **Paul Lindaberry, 2125 Marina Drive**, said that he is a life-long resident of the 41-10/Heart of Naples area and that he had envisioned a transformation of a blighted area into a pedestrian-friendly village where people would live and work. He cited advantages of such an environment to senior citizens and introduction of residences on side streets to support area businesses whose insurance costs would be positively impacted thereby. He concluded by encouraging the Council to support the proposed ordinance to upgrade the district. **James Kessler, 3250 Green Dolphin Lane**, cited the following computations that he said were based on the approval already conveyed on the Bomark/Trail's End development. He described the 118 acres as being privately owned, platted land covered by predominantly single story buildings. He stated that the area had 1.4 million square feet designated commercial with 5,300 corresponding parking spaces, a total of parking arrived at by including privately owned land, he said. Planning Director Lee confirmed that the 1,400 spaces owned by Naples Community Hospital and those owned by the Naples Daily News had been included in the 5,300 total. Mr. Kessler then asserted that the staff had ignored the City's Comprehensive Plan in favor of developers and landowners, including those who hold the Bomark/Trail's End property. Although this PD has been described as a 41-10 model, Mr. Kessler said, if the computations from this PD were applied to the entire 118 acres of the redevelopment area, the following would occur: 1) 10,816,000 square feet of building structures or 9,400,000 more square feet than presently exists; 2) 2,000 residential units; 3) at 17 units per acre, a 2006 parking space requirement which would result in a projected increase of more than 3,500 residents; 4) 13,500 feet of commercial space per acre for a total of 1.6-million square feet approximating the City's estimate of 1.4-million; 5) at three parking spaces per thousand square feet, 4,800 commercial parking spaces would be required; and 6) combining commercial and residential parking requirements, 6,800 parking spaces would

be needed, 612 on-street spaces and 6,200 in 40 multi-storied parking garages with 155 spaces each. **Peter Van Arsdale, 123 11th Avenue South**, made various points with reference to the “D” Downtown ordinance amendment and provided his comments in writing that are appended as Attachment 2. **Mary Brett, 530 First Avenue North**, noted that approximately ten percent of the voters had petitioned for a charter amendment to be included on the upcoming election ballot and urged Council to therefore withhold action on the “D” Downtown District.

Mayor MacKenzie however responded to the effect that she had been elected to represent the voters and make decisions relative to the best interests of the City. Council Members Taylor and Herms however expressed their support of Ms. Brett’s suggestions, while Vice Mayor Galleberg emphasize that Council is elected to address issues and represent residents. Mr. Galleberg further contended that the mailing, which had precipitated the above-mentioned petition, had been misleading and un rebutted. Mr. Galleberg also expressed the belief that once the public learned more about the “D” Downtown ordinance, they would support it. Council Member MacIlvaine characterized the petitioning group as representing a distinct minority with misinformation. Council Member Russell stressed that the public had been invited, involved, and informed regarding the “D” Downtown process from the beginning, and cited the many speakers present at that meeting as indicative of community involvement. He stated his commitment to continued effort in this regard. Council Member Wiseman stated that she is not a proponent of zoning by referendum; however, the aforementioned postcard mailing represented a concern and commitment by City residents, despite the inaccuracy of statements contained therein. Nevertheless, she said, it is her recognized duty to make the difficult decisions that are for the best interests of the City and its citizens.

Jacques Groenteman, indicated that he is President of the 41-10 Association, Co-Chair of the Heart of Naples Committee, a business owner, and a property owner in the affected area. He urged the Council to move forward with the “D” Downtown rezoning plan and described support as virtually unanimous within the district. **Joe Sfara, 225 Central Avenue**, stated that although he is a proponent of beautification, he is concerned that the redevelopment will force small business owners out of the Heart of Naples district. Therefore, he stated his support for a referendum on the issue. **Phil McCabe, 699 Fifth Avenue South**, pointed out that the HONC had met for two years and three months under the Sunshine Law (Chapter 286, Fla. Stat.) with the assistance of a professional planning consultant, a landscape architect, and engineers, and had welcomed all public input and participation. However, he said he did not support a referendum due to the planning sophistication required. He urged that the project go forward and utilize the tax increment financing funds already available for this purpose. Council Member Taylor read a letter from **Peter Thomas, 2658 Gordon Drive**, expressing opposition to the Heart of Naples redevelopment plan (Attachment 3). City Manager Rambosk then read a letter from **Erica Hinson**, (Attachment 4) pertaining to drainage issues relative to properties being developed on either side of an existing building; he said that staff would respond to Mrs. Hinson.

MOTION by MacIlvaine to CONTINUE THE DISCUSSION UNTIL 3:00 P.M.
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 (Continued/See Item 4)ITEM 7-a
A RESOLUTION DETERMINING PETITION 03-LE5 FOR LIVE ENTERTAINMENT AT THE NAPLES BEACH HOTEL AND GOLF CLUB LOCATED AT 851 GULF SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Continued/See Item 4) ITEM 7-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 03-R1S7 FOR THE NAPLES BEACH HOTEL AND GOLF CLUB LOCATED AT 851 GULF SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title note read.

RESOLUTION (Withdrawn/See Item 4)ITEM 12
CONSIDER GRANTING APPROVAL FOR STORMWATER IMPROVEMENT INSTALLATION IN THE 600 BLOCK OF FIFTH AVENUE SOUTH. (Editor's Note: No draft resolution was provided for this item.)

RESOLUTION (Withdrawn/See Item 4)ITEM 15
CONSIDER APPOINTMENTS TO THE PLANNING ADVISORY BOARD. (Editor's Note: No draft resolution was provided for this item.)

Recess: 12:15 p.m. to 1:35 p.m. It is noted for the record that all Council Members except Council Member Wiseman were present when the meeting reconvened.

.....**ITEM 21**
ATTORNEY CLIENT SESSION RELATING TO A PENDING PERSONAL INJURY CLAIM REGARDING AMY HEIDER. City Attorney Robert Pritt requested Council's advice for the above claim in an attorney/client session during the Regular Meeting of May 7, 2003, to discuss settlement negotiations and/or strategy relating to litigation expenditures. The following persons would be present for the Executive Session: Mayor Bonnie R. MacKenzie; Vice Mayor Gary Galleberg; Council Members Joseph Herms; William MacIlvaine; Clark Russell; and Penny Taylor; (Tamela Wiseman-absent); City Manager Kevin Rambosk; City Attorneys Robert D. Pritt and Frederick Hardt; and Patty Beale of AAF Reporting, court reporter. The estimated duration of the attorney/client session was cited at 20 minutes. City Attorney Pritt indicated that the applicable Florida Statutes are 286.011(7) and also 768.28(15c) regarding risk management programs.

Executive Session: 1:37 p.m. to 1:54 p.m. It is noted for the record that all Council Members except Council Member Wiseman were present when the meeting reconvened.

MOTION by Galleberg to DIRECT ATTORNEY FRED HARDT TO PARTICIPATE IN THE MEDIATION OF THE AMY HEIDER CLAIM CONSISTENT WITH DISCUSSIONS HELD IN EXECUTIVE SESSION;
seconded by Russell and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

RESOLUTION 03-10040.....ITEM 8-a
A RESOLUTION DETERMINING PETITION 03-LE6 FOR LIVE ENTERTAINMENT AT THE OLDE NAPLES PUB LOCATED AT 255 13TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION 03-10041..... ITEM 8-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION
03-RIS8 FOR THE OLDE NAPLES PUB LOCATED AT 255 13TH AVENUE SOUTH,
MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS
LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Titles read by City
Manager Kevin Rambosk (1:54 p.m.)

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

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

Timothy Flock, Olde Naples Pub, explained that his live entertainment permit application would allow a pianist and guitarist to continue performing at the local neighborhood restaurant where the pianist had been present for 13 years and the guitarist for 7 years without neighborhood complaints. City Manager Rambosk confirmed that Olde Naples Pub was simply obtaining the required permit for existing live entertainment. Planning Director Ron Lee advised that the City had not previously received complaints relative to the establishment and that, to his knowledge, the complaint letter referenced by Mayor MacKenzie (Attachment 5) had been the first regarding Olde Naples Pub.

Public Comment: None. (2:04 p.m.)

MOTION by Taylor to APPROVE RESOLUTION 03-10040; seconded by
Russell and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes,
Taylor-yes, Wiseman-absent, MacKenzie-yes)

MOTION by Herms to APPROVE RESOLUTION 03-10041; seconded by
Russell and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes,
Taylor-yes, Wiseman-absent, MacKenzie-yes)

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 9-a
Town Hall Meetings: February 27, 2003; March 6, 2003 (Pages 7 and 9, as amended), March 13, 2003, March 20, 2003; and April 2, 2003 Regular Meeting.

SPECIAL EVENTITEM 9-b-3
Naples Art Association – 11/01, 12/06/03, 01/03, 02/07, 03/06, 04/03/04

RESOLUTION 03-10042.....ITEM 9-c
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES
AND FLORIDA EQUIPMENT SPECIALISTS, LLC, FOR THE PURCHASE OF A
MUSTANG 742 TELESCOPIC LOADER; AUTHORIZING THE CITY MANAGER TO
EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not
read.

RESOLUTION 03-10043..... ITEM 9-d
A RESOLUTION APPROVING AN INTERAGENCY AGREEMENT BETWEEN THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE CITY OF
NAPLES REGARDING MARINE TURTLE MONITORING ASSOCIATED WITH THE
2003 MAINTENANCE DREDGING OF GORDON PASS; AUTHORIZING THE MAYOR

TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10044..... ITEM 9-e-1
A RESOLUTION AMENDING THE 2002-03 BUDGET ADOPTED BY ORDINANCE 02-9825; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10045..... ITEM 9-e-2
A RESOLUTION AMENDING THE 2002-03 BUDGET ADOPTED BY ORDINANCE 02-9825 FOR THE POLICE OFFICERS RETIREMENT TRUST FUND; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10046..... ITEM 9-e-3
A RESOLUTION AMENDING THE 2002-03 BUDGET AND CAPITAL IMPROVEMENT PROGRAM ADOPTED BY ORDINANCE 02-9825; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Russell to APPROVE CONSENT AGENDA ITEMS 9-a (as amended), 9-b-3, 9-c, 9-d, 9-e-1, 9-e-2, and 9-e-3; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

END CONSENT AGENDA

SPECIAL EVENT ITEM 9-b-1
(1) Kid’s Fishing Clinic – Naples Municipal Pier – 09/20/03 (2:05 p.m.) City Manager Kevin Rambosk reaffirmed that all street access, traffic and pedestrian flow, scheduled times, and safety issues had been resolved.

MOTION by Galleberg to APPROVE ITEM 9-b-1; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

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

SPECIAL EVENT ITEM 9-b-2
Evenings on Fifth – Fifth Avenue South Association – 05/08, 06/12, 07/10, 08/14, 09/04, 10/9, 11/13, and 12/11/03 (2:09 p.m.) City Manager Kevin Rambosk advised that the Fifth Avenue South Association had requested an amendment to its original application for Evenings On Fifth and introduced Association Executive Director Debbie Newman. Ms. Newman requested an additional street closure for East Lake Drive to accommodate the number of anticipated spectators for an Elvis Presley-type performer. In response to Council Member Herms, Ms. Newman provided assurances that performers are instructed to entertain only those spectators directly before them. She also explained that volunteers and merchants from the Association monitor noise levels at each entertainment station. However, Mr. Herms noted that he had filed a noise complaint at a previous performance based on comments from neighbors approximately eight to nine blocks from the entertainment.

In response to Council Member Taylor, Ms. Newman indicated that both musicians and singers require amplification. Vice Mayor Galleberg reminded Council that Evenings On Fifth had been approved as low-impact, monthly events with entertainment such as strolling musicians in order to draw people downtown, not for staged performances with hundreds of attendees. Additionally, Mr. Galleberg said that he was concerned about Old Naples residents having difficulty accessing their homes and therefore did not support closing an additional street; he also concurred with Council Member Herms regarding concern over noise. Council Member MacIlvaine pointed out

that a noise level threshold had not been established. Council Member Russell agreed that Evenings On Fifth had deviated from original intent and further stressed the unacceptability of noise generated by events intended to provide entertainment rather than to enhance the experience on Fifth Avenue South.

Mayor MacKenzie noted however that the request before Council was relative to the closing of East Lake Drive; however, she also cautioned Ms. Newman regarding high noise levels and requested that any necessary corrective action be taken immediately. Ms. Newman then also noted that the additional street closure would be necessary due to downtown construction and asserted that it would in fact represent less negative traffic impact for residents. Mayor MacKenzie questioned why the already-closed Park Street could not be used for the Elvis performance. Gloria Kovacs of Fifth Avenue South Association responded that Park Street however is used to showcase cars from the DeVoe dealership, the sponsor of Evenings On Fifth, DeVoe having moved to this location in response to merchant complaints regarding cars blocking storefronts. Additionally, Ms. Kovacs explained that the East Lake Drive street closure had been prompted by advice from Police & Emergency Services and originated from a meeting regarding traffic control and safety issues.

Public Comment: (2:34 p.m.) **Henry Kennedy, Tarpon Road**, related difficulties with parking for the girl's softball program at Cambier Park due to Fifth Avenue South street closings. While indicating his support for Fifth Avenue activities, Mr. Kennedy nevertheless requested consideration be given to partial street closings and additional traffic assistance. Ms. Newman responded that these activities would however be monthly events only for the next eight months.

Steven Moore, Chief of Police and Emergency Services, confirmed that he had met with the Fifth Avenue merchants relative to Evenings On Fifth events, with the suggestion of an East Lake Drive closure being made to address pedestrian safety concerns, noise control, and increased crowds. Chief Moore also requested that the Fifth Avenue South Association fund the additional police officers required to handle the crowds generated from increased attendance. Officers had previously been supplied at the City's expense in March and April, he said. In further discussion, City Manager Rambosk indicated that the Special Events Committee would establish a reasonable threshold or level of sound for all special event requests, as recommended by Chief Moore; however, this will involve additional research and evaluation, he said. In the short term, Mr. Rambosk noted, the City requires direct formal contact with a representative of Fifth Avenue South Association in order to have noise levels lowered should this be necessary during these events. Although Ms. Newman reported that their performer contract stated a noise level of 65 decibels, Mayor MacKenzie explained that the current citywide-permitted levels are 50 decibels during the day and 60 decibels during the evenings. Chief Moore said that he had not known of the 65-decibel provision in the contract between the association and its performers.

Council Member Herms said he had tested the ambient noise level and found that it registered at 85 to 90 decibels, which is much higher than the above-referenced Fifth Avenue South Association's contract. Ms. Newman however reiterated her group's conviction that the events are designed to complement the charm of the street and to comply with the wishes of both residents and City Council, and stated that the development of themes was simply a means to

attract local support during the summer months. She further informed Council that the Association would work to achieve noise level compliance.

MOTION by Galleberg to DENY STREET CLOSURE DUE TO TRAFFIC FLOW AND THE PERCEIVED INCONSISTENCY WITH PURPOSE OF EVENTS; seconded by Herms and carried 4-2 (Galleberg-yes, Herms-yes, MacIlvaine-no, Russell-no, Taylor-yes, Wiseman-absent, MacKenzie-yes).

Recess: 2:52 to 3:23 p.m. for the Community Redevelopment Agency (CRA) Meeting. It is noted that all Council Members except Council Member Wiseman were present when the meeting reconvened.

ORDINANCE (First Reading).....ITEM 13
AN ORDINANCE GRANTING COMPREHENSIVE PLAN AMENDMENT PETITION 03-CPA1, TO AMEND THE CONSERVATION AND COASTAL MANAGEMENT ELEMENT OF THE COMPREHENSIVE PLAN BY ADDING OBJECTIVES AND POLICIES TO ESTABLISH MARINA SITING CRITERIA, PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (3:24 p.m.) Mayor MacKenzie stated that Planning Director Ron Lee had been working with representatives of Collier Enterprises, The Conservancy of Southwest Florida, Citizens to Preserve Naples Bay, and all groups concerned with marina-siting criteria, and also noted that these organizations had been accommodated in some way. Mr. Lee also noted that the State of Florida had developed a guidebook relative to compilation of data, and that the City had complied with the requirements. Other documents cited as reference material are: the ordinance itself; Planning Director Lee's memorandum of April 14, 2003, highlighting recommended changes from the Planning Advisory Board; and Mr. Lee's May 2, 2003, memo including two separate policies that The Conservancy had requested be included (Policy Number 18-3 and 18-4).

City Attorney Robert Pritt advised that City Attorney Fred Hardt had recommended deletion of the third whereas clause concerning the Comprehensive Plan. Council Member Taylor however expressed doubt regarding the concept of a marina's ability to improve water quality. After a brief discussion, Council Member Russell recommended amending language indicating, "Redeveloped marinas that correct existing water quality problems or that improve water quality should be encouraged."

In response to Council Member Herms, Planning Director Lee confirmed that the key issue in the entire document is to identify marina-siting criteria and the respective standards regarding identification of preferred, moderate, and protected development sites. These standards are in accordance with the Collier County plan that has been accepted by the State as a model manatee protection plan, Mr. Lee said. Mr. Herms expressed concern relative to existing marinas and the impact of the changes being implemented; however, Natural Resources Manager Jon Staiger established that redeveloped marinas are actually decreasing the number of boat slips resulting in newer marinas being in compliance.

Council Member Taylor also noted that State requirements are also very stringent. Dr. Staiger pointed out that the Department of Environmental Protection (DEP) has its own permitting process coupled with the Fish and Wildlife Service involvement, resulting in additional requirements to be met.

Vice Mayor Galleberg concurred with the suggested deletion of the third whereas clause regarding the settlement with Collier Enterprises as, he noted, the City is obligated to do so in a conditional settlement agreement and so empowered by State Statute. Mr. Galleberg further requested deletion of the footnote appearing as numeral one in the column heading entitled “No Impact” and questioned the cost/benefit effectiveness of Objectives 18 and 19 since just seven manatee deaths had occurred in approximately 30 years. Planning Director Lee explained that the inclusion of Policy 18-2 is a formalized statement that the City would accept land dedications for conservation areas; however, Mr. Galleberg took the position that the statement added not substantive content since the City consistently accepts such donations. Mr. Galleberg also said that the wording of Objective 19 should reflect that support “may be provided” rather than “shall be provided.”

Public Comment: (3:48 p.m.) **Henry Kennedy, Tarpon Road**, requested that the Council accept the conditional settlement agreement and the respective rules and guidelines agreed upon rather than change the marina-siting criteria. He also objected to the inclusion of The Conservancy’s stipulations and expressed concern that the marina-siting criteria lists a depth of four feet or less at low tide which he said significantly changes the number of boat slips. Because possible dredging could change the number of boat slips allowed, it could also afford the Charter Club the opportunity to construct a marina encompassing much of Naples Bay. **Gary Davis, The Conservancy of Southwest Florida**, distributed copies of his May 7, 2003, letter addressed to Mayor MacKenzie (Attachment 6) in which he said he had expressed appreciation to Planning Director Lee and Natural Resources Manager Staiger for their efforts. After further discussion, it was determined that the percentage of coverage would be removed from Policy 17-13(2); this received the concurrence of both Natural Resources Manager Staiger and Collier Enterprises Attorney George Varnadoe. Mr. Varnadoe further stated however that the level-of-service standards that Mr. Davis raised go beyond what is needed and also noted that the County has never gone to that level of detail. Mayor MacKenzie then received concurrence of both Mr. Varnadoe and Mr. Davis that they would accept the changes as stated previously in the discussion. In further discussion it was also noted that the City has no land trust per se, but that the City can nevertheless accept land. Following a point-by-point restatement of changes by City Attorney Fred Hardt, said changes were embodied in the motion that appears below.

MOTION by Russell to APPROVE ITEM 13 ON FIRST READING, AS AMENDED:
delete third Whereas clause; add to Policy 17-7 “Marinas in locations with poor water quality and poor flushing should be discouraged. Redeveloped marinas that correct existing water quality problems or that improve water quality should be encouraged;”
delete footnote 1 in column heading “No Impact” on Page 5; revise Policy 17-13 (2) “...or Turtle Grass in an assemblage that occurs at a percentage of cover greater than 25.”; include in Policy 17-13 on Page 6 “not to exceed” under Preferred, Moderate Development and Protected Sites; revise Objective 19 on Page 7 from “shall” to “may”; adding Policy 18-3 “The City will monitor data on manatee mortality within the City’s waterway system and waterways within a five-mile radius of the City and compile an annual report. The report shall highlight geographic areas of concentrated boat-related manatee deaths.”; and adding Policy 18-4 “The City will evaluate the effectiveness of the adopted boating facility plan every five years.” This motion was seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

.....**ITEM 20**
REQUEST FOR AUTHORITY TO MAKE PROPOSALS FOR SETTLEMENT TO PLAINTIFF (MARY ADAMS VS. CITY OF NAPLES, COLLIER COUNTY CIRCUIT COURT). Attorney Fred Hardt summarized that the matter dealt with is a personal injury claim against the City currently under litigation relative to a sidewalk incident that had been sent to mediation; a \$10,000 cost of defense was assigned to this case, he said. The plaintiff's last demand was \$92,000 which was deemed unreasonable, Mr. Hardt reported, and advised that there had apparently been no defect in the sidewalk. Furthermore, the plaintiff reported to her treating physicians in Illinois that she was unsure whether she had tripped or lost consciousness, which she had indicated that she was prone to do, Mr. Hardt advised. Attorney Hardt therefore requested authorization to present the plaintiff with a check for \$10,000 as a Proposal for Settlement.

Public Comment: None (4:20 p.m.)

MOTION by Galleberg to AUTHORIZE PROPOSAL FOR SETTLEMENT IN THE AMOUNT OF \$10,000; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

CONTINUED (See Page 10) ITEM 6-b
(4:20 p.m.) Regarding the proposed "D" Downtown rezoning ordinance, Vice Mayor Galleberg indicated acceptance of some 14 technical suggestions submitted by City Attorney Pritt. Council Member Russell suggested that property owners who have existing pole signs be allowed to retain them through grandfathering; Council Member MacIlvaine and Vice Mayor Galleberg said that they would concede this point in order to have the matter move forward.

Council Member Russell further expressed concern relative to density issues and the \$35,000 payment in lieu of green space/open space due to lack of a green space master plan. Also in response to Mr. Russell, Consultant Brown encouraged the Council to retain the \$35,000 incentive in order to provide more flexibility for developers to increase density and allow the City to increase open space and green space. Vice Mayor Galleberg further noted that these density requests would still come before Council for approval in the conditional use process, thus providing another safeguard.

Council Member Russell also requested clarification regarding smaller parcels of mixed use or commercial buildings referenced in Peter Van Arsdale's letter (Attachment 2) that would have neither landscaping nor a ten-foot rear yard setback. Mr. Brown explained that if there is an alley, then a ten-foot rear setback applied, and Planning Director Lee further noted that the ten foot requirement is not a build-to line in the alley. In order to provide buffering, Mr. Russell however advocated the usage of landscaping similar to Fifth Avenue South in the alleys of the "D" Downtown district.

Mr. Lee stated that his staff and the City Attorney would incorporate the issues raised that day into specific language to reflect conceptual changes. Vice Mayor Galleberg also pointed out that the alley requirement is in the existing code and is not a Heart of Naples code change.

Council Member Herms then noted that a 50-foot standard setback from intersecting lines on any given street makes most existing signs, either pole or ground installations, nonconforming. Mr.

Hermes further stated that the ordinance removes the ability for a sign to be changed with new ownership, as it must be torn down thus eliminating the property owner's ability to install a new sign due to the 50-foot setback standard. Planning Director Lee agreed however to evaluate. Council Member Russell recommended further consideration be given to decreasing this requirement.

Regarding contiguous open space, Vice Mayor Galleberg recommended that paragraph 3.1 on Page 11 be revised so that the statement concludes with "...waiver to this provision." Mr. Galleberg also suggested that the alternate member on the DIRC be eliminated in conjunction with the upcoming general action to eliminate alternates.

Council Member Hermes asked whether a property owner with a Planned Development (PD) could, with four votes of Council, be allowed to build 25 units per acre. City Attorney Robert Pritt responded that this could be done if it were not inconsistent with the plan and further that because a PD would be considered an ordinance, both the PD ordinance and Code provisions would have equal dignity. Council Member MacIlvaine also pointed out that anyone may propose a PD rezone at any time which is a long-standing right, and Vice Mayor Galleberg stressed that there are also standards to grant a variance such unique conditions. Council Member Hermes however maintained that the Charter amendment process had been initiated to prevent Council from overriding requirements.

Council Member Taylor recommended that commercial uses be defined in Section 102-854 and that three spaces per 1,000 square feet be applied, noting a previously discussed suggestion by Carl Kuehner due to potential for the "D" Downtown area to become the next medical office development. Further, she urged reevaluation of commercial parking space usage during the evening and expressed concern that permitting residential uses on the first floor would allow structures to be built over 42 feet in height. Council Member Taylor also observed that with the current population at 22,000 and the Heart of Naples increase projected at approximately 3,000 people, the City's build-out total would be reached notwithstanding other redevelopment projects currently taking place in Old Naples where single family is being replaced by multi-family. Also cited by Miss Taylor was competition with Fifth Avenue businesses and increased school enrollment represented by children who may live in the "D" Downtown district. She said that she felt the potential growth impact on the City is necessary information in order to make an informed decision relative to population growth.

Mayor MacKenzie reiterated her desire that the second or a least third floors be stepped back to soften the effect of three-story buildings, both commercial and residential, citing her opposition to straight, flat three-story walls constructed at the build-to line. Council Members MacIlvaine and Hermes agreed.

Mayor MacKenzie requested clarification of the DIRC's mission and role. She concurred with City Attorney Pritt's suggestion to amend the first sentence on Page 26 to indicate DIRC's purpose and jurisdiction. Additionally, Mayor MacKenzie distinguished the waiver process for less substantial uses from that which addresses land use, and concluded by reiterating her opposition to parking on a deck above the third floor as being contrary to the Charter amendment that limited commercial heights to three floors and 42 feet. However, Planning Director Lee

pointed out that fourth floor parking without a roof, by definition is not a story. Council Member Russell stated that whether or not parking was permitted on the fourth floor, structurally residents would be viewing a three-story building that would be less than 42 feet. However, Council Member Herms stressed that constructing a roof on a parking garage is in fact for the sole purpose of adding an additional level of parking. Mr. Lee responded that the fourth floor would be permitted only if the property owner designates surface parking for public use. Council Member Taylor noted her objection to changing from a super-majority requirement to a vote of four Council Members.

Council Member Russell characterized the calculations provided earlier in the day by James Kessler as not realistic and as far exceeding the number of residential units per acre permitted. Additionally, he took issue with Mr. Kessler's theory that 44 parking decks would be needed to handle the residential density that Mr. Kessler had calculated. Mr. Russell further related his understanding that the number of Council Members had been increased to seven to protect zoning based on the premise that if four agreed, it probably was representative of the majority of what the public supports.

Council Member Herms however pointed out that with 85 to 90 percent lot coverage, parking garages would be required to accommodate 2.2 million square feet of commercial uses and 3.3 million square feet of residential which would account for up to 10 million square feet to support projected growth. He identified redevelopment of 30 to 40 percent lot coverage with two or three stories as appropriate, instead of what is being proposed which he compared to the former Gindroz plan with high density and an allowance of five stories.

Noting however that 30,000 square feet is needed in order to construct a parking garage, Council Member MacIlvaine said that there are in fact few locations of sufficient size in the district to accommodate such projects. He also took the position that there had been an extreme amount of misinformation presented regarding this issue and proffered a motion that staff be directed to specifically respond to assertions contained in a postcard circulated by the Honesty in Government group (referendum petition sponsors). Mr. MacIlvaine cited the group's assertion that residential would increase from 8 to 14 units per acre while in fact that the proposed ordinance would change the density from unlimited to 14 units per acre. Vice Mayor Galleberg seconded Mr. MacIlvaine's motion.

Council Member Herms stated however that the limit of 8 multi-family units per acre in a commercial zone, with 12 for medical districts, had been in place for approximately 20 years. This, he said, along with strict zoning requirements, had resulted in retention of the community's small-town atmosphere. Prior Councils, he said, had established these densities in anticipation that there would also be significant commercial square footage.

In response to Mayor MacKenzie, City Attorney Robert Pritt advised that either the first reading or the second reading of the proposed ordinance should be held after 5:01 p.m. which had prompted the first reading to be scheduled for May 21st at 5:01 p.m. to avoid scheduling conflicts with upcoming budget workshops.

In discussion of the motion that appears below it was determined that the staff would have an analysis of the information in the Honesty in Government postcard prepared before the next reading of the ordinance on May 21st. Mayor MacKenzie noted that the City has historically been a source of factual information for the public. However, Council Member Herms said he believed that this action would place the staff in a political position which would result in pressure from different points of view. He also stressed that information be included in the proposed analysis relative to the fact that “D” Downtown standards had called for density to be based on parking availability. In response to Mayor MacKenzie, Planning Director Lee indicated that an upcoming public presentation by staff would in fact include information on the changes that would occur with the proposed “D” Down rezoning.

City Attorney Pritt clarified that the action being discussed was strictly relative to directing staff and that no precedent would be set relative to the requirement to place an item on the agenda by five sevenths’ vote.

Council Member Russell pointed out that the three questions which should be answered by staff are whether the rezoning raises the density from 8 to 14 units per acre, whether it increases lot coverage from 50 to 90 percent, and whether any City laws are being violated.

MOTION by MacIlvaine for THE STAFF TO PREPARE AN ACCURATE SITUATION ANALYSIS BASED ON THE POST CARD (SEE ABOVE) WHICH HAD BEEN CIRCULATED. This motion was seconded by Galleberg and carried 5-2 (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-absent, MacKenzie-yes).

Council Member Taylor said she had voted against the motion because she, too, felt that the directive politicized the staff and that it was wrong for the majority of Council to issue this direction. She said that the factual issues should be presented relative to the Comprehensive Plan. However, Council Member MacIlvaine stressed that the facts should be made available and that no one should be misled.

Council then discussed various aspects of the analysis provided by Peter Van Arsdale (Attachment 2). In particular, Council Members noted Mr. Van Arsdale’s opposition to allowing residential on the first floor in the “D” Downtown district. Council Member Taylor expressed concern that the plan does not protect existing businesses and stressed her belief that the area is in fact not blighted. Vice Mayor Galleberg asked staff to examine possible reduction in lot size to facilitate single townhouse type development. He also recommended a review of lowered residential density and examination of setbacks and sidewalk measurements in order to assure the appropriate economic price on right-of-way parking. Miss Taylor also urged that more protection be included for surrounding residential areas that she said could be accomplished through setbacks and a variety of other strategies.

Council Member Russell said he wished to clarify that the Council is still working through this proposal and that comments, suggestions and ideas are still being entertained from the public. He said he would have preferred that the Honesty In Government committee had delayed their petition process until completion of this process.

Public Comment: (On Continuance) (7:25 p.m.) None.

MOTION by Galleberg to **CONTINUE THIS ITEM (6-b) TO 5/21/03 AT 5:01 P.M.**; seconded by Russell and carried 5-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-absent, MacKenzie-yes).

Recess: 5:25 p.m. to 5:39 p.m. It is noted for the record that all Council Members except Council Member Wiseman were present when the meeting reconvened.

ORDINANCE 03-10047.....ITEM 17
AN ORDINANCE PERTAINING TO DESIGN REVIEW; CREATING A NEW ARTICLE XI, OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE 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 XI. 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 Manager Kevin Rambosk (5:39 p.m.)

MOTION by MacIlvaine to **ADOPT ORDINANCE 03-10047 AS SUBMITTED**; seconded by Russell and carried 5-1 (Galleberg-yes, Taylor-yes, Russell-yes, Wiseman-absent, Herms-no, MacIlvaine-yes, Mackenzie-yes)

RESOLUTION 03-10048.....ITEM 14
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 read by City Attorney Kevin Rambosk (5:41 p.m.). Public Works Director Dan Mercer outlined the request as follows: 1) additional services relative to the aquifer performance test; 2) additional services for the Master Plan; and 3) additional information requested during the Master Plan presentation to City Council in September. Mr. Mercer explained that the additional services for the aquifer performance test had been required based on four requests for additional information by South Florida Water Management District. He further advised that the City has been attempting to renew its water permit for over three years although approval is now anticipated in June.

City Manager Kevin Rambosk also pointed out that answers to specific questions by Golden Gate residents had been required relative to the City's permit. The following amounts were cited relative to the Master Plan presentation: \$13,500 for analysis of rate increases; \$10,000 for hydraulic models; \$2,000 for consulting on preparation of Master Plan presentation; and \$2,000

to obtain billing data pertaining to Collier County, totaling \$27,500. Vice Mayor Galleberg and Council Member MacIlvaine questioned the additional change order costs and Mr. Mercer responded that his staff had already reduced them where prudent and had found that the additional services listed are fiscally responsible. After discussion relative to the \$20,000 proposal to address questions posed by Members of Council, it was determined not to have Hartman & Associates undertake this activity.

Public Comment: None (5:57 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 03-10048 AS AMENDED TO INCLUDE \$45,000 IN ADDITIONAL SERVICES FOR THE AQUIFER PERFORMANCE TEST AND \$27,500 IN ADDITIONAL SERVICES FOR THE MASTER PLAN, AND TO REMOVE THE REQUEST FOR ANSWERS TO QUESTIONS IN THE OPTIONAL PRESENTATION (SEE ITEM 9-e-4); seconded by Hermes and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

RESOLUTION 03-10049..... ITEM 9-e-4
A RESOLUTION AMENDING 2002-2003 BUDGET AND CAPITAL IMPROVEMENT PROGRAM ADOPTED BY ORDINANCE 02-9825 FOR THE APPROVED CONTRACT WITH HARTMAN AND ASSOCIATES FOR WATER MASTER PLAN AND THE AQUIFER PERFORMANCE TEST AND PROVIDING FOR AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:57 p.m.) who explained the \$97,500 total decreases to \$72,500 in the whereas clause, Section 1 decreases from \$52,500 to \$27,500, and the \$45,000 remains in Section 2, thus resulting in a total budget of \$72,500 listed in Section 3.

Public Comment: None. (5:58 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 03-10049 AS AMENDED; in second Whereas clause “subsequently increased by \$97,500 \$72,500”; in Section 1 decrease to \$27,500; and in Section 3 decrease to \$72,500; seconded by Taylor and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

RESOLUTION 03-10050..... ITEM 11
A RESOLUTION CONSIDERING GRANTING A RIGHT-OF-WAY PERMIT TO THE COMMODORE CLUBS I AND II FOR THE PLACEMENT OF AN ENTRY SIGN ON THE CITY’S WATER VALVE BOX LOCATED ADJACENT TO THE ENTRANCE OF THE CLUB; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:59 p.m.) who explained that this request is for a water valve box to be camouflaged by screening and landscaping and used as signage for the Commodore Club. He said that it would not further affect line of sight.

Public Comment: None (6:01 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 03-10050 AS SUBMITTED; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

RESOLUTION 03-10051..... ITEM 18
A RESOLUTION APPROVING A JOINT PROJECT AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR CARTER BURGESS TO PROVIDE PROFESSIONAL ENGINEERING DESIGN SERVICES TO DESIGN THE RELOCATION OF A PORTION OF THE 36-INCH RAW WATER MAIN IN CONJUNCTION WITH THE DESIGN OF THE I-75/GOLDEN GATE PARKWAY

INTERCHANGE PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:02 p.m.) who explained that the federal and state governments have insufficient funding to redesign this raw water main although the City would continue to seek reimbursement. Utilities Director Bob Middleton illustrated the Florida Department of Transportation's (DOT's) conceptual illustration of the new interchange for Golden Gate Parkway and Interstate 75 that would necessitate the City's relocation cost estimated at \$500,000. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) Mr. Middleton advised that the Council was being asked to approve approximately \$53,000 for the preliminary engineering design by Carter Burgess, the firm also under contract to the Florida DOT for the interchange project. This also includes approximately \$13,000 for construction services. In response to Vice Mayor Galleberg, Mr. Middleton and Public Works Director Dan Mercer explained the only easement in the area under the City's control is far to the east of this location and that Florida DOT does not grant easements in its right-of-way, although the Florida DOT is in some cases willing to release the City from liability with reference to location of its raw water line.

Public Comment: None (6:07 p.m.)

MOTION by Taylor to APPROVE RESOLUTION 03-10051 AS SUBMITTED;
seconded by Russell and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

RESOLUTION 03-10052.....ITEM 19
A RESOLUTION ACCEPTING TWO NEW PRODUCTION WELLS FOR THE CITY OF NAPLES FOR THE PURPOSE OF REPLACING TWO PREVIOUS WELLS LOCATED AT CALUSA BAY; AUTHORIZING THE CITY MANAGER TO ISSUE AN ACCEPTANCE LETTER IN ACCORDANCE WITH A CONSENT ORDER BETWEEN SOUTH FLORIDA WATER MANAGEMENT DISTRICT, GROVES OF NAPLES, INC. THE DEVELOPER OF CALUSA BAY, AND THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:07 p.m.) who reported that the wells, located in the Goodlette-Frank Road median, were performing properly and that the water is of good quality.

Public Comment: None (6:08 p.m.)

MOTION by Taylor to APPROVE RESOLUTION 03-10052 AS SUBMITTED;
seconded by Hermes and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

SPECIAL EVENTITEM 9-b-4
Haitian Flag Day-The Association for the Advancement of Haitian People-Fleischmann Park 05/18/03. City Manager Kevin Rambosk reported that it is the staff's position that the City does not waive the requirement for insurance, as had been requested. Three hundred dollars is the amount being requested for co-sponsorship.

Public Comment: None (6:10 p.m.)

MOTION by Herms to APPROVE ITEM 9-b-4; ***seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)***

RESOLUTION 03-10053.....ITEM 9-f
A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO EMPLOYMENT AGREEMENT WITH KEVIN J. RAMBOSK AS CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk

(6:10 p.m.) who explained that \$3,502.00 under Section 3, Salary, corresponded to a minimum of 4 percent, or the cost-of-living equivalency for the bargaining unit; and the \$6,437.00 under Section 7, Sick Leave, corresponded to a 30 percent sick leave payout upon separation. Most other managerial employment agreements had been updated accordingly, he said. Mayor MacKenzie indicated that the amendment basically adds one more year to City Manager Rambosk's contract. Furthermore, Mr. Rambosk advised that the City had changed from a sick leave plan to a personal leave plan; therefore, the sick leave payout would not be recurring.

Public Comment: None (6:13 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10053 AS SUBMITTED; seconded by Hermes and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

ORDINANCE (First Reading).....ITEM 10
AN ORDINANCE ADDING SECTION 50-1 "CRIMINAL HISTORY RECORD CHECKS" TO THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ESTABLISHING CRIMINAL HISTORY RECORD CHECKS FOR CERTAIN EMPLOYEES, APPOINTEES, PRIVATE CONTRACTORS, EMPLOYEES OF PRIVATE CONTRACTORS AND VENDORS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:14 p.m.) who informed Council that recent legislation would allow municipalities to accomplish criminal background checks from a system that utilizes the state and national law enforcement data, thus improving the quality of information previously provided by a private service.

Public Comment: None (6:14 p.m.)

MOTION by MacIlvaine to APPROVE ITEM 10 AS SUBMITTED AT FIRST READING; seconded by Taylor and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

RESOLUTION 03-10054.....ITEM 16
A RESOLUTION APPROVING AMENDMENT 1 OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION LAND AND WATER CONSERVATION FUND PROGRAM FISCAL YEAR 2000-2001 PROJECT AGREEMENT BETWEEN THE CITY OF NAPLES AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REGARDING \$150,000 MATCHING FUNDS FOR PHASE I OF THE FLEISCHMANN PARK REDEVELOPMENT PLAN AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:16 p.m.) who explained that grant submission had been adjusted and resubmitted for the Fleischmann Park Redevelopment Plan thus maintaining the eligibility of the \$150,000 matching funds. In response to Council, Mr. Rambosk further noted that the park redevelopment is currently awaiting engineering of underground improvements. Council Member Russell urged that this be expedited so that work could commence.

Public Comment: None (6:18 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10054 AS SUBMITTED; seconded by Taylor and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes)

CORRESPONDENCE AND COMMUNICATIONS.....

Council Member Taylor asked that the City Manager comment on a May 5, 2003, letter from Sprint addressing noise levels and related neighbor hood concerns relative to an air conditioning

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unit. City Manager Kevin Rambosk advised that the statements in Sprint's letter would be given staff consideration relative to their compliance with the City's requests. Additionally, he said, Planning Director Lee had been asked to review the mechanical noise levels, particularly in commercial areas adjacent to residential districts, and would respond to this request within three to four weeks. Furthermore, Mr. Rambosk stated, although a noise specialist had been contacted, services had not been retained due to the \$5,000 fee.

In response to an inquiry by Council Member Taylor, Mr. Rambosk advised that he would obtain a copy of the Collier County lobbyist ordinance which he would distribute to the Council.

Mayor MacKenzie recommended that a policy be established to deal with requests for hyperlinks to the City's website. Mr. Rambosk concurred and advised that the staff would develop such a policy.

City Manager Rambosk distributed an agenda for the joint meeting between the City Council and Collier County Commission to be held on May 20, 2003, and asked whether any other topics should be included. Due to time constraints, however, Council indicated that no further items should be added.

ADJOURN
6:26 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Bonnie McNeill, Recording Specialist

Minutes Approved: 6/18/03