



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

---

**City Council Regular Meeting – May 21, 2003 – 9:00 a.m.**

---

Mayor MacKenzie called the meeting to order and presided.

---

**ROLL CALL .....ITEM 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  
Ron Lee, Planning Director  
George Archibald, Traffic Engineer  
Terry Fedelem, Parks/Parkways Design Supt.  
Ron Wallace, Development Services Director  
Pastor Steven Wigdahl, Emmanuel Lutheran  
Tara Norman, City Clerk  
Karen Kateley, Administrative Specialist  
David Lykins, Community Services Director  
Laura Spurgeon, Planner  
Susan Golden, Planner  
Robert McGregor, Police & E.S.  
Steven Moore, Chief of Police & E.S.  
Denise Perez, Human Resources Director  
Kelly Nielsen  
Christopher Brown  
Phil McCabe  
Lou Vlasho  
Kati Daniels  
Mardon Collins  
Everett Thayer

Chris Thornton  
Richard Cacciagrani  
Clay Brooker  
John Wanklyn  
Jim Gunderson  
Henry Kennedy  
Joe Biasella  
Bill Beringer  
Fern Aitchison  
Jane Earle  
Donald Leddy  
Sandi Leddy  
Caroline Herms  
Martha Dykman  
Charles Kessler  
Matt Joyner  
Joe Sfara  
Richard Lyons  
Falconer Jones III  
Jacques Groenteman  
Other interested citizens and visitors.

**Media:** Dianna Smith, Naples Daily News

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

Pastor Steven Wigdahl of Emmanuel Lutheran Church

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

Lake Park Elementary School Presentation of a book published by students.

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

**MOTION** by Galleberg to **ADD ITEM 22, TWELFTH STREET NORTH IMPROVEMENTS**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**MOTION** by Herms to **ADD ITEM 23, REVIEW OF CONTRACT FOR CITY MANAGER'S POSITION**; 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 **ADD ITEM 24, EDIT CITY MANAGER INTERVIEW SCHEDULE**; 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 **ADD ITEM 25, RESTORATION OF MACEDONIA CHURCH PARKING LOT**; 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 THE AGENDA ADDING ITEMS 22, 23, 24, AND 25 AND REMOVING ITEMS 9-e AND 9-i FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION**. 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).

**PUBLIC COMMENT.....ITEM 5**

Kati Daniels and Everett Thayer both of 1690 Avion Place and Mardon Collins 1685 Airway Drive, expressed their concern regarding the possible extension of North Road for construction of a second Gordon River Bridge affecting the Avion Park neighborhood. Council Member Russell and Mayor MacKenzie assured the Avion Park residents they would receive notices of various upcoming meetings regarding this issue. Council Member Herms suggested that Avion Park residents ascertain whether the County or the City owns North Road and noted a conservation easement to The Conservancy requiring approval by that entity for construction of a bridge aligned with Central Avenue. Although Council Member Taylor suggested providing a letter of support to Avion Park, it was decided such action would be premature, as various governmental meetings regarding this issue had not been held.

**CONSENT AGENDA**

**APPROVAL OF MINUTES.....ITEM 9-a**

April 14, 2003, Workshop and April 16, 2003, Regular Meeting.

**SPECIAL EVENTS ..... ITEM 9-b**

**Naples 4<sup>th</sup> of July 2003 celebrations:** a) Pre-parade parachute jump-Gulfview Middle School; b) Fourth of July Parade; c) City of Naples Fireworks Display-Naples Municipal Pier.

Consent Agenda Items 9-c and 9-d being quasi-judicial proceedings, Council Members made the following ex parte disclosures: Wiseman, MacKenzie, Herms, Galleberg, and Taylor/visited the

establishments but no contact with either petitioner; Russell/spoke to petitioners regarding noise levels and visited the establishments; MacIlvaine/visited the establishments and participated in brief, non-substantive conversations.

**RESOLUTION 03-10055.....ITEM 9-c**

**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT FOR PROPERTY LOCATED AT 700 5<sup>th</sup> AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 03-10056..... ITEM 9-d**

**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR PROPERTY LOCATED AT 711 5<sup>th</sup> AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 03-10057..... ITEM 9-f**

**A RESOLUTION APPROVING A FIRST AMENDMENT TO AGREEMENT FOR PAVEMENT MARKING SERVICES BETWEEN THE CITY OF NAPLES AND TRUTWIN INDUSTRIES, INC., FOR THE PURPOSE OF PROVIDING ADDITIONAL PAVEMENT MARKING SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 03-10058.....ITEM 9-g**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND BONNESS, INC., FOR PARKING LOT IMPROVEMENTS AT THE POLICE & EMERGENCY SERVICES DEPARTMENT FACILITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 03-10059 (See Page 8) .....ITEM 9-h (a)**

**A RESOLUTION TERMINATING THE AGREEMENT WITH PAVERS & STONE, INC.; AND PROVIDING AN EFFECTIVE DATE. Title not read. (Editor's Note: Item 9-h (a) was later reopened to allow Pavers and Stone the opportunity to speak before the Council and was reconsidered with Item 9-h (b) at that time; see Page 8.)**

**RESOLUTION 03-10063..... ITEM 9-h (b)**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ROYAL PAVERS, INC., FOR THE PURPOSE OF PROVIDING BRICK PAVEMENT INSTALLATION SERVICES FOR CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. (Also, see Page 8.)**

**RESOLUTION 03-10060..... ITEM 9-j**

**A RESOLUTION APPROVING A CONSULTANT SERVICES AGREEMENT WITH INDEPENDENT CONSULTANT DOUG ESSMAN TO COMPLETE A COMPLIANCE REVIEW OF THE TERMS OF THE FRANCHISE AGREEMENT FOR CABLE TELEVISION WITH COMCAST; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**MOTION by MacIlvaine to APPROVE CONSENT AGENDA WITH EXCEPTION OF ITEMS 9-e AND 9-i; 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).**

**END CONSENT AGENDA**

**RESOLUTION 03-10061.....ITEM 9-e**  
**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR PROPERTY LOCATED AT 1177 3<sup>rd</sup> STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:30 a.m.) who noted that a live entertainment permit renewal may be placed on Council's Consent Agenda if no complaints against the establishment have been received. However, a Campiello representative would address this petition since one complaint had in fact been lodged.

This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie, Wiseman, Russell, MacIlvaine, Herms and Taylor/visited the establishment but had no contact; and Galleberg/visited the establishment and questioned the petitioner as to the reason this matter had been removed from the Consent Agenda. Notary Public Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Richard Cacciagrani, General Manager of Campiello's Restaurant, advised that the restaurant had been in business for five years and said he believed the sole referenced complaint to have actually been caused by a five-piece band across from Campiello's during a Thursday night Third Street event. Mr. Rambosk said he would therefore recommend Council approval. However, Mayor MacKenzie reemphasized the need for a noise level guideline for special events. While acknowledging the advisability of such a guideline, Mr. Rambosk nevertheless noted that very few complaints had been received regarding the Third Street South events, apart from parking issues during the Christmas celebration.

**MOTION by Russell to APPROVE RESOLUTION 03-10061 AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION (Continued) .....ITEM 10**  
**A RESOLUTION DETERMINING AN APPLICATION FOR A PUBLIC RIGHT-OF-WAY PERMIT AT 950 SIXTH STREET SOUTH; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (9:36 a.m.) who confirmed that the property in question is privately owned. Ron Wallace, Development Services Director, stated that while the Code of Ordinances allows installation of a circular driveway, parking spaces in the right-of-way are prohibited. In addition, he said, vehicles may not back into the street from parking areas. Falconer Jones, co-owner of the property, said he had requested construction of the right-of-way parking to accommodate visitors and service calls and pointed out that prior to this redevelopment the entire right-of-way had actually been asphalt. Questioning the advisability of this particular permitting requirement, Mr. Jones stated that if he were to install front-access parking according to the current code, the result would be more hardscape than the parking design he had proposed.

Mr. Jones also pointed out that Sixth Street South contains a 150-foot wide right-of-way for a distance of five blocks and that traffic volume was reported as minimal (approximately 4-5 cars per hour except during mass times at St. Anne's Church). Mr. Jones showed comparative

illustrations of two designs permitted by code (1,972 and 2,205 square feet of hardscape, respectively) versus his proposed design not permitted by code that totaled 1,024 square feet (Attachment 1). He also advised that although the Engineering Department had recommended grass pavers to decrease the hardscape area, he felt that grass pavers do not wear well and in fact constitute little advantage over brick in permeability.

Mayor MacKenzie said she believed the proposed to be a reasonable solution, but Mr. Wallace pointed out that despite reduced impermeability, such parking arrangements must show a hardship, which is not justified in this case. Petitioner Jones, however, predicted the recurrence of similar issues as redevelopment continues, asserting that his design would encourage more green space and discourage haphazard parking in the right-of-way. In further discussion it was also noted that Mr. Jones' proposal was to install parking designated for temporary guest use in front while resident parking was designated for the garage and alley behind the property.

City Manager Rambosk said that while the staff could not recommend approval of the petition based on current requirements, it was frequently more desirable to construct the type of parking being proposed than to allow haphazard parking and damage to the right-of-way.

Council Member MacIlvaine moved approval. In seconding his motion, Council Member Wiseman commented that although circular drives could be attractive, they also constitute greater amounts of hard surface than the Jones proposal and voiced her preference for green space.

Vice Mayor Galleberg cited unintended consequences of the policy resolution which, he observed, Council had passed two years before at the request of the Engineering Department. He concurred that allowing the proposed design would be advisable and urged that the aforementioned policy resolution be corrected accordingly so that a petitioner would not find it necessary to expend a \$300 permit fee in order for his request to be heard.

Development Services Director Wallace pointed out, however, that an initial iteration of the resolution had called for staff approval but that it had subsequently been determined that waivers would come before Council. Mr. Galleberg said that his interpretation of the aforementioned resolution was that right-of-way green space cannot be converted into hardscape without Council approval, not to preclude right-of-way parking. He also theorized that the policy had assumed that a property owner already had a driveway and merely desired to increase parking rather than a situation where no driveway existed. He therefore recommended revision of the current policy to address situations similar to the one being considered.

While concurring that some review is warranted, City Manager Rambosk pointed out that the governing resolution had been devised to prevent extensive asphaltting at single-family homes and recommended that the Council retain control over the above-referenced situations.

Mr. Wallace then clarified the provision dealing with backing into the street. While this is allowed at single-family and duplex units, it is not permitted in multi-family residential districts where parking is intended to be located in the rear where backing into an alleyway is allowed. In response to Council Member Taylor, Mr. Jones explained that the site has ample parking behind

the building for residents and that the requested spaces were for the temporary use of visitors and delivery personnel.

After further discussion of the reasons for establishing the current policy on right-of-way parking, Mayor MacKenzie suggested a future review since this issue was not on that day's agenda. Mr. Jones also recommended examination of language pertaining to sidewalks, since a developer could conceivably obtain permission for a 12-foot-wide sidewalk where someone may in fact park. While expressing his appreciation to Mr. Jones for bringing this matter forward, Council Member Russell said that he did not believe that the proposal met the City's goals of preserving green space and keeping rights-of-way open; also Mr. Russell said he did not believe that the necessary hardship exists in this instance allowing a waiver to be granted.

**Public Comment:** (9:56 a.m.) None.

**MOTION by MacIlvaine to APPROVE THIS RESOLUTION WITH THE DEPICTION IN EXHIBIT 1 WITH NO MORE THAN 1,024 SQUARE FEET OF BRICK PAVERS.** *This motion was seconded by Wiseman and failed 3-4, all members present and voting (Galleberg-no, Herms-no, MacIlvaine-yes, Russell-no, Taylor-no, Wiseman-yes, MacKenzie-yes).*

In light of the above vote, Council Member Russell pointed out that Mr. Jones would then be required to await further action on the City's policy and asked whether Council was intending to provide staff with further direction. The Council, he said, must have the authority to review petitions not just for hardship but also to address public benefit as well as aesthetic improvement. Vice Mayor Galleberg moved that the vote be reconsidered.

**MOTION by Galleberg to RECONSIDER LAST VOTE;** *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).*

Vice Mayor Galleberg explained that while the Jones request did not fit within the current policy and procedure, it was also advisable to effect revision from a common sense standpoint. He also stated that with the popularity of townhouses, parking in the rear, while not contemplated by the Code, is nevertheless becoming more commonplace.

At the suggestion of Mayor MacKenzie, Mr. Jones confirmed his agreement to a continuance in combination with a policy revision as noted. Mr. Galleberg also pointed out that this particular project was not a conversion to hardscape as the surface had originally been hardscape. After further discussion it was determined that a policy revision could be prepared for the next City Council meeting, and Vice Mayor Galleberg stressed that the policy and procedure should be revised to accommodate more green space and less hardscape as a common goal.

Council Member Herms pointed out that in the near future there would be new owners of this property; Mr. Jones confirmed that they support the parking spaces that would provide more green space.

**Public Comment:** (On continuance) None (10:14 a.m.)

**MOTION by Galleberg to CONTINUE to the June 4, 2003 Regular Meeting (for a policy amendment to allow for alternate implementation such as the one discussed);** *This motion was seconded by Russell and carried 6-1, all members*

*present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)*

It was noted that Petitioner Jones would not be required to reapply or pay an additional application fee.

**RESOLUTION 03-10062..... ITEM 9-i**

**A RESOLUTION APPROVING AN AGREEMENT WITH USA STEEL FENCE COMPANY FOR THE REMOVAL OF THE EXISTING CHAIN LINK FENCE AND THE FURNISHING AND INSTALLATION OF A SECURITY FENCE AT JASMINE CAY APARTMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:23 a.m.). Pursuant to a prior inquiry by Council, City Attorney Robert Pritt indicated that tax increment financing (TIF) funds could be used for this project and referred to his memorandum of May 16, 2003 (a copy of which is contained in the file for this meeting in the City Clerk's office). Additionally, City Manager Rambosk reported that the City's risk manager had confirmed use of this fencing by other municipalities and had approved it for the location proposed. Council Member Herms questioned however whether the fence as designed could cause possible injury. Police Officer Robert McGregor further noted that this fencing had been used at the Southwest International Airport as well as schools in Bradenton and Manatee Counties and is a standard design used throughout the country on school grounds. Mr. Herms nevertheless questioned whether a person could be impaled, but Officer McGregor explained that the top of the fence would be nearly 12 feet high due to the elevation of the ground precluding this concern.

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

**MOTION by Russell to APPROVE RESOLUTION 03-10062 AS SUBMITTED; seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)**

---

Mayor MacKenzie explained that she had been previously unaware of a request from Pavers & Stone, Inc., to address Council on Agenda Item 9-h-a; therefore, a company representative would be accommodated at that time.

---

**MOTION by Taylor to RECONSIDER Item 9-h-a; seconded by MacKenzie and carried 4-3, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-no, Russell-no, Taylor-yes, Wiseman-no, MacKenzie-yes)**

---

**RESOLUTION 03-10059..... ITEM 9-h-a**

**A RESOLUTION TERMINATING THE AGREEMENT WITH PAVERS & STONE, INC.; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:28 a.m.). Terry Fedelem, Parks and Parkways Design Superintendent, noted that complaints of deficiencies had occurred in all five of the projects assigned to Pavers & Stone; therefore, the work had been reassigned to subcontractors. Additionally, the City's safety inspector had identified tripping hazards at locations on Fifth Avenue where the company had installed brick. The second low bidder was then asked to repair these areas, Mr. Fedelem reported, and the reassigned work had been satisfactorily completed in a timely manner. The second bidder, Royal Pavers, Inc., was being recommended for future work, he said.

Bill Beringer of Pavers & Stone acknowledged that delays had in fact occurred with his subcontractors but that he had since solved this problem by employing an additional bi-lingual

supervisor. Mr. Beringer further asserted his continued desire to work for the City and requested another opportunity to do so. Council Member Herms however took the position that the quality of work necessitated changing vendors, and Council Member MacIlvaine agreed.

**Public Comment:** None. (10:34 a.m.)

**MOTION by Herms to REAFFIRM ORIGINAL DECISION ON RESOLUTION 03-10059 (See Page 3); 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 03-10063.....ITEM 9-h-b**  
**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ROYAL PAVERS, INC., FOR THE PURPOSE OF PROVIDING BRICK PAVER INSTALLATION SERVICES FOR CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:35 a.m.)

**Public Comment:** None. (10:36 a.m.)

**MOTION by MacIlvaine to APPROVE RESOLUTION 03-10063, 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).**

**Recess: 10:36 a.m. to 10:49 a.m. It is noted for the record that all except Council Member Herms were present when the meeting reconvened.**

**RESOLUTION 03-10064.....ITEM 11-a**  
**A RESOLUTION AMENDING RESOLUTION 02-9677, EXTENDING THE PERIOD OF RECOGNITION OF VESTED RIGHTS FOR FIRST NATIONAL BANK OF FLORIDA D/B/A FIRST NATIONAL BANK OF NAPLES TO RETAIN THE PERMITTED HEIGHT AT SIX STORIES OVER TWO STORIES OF PARKING AT 900 GOODLETTE-FRANK ROAD TO THE DATE OF EXPIRATION OF THE DEVELOPMENT AGREEMENT PERTAINING THERETO; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:50 a.m.). Mayor MacKenzie stated that while this is not a quasi-judicial proceeding, she wished to disclose that she had had conversations with the petitioner and the petitioner's agents as to whether she would consider a request to extend the expiration date of the development agreement beyond 2005. She said that she had replied to the effect that this would occur only if a minimum fifty-percent height reduction occurred.

**It is noted for the record that Council Member Herms reentered the meeting at 10:51 a.m.**

City Attorney Robert Pritt explained that the property in question has two separate owners with vested rights claims that had been made the prior year and considered by the Honorable Jack Schoonover, Special Master. Both were the beneficiaries of a development agreement with the City of Naples, which included the earliest termination date of May 17, 2005, ten years after the effective date. Mr. Pritt further explained that Council had established a procedure under Code Section 86-211, which also requires that development must commence within one year after the Special Master determination. The project would however not commence within that one year even though the agreement would be in force until May 17, 2005. Although there is no clear procedure for handling a situation which is beyond the terms of Section 86-211, Mr. Pritt noted that it would nevertheless be futile for the City to take a position inconsistent with the termination date of the development agreement.



Council Member MacIlvaine stated his concurrence and moved approval and Council Member Wiseman seconded. Various Council Members also confirmed that the Council had intended to grant vested rights approval until 2005. Mr. Pritt specifically referred to Resolution 02-9677, which he explained accepted the Special Master's final report including the stipulations that had been entered into by the parties.

In response to Council Member Herms, Christopher Thornton of Treiser, Collins, & Vernon, representing First National Bank of Florida, confirmed that the vested rights had been requested through the expiration of the development agreement. Vice Mayor Galleberg asked Mr. Thornton to review his client's alternatives should the Council not recognize this request. Mr. Thornton replied that First National Bank would be in doubt as to whether they could exceed three-stories, which were however allowed in a development agreement. Otherwise, litigation would be the only way to achieve a definitive answer. Mr. Galleberg further noted that the Council could then be brought into court to substantiate an acknowledged right.

**Public Comment:** None. (11:06 a.m.)

**MOTION by MacIlvaine to APPROVE RESOLUTION 03-10064 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 03-10065..... ITEM 11-b**  
**A RESOLUTION AMENDING RESOLUTION 02-9676, EXTENDING THE PERIOD OF RECOGNITION OF VESTED RIGHTS FOR CASTLE PARTNERSHIP TO RETAIN THE PERMITTED HEIGHT AT SIX STORIES OVER TWO STORIES OF PARKING AT 900 GOODLETTE-FRANK ROAD TO THE DATE OF EXPIRATION OF THE DEVELOPMENT AGREEMENT PERTAINING THERETO; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:06 a.m.). Attorney Clay Brooker of Young, Van Assenderp, Varnadoe & Anderson introduced John Wanklyn, President of the Commonage Corp., the majority interest holder in Castle Partnership. Mr. Wanklyn stated that Florida law would allow a lawsuit in order to enforce the development agreement.

**Public Comment:** None. (11:08 a.m.)

**MOTION by MacIlvaine to APPROVE RESOLUTION 03-10065 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 03-10066..... ITEM 6-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.** This being a quasi-judicial proceeding, Council Members made disclosures of ex parte communications, which in this instance involved visits to the establishment by each but no contact with the petitioner. Notary Public Tara Norman administered an oath to those intending to give testimony; all responded in the affirmative. City Manager Kevin Rambosk then read the titles to both resolutions (11:10 a.m.).

*Editor's Note: Title to 6-b was added subsequent to approval.*

**RESOLUTION 03-10067..... ITEM 6-b**  
**A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 03-RIS7 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.**

Council Member Wiseman stated that, despite a positive relationship between the Naples Beach Hotel and its surrounding residents, she would nevertheless be unable to support a request for additional performers at the lobby, Broadwell's Restaurant, and the beach bar. Council Member Taylor was also complimentary to the establishment's record of providing quality entertainment to the community, but noted that the request greatly expanded the live entertainment formerly provided. Additionally, Council Member Herms pointed out that Broadwell's is in close proximity to residences.

Jim Gunderson, representing Naples Beach Hotel and Golf Club, confirmed that the hotel lobby entertainment was intended merely to provide ambiance. In response to Vice Mayor Galleberg, he said that Broadwell's sought the flexibility to feature entertainment for various dinners and events and that the noise level was buffered by the golf course and that parking separated the facility from the neighborhood. Vice Mayor Galleberg complimented the Hotel's traditional Sunday beach events and said he would not oppose Broadwell's performers or the performers in the lobby. Council Member Taylor however questioned whether Broadwell's would be large enough to accommodate six performers; Mr. Gunderson reiterated that the hotel was seeking flexibility in order to accommodate a vocalist and musicians as well as utilize the facility for special events which feature entertainment. Council Member MacIlvaine pointed out the importance of the Naples Beach Hotel & Golf Club to the local economy, and that it had not generated complaints from the residents. Additionally, Mr. MacIlvaine stated that the establishment is managed in a responsible manner and urged support for the request in order for it to remain competitive.

Council Member Russell indicated approval of the lobby entertainment as well as that in the Everglades Dining Room; however, he expressed concern regarding Broadwell's becoming an entertainment destination. He further stated that the outdoor pool area should be granted live entertainment for just one day per week. Mr. Gunderson explained that it was in fact the hotel's intent to hold only one event in the outdoor pool area per week and confirmed that if the designated Sunday event were rescheduled to another day, there would be no other events that week. He reiterated the hotel's desire for flexibility in this regard. Although Council Member Russell expressed the opinion that three amplified performers at the outdoor beach bar would be excessive considering the limited space, he also said he believed hotel management would be able to contain activities and respond to citizen complaints before they reach the City. He also reminded Mr. Gunderson that a permit could be rescinded with three valid complaints.

In response to Council Member Herms, Mr. Gunderson indicated that outside entertainment at the convention building is infrequent and usually done to accommodate weddings and organizations. Nevertheless, it is considered low-key and features only a pianist. City Manager Rambosk also clarified that live entertainment approvals relate to public activities rather than private gatherings. However, Mr. Herms voiced concern that entertainment seemed to be moving from the beach (west) side of the street toward the golf course/neighborhood (east) side, much closer to residences. Outside entertainment without a permit is potentially problematic to the neighborhood, Mr. Herms said.

Mayor MacKenzie expressed the view that the lobby, Everglades Dining Room, and Broadwell's Restaurant would contain the music within the boundaries of the hotel property. Mr. Gunderson

also indicated acceptance of a once-per-week stipulation for the outdoor pool area events, either Thursday, Friday, Saturday, or Sunday; however, he requested a minimum of two performers. Vice Mayor Galleberg questioned the reason the Beach Club increased the request from three to six performers for the Outdoor Pool Area. Mr. Gunderson responded that this request referred to the Sunday event that consistently has had approximately six performers.

Council Member Wiseman also noted that being a new facility, Broadwell's had not previously included entertainment and therefore expressed concern relative to allowing six performers. Council Member Russell reiterated his concern that Broadwell's would become a destination rather than an amenity for guests.

Reiterating concern for the impact on the nearby residential neighborhood, Council Member Herms recommended that Broadwell's entertainment cease at 10:00 p.m. instead of 11:30 p.m. as proposed, and also questioned the advisability of allowing it to occur daily. Council Member Russell however pointed out that vacationers do in fact dine and listen to music on any given night rather than just weekends, and reiterated that the permit could be rescinded.

**Public Comment:** None. (11:35 a.m.)

**MOTION by Russell to APPROVE RESOLUTION 03-10066, AS AMENDED, (ACKNOWLEDGING THIS IS HISTORICAL AND IMPORTANT PART OF NAPLES COMMUNITY AND A UNIQUE SITUATION BECAUSE OF LONGEVITY) PROVIDING A MAXIMUM OF FOUR PERFORMERS ONLY AT BROADWELL'S RESTAURANT; A MAXIMUM OF TWO AMPLIFIED PERFORMERS AT THE OUTDOOR BEACH BAR; AND ALLOWING PERFORMERS IN THE OUTDOOR POOL AREA ONE EVENING PER WEEK EITHER THURSDAY, FRIDAY, SATURDAY, OR SUNDAY. This motion was seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)**

**MOTION by Russell to APPROVE RESOLUTION 03-10067 WITH SAME CONDITIONS AS IN RESOLUTION 03-10066; seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)**

**ORDINANCE 03-10068.....ITEM 12  
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 (11:36 a.m.).**

**Public Comment: (11:36 a.m.) Henry Kennedy, Tarpon Road,** advised that he had incurred considerable expense and effort to recover from identity theft and therefore expressed serious concern regarding the possibility of social security numbers and driver license numbers being visible during background investigations. He also said that he was opposed to anyone other than the

Police and Emergency Services Department (PESD) conducting background checks. Furthermore, Mr. Kennedy characterized the reference to “certain employees” as vague and questioned who would select the above-referenced individuals. He also said that a background investigation should only be conducted after approval in writing from the Mayor. In conclusion, he urged the Council to refine the wording relative to who could be investigated and for what purpose, specifically referencing the vulnerability of any citizen who has provided a social security number to an outside party.

City Manager Rambosk responded by emphasizing that social security numbers may not be divulged and that the State had authorized this procedure as an alternative to contracting with a private firm since the City is not able to utilize the government/law enforcement system. Consequently, the only information that is being requested is already public record and accessible; he also assured Council that persons authorized to conduct background checks would be identified.

Human Resources Director Denise Perez explained that the goal is to have employment eligibility information available before an offer of employment is made. Mrs. Perez stated that in her opinion the new process would actually provide a greater measure of confidentiality over an external contractor. Mayor MacKenzie stressed the importance of the criminal background checks pertaining to the safety of children with the many park programs and facilities governed by the City.

City Attorney Robert Pritt stressed that this procedure had been in state law for approximately one year and carefully delineates the activities permitted. Because the ordinance was drafted in accordance with the State Statute, Mr. Pritt recommended against any departure therefrom. He said he envisioned that a list would be devised for Council consideration and approval.

Council Member Russell noted that the ordinance as written did not include personal financial history or other matters such as divorce. Mr. Rambosk agreed that elements of financial history are currently part of a background investigation only for certain sensitive positions, such as police officers, who grant permission for that aspect of an investigation. Mr. Rambosk indicated that the staff would compile a list corresponding to respective positions to be included in background investigations for Council approval.

**Joe Biasella, 860 Twelfth Avenue South**, stated that as a retired police officer he supported this action and considered thorough background checks necessary and important. He however characterized the wording of the proposal as vague and asked that the Council not approve it until the City Manager specifically stated who would be checked. Furthermore, Mr. Biasella predicted that some employees of firms under contract with the City would be found to have records of incarceration. Mr. Biasella also urged that the City Manager identify which staff members would be assigned to handle background checks. Vice Mayor Galleberg however pointed out that the proposed ordinance implements State law that includes checks and balances ensuring the integrity of the process. City Attorney Pritt reiterated that the language had been adopted directly from the State Statute and that this would be considered enabling legislation applicable to certain individuals or classifications. However, the City Council would then make determinations on critical positions or classifications, he said.

**MOTION by Taylor to ADOPT ORDINANCE 03-10068 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 OF THE CITY OF NAPLES, FLORIDA, AMENDING THE CITY OF NAPLES CODE OF ORDINANCES SECTION 50-381 OF ARTICLE VI “DEFINITIONS” POLICE OFFICERS’ PENSION AND RETIREMENT SYSTEM TO PROVIDE CHANGE IN DEFINITION OF SALARY FROM BASE TO TOTAL REMUNERATION TO PARTIALLY COMPLY WITH FLORIDA STATUTES; PROVIDING FOR THE PURCHASE OF PRIOR MILITARY AND LAW ENFORCEMENT SERVICE; AMENDING SECTION 50-431 “CONTRIBUTIONS” PROVIDING FOR CLARIFICATION OF EMPLOYEE CONTRIBUTIONS; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (11:49 a.m.). Mayor MacKenzie stated that the police pension fund has a \$28,000 deficit and is projected to have a shortfall again next year; she therefore asked for confirmation that there would be a guaranteed funding source to cover this benefit expansion. City Manager Rambosk noted that the primary basis for funding is a State contribution which was not derived from tax revenues. Council Member MacIlvaine further commented that the aforementioned revenues also could not be used to fund the City’s current pension shortfall.

Steven Moore, Chief of Police and Emergency Services, further explained that the source of funding is insurance premiums as identified under Chapter 185, Florida Statutes. Further, Chief Moore explained that the actuary expected funding to continue to increase as it had done in 19 of the past 20 years and that disbursement of funds was anticipated within two months. Additionally, the actuary predicted a significant increase within the next few years enabling the City to meet the State’s established salary definition, thus eliminating the restriction on these funds, Chief Moore advised. Any future increases identified in Chapter 185 would be eligible to cover other shortfalls. Mayor MacKenzie expressed concern about future additional expenses arising, but Chief Moore advised that was not anticipated.

Council Member Wiseman requested that the word “partially” be deleted from the ordinance title and City Attorney Pritt concurred. Chief Moore clarified that the reference to “partial” corresponded to working towards full compliance of the State Statute by making incremental increases but nevertheless agreed with the amendment.

**Public Comment:** None (11:54 a.m.)

**MOTION by MacIlvaine to APPROVE ITEM 13 AT FIRST READING AS AMENDED TO DELETE “PARTIALLY” FROM THE TITLE; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

---

**Recess: 11:56 a.m. to 1:29 p.m. It is noted for the record that when the meeting reconvened, all were present except Council Member Wiseman.**

---

**.....ITEM 7**  
**EXECUTIVE SESSION – LABOR NEGOTIATION ISSUES (1:29 pm.)** City Attorney Robert Pritt stated that Council would conduct an executive session to discuss labor negotiation matters, pursuant to Chapter 447, Florida Statutes, Public Employees Collective Bargaining

Processes. He noted that Roetzel & Andress labor attorney John Fishbane, Human Resources Director Denise Perez, members of the negotiating team, and City Manager Kevin Rambosk would also be present for the meeting. Attorney Fishbane, who estimated the duration of the meeting to be 30 minutes, explained that its purpose was to educate Council on the fundamental principals of collective bargaining and to provide an update on pending matters before the City.

**Executive Session: 1:31 p.m. to 2:17 p.m. It is noted for the record that the entire Council was present when the meeting reconvened. There was no additional action needed on Item 7.**

**RESOLUTION 03-10069.....ITEM 14**  
**A RESOLUTION RANKING THE TOP THREE (3) SURVEYING FIRMS TO PROVIDE GENERAL SURVEYING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE CONTRACTS WITH THE THREE TOP-RANKED FIRMS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:17 p.m.). Development Services Director Ron Wallace stated that although the Engineering Department provides design services for the City, certain projects require expertise in such areas as general civil and transportation engineering. In addition, he noted that various City departments had requested engineering assistance with regard to surveying, drainage, and other issues. Mr. Wallace said staff therefore sought an annual contract that would provide prompt specialized engineering assistance when necessary and that designating three firms would allow adequate flexibility. He also said that those selected had extensive information on the City which could possibly lower costs. Moreover, he noted, many Florida municipalities, as well as Collier County, utilize this method.

Council Member Russell however disagreed saying that the Consultant Competitive Negotiation Act (CCNA) provides competition by allowing all firms to bid on City business. While he said he could approve designating one firm, he predicted difficulty and potential conflict in determining which of the three selected firms would best handle projects as they arise. Mr. Wallace however described the CCNA process as time-consuming and therefore not worthwhile for smaller projects; nevertheless, Mr. Russell contended that the selection of three firms on a rotational basis may be perceived as arbitrary.

In response to Vice Mayor Galleberg, City Manager Rambosk affirmed that Council would still approve those projects over \$75,000. Mr. Wallace also indicated that staff would negotiate a price for each job and select another of the three firms if the parties did not reach agreement. He said that all the firms are professional and obligated to a code of ethics, and that he believed each would submit a reasonable price. Council Member Russell however maintained that awarding a three-year contract with two, one-year renewal options would not provide a financial incentive to reduce costs. City Manager Rambosk therefore suggested shorter contract terms to provide added competition and allow new firms an opportunity to bid.

City Attorney Robert Pritt stated that notwithstanding the language of CCNA, he had determined that using more than one firm is in fact within the law but expressed concern about staff making the determination as to which firm would receive the project, as well as the proposed length of the contract. Mayor MacKenzie characterized a five-year contract term as excessive. Council Member Russell questioned how the staff would allocate work among the three firms, and recommended public documentation on each selection. City Attorney Pritt suggested creating a

master contract with all three firms that would stipulate these criteria. Mr. Wallace concurred, noting that specific knowledge of a particular project would be required as well as considering availability and price. Council Member Herms said he believed this process would afford great flexibility, and expressed support for proceeding with a three-year contract.

**Public Comment:** None. (2:55 p.m.)

**MOTION by Herms to APPROVE RESOLUTION 03-10069 AS AMENDED TO REQUIRE REBIDDING AT THREE-YEAR INTERVALS;** *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 15-a, 15-b, 15-c and 15-d were considered concurrently.

**RESOLUTION 03-10070.....ITEM 15-a**  
**A RESOLUTION RANKING THE TOP THREE (3) ENGINEERING FIRMS TO PROVIDE PUBLIC WORKS/TREATMENT PLANT PROCESSES ENGINEERING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE CONTRACTS WITH THE THREE TOP-RANKED FIRMS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:55 p.m.).

**RESOLUTION 03-10071.....ITEM 15-b**  
**A RESOLUTION RANKING THE TOP ENGINEERING FIRM TO PROVIDE GEOTECHNICAL/ENVIRONMENTAL ENGINEERING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A CONTRACT WITH THE TOP-RANKED FIRM; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:55 p.m.).

**RESOLUTION 03-10072.....ITEM 15-c**  
**A RESOLUTION RANKING THE TOP THREE (3) ENGINEERING FIRMS TO PROVIDE GENERAL CIVIL ENGINEERING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE CONTRACTS WITH THE THREE TOP-RANKED FIRMS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:55 p.m.).

**RESOLUTION 03-10073.....ITEM 15-d**  
**A RESOLUTION RANKING THE TOP THREE (3) ENGINEERING FIRMS TO PROVIDE TRANSPORTATION ENGINEERING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE CONTRACTS WITH THE THREE TOP-RANKED FIRMS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (2:55 p.m.). Mayor MacKenzie expressed concern regarding a possible conflict relative to the City and Collier County using the same transportation engineering firm; however, Development Services Director Ron Wallace said that having three firms would afford adequate flexibility. City Attorney Robert Pritt recommended specifying such conflict as one of the criteria used in the selection process.

**Public Comment:** None. (2:58 p.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 03-10070 (ITEM 15-a) AS AMENDED TO REQUIRE REBIDDING AT THREE-YEAR INTERVALS;** *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 Taylor to APPROVE RESOLUTION 03-10071 (ITEM 15-b) AS AMENDED TO REQUIRE REBIDDING AT THREE-YEAR INTERVALS;**  
*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 Herms to APPROVE RESOLUTION 03-10072 (ITEM 15-c) AS AMENDED TO REQUIRE REBIDDING AT THREE-YEAR INTERVALS;**  
*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 Russell to APPROVE RESOLUTION 03-10073 (ITEM 15-d) AS AMENDED TO REQUIRE REBIDDING AT THREE-YEAR INTERVALS;**  
*seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Council Member Herms expressed objection to using the firm of Kimley-Horn due to its recent findings on the Golden Gate Parkway/Airport Pulling Road overpass issue.

**RESOLUTION (Continued) .....ITEM 16**  
**A RESOLUTION RANKING THE TOP THREE (3) MARINE ENGINEERING FIRMS TO PROVIDE GENERAL MARINE ENGINEERING SERVICES ON AN AS NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE FIXED TERM CONTRACTS WITH THE TWO TOP RANKED FIRMS; AND PROVIDING FOR AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:01 p.m.). Council Member MacIlvaine proffered a motion to approve, as amended, to require rebidding at three-year intervals, seconded by Council Member Russell. Mr. Russell and Vice Mayor Galleberg however noted several scriveners' errors in the resolution, and City Manager Rambosk therefore recommended continuance.

**Public Comment:** None. (3:05 p.m.)

**MOTION by Herms to CONTINUE ITEM 16 TO THE JUNE 4, 2003 REGULAR MEETING;**  
*seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**RESOLUTION 10074 .....ITEM 17**  
**A RESOLUTION APPROVING TERMINATION OF A 10 FOOT UTILITY EASEMENT THROUGH TRACT A, LELY GOLF ESTATES TRACT MAP; AUTHORIZING THE MAYOR TO EXECUTE THE TERMINATION OF EASEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:05 p.m.). City Attorney Robert Pritt explained that because this is outside the city limits, the typical processes to vacate would not apply. He added that the Engineering Department had no objections, and that staff recommends approval. In response to Council Member Herms, Development Services Director Ron Wallace stated that this easement is currently in Collier County's service district.

**Public Comment:** None. (3:07 p.m.)

**MOTION by Russell to APPROVE RESOLUTION 03-10074 AS SUBMITTED;**  
*seconded by MacIlvaine and unanimously carried, all members*



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

**RESOLUTION 03-10075.....ITEM 18**  
**A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2002-03 BUDGET ADOPTED BY ORDINANCE 02-9825, AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:07 p.m.) who listed the various amendments contained in this request.

Mayor MacKenzie pointed out that, because it may prevail in certain cases, it may not expend the entire \$105,000 requested in the Legal Department. Vice Mayor Galleberg also asked why the budget amendment amount had not been reduced by the \$30,000 still unencumbered in the Legal Department. City Manager Rambosk explained that the Finance Director had sought to avoid a possible future amendment request, but that this adjustment could be made. Mr. Galleberg noted that the Legal Department budget would have a \$58,000 contingency for the last five months of the year and proffered the motion as shown below. Council Member Russell requested an update from the City Attorney on the status of various items, and Mayor MacKenzie recommended submitting an application to the Tourist Development Council (TDC) for reimbursement of the Lowdermilk Park project.

**Public Comment:** None. (3:12 p.m.)

**MOTION by Galleberg to APPROVE RESOLUTION 03-10075 AS AMENDED TO SHOW \$75,000 IN THE LEGAL DEPARTMENT;** *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).*

.....**ITEM 19**  
**DISCUSSION AND CONSIDERATION OF PARTICIPATION IN A THREE-YEAR URBAN COUNTY COOPERATION AGREEMENT WITH COLLIER COUNTY.** (3:12 p.m.) Planner Susan Golden explained that in September 2000, the City had entered its first three-year agreement with Collier County to jointly participate in the Community Development Block Grant (CDBG) program. She noted that this arrangement allows the County to assume responsibility for most of the administration, but that the City is responsible for oversight of any local activities it performs. The County however no longer needs Naples and Marco Island populations to meet the 200,000 threshold to qualify for U.S. Department of Housing and Urban Development (HUD) funding. The City could therefore revert to its former entitlement status, although there are advantages to partnering with the County, she noted.

Nevertheless, Planner Golden expressed concern that the County had initially agreed to a three-year commitment for a set dollar amount of \$250,000 per year, which the City had applied to the River Park Community Center. The County has however proposed to adjust the allocation based on HUD allowances. This would reduce the City's allocation to \$141,000 for the first year, and unknown amounts in the second and third years; moreover, she predicted it was likely to continue to decrease. Therefore, she recommended that the City and County agree to a specific dollar amount for the entire three-year duration. Council Member Herms concurred, suggesting that the Mayor correspond with each County Commissioner asking for support for a \$250,000 per year allocation.

In response to Mayor MacKenzie, Planner Golden said the City had pledged to repay the increased revenues for the River Park Community Center over five years, and that the CDBG funds have repaid the City \$500,000. Although the final \$250,000 payment would be available in August or September, she explained that the payments can be spread out creating a small pool of money the City could use for emergency repairs that residents may need as well as the \$50,000 needed to repay the Public Works Department.

Vice Mayor Galleberg noted that Bonita Springs had received nearly \$300,000 in CDBG funds. Planner Golden said she was unsure whether this was an allocation through Lee County or a direct allocation from HUD; Mr. Galleberg suggested gathering more information. In further discussion, she explained that the risk of the City being an independent entitlement city is that HUD may eliminate funding because of high median income. She added that staff would at a future meeting present recommendations on other improvements needed in the River Park neighborhood.

**Public Comment:** None. (3:27 p.m.)

**MOTION by Wiseman to MOVE FORWARD, NOTIFYING COLLIER COUNTY AND HUD OF THE CITY'S INTENT TO PARTICIPATE IN THE JOINT AGREEMENT; 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).**

.....**ITEM 20**  
**DISCUSSION OF THE REINSTALLATION OF THE COMMUNITY REDEVELOPMENT AGENCY (CRA) ADVISORY BOARD.** (3:27 p.m.) City Manager Kevin Rambosk noted that with the termination of the Heart of Naples Committee (HONC), staff had received several inquiries about alternative committees with the specific role and responsibility that the Community Redevelopment Area Advisory Board (CRAAB) could provide. He stated that the original CRAAB, established in 1993, was responsible for technical advice and recommendations on items such as land use, economic viability, acquisition of property, funding alternatives, and manpower needs. The nine-member board was comprised of representatives in the categories of home-ownership, banking, legal, land planning, development, real estate appraising, business and/or property ownership, and medical. Mr. Rambosk therefore requested Council direction on whether to proceed with reinstallation of this body.

Mayor MacKenzie said that although she had at one time been supportive, the majority of Council had decided to consider other options such as a manager to oversee the redevelopment area. Council Member MacIlvaine said that this board had worked well in the past, and that he believed the City should proceed to advertise for members. Council Member Russell concurred, noting a number of citizens in the district who are very knowledgeable and want an active role in the decision process. He however recommended a smaller board.

Council Member Wiseman also agreed with proceeding; however, she suggested implementing a one-year sunset option and modifying the membership categories. City Attorney Robert Pritt said he believed the City could change the board makeup, although he would perform some research on the matter. He however recommended against initially reducing the number of board members, saying Council should make that decision when it receives applications for membership. While expressing no opposition to the concept, Vice Mayor Galleberg nevertheless

questioned the amount of work that could actually be accomplished with the funding available. City Manager Rambosk predicted that the board would follow up on the HONC's recommendations on final landscape plans for roadways, open space and parks, storm drainage, and other issues.

Council Member Taylor said she believed that action on the board may be premature since the Council had not yet adopted the new "D" Downtown zoning ordinance. Predicting its overall success, Council Member MacIlvaine proffered a motion, seconded by Council Member Russell, to re-establish CRAAB and direct the City Manager to provide options to restructure. Council Member Wiseman said the board would provide additional input, and may be able to bring the Fifth Avenue and Heart of Naples interests together toward a common goal. Although expressing her general opposition to adding boards and committees, she said she was convinced of the potential value of CRAAB.

**Public Comment:** (3:43 p.m.) **Lou Vlasho, 720 Fifth Avenue South, Suite 203**, representing the Rimaco Building, Vergina, and Star Place, encouraged the Council to support the motion. He said he envisioned a working board comprised of area merchants, property owners, and residents who would examine the growing budget and support the work of the CRA. **Phil McCabe, 699 Fifth Avenue South**, HONC member, said he is also a member of a Bayshore CRA advisory board, which has a budget of \$800,000 and is currently in the process of hiring an executive director. He urged that Council proceed with reestablishing CRAAB so it can address the work yet to be done in the entire CRA district, and thereby alleviate the burden upon Council and staff.

**MOTION by MacIlvaine to RE-ESTABLISH CRAAB AND DIRECT THE CITY MANAGER TO PROVIDE OPTIONS TO RESTRUCTURE; seconded by Russell and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).**

Council Member Herms took the position however that this action was adding further bureaucracy, and that Council must in fact make the ultimate decisions. Council Member Taylor said she believed the CRAAB would be one more layer of insulation between the Council and the district, and that many of the vested interests are in conflict.

.....**ITEM 22**  
**IMPROVEMENTS TO 12<sup>TH</sup> STREET NORTH IN CONJUNCTION WITH FUN TIME NURSERY RELOCATION.** (3:50 p.m.) City Manager Kevin Rambosk said that staff had been working with representatives of Fun Time Nursery to secure a new location. Fun Time board representative Phil McCabe explained that various locations had been considered and that a 28,500 square foot site on 12<sup>th</sup> Street North is currently under contract. (A copy of the site plan displayed by Mr. McCabe is contained in the file for this meeting in the City Clerk's office.) Mr. McCabe also explained that the site abuts the Naples Daily News property and that of the Neighborhood Health Clinic. Therefore, in order to construct a 15,000 square foot building, Fun Time needs the cooperation of these abutting property owners as well as the City but that the board believes the site to be very suitable. Mr. McCabe further said representatives of the Neighborhood Health Clinic had agreed to the proposal and will work to connect parking lots and allow use of an entrance off Goodlette-Frank Road through the site onto 12<sup>th</sup> Street North. He added that Naples Daily News is currently considering selling some of its excess land to Fun

Time to allow adequate room for a playground. Mr. McCabe said his only request of the City therefore is to improve 12th Street, which is currently in poor condition and dead ends into the Naples Daily News property. This will allow Fun Time to construct a walkway from its building across the Naples Daily News property onto 12<sup>th</sup> Street to 3<sup>rd</sup> Avenue North. He then detailed the proposed improvements for 12<sup>th</sup> Street including the gutters, sidewalk, landscaping, parking, and lighting. Mr. McCabe added that the Neighborhood Health Clinic has agreed to allow Fun Time to use its trash container.

City Manager Rambosk said that the main objective has been to perform improvements in the public right-of-way only, and reminded Council that 12<sup>th</sup> Street is already slated for improvement in the Heart of Naples plan, suggesting use of Tax Increment Financing (TIF) to fund the improvements. In further discussion, Mr. McCabe explained that the board's goal is to improve the appearance of all of 12<sup>th</sup> Street and said the Fun Time building would have architecture similar to that of the Neighborhood Health Clinic and be compatible with the neighborhood.

Council Member MacIlvaine expressed approval of the plan. Council Member Russell said that he agreed with the concept but questioned whether Fun Time would have additional requests for the City to consider; Mr. McCabe noted the potential for variances. City Manager Rambosk asserted however that there is no commitment to authorize the facility unless it can be built completely within code, and that all required approvals must traverse the normal process. Council Member Taylor cited this project as an example of redevelopment occurring in the downtown area without what she characterized as the intensive, new Heart of Naples plan. In response to Vice Mayor Galleberg, Mr. McCabe said he was unsure whether Fun Time would terminate its lease at its present location. Council Member Herms said that he could approve the location in many respects, but noted that it abuts an automotive repair center. Additionally, he listed the following concerns: a dilapidated building across the street that would need significant improvement in light of the proposal; water retention should be under grounded; and a cul-de-sac would be needed at the end of the street to facilitate turning. Mr. Herms also pointed out that Fun Time would have to determine whether to rezone or apply for a Planned Development (PD), and possibly undertake a significant level of review by the Planning Advisory Board (PAB), Design Review Board (DRB), and Council.

**Public Comment:** None. (4:17 p.m.)

*Consensus that this project is a viable option on a conceptual basis.*

**RESOLUTION (Continued) .....ITEM 21**  
**A RESOLUTION APPROVING AN AMENDMENT TO THE EMPLOYMENT AGREEMENT WITH KEVIN J. RAMBOSK, CITY MANAGER, AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (4:17 p.m.) who explained that the City had entered into an employment agreement with him when he was appointed City Manager in 1999, which had included a retirement option, intended to address pension. However, following issues regarding eligibility and loss of normal benefits, a decision to provide an early retirement incentive was approved. The question later arose as to whether he would be allowed to participate in the managerial retirement plan. His recommendation to Council at the time, he said, had been that because he had already been granted an early retirement option, he should not

participate but rather requested to be considered for Police Pension System improvements if any were to be made during his tenure with the City.

There had since been such an improvement in the Police Pension System, he said, and noted that the first option would be to amend the effective date of the pension ordinance currently under consideration to November 1, 1999, which would provide him a \$461 monthly payment. This would however include all those employees who had retired, creating a financial impact of \$253,000 as a lump sum payment or \$39,000 per year for approximately nine years. He said he however believed this option to be excessive and that he had asked the Finance Department to consider a more cost-effective alternative; he had also asked the City Attorney to research whether there was an opportunity to provide a type of retirement benefit outside the pension. The second option, he said, would therefore be for the City to purchase a private annuity which would be owned by the City and distributed in a \$110,000 lump sum payment, and the third option would be the establishment of an internal City annuity payment of \$461 per month, or \$5,541 annually.

Budget and Investment Manager Anne Middleton explained that although the private annuity option would require an expenditure of \$110,000, the internal City annuity option would require a monthly payment to the Rambosks for as long as they live.

In response to Council, City Manager Rambosk clarified that his request is to be kept in sync with what Council is approving for the Police Pension System, which according to an actuarial study, equates to \$461 per month, which would be in addition to the amount he is already receiving. He said he believed that prior negotiations had been incorrect and had placed both him and the City in a difficult position.

In further discussion, Mrs. Middleton said she was unsure when the monthly payments would commence with the internal annuity option due to various legal ramifications. Council Member MacIlvaine said he believed the private annuity would be the best option; City Attorney Robert Pritt agreed, noting that it would be the most economical in the long term. Mrs. Middleton explained that this would require a budget amendment, and that the funds would likely come from the reserves. Council Member Herms however cited the possibility that creating a special program for the City Manager would invite litigation. City Attorney Pritt expressed doubt that such litigation would occur since there would be no commitment to any other person and therefore no legitimate claim.

Mr. Pritt then clarified that the issue arose from a mutual understanding that the City Manager would not lose retirement benefits by virtue of leaving the police retirement plan. Council Member MacIlvaine proffered a motion, seconded by Council Member Wiseman, to approve Option 2 (private annuity). Vice Mayor Galleberg however noted that Council is considering a pension plan improvement through an employment contract, and questioned the need for a pension and annuity. He added that he would prefer the internal annuity option. Council Member Herms concurred saying that it is prudent for the City to retain the funds and thus gain the interest on the \$110,000 lump sum payment, and instead remit a \$461 monthly payment. Council Member Russell proposed a fourth option, that being to simply budget a \$461 monthly payment to Mr. Rambosk and/or his survivor. City Attorney Pritt however cautioned that unless

it is very clear this is an annuity, another Council may challenge the payment; Vice Mayor Galleberg then suggested that it could however be bonded. Council Member Wiseman nevertheless urged Council approve Option 2, saying that an internal annuity may prove problematic for both the City and Mr. Rambosk.

**Public Comment:** None. (4:58 p.m.)

**MOTION by MacIlvaine to APPROVE ITEM 21 WITH OPTION 2 (CITY OWNED PRIVATE ANNUITY); seconded by Wiseman and failed 3-4, all members present and voting (Wiseman-yes, MacIlvaine-yes, Russell-yes, Galleberg-no, Herms-no, Taylor-no, MacKenzie-no.)**

While saying that he approved of the benefit, Vice Mayor Galleberg urged examination of structuring an internal City annuity. Council Member Taylor recommended continuance to obtain further information.

Council Member Herms proffered a motion to approve the internal City annuity option. There being no second, he proffered the motion below.

**MOTION by Herms to CONTINUE ITEM 21 TO THE JUNE 4, 2003 REGULAR MEETING; 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).**

.....ITEM 23  
**DISCUSSION OF CONTRACT WITH NEW CITY MANAGER** (5:03 p.m.) Council reviewed the contract draft, a copy of which is contained in the file for this meeting in the City Clerk's Office, and recommended amendments embodied in the motion below. Council Member Herms also suggested that the Mayor or a Council Member negotiate the contract directly with the candidate the day Council makes its decision; however, no support for that method was indicated. City Attorney Robert Pritt affirmed that he would present the recommended revisions at the May 29 Special Meeting.

**Public Comment:** None. (5:40 p.m.)

**CONSENSUS TO AMEND THE DRAFT AS FOLLOWS:** 1) delete Section 4-b; 2) amend Section 4-c "~~In addition~~, the City agrees..." and include provision that Council will consider a base salary increase after six months; 3) amend Section 5 "...cover all expenses of the employee relative to transportation for City business except that ..."; 4) amend Section 7 "...reasonable and necessary expenses of a ~~non-personal and generally job-affiliated~~..."; 5) amend Section 13 "...actual and reasonable moving expenses..."; 6) amend Section 2-e to include a provision for Council waiver of 60-day notice in the case of voluntary resignation; 7) include reference in Section 3-a to termination due to a commission of an illegal act (coordinate with Section 3-c); 8) amend Section 3-f "...or the employee resigns following a suggestion by at least a majority of Council"; 9) clarify in Section 5 the starting point for the measurement of 120 miles from Naples; 10) amend Section 3-c to cover any illegal act whether or not it results in personal gain; 11) amend Section 3-d "...inability to perform the duties and functions of the position due to disability"; 12) amend Section 3-f "...across the board reduction ~~for all the City employees as applied to department directors~~..."; 13) insert 21 workdays in Section 8; 14) number contract pages; 15) insert \$400 in Section 5 for monthly auto allowance; 16)

*insert \$1,500 in Section 6 for monthly housing allowance; 17) insert 7% in Section 11 for payment into an IRC; 18) leave Section 13 blank as to moving expenses.*

.....ITEM 24  
**DISCUSSION OF CITY MANAGER INTERVIEW SCHEDULE** (5:40 p.m.) After a brief discussion, Vice Mayor Galleberg proffered the motion below.

**Public Comment:** None. 5:44 p.m.

**MOTION by Galleberg to SCHEDULE THE FOLLOWING SPECIAL MEETINGS: THURSDAY MAY 29, 2003 AT 7:30 A.M. TO INTERVIEW CITY MANAGER APPLICANTS; FRIDAY MAY 30, 2003 AT 2 P.M. TO SELECT CITY MANAGER AND OFFER POSITION; AND MONDAY JUNE 2, 2003 AT 5 P.M. TO RESOLVE CITY MANAGER CONTRACT. 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).**

.....ITEM 25  
**RESTORATION OF MACEDONIA CHURCH PARKING LOT.** (5:44 p.m.) Mayor MacKenzie explained that the City had used this parking lot while it rebuilt the River Park Community Center. During the construction process, the parking lot was damaged which the City promised to restore. She therefore suggested directing the City Manager to include this as part of the Police Department parking lot repaving or the 10<sup>th</sup> Street repaving project. Council Member Taylor proffered a motion to approve, seconded by Council Member MacIlvaine. Council Member Wiseman however expressed concern regarding the lease agreement saying that it had expired and that it does not address future Community Center use.

**Public Comment:** None. (5:47 p.m.)

**MOTION by Herms to CONTINUE ITEM 25; 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).**

**Recess 5:47 p.m. to 6:04 p.m.** It is noted for the record that the entire Council was present when the meeting reconvened.

**FIRST READING (Continued) .....ITEM 10**  
**AN ORDINANCE 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; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (6:05 p.m.) who then indicated that the staff would review various changes in the proposed ordinance which had been made based on Council's last discussion of this issue (Attachment 2). Mayor MacKenzie also requested that public comment be heard as soon as possible since speakers had already been waiting an hour. Planning Director Ron Lee explained that all changes recommended by City Attorney Robert Pritt regarding formatting and composition of the Downtown Improvement and Redevelopment Committee (DIRC) had been reflected in the draft ordinance as presented. In addition, definitions and standards were placed in a more appropriate location, Mr. Lee said, and reviewed each amendment listed.

Vice Mayor Galleberg questioned whether the Council had agreed to the listed revision to the Open Space Fund (revised from \$35,000 to \$20,000 per unit). Council Member Russell recalled that the amount was to be more reflective of actual land costs. Planning Director Lee explained that while the \$20,000 fee had been Consultant Christopher Brown's initial recommendation (based on the land cost of 500 square feet at \$40/square foot), the Planning Advisory Board (PAB) had however recommended the higher figure.

In response to Council Member Taylor, Mr. Lee indicated that the ten-foot rear yard setback with a five-foot landscaped strip would be sufficient to accommodate trash collection and delivery services via an adjacent alley. With reference to signage, Mr. Lee confirmed for Mayor MacKenzie that an establishment located on a corner property can place a single monument sign at the intersection, but if two signs are used, each must be 50 feet from the intersection. Council Member Russell requested clarification as to whether a mere building cut-through would be considered a via, since he said he did not believe that such an area contained a public component. Consultant Brown explained that a via could in fact cut through a building in order to connect to a courtyard designated as public. Mr. Russell, however, said that he envisioned a via not as a hallway but as an open, uncovered space. Mr. Brown pointed out that in order to meet the minimum of 1,000 square feet, a via must be larger than a hallway and gave an example of a 20 foot wide space extending the depth of a 50 foot building. Nevertheless, vias could be of varying configurations to meet the minimum square footage requirement, Mr. Brown added.

Vice Mayor Galleberg questioned whether increasing the medical parking requirements from three to five spaces per thousand square feet had majority Council support. Council Member Taylor said higher parking standards are called for since medical usage in the district is expected to increase. Mayor MacKenzie however disagreed with the five-space standard which, she said, other intensive uses such as restaurants are not required to meet. Also in response to Mayor MacKenzie, Mr. Lee indicated that the concept of assigning parking requirements based on use had first been developed as part of the Fifth Avenue Overlay District regulations.

As noted by Council Member MacIlvaine, modifications to the regulations had also been based on a recommendation of the Community Redevelopment Agency (CRA) to reflect variations in sidewalk location and required landscaping. Council Member Russell suggested that since the CRA recommendations were not a part of the aforementioned staff memorandum, the Council should specify their inclusion.

**Public Comment:** (6:20 p.m.) **Fern Aitchison, 613 14th Avenue South**, expressed the hope that the area would prove to be an asset to the entire community, especially through providing support services. However, she also raised concern regarding maintenance of order in the multi-family units and said she believed that parking garages would cause disturbances and pollution for nearby residents. She then received clarification from Mayor MacKenzie that the density proposed remains at 14 units per acre with a height of no more than 42 feet, although up to 30 units per acre could be constructed with Council approval in conjunction with provision of green space. Mayor MacKenzie also assured Ms. Aitchison that the same law enforcement standards would apply to this district as elsewhere in the community. In conclusion, Ms. Aitchison encouraged installation of the maximum amount of landscaping possible. Council Member Russell noted that landscaping requirements had actually been increased and that at least six



acres of open space for the district would be acquired through redevelopment funds. Nevertheless, Council Member Herms asserted that there would be properties, absent alleyways or setbacks, which would contain no landscaping. Vice Mayor Galleberg however said that under the proposed regulations buildings would in fact be smaller in most instances, and that setbacks would either not be changed or would in some cases be increased. Mr. Herms then noted that the current 1.4 million square feet of usage would be increased to 5.5 million, with the additional requirement for parking garages. Ms. Aitchison asked whether the number of US 41 lanes would be reduced, and Mayor MacKenzie said that although lane reconfiguration would be a topic of future negotiation between the City, County and State, there is nevertheless space in the current configuration to accommodate additional landscaping.

Council Member Wiseman received Mayor MacKenzie's assurance that henceforth questions and comments by speakers would be directed to the chair and that Mayor MacKenzie would designate primarily staff members to provide responses.

**Jane Earl, 4951 Gulf Shore Blvd., North**, commended the Heart of Naples Committee (HONC) and others for their diligence in preparation of the plan. She conveyed her support and that of her North Gulf Shore Boulevard neighbors. She said however that while those with whom she had spoken had been in favor of the proposal, additional public education was in order. **Donald P. Leddy, 635 Parkview Lane**, also complimented the HONC on its work. However, he questioned the various amounts cited for open space fees, stating that the \$20,000 fee favored developers and should therefore be considerably higher. He also received confirmation that the rate for Payment In Lieu Of Parking (PILOP) had been increased from \$10,000 to \$20,000. In addition Mr. Leddy predicted that workers would not be able to afford to live in the district and questioned whether their trips had been factored into traffic and parking projections. Both Mr. and Mrs. Leddy thanked the Council for holding an evening meeting on this subject. **Sandi Leddy, 635 Parkview Lane**, related her concern that because of profitability, residential units would replace commercial and thereby defeat the mixed-use objective. She also cautioned that legal action under the Bert Harris Act would ensue if Council subsequently denied first-floor residential included in the plan. In response to Council, City Attorney Robert Pritt stated that a Bert Harris action could ensue at any time that someone believed his or her property had been inordinately burdened to the extent of significant loss in value, despite the fact that a complete taking had not occurred. In further response to Mayor MacKenzie, Mr. Pritt asserted that the City is not a guarantor of private property plans, despite the cap on the number of residential units which could be built north and south of Central Avenue; any action that is brought would nevertheless be fact-specific and decided on its own merits, he added. In conclusion, Mr. Pritt confirmed his position that the proposed ordinance is written so as to be fair to all property owners and that it would therefore be defensible in court.

**Caroline Herms, 1225 Ninth Avenue North, President of Lake Park Association**, reported the Association board as opposed to the HONC proposal as too intense. She said that 30 or more units per acre and up to 90% lot coverage does not comport with the small town look which should be preserved. Traffic is also a concern, she said. Therefore, Mrs. Herms encouraged Council to revise the ordinance in line with the Association's objectives. Mayor MacKenzie then received confirmation from Planning Director Lee that current roads have sufficient capacity to accommodate traffic from redevelopment in the "D" Downtown area. **Martha**

**Dykman, 5040 Seashell Avenue**, said that she did not believe that the desired residential units would materialize because the 42-foot height limit would not allow buildings to offer marketable views. Nevertheless, she said the area would inevitably develop in conjunction with a second Gordon River bridge and that, without the proposed ordinance, commercial development would intensify with no public benefit such as sidewalks, open spaces, landscaping and courtyards. **Charles Kessler, 525 Anchor Rode Drive**, said that while true blight exists in places like Calcutta, in Naples a standard of metropolitan blight should be applied. Nevertheless the boarded-up buildings, overgrown lots and abandoned cars associated with urban blight are not evident in the Heart of Naples/41-10 area, he said, and noted that he had observed various redevelopment efforts taking place under the current regulations. He said he had also observed many small businesses and few, if any, vacancies. Mr. Kessler read from a report by consultant Christopher Brown as follows: “While this area is far from blighted, it could stand to benefit from significant redevelopment activities.” Mr. Kessler therefore called for abandoning what he characterized as a false issue and instead movement to the core issue of rezoning. **Matt Joiner, 2625 13th Street North**, stated that after studying the HONC plan he believed both current and future property rights would be protected. This, he said, would in turn lead to an enhanced quality of life and viability. He however described the Charter amendment petition signed by some 1,500 voters as extremely misleading and confusing to the average citizen. He therefore asked whether there are any protections against such proposals and to what extent voters might be educated prior to casting their ballots. **Lou Vlasho, 720 Fifth Avenue South, Suite 203, President of Naples Better Government Committee (NBGC)**, indicated that the HONC plan had been studied by his group whose members had viewed many of the presentations as well as hosting its own presentation by Council Member MacIlvaine, Chair of the HONC. Mr. Vlasho said that the plan was perceived both as proactive and as a means of controlling development, having been drafted over several years with significant public input. NBGC, he said, therefore unanimously recommends adoption of the proposed ordinance and commends the work of the committee and staff. Mr. Vlasho also said that NBGC encourages the Council to hold a special election in the early fall for the purpose of deciding the aforementioned proposed Charter amendment, not by mail ballot, but by opening polling places. He said that this would prevent the Charter amendment petition from becoming a political issue at the City’s February general election. Mr. Vlasho further asserted that NBGC would form a coalition consisting of what he described as a broad cross-section of the community to defeat the Charter amendment, which he characterized as a measure to take control from properly elected officials. **Joe Sfara, 225 Central Avenue**, disputed the assertion that the Heart of Naples area is blighted and said that the community depends on the services available there. He also predicted that the economic formula for the proposed redevelopment would force these small businesses to relocate, thus intensifying traffic problems as residents seek services elsewhere. Mr. Sfara also noted the thrift stores in the Heart of Naples area which support such organizations as the Shelter for Abused Women and The Conservancy need an area such as this to operate economically. Nevertheless, he urged beautification of the Heart of Naples area, which he said should be funded by taxpayers, and recommended that the Council heed the comments of its constituents. **Richard Lyons, 25241 Estuary Way, Bonita Springs, representing Dale Chlumsky, Trustee, and the Chlumsky Family**, indicated that his clients own the property at 950 Central Avenue. He asserted that by demonstrating that current investors are being protected, the other investment envisioned by the HONC would be attracted. He said that his clients’ building contains two long-term tenants, which fully utilize the 17 perpendicular parking spaces now proposed for replacement by three

parallel spaces. Mr. Lyons therefore asked that these 17 spaces be grandfathered in exchange for his clients' granting a three-foot, professionally designed landscaping buffer along the south side of the sidewalk. In response to Council Member Russell, Planning Director Lee said that he believed the issues identified by Mr. Lyons instead relate to the conceptual Central Avenue streetscape plan which is not involved with the ordinance under discussion. Mr. Lyons however reiterated his concern that loss of any of the 17 parking spaces on public property would affect the viability of the businesses in his clients' building which had already been impacted by overflow parking from the Starbuck's coffee house next door.

Council Member Taylor said she felt that the situation related by Attorney Lyons had recurred throughout the district and that the proposed reconfiguration of parking would force existing businesses to leave. She also characterized the plan as a wholesale assault on the area and observed that it is not realistic to expect customers to walk over a block to reach their destination. Mr. Lyons concurred, predicting that patrons of the shops in the Chlumsky Building would instead gravitate to competitors. Council Member Herms then asked whether Mr. Lyons understood that the DIRC would designate his client's parking for development across the street, thereby worsening the parking situation. Mr. Lyons said that while his clients did not want to be perceived as being in opposition to the redevelopment plan, they were nevertheless seeking a means of protecting present investors.

**Falconer Jones, 620 Sandpiper Street**, indicated that he does not own property in the Heart of Naples area, nor does he represent any property owners there. Nevertheless, he said he agreed with an estimated 90% of the prior speakers, which, he said, is approximately the percentage of voters who did not return the aforementioned Charter amendment petition. He said that having people live and work in an area like the Heart of Naples is in fact a recurring model nationwide. Also, as a member of HONC, he asserted that the area had been viewed neither as an extension of Fifth Avenue South nor an entertainment district, but that every effort would be made to work with existing businesses to protect their parking until they choose to redevelop. Mr. Jones also pointed out that because the district did not waive the 500-foot separation between alcoholic beverage licenses, a proliferation of restaurants was unlikely to occur; he also recommended that Council carefully consider street closures for events both in this area and on Fifth Avenue South. Mr. Jones then discounted those who urged delay of a decision until after the summer months since, he said, the matter had in fact already been considered over a period of two years. In response to Council Member Russell's prior comments relative to vias, Mr. Jones indicated that he, too, opposed considering these areas as public open space. He further urged that landscape codes be made compatible with setback zones in the proposed ordinance. In conclusion, Mr. Jones expressed his opposition to Charter amendments due to what he characterized as unintended consequences which could then be addressed only by another vote of the electorate; he also predicted that should the Charter amendment pass it would in fact generate Bert Harris Act claims of vested rights. In conclusion he urged passage of the proposed ordinance with the minor changes discussed, stating that future adjustments could be made, and noting that the plan provides for more green space and less intensity. **Jacques Groenteman, President of the 41-10 Association**, expressed appreciation for consideration of this matter in the evening hours and indicated that he had also been a member of the HONC. He listed various sources of information utilized by the HONC over the past two years as well as the plans undergoing an expert analysis; the City staff had also worked on redevelopment issues in the 41-10 area for approximately six

years, he said. In addition, Mr. Groenteman pointed out extensive contacts by the 41-10 Association with businesses and property owners in the area over a five-year period. He also cited the street renovations already accomplished which had been found to enhance abutting businesses. In conclusion, Mr. Groenteman said that he believed the 41-10 area to be an in-City location where he could afford to reside. He also disputed the notion that patrons would not walk the distance of a block and a half to their destination and compared distances currently walked by customers in a mall setting. He urged timely passage of the ordinance in light of the work that had occurred over the years cited.

Following the public comment period, Council Members posed various questions to staff and made further comments on the proposed ordinance. Council Member Russell received clarification that the NCH Healthcare structure on Eighth Street and Fourth Avenue North is an example of redevelopment which meets the current “D” Downtown zoning and that there is in fact a ten-foot setback from each abutting roadway. Mr. Russell reviewed the history of the 41-10/Heart of Naples area, which he said had in the past been the community’s industrial zone, and stressed that while it may not have yet manifested itself, property owners actually have the right for more extensive development under current regulations. Again noting the NCH building, Mr. Russell pointed out that the new “D” Downtown regulations would improve the area by requiring more setbacks, stepping-back of upper floors, and inclusion of more on-site green space. He also stressed that the current regulations allow for parking garages with five affirmative votes of Council but with no limits on number, size, or land area although the current proposal imposes those limits. There is also no density cap in the district at the present time, he said, while the proposed regulations would impose a maximum of 14 units per acre with up to 30 units per acre with Council approval and with payments earmarked for acquisition of green space; total residential units would also be capped and distributed north and south of Central Avenue. In addition, Council Member Russell observed that there is sufficient infrastructure to accommodate even the extent of the current zoning and that the proposal would significantly reduce this impact. In conclusion, he asserted that those opposing the proposed rezoning had in fact supported the regulations currently in place, characterizing the position taken on the new regulations as being solely for political purposes. In conclusion, he said he wished to strongly make the point that the proposed “D” Downtown regulations would result in less intensity, more green space and be better for the community; he described the pending Charter amendment however as being unstudied and unjustified and predicted that it would trigger significant and successful litigation against the City when owners, who in fact support the current proposal, assert their property rights. He reiterated his previous position that vias should not be considered as public open space.

Mayor MacKenzie said that she continued to take issue with allowing four floors of parking, asserting that this is not in accordance with the 42-foot height limitation contained in the City Charter. She equated allowing parking atop the third floor to permitting four floors devoted to restaurant use and questioned whether under this scenario a rooftop restaurant would be allowed to have umbrella tables or any type of canopy. She also said that parking atop the third floor would lead to other undesirable results such as garages with low ceilings and residents overlooking a rooftop with cars. Residents, she said, would be better served if landscaping were incorporated in those locations.

Council Member Wiseman pointed out that the current draft ordinance allows developers, not the City, to decide where to position open space which, she said, would not necessarily accrue to the best interests of the overall neighborhood. She also expressed the need to include grandfathering language relative to nonconforming signs; otherwise, without the previous five-year removal requirement, it could be argued that all nonconforming signs must be replaced immediately. Mrs. Wiseman also recommended that a provision be included to address the requirement to remove a nonconforming sign if the building were removed. She also recommended that Council address the density issue, which, along with the term blighted, had become a rallying cry. Instead of being blighted, she said, the neighborhood is indeed redeveloping, although regulations are needed so that redevelopment is consistent with neighboring areas. Therefore, she recommended that the Council not only focus on density as a key policy issue but also the size of residential units which she said may be more appropriate in lesser square footages.

Council Member MacIlvaine then gave his endorsement to the changes cited above by Planning Director Lee (memoranda of May 16 and 20 included as Attachments 2 and 3); other issues, he said, could be addressed at a later time.

Vice Mayor Galleberg indicated his agreement with Council Member Wiseman's comments. He also proposed that terminology in the landscaping plan be consistent in use of either right-of-way line or property line. Mr. Galleberg then recommended that Setback Zone D conform to other such zones wherein measurement is from the property line. He also pointed out a change, which had previously been noted; namely, in Section 102-851(2)(a) regarding prohibition of projection beyond a 20- rather than a 22-foot Zone A setback line. In that same section, sub-paragraph (c), Mr. Galleberg received confirmation from Planning Director Lee that pedestrian hardscape must be in the remaining setback, the first five feet being designated for landscaping.

City Attorney Pritt recommended that all changes to the ordinance be made at that meeting; otherwise, another first reading would be required.

Council Member Herms expressed concern that property owners in the district may not be cognizant of the requirement for DIRC review should they even wish to change the color or the landscaping of their buildings (Section 102-857(3)). Should this required approval not be obtained, he said, the building owner would be subject to code enforcement proceedings. Mr. Herms also took issue with an assertion by the City Manager that the new regulations would be easier to comply with and instead stressed the complexity and length of the review process. Mr. Herms supported his position by citing scrutiny by the Design Review Board, DIRC, and frequently Planning Advisory Board (PAB) as well as City Council for certain of the building modifications, which a property owner may wish to implement. Instead of complicating it, he said, the process should have been simplified. Conversely, he said, parking had in the past been the limiting factor for development (three spaces to 1,000 square feet on the property in question); however, the new regulations allow property owners to request allocation of parking spaces already in use in the district in order to increase density. This, he said, would greatly exacerbate parking shortages. Therefore, he disputed a statement by Council Member Russell that certain development rights exist since this development could not occur without providing sufficient parking.

Mr. Herms cited Council's approval of the Trail's End (Bomark) rezone with 69% lot coverage while other developments currently underway in the 41-10 district range only from 25-35%. However, the only way density of the degree exhibited by Trail's End could be achievable throughout the district, he said, is through construction of a parking garage. Mr. Herms then displayed photos contained in the report by Consultant Brown to illustrate the type of development which he said would occur in the district. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) He described this development as commercial on the first floor and residential on the second and third; however, he noted that there was no space between buildings and displayed other illustrations from the Brown report that showed an urban setting requiring parking garages, parking on side streets or parking in the rear of buildings. Mr. Herms said that density levels calculated on the Trail's End percentage throughout the Heart of Naples/41-10 district would equate to 10 million square feet of development compared to the existing 1.7 million; this, Mr. Herms observed, is compared to the 330,000 square feet of development on Fifth Avenue South, including parking garages. He reiterated his position that millions of square feet of parking garages must therefore be built to accommodate the square footage of redevelopment permitted under the new regulations. Therefore, the community would be completely different from what it is today, he said.

Council Member Herms then contrasted the aforementioned proposed zoning with that which is listed in the proposed Charter amendment: 8 units per acre by Charter amendment and up to 30 units per acre in the "D" Downtown regulations; 50% lot coverage in the Charter amendment as opposed to as high as 90-93% in the proposed regulations; the 42-foot/three story height limit already in the City Charter which can be circumvented by utilizing a Planned Development (PD) which with majority Council approval could go as high as ten stories; and 18,700 new vehicle trips per day projected by the density level proposed. He said that the community must determine whether this is the type of development it wants.

In response to Council Member Taylor, Planning Director Lee indicated that lot coverage is listed neither in the current nor in the proposed zoning code. Miss Taylor expressed the view however that neither the Gindroz plan of 1997, the subsequent zoning enacted, nor the proposed zoning is appropriate for current conditions. Citing statements by Consultant Brown that the City should provide parking facilities, Miss Taylor asked whether the cost of such measures had in fact been ascertained. City Manager Kevin Rambosk said that this calculation had not been made since it had not been included in the proposed "D" Downtown ordinance. Referring to a prior statement by Council Member Russell that the area in question had formerly been an industrial park, Miss Taylor received confirmation from Planning Director Lee that lot coverage for industrial uses is limited to 60%; she compared this to the aforementioned 69% lot coverage for the Trail's End project previously noted. In further dialog with Mr. Lee, Council Member Taylor ascertained that all commercial uses require three parking spaces for each 1,000 square feet of commercial uses as it is on Fifth Avenue South.

Vice Mayor Galleberg took issue with the use by Council Member Herms of illustrations of mixed-use development from the Brown report, since he said these types of structures would not result if the proposed rezoning were enacted. Mr. Galleberg cited the landscaping required under the proposal as opposed to the depicted buildings positioned directly abutting the sidewalk. He also made the following comparisons with regulations currently in place: setbacks have not

changed; residential, currently unlimited in height, would be restricted to 42 feet; maximum units, currently unlimited, would be capped at 1,652; additional green space; and more stringent residential parking requirements from 1.5 spaces to 2 per residential unit and from 1 to 1.25 spaces for transient uses. The goal, therefore, he said, was to enhance the current regulations by providing for more green space and allowing owners better options to improve their properties.

In a discussion of the residential density to be established, Council Member MacIlvaine noted that a district-wide cap of 1,652 units had been proposed. However, citing the Bayfront Marketplace development, Council Member Wiseman expressed the view that there would be no public support for density of 30 units per acre. She said that the Council should therefore reduce the proposed density to 12 units per acre to help assure that existing commercial would remain but that new commercial would not experience the high vacancy rate beginning to appear in the Fifth Avenue South area. In further discussion, however, Consultant Brown indicated that in order to incentivize green space, density or height is normally allowed to increase. Mrs. Wiseman nevertheless pointed out that without certainty, developers would not take the necessary risks, and should the proposed Charter amendment pass or the complexion of the Council change in the 2004 general election, this certainty would in fact not be achieved. She recommended therefore that the Council seek compromise as opposed to the possibility of either repeal of the zoning code it had adopted or the possibility of lawsuits like those experienced after the election of 2000 under the Bert Harris Private Property Act.

Council Member Russell nevertheless expressed doubt in the effectiveness of a compromise since, he said, the proponents of the Charter amendment are seeking political power. He also asserted that the illustrations displayed by Council Member Herms could not be built under the proposed zoning. Mr. Russell also pointed out that an economist had advised that the lowest density should be 14 units per acre, noting that while 12 units per acre are allowed in most other mixed-use districts, there are higher densities such as Village Green in Old Naples, which is at 25 units per acre. Density does not change the building envelope, he pointed out, but instead governs how many units can be accommodated within. He said he would be unwilling to deviate from the 14 units per acre without additional factual information.

Reiterating the cap of 1,652 residential units in a 118-acre district, Council Member MacIlvaine expressed the view that greater density in one area would allow the provision of more green space in another. He also cited a vision of pocket parks and cultural parks dispersed throughout the district developed by the City through payment in exchange for density; he characterized the Heart of Naples/41-10 area as a village within a City. Mr. MacIlvaine also urged caution in responding to political statements, which he characterized as unsubstantiated. Factual information should, he said, be adhered to and disseminated to the public. He also stated that the aforementioned illustrations displayed by Council Member Herms did not reflect the development envisioned by the plan.

Vice Mayor Galleberg asserted that there would be no certainty about what is allowed in the district since a referendum question was pending, regardless of whether the Council reduces the density to 12 units per acre. He urged reliance on what he described as expert advice; otherwise, too restrictive regulations would inhibit development. Council Member Wiseman took the position that in fact there was little distinction between 12 and 14 units per acre and predicted

that the impact of the referendum would be diffused by the knowledge that the Council examined, re-evaluated and reduced the density as a compromise position. Noting that Council Member Herms would be unable to vote due to a previously asserted conflict of interest, Mrs. Wiseman therefore urged unanimity on the part of Council for its effect in possible defeat of the proposed Charter amendment.

Council Member Herms said that he agreed that compromise was in the best interests of all concerned; however, he maintained that Council could approve almost any residential density a developer may request through the PD rezone process. To substantiate what he described as a lack of consistency in the decision-making process and a lack of validity in existing zoning standards, Mr. Herms pointed out that the current Council had recently approved two PD's at approximately 17 units per acre (additional buildings at Bayfront Marketplace and the Trail's End/Bomark project). Acknowledging the significance of density, Mr. Herms said that he nevertheless believed lot coverage to be equally important and pointed out that some 3,000 new residents could move into the Heart of Naples area as compared to 3,600 in the entire area of Old Naples. He said that this, along with additional traffic, is not what the community wants although they do want the Heart of Naples district to improve under existing standards. Although he could not vote on this issue, Council Member Herms said he continued his support for a limit of 8 units per acre which he said had, with the exception of 12 units per acre in a limited medical zoning area, been a long standing density within the City's requirements. Even with 8 units per acre, he said, more commercial could still be added provided the City allows the necessary parking facilities to be constructed.

Mayor MacKenzie, however, ascertained from Planning Director Lee that under the zoning currently in place in the "D" Downtown district, parking garages are allowed and can be built to the lot line on the rear and sides with no landscaping.

Council Member Taylor said that she had consistently urged compromise. Quoting from an introductory statement in conjunction with the inception of the Heart of Naples Committee (HONC) in 2001, she cited recognition of the district as having a small town character and scale although the Civic Design Associates (Christopher Brown) report had cited the promotion of a mixed-use, urban environment which she equated to the distinction between Naples and Fort Lauderdale. She urged Council to therefore recognize the existence of what she described as two distinct visions from which all the problems to date had ensued. People move to Naples because of the small town, low-density atmosphere and in spite of the 41-10 area, she continued, and asserted that development could be encouraged and parks created while still protecting this quality of life. Miss Taylor questioned therefore the advisability to accelerate redevelopment like that on Fifth Avenue South since multiple special events are required to maintain the viability of businesses on Fifth Avenue despite the fact that they are surrounded by residential uses. This should not be repeated in the 41-10 area, she said, pointing out the traffic congestion which had occurred on Fifth Avenue.

Vice Mayor Galleberg however characterized the comments of Council Members Herms and Taylor as demagoguery and an effort to deceive. He said that urban is defined, however, merely as the center of a city, which does not necessarily equate to such places as Fort Lauderdale or New York. He also took issue with Council Member Herms' comparison of Bayfront



Marketplace with the recently approved Trail's End project, which he said has fewer than 10% of the condominium units of Bayfront and is half the height. Regulations enacted by the Council do not force redevelopment over any period of years, Mr. Galleberg also noted, but said that the Council is instead adjusting zoning requirements to allow better choices for the community.

In response to Council Member Wiseman, Consultant Brown addressed the issue of lot coverage as an incentive for providing green space as opposed to density bonuses. He said that green space in a downtown area is however controlled by such methods as setbacks instead of percentages, noting that setbacks are already substantial on US 41, and also noted that the Council recently increased the rear building setback within the proposed ordinance. Mrs. Wiseman also questioned an assertion by Council Member Herms that 93% lot coverage was possible under the proposed regulations. While Planning Director Lee indicated that this might occur on small parcels, as lots increase in size it is required that parking be provided on site which requires 30 square feet of green space per parking space. Also in response to Mrs. Wiseman, Mr. Lee said that if rear setbacks in the "D" Downtown district were to increase substantially, it would drastically reduce the buildable area because of the small size of the lots in the area.

Mayor MacKenzie then addressed the proposed demographics of residents who would move into the "D" Downtown district and described how this type of housing would allow older persons, who may no longer be able to drive, to retain their independence and remain integrated into a neighborhood. This, she said, would be the determining factor for her to concur with the suggested density. Mayor MacKenzie also stressed that it was within Council's purview to make the kinds of decisions which were then before it; therefore, if a decision by four members of the Council is considered a threat, a Charter amendment should be passed which eliminates the Council altogether. She said she agreed with Council Member Herms that less residential would allow more commercial uses, but pointed out that this is the situation in the 41-10 district at the present time, and predicted that without zoning changes, commercial redevelopment would continue to occur but would not afford such amenities as landscaping and arcades as envisioned by the proposal. She said that these are among the factors which commend it.

In conjunction with statements made by Council Member Herms, Council Member Russell recommended that the code requirements for PD's be re-examined so as to avoid disregard of the zoning standards, which had been the result of considerable time and effort on the part of all concerned. However, he urged that the Council develop a consensus. Mayor MacKenzie noted that several Council Members had retained their support for 14 units per acre; however, Vice Mayor Galleberg said he could consider a lower number with the assurance that it would not negatively impact development or the possibility that units would be prohibitively priced. He supported the exchange of density for green space as another means of having smaller, less expensive units available in the area. He further questioned the advisability of interpreting a ten-foot required rear setback as a build-to line and recommended clarification on this point. Planning Director Lee said that in fact a site could contain a greater rear yard setback (see Page 10 of the draft ordinance).

Consultant Brown said that reducing both the 14 and the 30-unit-per-acre density regulations would not only result in larger residential units, but would slow redevelopment; 12 units per acre

would result in a cap of 1,416 residential units in the district, he added. Nevertheless, he recommended against revising the 30-unit limit even if the 14 units per acre allowance were revised to 12. Council Member Russell, however, pointed out that since commercial traffic is significantly greater than residential traffic, reducing residential density would engender increased commercial density and, in turn, increased traffic. Mr. Brown also noted that despite vacancies occurring throughout the country in areas similar to Fifth Avenue, it is essential for downtown neighborhoods like 41-10 to contain residents to support businesses; he also agreed with Mayor MacKenzie that this is an area particularly advantageous for older persons who can no longer drive.

Vice Mayor Galleberg pointed out that despite a request for a density of 30 units per acre, City Council may not approve projects to this extent; he also cited the difficulty of assembling a parcel as large as one acre due to multiple ownerships. This maximum density would result in approximately ten residential units on a lot 100 X 150 feet in size, Mr. Galleberg said, although of right, four to five units could be built. Council Member Wiseman cautioned, however, that a result of allowing smaller units was their adaptation to a type of time-share which does not achieve the goal of providing residents to support neighborhood businesses; she also said she was not certain that there is a market for smaller units due to land costs in the 41-10 area. Mayor MacKenzie, however, said that based on the success of residential units in the Fifth Avenue area there would likewise be a market for them in 41-10. Council Member Russell, said, on the other hand, that development may occur at a significantly lower density than projected depending on the economy and other factors. Mayor MacKenzie noted that two members of Council favored 8 units per acre, two supported 12 and three were for 14. Vice Mayor Galleberg said that based on the degree of study already devoted to the issue, he would then support 14 rather than 12.

Council Member Wiseman nevertheless maintained that a reduction to 12 units per acre would represent an effort on the part of the Council to compromise, also noting the impact of the 42-foot height amendment even on the “D” Downtown code currently in effect. She also said that she was not convinced that density bonuses to allow 30 units per acre were feasible in practice, characterizing the process as disjointed, particularly since no long-term plan for acquisition of green space exists, and since there is no provision for evaluation of green space sites. To substantiate her point, Mrs. Wiseman said she disputed the value of the green space provided by the new bank building on Third Avenue South since she questioned whether it would be used effectively as a park due to its proximity to motor vehicle exhaust. In seeking compromise between the 12 and 14 figures, Vice Mayor Galleberg suggested that the limit be set at 12 with any further density being subject to the conditional use process, and Mrs. Wiseman suggested transfer of development rights as another possibility to still allow incentives for creativity.

Council Member MacIlvaine, however, said that 14 and 30 units were being set forth to provide some assurances to property owners of the development activities which will be permitted; otherwise, he said, uncertainty about zoning regulations engenders applications for PD’s. Mr. MacIlvaine therefore expressed disagreement with imposing the conditional use process for projects over 12 units per acre as contrary to encouraging residential over commercial uses. Also, he pointed out, without the ability for a property owner to construct 30 units per acre, the economic viability of the district would be lost. Consultant Brown indicated that four, 1,250-square-foot residential units could be constructed under the 14-unit-per-acre rule in a two-story

building on a 100 X 150 foot lot with ground floor retail and the second floor residential; however, 12 units per acre would yield 3.6 which would be rounded down to 3 dwellings at 1,600 square feet each. He also noted that a third floor at 14 units per acre on the aforementioned lot would require either purchase or provision of open space under the proposed regulations.

Although Vice Mayor Galleberg maintained that 12 units per acre would still not preclude a property owner from requesting 14 through the conditional use process, Council Member Taylor cautioned that an individual's success in the conditional use process would depend on the positions taken by the Council Members in office at the time. She said she concurred with maintaining certainty and that area property owners had indicated that this was their desire.

Council Member Herms then expressed his preference for residential over commercial development and suggested that in order to achieve this goal, 75% of the on-street spaces in the "D" Downtown zoning district should be designated for residential use. Mayor MacKenzie, however, noted that the code is weighted to benefit small businesses and property owners through the availability of on-street parking, whereas, larger parcels must provide parking on the premises, therefore enabling small property owners to remain in the district. Mr. Herms said that it should not be assumed that small property owners would however have the financial resources to undertake redevelopment and predicted sale to another entity with the requisite financial ability. Mayor MacKenzie said that she had however been contacted by several small property owners who were anxious for regulations to be put in effect so that they could develop.

After further discussion of the various proposed densities noted above, Council Member Russell also proposed that the open space fund be eliminated in favor of requiring on-site open space as a specific benefit to eliminate massing of buildings and increase public access. Council Member Wiseman maintained her position that the various groups in the community, including homeowner associations, would respond favorably if the Council showed sensitivity to reducing the density to a level comparable with that currently allowed in Old Naples. However, Council Member Russell took the position that the Council through the various improvements already made in the proposed ordinance had in fact been addressing the public's concerns and that there would be no benefit to the district through a political compromise absent a factual basis for reducing density.

Council Member Wiseman, observing the success of the City's beautification on Fifth Avenue South, also urged that the landscape plan for the 41-10 district be expedited as a means within the City's purview and resources to immediately realize a benefit to the area.

Consultant Brown then confirmed for Vice Mayor Galleberg that there was in fact no expectation that the district would reach the cap of 1,652 total residential units because some commercial property owners would wish to retain their one-story structures. Therefore, Mr. Galleberg said he believed that a density of 12 units per acre and a cap of 1,416 total units would not have a negative impact on the plan since some of the 1,652 units were unlikely to be built. He said that with a 12-unit limit prior to the conditional use process and deletion of the 30-unit cap, the Council would be making a pragmatic and reasonable response to public sentiment while still retaining the goals of the plan. Council Member MacIlvaine, however, took the position that

eliminating the 30-unit cap would destroy the incentive to purchase green space to open the district through the construction of parks. Mr. Galleberg said that green space would still be purchased after 12 units per acre density were reached since it was unlikely that any project would reach 30 units per acre. Mr. Galleberg also urged that the Council exhibit faith in the judgment of future Councils to take appropriate actions during the approval process. Council Member Taylor however said that she did not have this degree of trust due to influences exerted on those in the political process, stating that a cap was therefore necessary.

Council Member Herms then pointed out that regardless of the residential density, the same size buildings could be constructed with the remainder of the space merely being occupied by commercial because of a lack of lot coverage standard, insufficient setbacks and provision for large parking garages. Therefore, he recommended that Council determine the desirable building size and, from that perspective, determine density.

Council Member MacIlvaine said that although he could support a 12-unit-per-acre limit prior to triggering the conditional use process, he maintained that the 30-unit limit was essential to assure that residential units will be distributed throughout the district rather than centered in a few large projects. Mayor MacKenzie then summarized the amendments just discussed: 12/30-unit density requirements, 1,416 unit cap (proportionally redistributed to the north and south sides of Central Avenue), and retention of green space and parking standards currently in the draft ordinance as well as the requirement for a conditional use after 12 units. During assessment of consensus, Council Member Wiseman, Vice Mayor Galleberg and Mayor MacKenzie indicated their concurrence with this proposal, Council Members Russell and MacIlvaine withheld support pending further information, and Council Members Herms and Taylor dissented.

In discussion of whether vias are to be considered open space, it was determined that the definition must include that the area cannot be roofed and should not pass through the center of a building. Vice Mayor Galleberg proposed that the definition of via therefore be amended as follows: "... a pedestrian walkway or pathway through or adjacent to a building." He also recommended a revision to the effect that a via "... shall be open to the public and if not roofed may qualify as open space ...". It was also noted that elsewhere in the code a requirement had been included that a structure must have a break after an expanse of 150 feet. In response to a previously stated concern by Council Member Wiseman, City Attorney Pritt suggested the following amendment in Section 102-854A(1)(a) in order to allow input from the staff on location of open space: "If the project ~~elects to~~ provides public open space at least 500 square feet..." However, further concern was expressed by Mrs. Wiseman and Council Member Russell that an overall plan for acquisition of green space must also be put in place, which would not be achieved by dedication of small parcels donated by developers and dispersed throughout the district in an unplanned manner. Vice Mayor Galleberg expressed the opinion that with the language modifications proposed, placement of green space to the advantage of the community is in fact implicit in the conditional use process; however, Council Member Wiseman said she was instead seeking a more affirmative statement that location of green space, whether or not it is contiguous to the project, is more within Council's control.

In response to the above, City Attorney Pritt proposed the following text: "The decision as to whether the dedication or payment in lieu of dedication is acceptable must be made by the

Council.” Council Member Wiseman concurred and stressed the importance that a density bonus should not be granted merely based on land which a developer is less likely to incorporate into the project. She reiterated the importance of prompt identification of parcels, which would be beneficial to the district for inclusion of green space.

Council then reviewed signage and various other regulations. Council Member Wiseman also recommended what she described as a global provision that would assure that existing businesses whose owners do not choose to redevelop would be allowed to remain in their present locations, that they would not be required to relinquish any of the right-of-way parking spaces on which they depend, that they would not be required to fund landscape improvements over and above the level of their contribution to the Tax Increment Financing (TIF) fund, and that these businesses would not be required to alter their current signage. She also said that the nonconformity section elsewhere in the Code of Ordinances would protect against imposition of redevelopment requirements for property owners who wish to make only minor improvements and therefore recommended repeating that language in the “D” Downtown rezoning ordinance. Also in response to concerns expressed by Council Member Herms, Planning Director Lee suggested exempting the properties in the “D” Downtown zoning district from other signage regulations which require that change of copy or a structural modification of a proportionate value triggers compliance with whatever code provisions are in place at the time of the modification.

City Attorney Pritt recommended the following further amendment to the regulations on signs: “Nonconforming signs are not required to be removed except in accordance with the City’s regulations relating to nonconformities set forth in Section 106-38 (c)(2) and (3).” It was noted that this language would be inserted as a new Paragraph 10 in Section 102-853 of the ordinance draft. However, he said that other nonconformities should be addressed elsewhere. Mrs. Wiseman therefore recommended that a reference to nonconformities remain in the section on signage with addition of a reference to the proposed general provision related to nonconformities.

Mayor MacKenzie then expressed her opposition to allowing parking on the roof of a three-story parking structure, stating that this would cause her to vote against the ordinance. Council Member Taylor also said that she would prefer approval of parking garages revert to a prior requirement for a super-majority of Council. However, Council Member Russell said that parking atop the third floor would not be visible and would accrue to more open space and result in the least number of parking garages needed. Mayor MacKenzie said however that she did not understand why an exception would be made for parking vehicles when there is no such exemption for other types of commercial activity. She also noted that she perceived a conflict with the height limitation in the Charter.

In developing consensus, Council Members Wiseman and Russell and Vice Mayor Galleberg concurred that parking should be allowed on the roof of the third story while Council Member MacIlvaine said that he was concerned about Mayor MacKenzie’s opposition and recommended further review. Mr. Galleberg said he believed that parking in this location would in fact be shielded from view, and Council Member Wiseman said that another building would not look down on the vehicles because of district height restrictions. Council Member Herms however took the position that the Charter height amendment does not permit use of more than three

floors and Council Member Taylor expressed her concurrence with Mayor MacKenzie's position. Vice Mayor Galleberg pointed out that not only does the code not prohibit various activities from occurring on roofs, he did not believe that a building would compress lower floors of a costly parking garage in order to utilize the top of the third level. Council Member MacIlvaine then expressed his support for parking being allowed atop the third floor with inclusion of a parapet which he said would still be significantly below 42 feet in height.

Mayor MacKenzie then sought Council comment on the simplification of the review process suggested by Council Members Herms and Taylor. She however stressed the importance of retaining the various elements of scrutiny, including the design review that was currently being implemented City-wide. However, Council Members Wiseman, Russell, MacIlvaine, and Vice Mayor Galleberg concurred with exempting the "D" Downtown district from design review as it had been in the Fifth Avenue South Overlay District, which contains the Staff Action Committee (SAC) comparable to the Downtown Improvement and Redevelopment Committee (DIRC).

Noting the extensive amendments, which had been made at that meeting, Council discussed whether the text would be approved on first reading. City Attorney Pritt said that if all changes were documented during the session, it could in fact be considered a first reading; however, he said that further refinement in drafting would be prudent.

Council then discussed the issue of lot coverage, with Mayor MacKenzie expressing reservations about imposing this type of standard in light of the impact of setback and other regulations imposed on building placement. Council Member Russell characterized establishing a percentage of lot coverage at that point as being unstudied and recommended against it; Council Member MacIlvaine concurred. Council Member Taylor recommended further study by Consultant Brown and Council Member Wiseman maintained that floor area ratio, most valuable in multi-story buildings, be explored. Council Member Herms disagreed, asserting that controls on the sizes of buildings can only be accomplished through lot coverage and setback requirements. Vice Mayor Galleberg however said he opposed a lot coverage standard since limits on development were being achieved by other means, and Consultant Brown indicated that lot coverage limits are not appropriate for an urban neighborhood since more effective control and certainty, apart from parking controls, can be effected through setback and landscaping requirements.

Mayor MacKenzie then polled the Council with reference to retaining the requirement for a super-majority of Council to approve a parking garage. Council Member Herms concurred but Vice Mayor Galleberg and Council Members MacIlvaine, Russell and Wiseman indicated that they did not favor approvals going beyond a simple majority. Council Member Taylor was out of the room when this provision was covered.

Mayor MacKenzie then proposed that funds paid for parking spaces or green space be utilized for either purpose at Council's discretion. Various other Council Members, however, disagreed. There was also no agreement to a proposal by Council Member Russell that developers not be assessed for green space until the City has established a green space master plan funded by TIF revenues. It was noted, however, that a \$35,000-per-unit figure had been proposed by the PAB but remained at \$20,000 in the proposed ordinance.

In summarizing recommended changes to the proposed ordinance Mayor MacKenzie listed the following: text amendment changes submitted by Planning Director Lee (See Attachment 2); changes discussed at this meeting including easements, dedication of public open space, density, signage and nonconformities; possible future amendment to DIRC regulations relative to design review; changes recommended by Landscape Architect Gail Boorman enumerated in Planning Director Lee's memorandum of May 20 (Attachment 3); and the elements as suggested by Council Member Herms listed below.

Council Member Herms proposed inclusion of paving materials in Section 102-851 rather than having them established by DIRC, which he said should not legally be within its purview. He also suggested adding concrete clapboard material to Subsection (5) of Section 102-851 and inclusion of specifics relative to screening required for parking fronting a public street in Section 102-854(4). In conclusion, Council Member Herms received clarification from Planning Director Lee that the prohibition against waivers for matters relating to use in Section 102-855 would not apply to such matters as building colors but would involve more significant issues such as allowing a use on a floor where that particular function would not normally have been permitted under the code.

Council then discussed dates for continuance of the first reading of this ordinance. Thereafter the following motion was approved:

***MOTION by Russell to CONTINUE this matter to a workshop on June 2, 2003, at 8:30 a.m.; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

It was clarified by City Attorney Pritt that due to advertising requirements, second reading could not occur until the regular meeting of June 18. Council Member Wiseman also stressed the importance of the public being informed of the changes, which had been recommended at that meeting. City Manager Rambosk said that the revised draft would be posted on the City's website as soon as possible the following week.

**PUBLIC COMMENT**.....  
None. (It is noted for the record that Henry Kennedy had registered to speak but declined to do so when called.)

**CORRESPONDENCE and COMMUNICATIONS**.....  
Council Member Taylor noted advertising by Keewaydin Club for public events, said advertising having indicated that ample parking would be provided in a City lot. She indicated that patrons were to be picked up at the City Dock for transport to the island. City Manager Rambosk said that he would investigate. Miss Taylor also noted significant tractor-trailer traffic on Tenth Street in Lake Park and asked particularly that truck traffic on Seventh Avenue North be monitored. Council Member Russell also noted that Crayton Road is another area in need of attention in this regard. Council Member Herms received assurances from Mayor MacKenzie that it would not be necessary to appoint an interim City Manager prior to arrival of City Manager Designee Robert Lee. City Attorney Robert Pritt reported that Judge Hugh Hayes had approved the conditional settlement agreement between the City and Collier Enterprises relating to the Hamilton Harbor project.

**ADJOURN** .....  
10:17 p.m.

---

Bonnie R. MacKenzie, Mayor

Minutes prepared by:

---

Tara A. Norman, City Clerk

---

Bonnie McNeill, Recording Specialist

---

Jessica R. Rosenberg, Deputy City Clerk

Minutes approved: 8/20/03