



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – June 4, 2003 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bonnie R. MacKenzie, Mayor
Gary Galleberg, Vice Mayor

Absent:

Joseph Herms
Penny Taylor

Council Members:

William MacIlvaine
Clark Russell
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Robert Pritt, City Attorney
John Staiger, Natural Resources Manager
Tara Norman, City Clerk
Ronald Lee, Planning Director
Ann Marie Ricardi, Finance Director
Ronald Wallace, Development Services Dir.
George Archibald, Traffic Engineer
Ann Walker, Planner
Laura Spurgeon, Planner
Susan Golden, Planner
Karen Kateley, Administrative Specialist
Jim Soprano
Anthony Verderamo
Everett Thayer
John Passidomo
Erika Hinson
John Vega
Gail Boorman
Lou Vlasho

Craig Davis
Mike Reagan
Mike Rinaldi
Falconer Jones
Ardavan Moaveni
Khosrow Moaveni
Peter Eschausier
Lieutenant Mark Cherny
Richard Yovanovich
Bob Brady
James Hirst
Will Gamble
Charles Thomas
Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News

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

Pastor Don Tomei, Restoration Church

ANNOUNCEMENTSITEM 3

National Home Ownership Expansion Week Proclamation presented by Council Member MacIlvaine.

SET AGENDA.....ITEM 4

Item 10-a – Amend policy for permitting parking in right-of-way.

MOTION by Galleberg to ADD ITEM 10-a (AND RENUMBER 10-a and 10-b); seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

Item 23 – Amend Council summer meeting schedule.

MOTION by MacIlvaine to ADD ITEM 23; seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

Item 24 – Authorize Tourist Development Council (TDC) funding application for Lowdermilk Park parking lot reconstruction.

MOTION by MacIlvaine to ADD ITEM 24; seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

MOTION by Galleberg to SET AGENDA WITHDRAWING ITEM 7, CONTINUING ITEM 14 TO JUNE 18, 2003, AND ADDING ITEMS 10-b, 23, AND 24; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

PUBLIC COMMENT.....ITEM 5

Jim Soprano, 2620 Tenth Street North, noted that this is his second appearance before City Council concerning the fire training tower at Fire Station 2. A letter was read and a petition submitted requesting relocation of the training facilities on the premise that the quality of life in the adjacent residential neighborhood had been negatively affected. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) City Manager Kevin Rambosk advised that an item requesting funds to restore the interior stairway at the fire training tower had been placed on the next City Council agenda. Therefore, Mayor MacKenzie said that this item could be included in the upcoming City Council Workshop on June 16 and the City Council Meeting on June 18, 2003. (It is noted for the record that this item was however not so scheduled.) **Anthony Verderamo, 1275 Cobia Court**, advised that he had appeared before Council on May 7, 2003, regarding his neighbor's boat lift which he contended had been constructed contrary to code and restricts his ability to build a boat lift on his property. His contractor has declined to construct a dock for him as it would block his neighbor, he said, and noted that it had been Natural Resources Manager Jon Staiger who had permitted his neighbor's boatlift. City Manager Rambosk explained that he had advised Mr. Verderamo by letter of the process by which Dr. Staiger is empowered to make decisions on dead-end canals. Mr. Rambosk also stated the following: 1) the City had deemed the neighbor's dock to be in compliance since a problem with the original diagram had been corrected; and 2) the appeal process was outlined and a copy of the code provision provided. Mr. Verderamo noted that he had not yet received this letter, and Mr. Rambosk stated that he would provide a copy to the City Council for discussion at a later date. **Everett Thayer, 1690 Avion Place**, said he wished to remind Council of his agreement with the City and the Airport Authority regarding replacement of trees that would grow to a height of approximately 30 feet prior to removal of Australian pines that act as a sound buffer at the perimeter of the airport. Mayor MacKenzie said she did not feel that any changes to that arrangement were anticipated. In addition, Mr. Thayer asserted that he had been

instrumental in obtaining a grant for the airport to move North Road and to place a turn lane from Airport Road onto North Road as a safety measure. He said that with the turn lane, he had also agreed not to oppose relocation of North Road; however the turn lane had not been installed and hangars were built. This resulted in his feeling betrayed by the City, Mr. Thayer said, noting that 67 accidents had subsequently occurred before another grant was obtained. Mayor MacKenzie stated that the City would ensure that the Airport Authority upholds the landscaping agreement.

CONSENT AGENDA

(9:25 a.m.) This being a quasi-judicial proceeding, Council made ex parte disclosures regarding Marie-Michelle Restaurant. Each member of Council present indicated that he or she had visited the establishment, but had had no contact with the petitioner.

APPROVAL OF MINUTESITEM 13-a
May 5, 2003, Workshop (as amended on Page 2) and May 5, 2003 Special.

SPECIAL EVENT ITEM 13-b
James B. Haynes block party, 415 - 11th Avenue South, July 4, 2003.

RESOLUTION 03-10077.....ITEM 13-c
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT FOR MARIE MICHELLE RESTAURANT ON THE BAY LOCATED AT 4236 GULF SHORE BOULEVARD NORTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10078..... ITEM 13-d
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NAPLES AND VIC'S PAINTING, INC., FOR THE PURPOSE OF PROVIDING ADDITIONAL PAINTING SERVICES FOR TRAFFIC SIGNAL POLES AND SIGN STRUCTURES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10079.....ITEM 13-e
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NAPLES AND AGNOLI, BARBER AND BRUNDAGE, INC., FOR THE PURPOSE OF PROVIDING ADDITIONAL SURVEYING SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10080..... ITEM 13-f
A RESOLUTION APPOINTING JESSICA R. ROSENBERG AS DEPUTY CITY CLERK; AND PROVIDING AN EFFECTIVE DATE. Title not read.

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

MOTION by Galleberg to APPROVE CONSENT AGENDA ITEMS 13-a (AS AMENDED), 13-b, 13-c, 13-d, 13-e, and 13-f; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

RESOLUTION 03-10081.....ITEM 6
A RESOLUTION DETERMINING PETITION 03-GDSP6 AS REQUIRED BY 102-592(b) OF THE CODE OF ORDINANCES FOR APPROVAL OF THE 2003 AIRPORT UTILIZATION PLAN UPDATE FOR THE NAPLES AIRPORT LOCATED AT 160

AVIATION DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:28 a.m.). This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie/familiar with Naples Airport Authority (NAA) but no contact with NAA personnel or their agents on this issue; Wiseman and Russell/no contact; MacIlvaine/no contact on this issue but frequent contact with Airport Authority due to his membership in the Noise Compatibility Committee; and Galleberg/no contact other than viewing Planning Advisory Board meeting. City Clerk Tara Norman administered an oath to those intending to give testimony; all responded in the affirmative.

Craig Davis, Director of Engineering and Planning for the City of Naples Airport Authority, thanked the Council for the opportunity to present its quarterly update at the upcoming June 16 Workshop and advised that the Chairman and NAA staff were in attendance and available to answer questions.

With reference to the current petition, Mr. Davis indicated that in 1998 the existing Airport Utilization Plan had been approved with plans scheduled for updating it in 2003. The current plan is essentially completed, he said, and through the general development site plan (GDSP) process the following were added: 1) the legend now includes 5-7 years for new site-specific development; 2) 10-plus years for future development; and 3) identification of the greenway in the west quadrant as new site-specific development instead of its previous listing as existing development (since construction had not yet commenced in that area).

Further, Mr. Davis advised that the Planning Advisory Board (PAB) had questioned NAA projected maximums relative to the number of takeoffs and landings on any given day, as well as the maximum number of aircraft storage hangars projected. He then provided calculations showing an estimated 195,500 operations in 2015 and a projected need for 366 aircraft storage hangars by that date (Attachment 1). Mr. Davis further explained that both usage predictions had originated from the Airport Master Plan Update. Also included in the plan, he said, is a new Collier County Sheriff's special operations facility in the north quadrant, which is currently housed at the Tower Drive location in a facility shared with the Emergency Medical Services (EMS), which requires additional space. The NAA's plan also incorporates Collier County Transportation's expansion plans, including recycling. In addition, he said, the general aviation terminal parking lot rehabilitation project is needed due to poor drainage, and the NAA is also working with the City's Natural Resources Manager to accept material from the Aqualane Shores (West Naples Bay) dredging project.

City Clerk Tara Norman administered an oath to Lieutenant Mark Cherny, Chief Pilot and Aviation Officer of the Collier County Sheriff's Office (CCSO), who responded affirmatively. Lieutenant Cherny explained that while Emergency Medical Services (EMS) and law enforcement had shared a space, demands for service had resulted in both operations having expanded necessitating the plans as cited. CCSO's operation on the airport grounds will house the canine units consisting of dogs who detect bombs and/or drugs, the marine bureau, and selective traffic enforcement staff (which is comprised of approximately 120 officers working varying 24-hour shifts). Additionally, Lieutenant Cherny noted that the establishment of law enforcement at the airport serves to further protect the community in light of the nation's

heightened security alert. Operationally, the decision to build space in the City versus a County airport, Lt. Cherny said, was based on proximity of service calls encompassing a 12-mile radius of Naples Airport; also, he said, transportation capabilities associated with the Marco Island or Immokalee Airports would not be conducive to timely ground or air response time. Currently the CCSO is leasing two additional hangar spaces from the NAA in addition to the EMS space, although it is their goal to consolidate their equipment. Currently CCSO is not planning on purchasing additional aircraft nor is an expansion of services planned; rather, the new building would house existing aircraft.

Council Member MacIlvaine agreed that the proximity of CCSO operations represents a benefit to the community. A newly formed bomb squad has recently been formed and placed at the airport location to respond to calls in conjunction with the City, Lieutenant Cherny added, and pointed out that airports have been placed on a critical sites list since the 9/11 terrorist attack, and the CCSO's visibility will be enhanced in that area.

Vice Mayor Galleberg queried the NAA officials regarding the regional economics of declining usage of the airport, decreased local air traffic since the 9/11 attacks, and whether this was reflected in the Utilization Plan. Airport Authority Commissioner Peter Eschusier confirmed that a study is in fact being completed concerning the economic impact of the airport on the community and that this information would be forthcoming at the June 16 meeting with City Council. He also stated that the last economic impact study presented relative to the NAA and the local community was completed in 1997. Mr. Eschusier stressed the importance that citizens be informed not only regarding the airport's impact on the infrastructure of the City but also the economic benefit derived from the airport.

Mayor MacKenzie questioned Mr. Eschusier regarding a landscape buffer on the western quadrant. She said that there had been a clear understanding that prior to the removal of the Australian pines which affected the Avion Park portion of North Road, a landscape buffer of trees would be in place. With the NAA's plan and the greenway proposed, Mayor MacKenzie questioned how the aforementioned understanding would be accommodated. Mr. Davis responded that the NAA had no plans to remove exotic plants or the referenced tree canopy in the west quadrant, although grant funds from the Florida Department of Transportation (FDOT) had been received to remove exotics in the upland areas of NAA's wetlands, considered to be of pristine quality. He also clarified that the limits of the project are the existing greenway and uplands and do not extend into the west quadrant; the aforementioned agreement with reference to the North Road buffer would be accommodated, he added.

Public Comment: None. (9:47 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10081 AS SUBMITTED; seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

**RESOLUTION (Withdrawn, See Item 4, Page 2)ITEM 7
A RESOLUTION DETERMINING VARIANCE PETITION 03-V1 FROM SECTION 102-186 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES SPATIAL PERCEPTION REQUIREMENTS IN ORDER TO PERMIT THE CONSTRUCTION OF A POOL ENCLOSURE THAT EXCEEDS SPATIAL**

PERCEPTION REQUIREMENTS BY APPROXIMATELY TWO FEET, AT 584 PARKWOOD LANE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10082.....ITEM 15
A RESOLUTION RANKING THE TOP THREE (3) ENGINEERING FIRMS TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR DRAINAGE IMPROVEMENTS FOR THE FLEISCHMANN PARK MASTER PLAN PROJECT; APPROVING AN AGREEMENT WITH THE TOP RANKED FIRM, JOHNSON ENGINEERING, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:48 a.m.) who explained that engineering work similar to the western portion is being requested for the eastern area of the park. The City is recommending Johnson Engineering at a cost of \$45,000, he said. City Attorney Robert Pritt recommended that Council rank the engineering firms should a need arise to use a back-up engineering firm.

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

MOTION by Russell to APPROVE RESOLUTION 03-10082 WITH FOLLOWING RANKING: 1) JOHNSON ENGINEERING, INC., 2) AGNOLI, BARBER & BRUNDAGE, AND 3) CAMP DRESSER & MCKEE; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

RESOLUTION 03-10083.....ITEM 16
A RESOLUTION APPROVING A THREE-YEAR URBAN COUNTY COOPERATION AGREEMENT WITH COLLIER COUNTY FOR PARTICIPATION IN THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME PROGRAMS FOR FEDERAL FISCAL YEARS 2004, 2005 AND 2006; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:51 a.m.) who reported that while the staff had attempted to negotiate a \$141,000 entitlement amount, Collier County is seeking to implement language which would instead reflect the actual entitlement amount received from the Federal Government. He confirmed for Mayor MacKenzie that the Council would again review the matter if the County changed the terms of the agreement and that the entitlement amount may not remain consistent each year.

Public Comment: None. (9:53 a.m.)

MOTION by Russell to APPROVE RESOLUTION 03-10083 AS SUBMITTED; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

ORDINANCE (First Reading).....ITEM 17
AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING THE CITY OF NAPLES CODE OF ORDINANCES SECTION 50-432(3), POLICE OFFICERS' PENSION AND RETIREMENT SYSTEM, TO PROVIDE FOR A ONE TIME COST OF LIVING INCREASE FOR PARTICIPANTS WHO HAVE BEEN RECEIVING BENEFITS FOR FIVE (5) OR MORE YEARS IN THE AMOUNT OF ONE-HALF PERCENT (.5%) PER YEAR OF RETIREMENT UP TO A MAXIMUM OF FIVE PERCENT (5%); PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City

Manager Kevin Rambosk (9:53 a.m.) who explained that the Code requires review on even-numbered years of the status of retirees in the police pension system; however, adjustments were last made in 1991 and had not been regularly updated. The Pension Board, after conducting an analysis of the retirees as well as the cost of living over the years, made a recommendation to provide a one-time adjustment for certain individuals. Having been budgeted, the Council would be able to fully fund this adjustment at a one-time cost of \$20,000, he said. Mayor MacKenzie expressed her support for adjustment, which she characterized as affordable, and Vice Mayor Galleberg noted that this action represented a financial review of a predetermined benefit and that the resulting adjustment was made to maintain compliance.

MOTION by Galleberg to **APPROVE ITEM 17 AT FIRST READING;**
seconded by Wiseman and carried 5-0 (Galleberg-yes, Herms-absent,
MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

ORDINANCE 03-10084.....ITEM 18
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 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 (9:56 a.m.) who indicated that funding had been specifically designated by the State for this purpose and therefore would not be available to address any other issues relative to actuarial soundness of the plan.

Public Comment: None. (9:57 a.m.)

MOTION by MacIlvaine to **ADOPT ORDINANCE 03-10084 AS**
SUBMITTED; *seconded by Galleberg and carried 5-0 (Galleberg-yes, Herms-*
absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-
yes)

ORDINANCE (First Reading).....ITEM 19
AN ORDINANCE AMENDING SECTION 94-32 OF THE CODE OF ORDINANCES IN
ORDER TO ESTABLISH NOTICE REQUIREMENTS FOR THE ISSUANCE OF
DEMOLITION PERMITS FOR HISTORICAL STRUCTURES; AND PROVIDING A
SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:57 a.m.) who advised that staff had been requested to provide language requiring certain notifications prior to demolition of historic structures that are specifically identified in Section 110-84(b)(1). Planning Director Ron Lee clarified that he had not reviewed revised language with Lodge McKee who had spoken in support of the ordinance before the Planning Advisory Board (PAB).

Council Member Russell received clarification that while the staff summary had listed a 180-day waiting period as recommended by the PAB, the ordinance indicated a 45-day period which had been originally recommended by the staff. Additionally, Mr. Russell requested clarification regarding who receives notification relative to the issuance of a demolition permit. City

Attorney Robert Pritt recommended notification to the Collier County Historical Society, Mayor, City Council Members, City Manager, and all property owners within 500 feet of the subject property; however, it was also recommended that, with the exception of property owners within 500 feet, this be established as an administrative policy as opposed to a requirement of the ordinance.

Council Member Wiseman suggested that instead of a reference to Section 110-84(b)(1), which is the criteria established for bed and breakfast facilities, the proposed regulations contain separate verbiage more applicable to this purpose. She said she was also concerned that the historic structure definition contained in the aforementioned section was insufficient to protect structures which may not be located in a multi-family district. Mr. Lee explained however that the intent was to avoid having to identify all the historic homes within this new section of the code since the bed and breakfast regulations reference a map listing all of the contributing structures. Nevertheless, he proposed referencing the map only and noted that the intent had not been to limit the provisions to multi-family zoned properties but to include all those structures considered contributing as defined by the map.

After ascertaining that owners of contributing historical structures had not been individually notified, Council Member Russell recommended that these individuals be given an opportunity to comment, especially on the change in the waiting period from 45 to 180 days. Mayor MacKenzie however stated that any objections to the length of the waiting period could be accommodated by allowing current property owners to petition Council for a waiver, such as those who may have owned the property for a significant length of time.

Council Member MacIlvaine, however, said that regardless of the length of ownership, the resultant loss of a historic structure had been Council's concern. He said that he believed the 45-day period to however be sufficient but echoed Council Member Wiseman's concerns relative to providing a precise definition of historic property. Mr. MacIlvaine therefore urged that owners of contributing properties be notified and that Council not proceed until this sector is heard from. He then moved for a two-week continuance; however further discussion occurred. Planning Director Lee received clarification from Council that the notification was to be directed to all those owning a contributing structure on the map referred to above. Mr. Lee also agreed to revise the ordinance and include language identifying historical structure criteria within the ordinance and that the notice would include a summary of proposed revisions.

In seconding the motion to continue, Council Member Wiseman established that staff research had indicated that waiting periods in the various other communities range from 30 to 180 days. Mrs. Wiseman asked City Attorney Pritt to address any possible legal exposure which may accrue to the City relative to property rights. Mr. Pritt responded that while a waiting period could be considered a temporary taking, other case law found some delays in the execution of a permit allowable. Therefore, he said, staff had recommended the shorter 45-day waiting period so as to be reasonable under the circumstances to allow the City time to identify options in any particular instance.

Council Member MacIlvaine noted that the President of the Collier County Historical Society had deemed the 45-day waiting period to be reasonable.

Vice Mayor Galleberg received confirmation that the dissenting votes among PAB members had been primarily related to insertion of a 180-day waiting period. Additionally, Mr. Lee confirmed that the structures identified as contributing are generally residential, although some in the Third Street South area are commercial. Also, he said, all contributing structures must be within the designated district and are listed by address in the Comprehensive Plan.

Vice Mayor Galleberg concurred that 45 days is a more appropriate waiting period, but urged that more thought be given to defining via a list what constitutes a historical structure. Therefore, Mr. Lee indicated that the criteria relative to “historical structure” in the Comprehensive Plan would be provided to the Council for the June 18 meeting.

In further discussion, Mr. Lee indicated that age is only one of the criteria used to evaluate historic significance and that because the prior survey dates to 1988, there may be other structures which should now be evaluated. He said that the staff and PAB would be working toward this end.

Vice Mayor Galleberg said he also concurred with notifying property owners by mail, both to the property site and the address appearing on property tax records. Council concurred with the recommendation that notification to the Collier County Historical Society, Mayor, City Council, and City Manager be deleted from this ordinance and subsequently adopted as an administrative policy.

Council Member Wiseman also recommended that revised language take into consideration a structure which may be condemned and should be dealt with sooner than 45 days.

Public Comment: None. (10:16 a.m.)

MOTION by MacIlvaine to CONTINUE UNTIL JUNE 18, 2003, COUNCIL MEETING (USING MAP OF HISTORIC STRUCTURES AS DEFINITION LIST; NOTIFYING OWNERS OF HISTORIC STRUCTURES OF THIS PENDING ACTION; PROVIDING FOR DIRECTIVE ON NOTIFICATION OF MAYOR/COUNCIL AND COLLIER COUNTY HISTORICAL SOCIETY TO BE AN ADMINISTRATIVE POLICY RATHER THAN CONTAINED IN THE ORDINANCE; AND PROVIDE EXCEPTION FOR CONDEMNED PROPERTIES. *This motion was seconded by Wiseman and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)*

RESOLUTION 03-10085.....ITEM 20
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 AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:17 a.m.) who indicated that a question had been raised at the last Council Meeting as to why three firms were ranked but only two recommended. Natural Resources Manager Jon Stagier further explained that the Selection Committee recommended that two firms be chosen to secure an additional source of services should projects overlap and the workload necessitate. Suboceanic Consultants, he said, had worked with the City on the Fishing Pier repair project, City Dock, and other projects, and is

experienced in underwater structural work. Coastal Planning & Engineering does similar work but also has a larger staff availability and would be considered as an alternative firm. City Attorney Robert Pritt, however, advised that the law requires that three engineering firms be ranked, even though use of one firm was anticipated. Also, the top two firms are listed as being considered equal and will both be considered for the work as needed under the existing contract, Mr. Pritt added.

Public Comment: None. (10:21 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTUION 03-10085 AS AMENDED: LIST FIRMS RANKED AS FOLLOWS: SUBOCEANIC CONSULTANTS AND COASTAL PLANNING & ENGINEERING AND HOLE MONTES IN 5th WHEREAS AND IN SECTION 1; seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

RESOLUTION 03-10086.....ITEM 21
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO THE ARCHITECTURAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND A. GAIL BOORMAN & ASSOCIATES TO PROVIDE FOR ADDITIONAL COMPENSATION FOR ADDITIONAL SERVICES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:21 a.m.) who explained that a second amendment was being requested to cover additional funding requirements. He referred to a summary of projects dated May 27, 2003, that dealt with the current status of each project, the majority of which had been completed. He also reported that the largest project had been submitted to the Florida Department of Transportation (FDOT) and involves US 41; however, the final plans for Eighth Street and Central Avenue are yet to be completed. Mr. Rambosk said that he anticipated the funding request before Council would cover the remaining costs associated with these projects.

While commenting favorably on Architect Boorman's work, Council Member Russell recommended close review of the remaining activities since the extent of the work needed had not been initially anticipated. Mr. Rambosk estimated the original mission should be accomplished within the funding requested; however, he reminded Council that if other projects should be assigned, an additional amendment would be required at that time. Mayor MacKenzie cited the source of the funding as the Community Redevelopment Agency (CRA) for the entire \$75,000 to be paid to Ms. Boorman.

Public Comment: None. (10:21 a.m.)

MOTION by Russell to APPROVE RESOLUTION 03-10086 AS AMENDED TO LIST FUNDS AS BEING DERIVED FROM COMMUNITY REDEVELOPMENT AGENCY (CRA); seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

RESOLUTION 03-10087.....ITEM 22
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 (10:25 a.m.) who informed Council that this had been continued from the prior meeting regarding the viability of the City developing an

internal annuity. Council Member MacIlvaine referred to Finance Director Ann Marie Ricardi's May 28, 2003, memorandum which conveyed her opinion that the City should purchase an annuity from a licensed vendor rather than managing one internally; Mr. MacIlvaine indicated his support for this position. (A copy of the aforementioned memorandum is contained in the file for this meeting in the City Clerk's Office.) Council Member MacIlvaine further stated that, based on his professional background in the field, he would strongly urge the Council to abide by Ms. Ricardi's advice. Vice Mayor Galleberg agreed and noted that Council had requested the Finance Director's detailed review based on a continuing contractual obligation which would have been funded by the City.

Council Member Russell received clarification that by approving the agreement, the vendor is thereby also approved. City Attorney Robert Pritt also recommended approval of the agreement utilizing an annuity vendor.

Public Comment: None. (10:29 a.m.)

MOTION by Wiseman to APPROVE RESOLUTION 03-10087 AS SUBMITTED; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

.....ITEM 23
CONSIDER AMENDING CITY COUNCIL SUMMER MEETING SCHEDULE

It was ascertained that because four members of Council would be unavailable for budget workshops originally scheduled to commence August 4, these sessions would be set for Monday through Wednesday, August 18, 19, and 20, with Council's return from summer break on the 18th.

MOTION by MacIlvaine to ADD TO JUNE 18, 2003, AGENDA AND SET A RETURN DATE OF AUGUST 18, 2003; seconded by Wiseman and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

Mayor MacKenzie also received clarification that the start time for the June 16 workshop would remain at 8:30 a.m. and that Council would return for its scheduled 5:00 p.m. budget workshop on that day.

RESOLUTION 03-10088.....ITEM 24

A RESOLUTION APPROVING A COLLIER COUNTY TOURIST DEVELOPMENT COUNCIL CATEGORY "A" GRANT APPLICATION FOR THE LOWDERMILK PARK PARKING LOT RECONSTRUCTION/RESTORATION IN THE AMOUNT OF \$375,000; AUTHORIZING THE MAYOR TO EXECUTE THE APPLICATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:38 a.m.) who advised that the projects at Lowdermilk Park had been split between the building improvements and the parking lot project to follow within two to three years. However, based on Collier County's use of the parking lot for beach restoration activities, Mr. Rambosk noted, and by working with the County, the project had been moved ahead of schedule. Mr. Rambosk therefore recommended approval so as to expedite the project which would include restoration of the base as well as repaving, lighting and landscaping. He noted that the 216-space lot contains metered, permit, and handicapped parking.

Vice Mayor Galleberg then clarified his previous statements regarding beach-related funding issues. He said that while not intended as criticism, there is what he described as a new reality resulting in competition between maintenance/renourishment and access/land acquisition interests at the County level. While stating that City staff presentations to request funding had not been deficient in the past, Mr. Galleberg nevertheless encouraged staff to improve coordination and be prepared to compete effectively at the level of other interests appealing for limited Tourist Development Council (TDC) funding. City Manager Rambosk indicated that this process had already begun.

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

MOTION by Galleberg to APPROVE RESOLUTION 03-10088 AS SUBMITTED; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

Recess: 10:44 a.m. to 10:59 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 03-10089.....ITEM 8
A RESOLUTION DETERMINING PETITION 03-GDSP5 FOR A TWO-STORY 6,000 SQUARE FOOT RETAIL, OFFICE AND RESTAURANT BUILDING LOCATED AT 201 GOODLETTE ROAD SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:00 a.m.). This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: MacKenzie/no contact with the petitioner or the petitioner's agents since the first discussion of this matter several weeks previously; Wiseman/no discussion regarding the subject of the petition; Russell/conversation with petitioner's representative Richard Yovanovich regarding the entire Planned Development and some respective elements to avoid the construction of a five-story structure; MacIlvaine/no contact; and Galleberg/no contact. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative.

Attorney Richard Yovanovich displayed an illustration stating that this petition represented another building within the Bayfront Marketplace project. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) He also indicated that the petitioner had agreed to all staff stipulations and that the Planning Advisory Board (PAB) had unanimously recommended approval. In response to Mayor MacKenzie and Vice Mayor Galleberg, Attorney Yovanovich provided a summary of the Bayfront Marketplace project. He explained that the building currently under consideration is the required approval of specifics, the building having already been depicted on a conceptual general development and site plan (GDSP) petition for the entire project. This petition represented the construction of Building C-1 which would eventually share parking with Building C-2 once constructed. At this point, Building F and Building C-2 would have completed the specific GDSP process, he added.

Council Member MacIlvaine ascertained that the structure would be 41 feet 1/2 inch above the Federal Emergency Management Agency (FEMA) elevation but noted an error in the placement of the complex on a location map included with the traffic study. Planning Director Ron Lee however advised that the accuracy of the traffic study results had been confirmed. While moving approval with staff recommendations, Council Member Russell added that he nevertheless

continues to view this project as not fulfilling the vision for this area and that he continues to hope for improvement.

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

MOTION by *Russell* to **APPROVE RESOLUTION 03-10089 AS SUBMITTED**; *seconded by Wiseman and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)*

CORRESPONDENCE AND COMMUNICATIONS.....

(11:08 a.m.) Because there was sufficient time before the next scheduled agenda item, Council Members discussed correspondence, Mayor MacKenzie noting that opportunity for public comment could also be afforded at the conclusion of the agenda. Council Member Wiseman reported that at least one of the wall-mounted menu boards on Fifth Avenue, which are restricted as to contents, is now being used for a proliferation of other materials. She therefore requested that this be addressed by staff.

Mayor MacKenzie noted that one mast arm at US 41 and Fifth Avenue South had not yet been painted and sought assurances that this painting would be completed in conjunction with mast arms in other locations.

PUBLIC COMMENT.....

None. (11:10 a.m.) It is noted for the record that another opportunity for public comment occurred at the conclusion of this meeting.

Recess: 11:10 a.m. to 11:28 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 03-10090.....ITEM 9
A RESOLUTION DETERMINING A REQUEST TO FORMALLY ABANDON THE PLAN FOR CONSTRUCTION OF THE EXTENSION OF THIRD AVENUE NORTH TO GOODLETTE-FRANK ROAD; AUTHORIZING THE MAYOR TO EXECUTE A DEED RECONVEYING REAL PROPERTY TO GRANTOR; AND PROVIDING AN EFFECTIVE DATE. Title read by Kevin Rambosk (11:28 a.m.). City Attorney Robert Pritt advised that this is not a quasi-judicial proceeding but more analogous to a vacation of property which is deemed to be legislative in nature.

Ardavan Moaveni, 481 Quail Forest Boulevard, stated that his father owns Goodlette Self Storage, which he manages for their company, Florida Management and Development Corporation (FMDC). He indicated that, based on opposition expressed by River Park residents to the extension of Third Avenue North and subsequent discussion with City representatives, the reverter clause in the deed of conveyance to the City was being exercised. Although he said it had first been discussed that a vacation of right-of-way should be pursued, this was not deemed appropriate since the process requires a specific explanation of the usage of the property which was not known by FMDC at this time, Mr. Moaveni noted. Furthermore, he said, City Attorney Robert Pritt had advised him by letter that it would be necessary for the City Council to formally abandon the Third Avenue North extension for FMDC to retrieve the property. However, after this request was made, the City staff then made a recommendation not to abandon the possible extension of Third. Mr. Moaveni said he believed the staff had in fact taken this position due to concern for the status of utilities which had been installed in this right-of-way. He said the City should either build the road or decide that the road is not going to be built and let the right-of-

way be abandoned. In response to Mayor MacKenzie, Mr. Moaveni said that his family would work with the City staff to accommodate the utilities.

Vice Mayor Galleberg then requested information on the zoning classification and the background of the property. Khosrow Moaveni, owner of Goodlette Self Storage, said that in 1986 the City had required that a 30-foot easement be dedicated for the construction of Third Avenue North as a condition of the permit to construct his facility. Third had been listed on the City's Comprehensive Plan at that time, he said. Although the City's traffic consultants had determined that the Third Avenue North extension was in fact detrimental respective to Goodlette-Frank Road, the City had persisted. Mr. Moaveni further noted that former City Attorney Kenneth Cuyler had by memorandum disagreed with the aforementioned dedication process in conjunction with permit applications.

Additionally, Mr. Moaveni said the City had agreed to procure a similar 30-foot easement on the south side from an adjoining property owner to assemble a 60-foot wide easement to accommodate construction of the Third Avenue North extension. Mr. Galleberg observed that the practical effect of the requested abandonment would be to afford an additional 30 feet of land on which to build.

Development Services Director Ron Wallace illustrated on a drawing (a copy of which is contained in the file for this meeting in the City Clerk's Office) three parcels of property: 1) Goodlette Self Storage, owned by the Moaveni's; 2) Old Naples Self Storage; and 3) property (approximately 80 x 80 feet) owned by the City which had formerly been the railroad easement. Mr. Wallace advised that utility work had been completed in 1999 and an additional piece of property in fact had been acquired from developer Henry Halle and that the City had considered purchasing other property as well. Mr. Wallace confirmed that utility easements would be required if the City were to abandon the roadway, although future projections relative to the need for a roadway are difficult, he said.

In response to Mayor MacKenzie, Mr. Wallace advised that the normal width of a utility easement is 15 feet. Mayor MacKenzie pointed out that River Park residents opposed the proposed road extension over concerns about children at play and that the Moaveni family's goal is simply to work with the City to reach a determination regarding their respective property. Khosrow Moaveni reiterated that his family urges the City to decide whether or not the roadway is to be constructed and, if not, to return their property. He also mentioned that the property is now inhabited by the homeless, is not maintained, and has become unsightly.

In response to Vice Mayor Galleberg, City Attorney Robert Pritt explained that while the practice of mandatory dedications had been common, a court decision in a Lee County case and subsequently in the Supreme Court had most likely been the cause of such a policy being discontinued. In the way of further background, Planner Ann Walker stated that at the time the railroad right-of-way was abandoned, the City purchased the 80 x 80 foot piece of property, presumably with the right-of-way in mind. The extension of Third had been and continues to be a part of the Comprehensive Plan, she added. When this Moaveni property was being considered for development, the City requested the 30-foot strip with the intent of acquiring the property to the south, resulting in a 60 foot wide right-of-way connecting to Goodlette Road, Ms. Walker

explained. However, Ms. Walker confirmed that the City was unable to purchase the 30-foot right-of-way to the south, but rather in 1999 purchased a triangle-shaped piece of property that was the 30 foot on the east end.

In further discussion of the acquisition of a 30-foot parcel from the property to the south of the Moaveni site, Planner Walker indicated that when this project had been proposed, the Planning Department had required positioning the buildings on the north side of the project so as to allow for a portion of the property to be used for this right-of-way. It was also noted that in 1999, utility installation, discussion of construction of the River Park Community Center, and rejection of the plan to extend Third by the River Park residents had in general coincided.

Council then reviewed various implications for connection of Third Avenue North to 12th Street and Goodlette Road, including its effect on the site on 12th which was being considered for Fun Time Nursery.

Ardavan Moaveni reiterated, however, that there is insufficient land to construct a roadway as there is only one 30-foot strip; he also pointed out that in the deed of conveyance it had been designated that the City would obtain an additional 30-foot neighboring property to the south, but that this was not accomplished. Instead, he said, the City had purchased another triangular section of property. Mr. Moaveni also said that he felt the real issue remained the City's utilities, and since the property is used for nothing but utilities, it would be unfair to his family which would be left to deal with what had become a junkyard and a source of continual complaints from landscaping personnel.

Urging a decision on the matter, Khosrow Moaveni expressed the opinion that 12th Street North would not be extended and reiterated that a traffic consultant had advised that the extension would not help traffic circulation, even if 12th were connected with Third Avenue North, and could actually be detrimental to traffic on Goodlette Road. Mr. Moaveni then referred to the original 41-10 (Gindroz) redevelopment plan which had recommended that Third Avenue North be extended, and took the position that the staff's recommendation was based on that report; even then, he said, the proposal was to extend Third only to serve as a proposed pedestrian-oriented, single-family area which had not materialized. Mr. Moaveni then reiterated prior statements regarding the circumstances wherein the City received the property, cautioned that acquisition of additional right-of-way would entail condemnation, and complained that the condition of the 30-foot area in his view constituted a blight.

Noting that the petitioners had made many salient points, Vice Mayor Galleberg nevertheless said he felt it premature to abandon the property, recommending further staff review. He however stressed that no time limit be imposed although a final determination should eventually be made as to whether a road is to be built and pointed out that the item remained in the Comprehensive Plan. Council Member MacIlvaine agreed, stating that he had based his opinion on the changing dynamics represented by possible introduction of Fun Time Nursery.

Mayor MacKenzie, however, expressed the opinion that the property owner had been treated poorly compared to the adjacent property owner from whom another 30 feet had not been obtained. Not only did the owners of the Moavani site originally relinquish 30 feet, but the staff

is predicting that they will be asked to give up even more, she said, which does not seem fair. Mayor MacKenzie therefore advocated a continuance of this item in an effort to accommodate the City's interests, as well as those of the property owners.

Council Member Russell stated that while he recognized a hardship on the part of the property owners, he was not prepared to make a decision since the public value of retaining it remained unclear. A determination, he said, must be made regarding the viability of a roadway and other steps this would entail. Mr. Russell, therefore, encouraged a careful evaluation of all aspects of this matter.

Council Member Wiseman concurred, but urged that the area receive maintenance attention and recommended that staff work with citizens and return to Council with a proposal. Additionally, she noted that \$12,000 is due and payable by the petitioner either when the City builds the roadway or, immediately, if the petitioner were to sell the property, regardless of the City's intent. Therefore, she suggested that in fairness the City forgive the \$12,000, regardless of whether a road is built. Council Member Wiseman further referenced the reasons for denial of this request as being based on the road being shown in the Comprehensive Plan as well as the 41-10 (Heart of Naples) plan. Mr. Galleberg added that a determination and recommendation is therefore needed for what is in the public's best interests.

Mayor MacKenzie noted that since the Moavani's property had been extracted to extend Third Avenue, she urged Council and staff to determine the plans for this property and resolve this issue. Development Services Director Wallace advised Mayor MacKenzie that while the petitioner had requested Council to review this situation, the staff completed the report as a vehicle of presentation to Council. Council discussed various options to allow return of the item at a future date, which Vice Mayor Galleberg characterized as denial without prejudice. Mrs. Wiseman then accepted an amendment to her motion to this effect.

MOTION by Wiseman to DENY RESOLUTION 03-10090 AS SUBMITTED (WITH THE INTENT THAT DENIAL DOES NOT PRECLUDE REVISION AND RETURN TO THE CITY COUNCIL); seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

Recess: 12:18 p.m. to 1:32 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

City Manager Kevin Rambosk apologized to the Council and the City Attorney for the manner in which Agenda Item 9 had been submitted and that a meeting was scheduled for later that week to begin addressing this matter with Mr. Moavani.

RESOLUTION 03-10091.....ITEM 10-a
A RESOLUTION APPROVING AN AMENDED POLICY PERMITTING PARKING IN THE PUBLIC RIGHT-OF-WAY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.) who referred to the revised standard right-of-way parking procedure allowing the Council to make a determination in a special district without the necessity of documenting a hardship. Traffic Engineer George Archibald explained that despite the City's policy to discourage and prevent the conversion of greenscape to hardscape, the scenario presented in Item 10-b (below) was deemed exceptional since the right-of-way is extremely wide and would have resulted in creating more hardscape. (It is noted for the record that Mr. Archibald's

comments, while made during this discussion, are applicable to Item 10-b and contained therein.) Therefore City Council in the amended policy would have the decision-making latitude to approve construction deemed to be less adverse hardscape than represented by driveway construction, Mr. Archibald noted.

Vice Mayor Galleberg concurred with the amendment proposed but nevertheless maintained that it is advantageous to act consistently with City policy and derive guidance from it. He suggested changing the word “hardship” to “condition” to better reflect the intent of the amendment. (A copy of the referenced Exhibit “A” is contained in the file for this meeting in the City Clerk’s office.)

Public Comment: None. (1:39 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 03-10091, AS AMENDED, TO REPLACE “HARDSHIP” WITH “CONDITION” IN EXHIBIT A; seconded by Wiseman and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

RESOLUTION 03-10092..... ITEM 10-b
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 (1:39 p.m.). During the discussion of Item 10-a (above) Traffic Engineer George Archibald noted that on Sixth Street South where this project is located, the right-of-way is 120 feet rather than the traditional 60 feet in width and features a divided highway with a large median. Therefore, development along Sixth Street necessitates providing access to the owner’s property from the greenscape. Garages are located in the rear alley for principal access, and a U-shaped driveway typically provides secondary access, he explained. In conformance with the new policy adopted above, the staff recommended approval, he said.

Mayor MacKenzie asked whether the \$300 fee paid by the petitioner could be refunded since he had brought an anomaly to the attention of Council. However, after further discussion, it was determined that the petitioner had appropriately completed the process and that Council did not support refunding the application fee. Mr. Pritt also noted that the fee could not be waived unless there is a specific provision for a waiver; however, reimbursement must be requested by the petitioner. Traffic Engineer Archibald said he foresaw other such requests along Sixth, but Mayor MacKenzie pointed out that constructing driveways already allowed without Council approval would equate to the loss of even more green space. Mr. Archibald stated that staff would however encourage parking construction to maximize greenscape over hardscape by incorporating turf blocks. Nevertheless, it was noted that in this case the petitioner had wished to avoid the use of turf blocks.

Public Comment: None. (1:43 p.m.)

MOTION by Russell to APPROVE RESOLUTION 03-10092 AS AMENDED TO REFLECT SUBMISSION BY PETITIONER; seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

In light of this petitioner’s safety concerns relative to turf blocks, Council Member Wiseman asked about the appropriateness of their use at the Naples Preserve, a question she said she had raised at the time Naples Preserve was being improved. She said that at that time she had been told that this was not a concern. Although Mr. Archibald said he felt that turf blocks had been

used successfully in the “D” Downtown district and had minimized hardscape, Development Services Director Ron Wallace indicated that he would research their use at Naples Preserve and advise Council of his findings.

Recess: 1:45 p.m. to 2:00 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Mayor MacKenzie apologized for the need for multiple recesses during this meeting but that various items had been scheduled for a time certain to afford the public an opportunity to schedule attendance.

.....**ITEM 11**
REQUEST OF INDIES WEST ASSOCIATION, INC. FOR FINANCIAL SUPPORT FOR REBUILDING OF A SEAWALL. Title read by City Manager Kevin Rambosk (2:00 p.m.) who indicated that Robert Brady of Indies West would make a presentation. Although City Attorney Robert Pritt confirmed that ex parte disclosures were not needed, Council Member Wiseman made a voluntary disclosure to the effect that she had spoken to Indies West’ attorney, Richard Yovanovich, who had been engaged to perform preliminary research. Mrs. Wiseman further noted she had expressed opinions during that discussion which she believed to be relevant to the matter before Council. Council Member Russell said that he had also engaged in some preliminary discussions with Mr. Yovanovich. Council Member MacIlvaine said that he, too, had had a discussion with Mr. Yovanovich and noted that he owns a boat with a draft of four feet, seven inches, which regularly transverses Doctor’s Pass. Mayor MacKenzie also advised that she had spoken with Attorney Yovanovich regarding this matter, and Vice Mayor Galleberg noted that he had had a similar conversation with Mr. Yovanovich as well as brief conversations with citizens who are however not Indies West residents but who had nevertheless been tracking this issue.

Indies West representative Robert Brady introduced Indies West Board Member Will Gamble and Engineer James Hirst, of Hirst & Associates. Mr. Brady noted that he had previously appeared before the Mooring Bay Special Taxing District Advisory Committee, as cited in the documents provided to Council, and that the appeal had been referred. Indies West, he said, was appealing for financial relief from the City to repair 450 feet of its seawall which borders Doctors Pass and which is in imminent danger of failure. Mr. Brady quoted extensively from written comments which appear as Attachment 2 (excluding exhibits which are contained in the file for this meeting in the City Clerk’s Office). Additionally, Mr. Brady noted a photo which he said had been taken six years prior to construction of Indies West and took the position that the bulkhead had been considered a public project. Therefore, he said, his group’s position is based on adequate evidence that a precedent had been set for City responsibility to maintain Doctor’s Pass as a navigable waterway.

Mr. Brady characterized Doctor’s Pass as a major access for hundreds of boats, both commercial and recreational, which is patrolled by City police, maintained by a taxing district under the Council’s supervision, and monitored by the federal government relative to maintaining safety and passage. He also took the position that a major dredging and jetty reconstruction project completed in 2002 had combined with the tidal flow and resulted in the formation of a large hole up to approximately 18 feet deep at Marker #8; this, he said he believed had contributed to the wall’s deterioration. Mr. Brady stated that as an emergency measure Indies West had undertaken a major reconstruction project and that Indies West was therefore requesting City funding

assistance in the amount of \$500,000 for the portion of its proposed \$1.5-million seawall restoration project that corresponds to Doctor's Pass.

In response to Council Member Russell, Mr. Brady replied that Indies West had been built in 1968 but indicated that, despite considerable research on their part in the City's files, the entity which had constructed the seawall could not be determined. Mr. Russell further questioned the amount of additional fill which had been introduced to construct Indies West. While stating that he believed the filling had not been significant, Mr. Brady also pointed out that bedrock is 20 feet deep on the Indies West's peninsula possibly prompting the type of bulkheading that was originally put in place.

Natural Resources Manager Jon Staiger expressed the position that the City's dredging of Doctors Pass had not affected the Indies West seawall and instead explained how scouring occurs naturally in the area of the aforementioned Marker #8. Further, Dr. Staiger noted, the pass is hydraulically efficient and well balanced, and if it were deepened, the velocity would slow and thereby encourage shoaling. Engineer Jim Hirst, representing Indies West, concurred with Dr. Staiger in that a tidal jet is created from the north that goes against that seawall, hydraulically scouring that area.

In response to Council Member MacIlvaine, Dr. Staiger advised that the City had taken title of the two jetties on Doctor's Pass from the Moorings Development Company in a formal resolution in approximately 1967 and that Moorings Development had constructed the bulkhead; nevertheless, Dr. Staiger said he doubted that, based on environmental deterioration, the current bulkhead was the original construction. Dr. Staiger further expressed the opinion that little dredging had been needed in the case of Indies West because the general vicinity had been a pine-forested area. In further discussion, Council Member Russell inquired as to the owner and original builder of the seawall; Dr. Staiger explained that upland property owners own their respective seawalls and that repair of seawall failure had historically been the responsibility of the property owner, which is also required by ordinance.

In additional response to Council Member Russell, Dr. Staiger responded that while he was not familiar with the history of the development, the jetties, which stabilized the entrance to the inlet, were constructed and given to the City. All the bulkheads constructed during the course of the development of Coquina Sands, the Moorings and Park Shore were installed by the developers with responsibility therefore passing to the upland property owners, he said and the City has not had title to any of the shoreline stabilization structures. Council Member Russell therefore contrasted the City's public responsibility in regard to navigation with construction of seawalls installed for the protection of private property.

Council Member Wiseman noted an absence from the materials of a survey of the Indies West property which, she said, would have been required as an exhibit for declaration of a condominium.

Dr. Staiger further explained that the City had received tourist tax revenues to fund the most recent dredging of Doctors Pass. However, Mayor MacKenzie pointed out that the City had not expanded the services and activities which it would have normally undertaken merely because of

a different funding source, in this case Tourism Development Council (TDC) grants in the instance of Doctors Pass dredging.

Vice Mayor Galleberg also pointed out that maintenance dredging and seawall maintenance are in fact unrelated. The City has established a policy to dredge, he said, but there is a specific ordinance requiring property owners to maintain seawalls. Council Member MacIlvaine also observed that since Doctors Pass dredging had occurred in approximately 50 feet of a channel that is 150 feet wide at the narrowest point, there would be no connection between dredging and the condition of the Indies West seawall. In further discussion, however, Dr. Staiger noted that an impact to navigation would nevertheless occur if failing seawalls were to allow a significant amount of material, including buildings, to fall into the pass. He however deferred to Engineer Hirst to address that issue.

During further discussion, other instances were noted wherein private parties repaired seawalls which, had they failed, would represent a similar hazard to navigation. In response to Council Member Wiseman, Dr. Staiger however indicated that he was unaware as to whether the Indies West seawall had shifted or failed, although a significant movement of the seawall had been repaired in 2002. Both Council Member Wiseman and Vice Mayor Galleberg reiterated that property owners, under the Code of Ordinances, could be compelled to repair the seawall through the code enforcement process. Vice Mayor Galleberg also stated that, regardless of the present condition, property owners have an affirmative obligation to prevent their seawalls from failing and causing a hazard to navigation. Also, in response to Council Member Russell, City Manager Rambosk confirmed that the City has no record of accepting, building, or maintaining seawalls other than those adjacent to property that the City owns. Mr. Russell said that based on information received, the seawall must therefore have been put in place by either the original developer or the condominium. Vice Mayor Galleberg said that this information was not in fact necessary since a developer, not the City, had dredged to create the Moorings and had deeded to the City the portion of Doctor's Pass adjacent to the jetty. Seawalls have a useful life and must be maintained and are designed for the area and circumstances of their locations. Council Member Wiseman also asserted that the burden of proof would therefore rest with the petitioner to prove that the City owned the seawall or had a maintenance responsibility. She however again questioned why a boundary survey of the condominium property had not been included within the packet of information supplied to City Council.

Engineer Jim Hirst of Hirst & Associates asserted that there is in fact always a close relationship between dredging and seawalls. If the center channel is dredged, a slope is formed up to the seawalls, he said, and characterized the Indies West seawall as having moved alarmingly. Robert Brady stressed that the Indies West request is not an ordinary seawall maintenance situation, again citing passing boat traffic as the cause for undermining the seawall and impacting Indies West to a greater extent than others in that region. He further contended that the pass dredging was more extensive than suggested by Natural Resources Manager Staiger and had in fact come nearer to the Indies West seawall. Mr. Brady concluded by stating that the request for public funding is not for sole support of Indies West but rather for what he depicted as a public waterway.

While expressing empathy with the position of Indies West, Council Member Wiseman stated that the Council must however view the City as a whole, and equating this request to property owners near Naples Bay or Gordon Pass requesting public funding for a similar purpose. Mr. Brady, however, contrasted the width of channels in Naples Bay with that of the narrower Doctors Pass. Council Member Russell cited an example of rip-rap adjacent to Naples Bay having been replaced by a private property owner and expressed the view that there could be public traffic impacts to private property that would not necessitate public funds for repair. Vice Mayor Galleberg and Council Member Russell however commended the petitioners on the comprehensive nature of their presentation.

Public Comment: None. (2:25 p.m.)

MOTION by Wiseman TO DENY BASED ON THE TERMS OF THE DEDICATION OF THE (DOCTORS PASS) JETTY TO THE CITY AND SECTION 94-232 OF THE CODE OF ORDINANCES, AS WELL AS THE ABSENCE OF PUBLIC PURPOSE IN EXPENDING TAX DOLLARS FOR THIS REQUEST, DESPITE THE LEGITIMATE NEED FOR THIS WORK TO BE PERFORMED. This motion was seconded by Russell and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)

Recess: 2:46 p.m. to 3:03 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

ORDINANCE (First Reading).....ITEM 12
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 Attorney Robert Pritt (3:03 p.m.). Planning Director Ron Lee reviewed substantive changes which had been made to the ordinance. (See also May 27, 2003, memorandum by City Attorney Robert Pritt appended as Attachment 3): 1) Section 102-847(c) adjusted time period to October 2004 and every year thereafter; 2) “parking structure” was edited throughout to provide consistency regarding parking garages, etc. and was referenced in Section 102-851(1)(a); 3) Section 102-852 was revised relative to sidewalk and landscaping placement in response to recommendations by landscape architect Gail Boorman; 4) Section 102-854(10) adding a provision for a choice of two of the three allowable signs; 5) Section 102-855 (1) returning medical parking requirements to three spaces per 1,000 square feet; 6) Section 102-857(4) removed the provision that if a decision is not rendered by City Council within 30 days, the plan is approved (based on recommendation of the City Attorney); 7) Section 102-860(5) clarified that the reimbursement of parking from the City would be derived from the parking trust fund established by the City; and 8) added Illustration #6 depicting parking landscape configurations.

Mr. Lee also noted the existence of other issues requiring Council consideration: 1) fourth-level parking and the two options provided by the City; and 2) Attorney John Passidomo’s request relative to the Grand Central Station property, which he noted had been addressed in his memorandum of June 3, 2003 (Attachment 4).

City Attorney Pritt also noted that in Section 102-849(1)(c) setback zone C had been changed from ten feet to five feet. In addition Section 102-858(3) was revised as follows: “An affected property owner may request the City Manager to approve up to 2, six-month extensions of time.” Council Member MacIlvaine referred to Section 102-852(6) and pointed out that “500 feet” should be changed to “500 square feet.” Council Member Wiseman noted that the word division should be capitalized in Section 102-860(7), and City Attorney Pritt confirmed that the reference was to District 29.

Mayor MacKenzie asked whether sound installation should be recommended for potential residential development, despite the fact that the “D” Downtown District was not within the Naples Airport Authority (NAA) noise overlay. Council Member MacIlvaine recommended against this, noting that the Airport Zoning Commission had looked upon soundproofing as pointless because most residents open their windows. It was also determined that the basis for purchase of units of green space would remain at 500 square feet.

Mayor MacKenzie made reference to Options 1 and 2 submitted by staff with reference to the issue of fourth-level parking. Although various Council Members commented, a determination was not made until later in the meeting.

Public Comment: (3:30 p.m.) **Attorney John Passidomo, 220 South Winds Drive**, thanked the Planning staff for reviewing and refining his proposal submitted on Monday, June 2 (allowing three stories of residential over one story of parking in a total building height of 49.5 feet measured from the required first floor FEMA elevation; see Attachment 4). He further explained that exclusively residential interior buildings on his client’s site (now known as Grand Central Station) would be located at least 100 feet from the nearest through street and would be behind a building which contains residential and commercial use on the first floor with a depth of at least 30 feet. (Later in the meeting he confirmed that his client planned that Third Avenue South would be extended to Goodlette-Frank Road and that these setbacks would be calculated therefrom.) Additionally, provisions for a landscape buffer were added and none of the residential buildings would appear on the frontage line. Mr. Passidomo also pointed out that the “D” Downtown ordinance as proposed appeared to give consideration to street frontage within the traditional grid system rather than to a 17-acre parcel which contains no streets and has no platted lots.

Mr. Passidomo further advised that a market analysis had revealed that residents desire secure parking beneath their building, exclusively for their benefit, as well as open space with landscaping, such as courtyards. Creating the opportunity for three stories of residential would result in the same number of allowable units, using less space and providing more open area, Mr. Passidomo asserted. He then displayed a depiction with these characteristics (a copy of which is contained in the file for this meeting in the City Clerk’s Office), stating that his proposal would achieve 50 percent less lot coverage. He therefore requested that the language he had submitted be included in the ordinance.

Council Member MacIlvaine observed, however, that even though green space would be traded for height in Mr. Passidomo’s proposal, allowing higher buildings would be contradictory to the “D” Downtown District goals.

Council Member Russell also said that any changes must work for the entire District and not harm its intent. He further expressed his concern that more buildable space rather than open space could however be created on large parcels. Mr. Passidomo pointed out that no density standard is currently in place in the "D" Downtown District, although his client would comply with the recommended standard of 12 units per acre. He reiterated that, regardless of density, 50 percent less buildable land would be achieved with 7.5-feet of additional height.

In response to Council Member Wiseman Mr. Passidomo suggested that to provide Council with additional assurances, the language of his proposal could be revised to indicate that "development site" refers to the entire 17-acre Grand Central Station parcel. However, he noted that he was of the opinion that with incentives for smaller as opposed to larger parcels, the alternative to the 17-acre development would be to fragment the property into smaller parcels that could enjoy 100 percent lot coverage and all the other benefits afforded to smaller parcels. Planning Director Ron Lee suggested the rewording be changed from "development site" to "represent no more than four buildings in all phases of the project" which would assure that only four buildings would result regardless of the number of phases. Council Member Wiseman said, however, that this would address a Planned Development but not a case where a singular owner could divide a site into independent projects which would then be presented separately to Council. She said this should be avoided.

Erika Hinson, President, Old Naples Association, first ascertained that Attorney Passidomo's proposal dealt only with a site of the size of Grand Central Station and did not include all of the 41-10 (Heart of Naples) area. Ms. Hinson read a statement from the Old Naples Association's Board of Directors (Attachment 5).

John Vega, 201 Eighth Street South, Baker Center Office Suite 207, noted that he had been a resident of greater Naples for 37 years and that he was representing the following: 625 Investments, Ltd. Partnership; HHH Investments, Ltd. Partnership, Francis D. Hussy Jr., Trustee; Yurduro Vega; and Eduardo and Luisa Perraro. He said that the aforementioned entities represent the Baker Center (Eighth Street South); the vacant lot at Sixth Avenue South and US 41; the building housing the Kandi Rug Gallery on US 41; and the Empire Plaza on Goodlette-Frank Road. He pointed out that there is in fact only limited space for residential units to be constructed within the "D" Downtown District. Also pointing out the growth that continues in the Greater Naples area, Mr. Vega said that progress should not be impeded by a fear of more residents. Buildings such as the Baker Center and Empire Plaza will not be replaced by condominiums; although vacant lots within the 41-10 (Heart of Naples) area will encourage redevelopment, he said. Mr. Vega also stated that current parking standards are prohibitive for cost-effective buildings whereas a pool for on-street parking would allow a less expensive building and increased landscaping, setbacks and green space. He therefore expressed support for the proposed ordinance which he maintained would provide economic incentives to redevelopment of areas within that corridor.

Gail Boorman, 1100 Fifth Avenue South, noted that she had worked with the Heart of Naples Committee (HONC), the Council, and the staff over several months and stressed the importance of the proposed ordinance moving forward, describing it as a significant improvement in regulations. Ms. Boorman also noted benefits in open space and streetscapes, but urged that the

proposal made by Attorney Passidomo not be allowed to stymie the progress of adoption, characterizing it as problematic for general application even though on a large parcel taller buildings do afford the opportunity of more ground-level space. Further, Ms. Boorman suggested adopting the ordinance before establishing an open space Master Plan, although preliminary studies could designate how an open-space system would function.

Lou Vlasho, 720 Fifth Avenue South, Suite 203, representing the Naples Better Government Committee (NBGC), advised that the NBGC had studied the 41-10 (Heart of Naples) plan as originally proposed by the Heart of Naples (HONC). He also said that he had attended, viewed, or participated in the various meetings relative to the ordinance, including but not limited to, various presentations to the City Council by the committee and consultant. In addition, he said, NBGC had hosted a presentation by the HONC Chair, Council Member MacIlvaine. Mr. Vlasho said that the proposed ordinance reflects a sound and proactive plan for the area which is positive for controlling growth. He also cited the considerable public input which had been received and Council's enhancement of the ordinance based thereon. The NBGC had, he said, unanimously voted to support the ordinance amendments and recommended approval. Respective to the Grand Central Station project, he expressed disappointment at the late arrival of the proposal but observed that it is a key parcel and that an appropriate plan had been outlined. Mr. Vlasho then made reference to the proposed charter amendment and conveyed NBGC's request that a special election be held for this purpose in early Fall 2003; this, he said, would keep the matter from becoming a political issue in the general election in February. NBGC would form a coalition to defeat the charter amendment, he said, and would invite a broad section of the community consisting of civic groups, homeowners, and other interested groups to join; Mr. Vlasho also indicated that the process had in fact begun and said that NBGC disagrees with a charter amendment-type government, which takes control away from properly elected officials.

Mike Reagan, Greater Naples Chamber of Commerce (GNCC), 3620 Tamiami Trail North, congratulated Council Members for their diligent review of the 41-10 (Heart of Naples) plan and conveyed GNCC's full support. Additionally, he stated, there was agreement to support the NBGC and any consequent public petitioning or political action relative to any proposed Charter amendment. He urged Council to move forward with adoption of the proposed ordinance. Council Member Wiseman thanked Mr. Reagan for his attendance and contribution and stated that she hoped to see him in attendance at future Council meetings.

Council and Attorney Passidomo discussed various means of ensuring that interior buildings would be allowed only on large parcels like Grand Central Station. Vice Mayor Galleberg said he believed that first reading of the ordinance should be finalized that day and the second reading on June 18, 2003, despite the outcome of the particular provision proposed by Attorney Passidomo.

Council Member MacIlvaine then stressed the unanimity among members of the HONC with regard to the 42-foot height limit. He therefore warned against 49.5 feet proposed by Attorney Passidomo, giving credence to the sponsors of the Charter amendment who he said fear developers would be able to sway the Council with specific exceptions. Further, Mr. MacIlvaine asserted that the Council had been provided with neither architectural drawings nor a substantive

site plan, except for the assertion that 49.5 feet is needed; this, he noted, had been presented just two days prior to the vote on the proposed ordinance at first reading.

While acknowledging the diligence in preparation of the draft ordinance, Vice Mayor Galleberg nevertheless pointed out that an opportunity had arisen to incorporate the strategic Grand Central Station property into the “D” Downtown district, which would be beneficial to the community despite the lateness of the request. City Attorney Pritt advised that all amendments, which are considered substantive, must be completed at that meeting in order to avoid the necessity of another first reading.

The Council, along with Attorney Passidomo and City Attorney Pritt, discussed various changes in the amendment submitted by Mr. Passidomo. A revised draft was presented to Council following the recess which appears below.

Council Member Wiseman asked if the spatial perception for interior residential buildings would appear significantly taller than comparable, nearby commercial or mixed-used buildings. Planning Director Lee expressed the opinion that from a line-of-sight, the 49.5-foot interior building would not appear significantly taller than 42-foot buildings and would blend appropriately. Council Member MacIlvaine requested assurance from Attorney Passidomo that the 49-foot rooftops would not be seen from the street.

Mr. Passidomo stated that the designs were made with 75% landscaping opaqueness according to City code, which could be increased to 100% if needed. He further advised that his client, Jack Antaramian, had contracted to purchase the Grand Central Station site only after the HONC had disbanded. He characterized the Grand Central Station property as the catalyst to encourage development of the “D” Downtown district. He said, however, that 12 units per acre would be workable with the design plan being viewed by Council.

Mayor MacKenzie questioned whether a PD (Planned Development) on the Antaramian/Grand Central Station site would be limited to 42 feet. Planning Director Ron Lee confirmed that a 42-foot limit would be imposed for commercial buildings but not for residential. He also said that any building with a commercial component would be limited to 42-feet, but within a mixed-use project, an exclusively residential building would not be subject to the 42-foot height limit.

Expressing concern that within a PD an exclusively residential project of over 42 feet could be approved by four affirmative votes, Council Member Wiseman suggested incorporating the height limitations and 12-unit per acre density maximums into the Comprehensive Plan as a means of illustrating Council’s commitment to controlling growth. Furthermore, Mrs. Wiseman stated, the developer would not be able to receive a PD approval inconsistent with the Comprehensive Plan. Mr. Lee said that such an amendment could be accommodated within the current Comprehensive Plan amendment cycle. Mrs. Wiseman further noted that it adds an element of time, keeping the developer from getting PD approval inconsistent with the Comprehensive Plan. Additionally, she added, a Comprehensive Plan amendment would proceed to the State, giving more time for the public comment. Council Member MacIlvaine concurred, noting that this would add stability to the goals of the district. After further discussion, action on Council Member Wiseman’s proposal appears below.

MOTION by Wiseman to DIRECT STAFF TO FORMULATE A PROPOSED COMPREHENSIVE PLAN AMENDMENT TO BE HEARD BY THE PLANNING ADVISORY BOARD IN JULY TO INCLUDE HEIGHT AND DENSITY CONTROLS PROPOSED (SPECIFICALLY ADDRESSING IF A HEIGHT LIMIT FOR INTERIOR BUILDINGS IS ALLOWED AT 49.5 FEET, A 12-UNIT-PER ACRE MAXIMUM DENSITY IS SPECIFIED IN THIS INSTANCE). *This motion was seconded by MacIlvaine and carried 5-0 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes)*

Council again addressed revisions to the amendment proposed by Attorney Passidomo. Among the issues raised was refinement of the language in relation to FEMA elevations.

Attorney Passidomo also reiterated his client's commitment to build only 12 units per acre, for a total of 212, as well as dedicating Third Avenue South as a public right-of-way; however, he requested that this dedication not equate to a reduction in that total number of units. Additionally, Mr. Passidomo said that other criteria could be defined to address the entire development site, including any land that might ultimately be dedicated as a public right-of-way.

Council Member Wiseman urged that time be allotted so staff could address various amendments discussed and allowing the first reading to be effected at that meeting. Mayor MacKenzie agreed that Attorney Passidomo, Planning Director Lee, and City Attorney Pritt should meet during a recess followed by Council's decision as to whether amendment language proposed by Mr. Passidomo would be added to the ordinance.

Recess: 4:57 p.m. to 5:45 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened

(It is noted for the record that revisions formulated during the above recess are appended as Attachment 6.) City Attorney Pritt noted that four substantive changes had been made: (as well as an insubstantial change denoting that this would be added to Section 102.843): 1) The exclusively residential interior building definition would be changed in Subsection 1 to state "located at least 100 feet from any public street" as opposed to the former text "the nearest through public street"; 2) Subsection 2 (ii) would state "any public street" rather than "the nearest through public street"; 3) Subsection 6 was added to indicate "not exceed an overall density of 12 units per acre for the entire building site, including land dedicated by developer of the entire development site to public right-of-way"; and 4) Section 102-850 Maximum Building Height Subsection (a) was revised relative to Exclusively Residential Interior Buildings to indicate "maximum height shall be limited to 3 stories of residential use and 42 feet over one story of parking measured from the first floor residential elevation to the peak of the roof or the highest point of any appurtenance attached to the roof." Mr. Pritt explained that this would replace "up to a maximum height of 49.5 feet measured from the first floor FEMA elevation to the peak of the roof or the highest point of any appurtenance attached to the roof." The last sentence was separated as it applied to both "a" and "b," he noted. He also pointed out that he did not agree with Attorney Passidomo's inclusion of Subsection 6 in Section 102-843.

Council then reviewed this draft making various suggestions for amendment. Council Member Wiseman noted that while last-minute drafting is not a preference; she nevertheless urged Council to approve the ordinance on first reading notwithstanding the fact that Council might

fine-tune this material after reflection. Council then proposed various amendments relative to the method for determining how height of interior residential buildings would be measured from FEMA elevation. Council Member Wiseman also urged that the ordinance be clear in its recognition of the parcel's dedication of public right-of-way as a public benefit in the part played in reinstitution of the City's street grid system.

After introduction of various other suggested amendments, Council Member Russell noted that citizens with whom he had spoken had expressed concern about what he characterized as last-minute decision making by Council. Acknowledging the right of Attorney Passidomo's client to participate in the dialog as a potential property owner, nevertheless, he said, regulations should not be tailored to one parcel. However, he stated, the HONC had compiled a district-wide ordinance but had not considered the advantages derived from very large parcels that could be assembled while still maintaining the overall goals of the "D" Downtown district. Additionally, he said he recognized the importance of this parcel being a catalyst for the entire district and that it represents an immeasurable impact. He said that not only would he require careful analysis of the proposed changes prior to second reading, but that the public should be afforded the opportunity to comment.

In response to Council, City Attorney Pritt advised that first readings must continue to occur until substantive drafting is completed and that seven days are required for the notice of the first reading and five days for the second. City Manager Kevin Rambosk also requested additional opportunity for the staff to review the changes discussed at this meeting and to inform the public.

Vice Mayor Galleberg however characterized the issue as straightforward. He said in fact it had to do with consideration of a 42-foot residential building being constructed over first-floor parking when the building is not visible from the street; the benefit is to bring the large Antaramian/Grand Central Station project into the 41-10 (Heart of Naples) district. If not addressed, he said he perceived the following: 1) the plan would return as a PD; 2) the regulations would require amendment soon after passage, which he said should be avoided; 3) Council might be asked to consider a variance; or 4) without a provision as proposed, the project would not be feasible. He said he did not believe that Council would be given a better opportunity for a project of this quality on this site.

Mr. Russell however continued to maintain that Council would be open to criticism for making changes at that time without further study.

Council Member Wiseman pointed out that Council could likewise recess for a period of days without having to call a special meeting or allowing the ordinance to remain unresolved over the summer hiatus. A brief discussion ensued regarding Council Members and their respective schedules, with Council Member MacIlvaine urging a decision that day rather than rescheduling.

Council Member Russell noted that the Grand Central Station property could in fact be considered a PD which he said would be a legitimate option. Council Member Wiseman said that the Antaramian/Grand Central Station project is not at the point where it could be brought before Council as a PD but, rather, Attorney Passidomo was seeking accommodations for his client based on preliminary observations and due diligence. She further stated that the proposed

changes would in fact afford some certainty. Mrs. Wiseman added that if Council suggested that the Grand Central Station developer return with a PD, the property would not be redeveloped in the near future.

Mayor MacKenzie expressed concern with amending an ordinance to accommodate a single parcel, although if the provision were also to be available to other “assembled” sites, the right-of-way issue should again be analyzed. She agreed with other Council members who expressed reservations regarding making a decision relative to the requested revisions at that meeting. Further she noted that on-street parking had not been allowed on developments of that size in the “D” Downtown district but questioned whether on-street parking would be available specifically to this client based on the contention that they rightfully owned and built the street but granted the City right-of-way.

After further discussion of the adoption process, Mayor MacKenzie asked City Attorney Pritt whether the Council could vote separately on the additional language presented by Attorney Passidomo or on the ordinance as a whole, incorporating the language with the understanding that it could be revised prior to June 18. Mr. Pritt suggested that Council vote on all the amendments and finalize a decision on the aforementioned Options 1 or 2. Vice Mayor Galleberg also noted another section where the October 1, 2003, date should be revised to 2004.

Mr. Pritt indicated that in Section 102.852(1) “Spatial massing: Maximum building height including residential buildings...” should be deleted, as building height is covered in Section 102.850. In addition, Section 102.850 should be revised to state “...the maximum height for buildings, except residential, shall be limited to 3 stories and 42 feet...”

Council Member Wiseman and Vice Mayor Galleberg then suggested revisions to Section 102.843 which would apply a density of 12 units per acre to the entire development site, including land within said site dedicated to the City for public right-of-way.

City Attorney Pritt reviewed suggested revisions to Section 102.850(b), indicating that three-story, exclusively-residential buildings be 42 feet measured from FEMA. Attorney Passidomo however characterized the change as dramatic and one that would have the effect of undermining his entire proposal. He said that the first floor elevation should be the point of measurement, not FEMA.

After further discussion, Vice Mayor Galleberg quoted Section 102-850(b) as follows: “For all Exclusively Residential Interior Buildings, maximum height shall be limited to 3 stories and 42 feet measured from the higher of first-floor FEMA elevation or 8 feet above existing grade to the peak of the roof or the highest point of any appurtenance attached to the roof.” Mr. Passidomo indicated that his interpretation of Mr. Galleberg’s drafting was that it was 8 feet to the first floor; however, he had heard previously 8 feet to the top of the garage with 2 feet thereafter before starting the first floor. Mr. Galleberg noted that the proposal asked for 7.5 feet of height for parking and that he had rounded the number up to 8 feet, so as to meet this concern.

Charles Thomas (non-registered speaker) addressed this issue by stating that the 7.5 feet was a measurement above FEMA, and FEMA measured 2-1/2 feet above grade. Therefore, where

there was not parking beneath a building and it was not an interior residential building, the measurement would be taken 42 feet from FEMA to the absolute top of the roof. In a situation where parking would be introduced into an interior building, the measurement would essentially be 49.5 feet from that same baseline, which would be FEMA. Therefore, Mr. Thomas said, it would be workable if the first residential floor were to be no more than 7.5 feet above FEMA. He also pointed out that 8 feet clear would be needed in the garage below the structural members, and then the floor must be supported, which would encompass approximately 2 feet.

Attorney Passidomo also pointed out another area of concern in Section 102-851(3)(b) regarding residential first floors. He stated that Planning Director Lee was of the opinion that this dealt with buildings on the frontage line, but Mr. Passidomo nevertheless requested an amendment as follows: “The first floor elevation on frontage lines.....” This revision would provide explicit clarification on building on the frontage line, he stated.

After additional discussion relative to revision of the proposed language, Council Member Wiseman observed that it was the Council’s intent to allow residential interior buildings, as defined, to enjoy exactly that which is allowed for any other buildings in the District with the exception of up to 8 feet of parking beneath. Drafting of the respective language could therefore be based on the staff’s expertise over the upcoming two-week period, she said. City Attorney Pritt, however, expressed the opinion that the language should be completed before adjournment. Mr. Pritt also expressed frustration at what he deemed last-minute changes which should have been submitted to the Council earlier. Attorney Passidomo countered by describing the changes as stylistic and contended that substantive changes were not being made. Mr. Pritt however opined that the revisions were in fact substantive. Mayor MacKenzie concurred that the changes were substantive, particularly as it applies to consideration of buildings that would be taller than three stories.

Council Member Russell recommended proceeding to second reading without incorporating the proposed language so that it could be fully reviewed. Mayor MacKenzie agreed. If Attorney Passidomo’s proposal could be accommodated at second reading, Council would do so at that time, he said. Mr. Passidomo received confirmation from Mayor MacKenzie that it was Council’s intent to take final action on the “D” Downtown amendment prior to its summer recess and was willing to hold a special meeting, if required.

Council then discussed Options 1 and 2 as presented (Attachment 7) which dealt with rooftop parking. Mayor MacKenzie pointed out that Option 1 does not preclude construction of a fourth level of parking and dedicating it to the public, it merely does not expressly approve it. Option 2 does, however, specifically approve it, she said.

Council Member Russell stated his support of Option 2 with the addition of “third floor” added to the end of the fifth line. Mayor MacKenzie, however, stated that she would be unable to support parking on the third level rooftop because of a strong conviction it would not be in compliance with the height-limiting Charter amendment. She said she also felt that it would engender litigation which had already accounted for approximately \$1-million per year. This must stop, she said. In a further exchange with Council Members Wiseman and Russell, Mayor

MacKenzie said that while the “D” Downtown ordinance would be an overall benefit to the district, a positive start would not be achieved if one of the provisions was not within the law.

Noting that any parking structure requires a conditional use, Vice Mayor Galleberg pointed out that dedication of the ground floor to the public would be a beneficial aspect to approval of a petition; however, the ordinance does not preclude the use of the third floor without a dedication to the public. The only limit is 42 feet, he said. Council Member Wiseman pointed out however that the language in paragraph 6 (Option 2) could be revised to require dedication of the entire ground floor if third floor rooftop parking is to be allowed. Mayor MacKenzie said that if the words “on the rooftop” and “third floor” were deleted, she would be able to vote in favor of the ordinance.

Council Member MacIlvaine suggested the language, “.... permitted to provide supplemental parking on the second floor rooftop,” stating that he would continue to compromise by granting parking on the second floor rooftop only, if the rest of Council agreed. Mr. Russell however said that he did not believe parking on the second-story rooftop would provide an adequate financial incentive for the developers to provide ground-floor parking.

Council Member Wiseman then proposed language that would make it clear that all parking structures must undergo the conditional use process. This, she said, would address Mayor MacKenzie’s concern about a proliferation of rooftop use, regardless of the level, and contain a specific prohibition of third-floor rooftop parking unless a developer dedicated the entire ground floor to public use.

Council Member Russell said that he believed that obtaining permission to use the rooftop should only be possible in exchange for providing public parking on the ground floor, therefore indicating to future Councils that a public benefit was to be derived. Mayor MacKenzie however stated that the ordinance currently provides for that procedure, but Mr. Russell noted that in order for Council to grant a conditional use for rooftop parking, some public access must be granted, at a ratio yet to be determined. Furthermore, Mr. Russell explained, it gives the Council the opportunity for debate and compromise before accepting the conditional use. Council Member MacIlvaine stated that it additionally allows the Council to designate how many floors are to be built.

However, Mayor MacKenzie confirmed with Planning Director Lee that a property owner could presently build a three-story parking garage. Council Member Wiseman nevertheless noted certain economic realities since building parking structures is costly. Therefore, incorporating two levels of parking within a structure, she said, with some parking dedicated to public use, would result in surface parking which is not beneficial to the plan. Mrs. Wiseman therefore expressed the opinion that a developer would not be interested in building a parking structure in the aforementioned scenario.

Vice Mayor Galleberg suggested adding to paragraph 6 of Option 2 a statement to the effect that dedication of the ground floor for public parking is a desired goal and should be given due consideration through the conditional use process. He described this as an incentive to developers, primarily those who would be implementing relatively large parking structures.

Council Member Wiseman however expressed skepticism that this result would not be an overall reduction in surface parking which is extensively employed in the district at the present time.

Mayor MacKenzie then noted that the changes proposed by Attorney Passidomo, and discussed earlier in the meeting, would not be incorporated at that time but suggested that the staff work with Mr. Passidomo to identify possible amendments before June 18.

Notwithstanding the proposed Antaramian/Grand Central Station project of 12-units per acre maximum, Council Member Wiseman also observed that the proposed 30-unit-per-acre cap would attract opposition. She therefore suggested that this, too, be reduced in light of the extent of commercial and mixed-use development already present. She also predicted that this would engender proposals of greater density than 12-units per acre, noting that 22 units per acre is the high-density residential standard in the Comprehensive Plan future land use map. Additionally, she questioned the advisability of setting the open space fee for extra density at \$20,000 per unit, suggesting that a staggered rate should be imposed since by incorporating more units, a developer's profit proportionally increases. However, Mayor MacKenzie cautioned that there may be a detrimental effect on the development of smaller, affordable housing units for the people who work in Naples. Concurring with Mayor MacKenzie's reasoning, Council Member Russell said that he found it a disincentive to raise the fee.

Council Member MacIlvaine noted that Consultant Christopher Brown had convinced the Heart of Naples Committee (HONC) that 30 units per acre was economically practical and a lower density might produce lower economic viability; this amount had in fact been based on acquisition and demolition costs. Mr. MacIlvaine therefore contended that the 30-unit cap should be maintained. Council Member Wiseman reiterated her prediction that more requests would therefore approach the maximum which, she said, she believed to be too dense.

Vice Mayor Galleberg maintained however that flexibility and incentives would be the net benefit of the 30-unit-per-acre cap. Council Member MacIlvaine made the motion that appears below and noted that the discussion regarding the Grand Central Station project for exclusively residential interior buildings would be deferred for further consideration. (It is noted for the record that public comment was taken after the motion and second but before the vote.)

MOTION by MacIlvaine to APPROVE FIRST READING OF ITEM 12 AS AMENDED: 1) deleting Section 102-852(1) Spatial massing 2) amend Section 102-852(6) Plan preparation "For any project involving a building addition of 500 square feet;" 3) Section 102-860(7) capitalize Division; 4) revise all dates regarding computation of fees to commence on October 1, 2004 (Section 102-847(2)(c), Section 102-856(3), Section 102-860(2), and Section 102-860(7) and 5) select Option 2 for Section 102-860(6) as amended "...may be permitted to provide supplemental parking on the third floor rooftop."; seconded by Galleberg and carried 4-1 (Russell-yes, Galleberg-yes, Herms-absent, Wiseman-yes, Taylor-absent, MacIlvaine-yes, MacKenzie-no).

Public Comment: (7:26 p.m.) Falconer Jones, 620 Sandpiper Street, a member of the HONC, expressed the belief that private enterprise, not the City, would provide the aforementioned public parking spaces. He stated a preference for fewer parking garages with the additional deck/rooftop spaces. Parking on the top level could be screened and structured, he

said, and would be environmentally advantageous and better for the pedestrians. He further contended that few incentives remained for developers due to revisions to the draft ordinance. He also concurred with lowering allowed density to 12 units per acre but opposed lowering the 30-unit-per-acre cap or increasing the fee to build the additional units within a project. He also suggested that the open space fee be tied to a lot size rather than unit size. He concluded by urging approval of the ordinance and requesting the Council to investigate options such as screening the top level of parking or restricting parking garages to less than 42 feet.

Mike Rinaldi, 1667 Bonita Court, stated that, based on his banking and accounting background, he was troubled by the \$20,000 open space incentive and stated that he agreed with Council Member Wiseman that the developer who chose to increase density would derive a sizeable benefit. Mr. Rinaldi then depicted an example of the profit which could be achieved from a unit costing \$350,000, or an approximate 53% margin. He asked that the Council therefore reconsider unintended consequences. Mr. Rinaldi also expressed the opinion that the consultant who provided the density advice to the City might not have had expertise in the financial area and requested the Council reconsider density. He further predicted that the aforementioned high profit margin would incite the no-growth constituency.

Acknowledging Mr. Rinaldi's financial analysis, Vice Mayor Galleberg nevertheless encouraged Council to concentrate on the purpose of the payment which is to acquire green space and that the \$20,000 had been based on the cost of acquiring that green space. Council Member MacIlvaine concurred.

Council Member Russell reiterated that careful scrutiny would be afforded through the conditional use process before parking would be permitted atop the third floor and that four Council Members did not concur that this was a violation of the height limitation in the Charter. Mayor MacKenzie, however, characterized this as an unnecessary incentive for developers and that possible litigation could result in an unfavorable consequence for the district.

Council Member Wiseman contended that a developer could go from 12 units to 30 units for a few hundred thousand dollars in payment for green space, and again requested that Council reconsider either the fee or the total maximum. Further, she pointed out, the developer must have a meaningful incentive to provide open space; otherwise, the City would have a difficult time providing it. Additionally, Mrs. Wiseman contended that acquiring potential open-space sites is not being done as part of the ordinance, and therefore expressed concern that the City would find itself in the position of paying considerably more than the fair market value for green space as it had done for the Naples Preserve property.

During the roll call vote on this item, Council Member Wiseman also commended all the stakeholders who had advised the Council regarding the development of the "D" Downtown ordinance and said that it accomplished most of the goals set. Further, she characterized zoning by Charter amendment as too complicated. She predicted that the proposed regulations would control unbridled growth yet spur positive redevelopment, citing the beneficial aspects of the landscaping plans, and urged the Council to assure that the public is made aware of the work that had been done. Mrs. Wiseman suggested a short documentary for this purpose. In conclusion, Mrs. Wiseman said that, despite the reservations she had noted, she had confidence that the

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existing or future Councils would make the necessary corrections to improve the ordinance, if needed. In casting a negative vote, Mayor MacKenzie thanked Council Member MacIlvaine and the HONC but maintained her belief that the ordinance contained an illegal element.

PUBLIC COMMENT

None. (See also Page 13.)

ADJOURN

7:43 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Bonnie J. McNeill, Recording Specialist

Minutes Approved: 8/20/03