



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – June 18, 2003 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bonnie R. MacKenzie, Mayor
Gary Galleberg, Vice Mayor

Council Members:

Joseph Herms
William MacIlvaine
Clark Russell
Penny Taylor
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Robert Pritt, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
Ron Wallace, Development Services Director
George Archibald, Traffic Engineer
Laura Spurgeon, Planner
Police Officer Michael O'Reilly
Police Officer John Eaton
Jon Staiger, Natural Resources Manager
Susan Golden, Planner

Karen Kateley, Administrative Specialist
Bonnie McNeill, Recording Specialist
Pam Watson
Henry Kennedy
Erika Hinson
Marylin Elwood

Media:

Dianna Smith, Naples Daily News

Other interested citizens and visitors.

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

Reverend Michael Harper, Naples Community Hospital Chaplain

ANNOUNCEMENTSITEM 3

Celebrate the Arts Month proclamation presented by Vice Mayor Galleberg

SET AGENDA.....ITEM 4

Item 22 – Tourism Agreement with Tourist Development Council (TDC) for Doctors Pass monitoring

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

Item 23 – Tourism agreement with Tourist Development Council (TDC) for Gordon Pass monitoring

MOTION by Taylor to ADD ITEM 23; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 24 – Acceptance of replacement water line easement at Grey Oaks

MOTION by Taylor to ADD ITEM 24; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 25 – Petition to add Naples Bay to Surface Water Improvement and Management (SWIM) program

MOTION by Taylor to ADD ITEM 25; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 26 – Progress review of Fifth Avenue South Master Plan by Andres Duany

MOTION by Wiseman to ADD ITEM 26; seconded by MacIlvaine and carried 6-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

Item 27 – Utility relocation agreement with Florida Department of Transportation (FDOT) for US 41

MOTION by Taylor to ADD ITEM 27; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 28 – Authorize drainage/resurfacing projects with Florida Department of Transportation (FDOT) for US 41

MOTION by MacIlvaine to ADD ITEM 28; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 29 – Authorize letter conveying City's position on beach renourishment/maintenance utilizing TDC funds

MOTION by Galleberg to ADD ITEM 29; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 30 – Support Regional Offsite Mitigation Area (ROMA) in vicinity of Golden Gate wellfield

MOTION by Taylor to ADD ITEM 30; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Galleberg to SET THE AGENDA ADDING ITEMS 22, 23, 24, 25, 26, 27, 28, 29, 30, REMOVING ITEM 10-g FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION, AND WITHDRAWING ITEM 16. This motion was seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

PUBLIC COMMENT.....ITEM 5

Pam Watson, 463-17th Avenue South, spoke in favor of historic preservation and commended the Council for the ordinance being considered imposing a waiting period for demolition of historic structures. In addition, she asked that the Council take a proactive stance in protecting landmark sites through taxation or zoning incentives.

ORDINANCE 03-10093.....ITEM 6

AN ORDINANCE AMENDING DIVISION 29, D DOWNTOWN DISTRICT, OF ARTICLE II OF CHAPTER 102 OF THE CODE OF ORDINANCES IN ORDER TO MODIFY PROVISIONS OF THE D DOWNTOWN ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:15 a.m.). City Attorney Robert Pritt summarized his memorandum of June 16, 2003, (Attachment #1) which provided a legal opinion of “floor” relative to rooftop parking, pursuant to the Charter height restriction. Mr. Pritt opined that “floor” and “story” are synonymous and that parking on the third story is not prohibited by the Charter; however, he advised that Council could restrict top-level parking, or any other use, if so desired.

Council Member Herms requested clarification relative to what rooftop activities would then be prohibited under the Charter, citing a restaurant owner deciding to make use of the rooftop. Mr. Pritt indicated that in light of his aforementioned interpretation, it would be necessary for Council to further address specific usage. Council Member Russell interjected however that Council had directed the staff to revise the ordinance to prevent other rooftop usage, and Mayor MacKenzie noted that this option had previously been available to any commercial building. Council Member MacIlvaine moved for approval of the ordinance on second reading and Mr. Russell seconded.

Public Comment: (9:25 a.m.) **Marylin Ellwood, Tenth Street South**, indicated that she owns property on both Tenth Street and Fifth Street South. She expressed her thanks to Heart of Naples Committee (HONC), Committee Chair MacIlvaine, the Planning Advisory Board (PAB), the Community Redevelopment Agency (CRA), City Council, City Manager Kevin Rambosk, Planning Director Ron Lee, and Planner Laura Sturgeon. She urged the Council to move forward as this ordinance would stimulate development and create a viable and diverse downtown area, but nevertheless do so in what she described as a controlled and responsible manner. **Erika Hinson, 347 Central Avenue**, President, Old Naples Association, noted that she was representing the Board of Directors. While characterizing the 41-10/Heart of Naples plan as positive, Ms. Hinson nevertheless stressed the importance of restricting density to 12 units per acre and disallowing trade-offs or buy-outs for developers to receive permission to exceed that level. She took the position that the lot coverage should remain the same as that in Old Naples/Lake Park, thereby alleviating green space concerns. In addition, she stated, the building height should be capped at 42 feet, rooftop parking should not be permitted, and rooflines should be similar to those in Old Naples and Lake Park. She also requested Council’s support of small businesses within the “D” Downtown area and expressed concern for their continued viability.

In response to Council Member Herms, Planning Director Ron Lee explained that if a property owner were to remodel an establishment, an appearance before the Downtown Improvement and Redevelopment Committee (DIRC) would be required for such things as façade or landscaping changes, and an appearance before the Design Review Board (DRB) for color changes. In further discussion Council Member Herms ascertained that if a property were zoned Planned Development (PD), despite its location in the “D” Downtown district, it would not be subject to this same process in order to alter landscaping or exterior colors. However, Mr. Lee pointed out that if a PD were to undergo changes or additions of over 1,000 square feet, a separate DRB process would be imposed.

Although Mr. Herms noted that a property owner could be cited for violating an unknown district regulation, Vice Mayor Galleberg said he believed that property owners in the “D” Downtown District to be sufficiently informed and aware of the upcoming ordinance changes. Mr. Galleberg also pointed out that DIRC had been modeled after the Staff Action Committee (SAC) for Fifth Avenue, and property owners have considered SAC beneficial rather than restrictive. Mr. Galleberg also cited enthusiastic responses he had received from property owners regarding the 41-10/Heart of Naples plan. Conversely, Mr. Herms stated that he was unaware of any property owners who realized that they would be required to appear before DIRC to change the color of their buildings or landscaping.

Council Member Russell also expressed the belief that the constituency understands the value of a cohesive district and that the ordinance would accrue to better properties, better businesses, and a better overall district. Council Member Wiseman also noted that existing property owners would not be forced to implement change or redevelop their properties. In response to concerns previously expressed by Council Member Herms, Planning Director Lee said that he would consult with the City Manager and City Attorney to develop an administrative policy to address proposed changes to properties during this interim period until the DIRC is established.

Council Member Taylor requested a list of activities that would require a conditional use permit. Mr. Lee responded by noting a table of conditional uses contained in Section 102-844 and also by citing such examples as increased density greater than 12 units per acre and construction of parking structures. Miss Taylor noted that conditional uses require a simple majority vote of Council, and Mr. Lee further confirmed that an application fee of \$425 would also be applicable. While Mr. Lee advised that the ordinance established a framework for options available to a property owner, Miss Taylor questioned how a landowner would be able to ascertain a property’s value until density had been approved, said density ranging from 12 units to a 30-unit maximum. Therefore, Miss Taylor said that she was of the opinion that the “D” Downtown ordinance favored larger developers who had systems in place to handle situations such as conditional use application, whereas the same process could represent an obstacle to single owners of smaller properties.

Council Member Herms then noted that a developer could circumvent the ordinance restrictions by requesting a rezone to PD, requiring a majority approval of Council, and in actuality result in no limits if four of seven Council votes were in favor. Council Member MacIlvaine however pointed out that the PD was neither new to this ordinance nor exclusively for the “D” Downtown district. Council Member Wiseman reminded Council that an amendment to the Comprehensive

Plan was being made to address this concern which would make it more difficult to exceed the limits stated. Mrs. Wiseman further noted that a petitioner would undergo a more extensive, time-consuming process and that it would be much more difficult to amend the Comprehensive Plan than the “D” Downtown ordinance.

Council Member Herms however said that he favored having the voters decide the specific maximum density and that it would also not be advisable to revise the Comprehensive Plan prior to voter input. He further noted that the Comprehensive Plan currently contains a limit of 50% lot coverage for commercial buildings, although the staff had not included that percentage in the ordinance, and that a building of up to 69% lot coverage had already been approved for construction. Therefore, Mr. Herms said that he was not confident that zoning would provide stability to the District since, unlike a Charter amendment, zoning regulations could be circumvented.

Vice Mayor Galleberg emphasized that certainty is in fact provided in the ordinance, that property owners know what they are allowed, and that they realize when a conditional use from Council is required. Council Member Herms responded by citing the uncertainty represented by a potential increase in density from 8 to 30 units per acre on the property value alone. Mr. Herms also likened a 30-unit per acre structure to a Chicago tenement, but Mr. Galleberg countered by stating his belief that owners of small properties are through individual research indeed capable of ascertaining the economic value of a specific property.

Council Member Taylor asked whether the 41-10/Heart of Naples plan had been integrated into the remainder of the City to determine whether the predicted growth would be appropriate. Planning Director Lee advised that a comprehensive analysis had in recent months been provided to the Council with regard to the impact of traffic, building heights, density, and intensity of use. The analysis, he said, showed the current infrastructure to be adequate to support the additional residential units and that traffic models for the years 2005 and 2025 had indicated sufficient capacity to support the development. Miss Taylor asked whether additional traffic from street fairs and attractions had been included in the analysis. City Manager Rambosk replied that generally accepted engineering practices had been used for capacity loading and levels but that street fairs had not been included.

A further discussion commenced regarding projected residential traffic which Mr. Lee advised had been based on 1,652 (revised to 1,416) residential units resulting in an assessment of sufficient capacity in 2005 and 2025 with the existing traffic levels increasing approximately 5 percent each year. Council Member Herms noted that even with the reduction in residential units, approximately 16,000 trips per day would be generated from the additional development. Council Member Russell however asserted that the infrastructure is sufficient as planned, residential and commercial components having existed in the District for many years. Mr. Herms nevertheless took the position that capacity notwithstanding, the people in those neighborhoods do not want the additional traffic.

Council Member Wiseman requested that landscaping referred to in Section 102-858(2)(d), Nonconformities, be described as “on-site” for better clarity. City Attorney Pritt agreed that this change would not be considered substantive. Council Member MacIlvaine, maker of the motion, also concurred with this amendment. (It is noted for the record that comments by various Council Members during the roll call vote on this item appear following the motion.)

MOTION by MacIlvaine to ADOPT ORDINANCE 03-10093, AS AMENDED, ADDING “ON-SITE” TO SECTION 102-858(2)(d), Page 31, BEFORE “LANDSCAPING IMPROVEMENTS”. This motion was seconded by Russell and carried 5-1-1 (Russell-yes, Galleberg-yes, Herms-abstained, Wiseman-yes, Taylor-no, MacIlvaine-yes, MacKenzie-yes). (See Attachment #2, Form 8-B memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

Council Member Herms disclosed he would be unable to vote on the ordinance as he owns property within the “D” Downtown district boundaries.

Council Member Russell characterized the process as illustrative of good government, pointing out that the citizenry had been included from the onset. Council Members, he also said, had been elected to make decisions on behalf of the community and described the ordinance as a positive step for both the district and the City, urging that continued debate be based on factual information.

Vice Mayor Galleberg acknowledged the time and effort which had been devoted to development of the “D” Downtown ordinance which, he said, represents an improvement in the current zoning. Comments from the public, property owners, neighborhood associations, and others have all been appreciated, Mr. Galleberg stated, and predicted that the improvements would benefit surrounding neighborhoods, the actual district, and the overall City.

Council Member Wiseman noted that, while imperfect, the ordinance nevertheless represents a vast overall improvement. However, she voiced her disapproval of the fee imposed for extra density having been decreased to \$20,000, noting that Consultant Christopher Brown had taken the position that developers would pay instead of providing open space. A lower fee only encouraged this, she added, and characterized the revenue so derived as a slush fund, absent a plan for acquiring green space. Mrs. Wiseman also cited landscaping and infrastructure components as providing great improvement to the 41-10/Heart of Naples section.

Council Member Taylor advised that she had served on the predecessor group to the HONC and said that she felt the area was in fact in need of ~~only slight~~ some improvement. Parking, she explained, currently controls density, but the committee on which she previously served had concluded that parking garages must achieve a supermajority vote. However, Miss Taylor said, she was of the opinion that developers would now be rewarded for building parking garages as well as allowing parking on the fourth floor and dedicating the bottom floor for the public. She also took the position that this plan was more beneficial to the large developer than to smaller businesses, which would not benefit from the conditional use process. Furthermore, she stated, neither the Council nor the consultant had given serious consideration to the resulting population growth and questioned to what extent Naples could absorb more businesses and more residents. While citing positive aspects of the 41-10/Heart of Naples plan, she disagreed with the \$20,000

density fee, the parking garage concept, the unspecified lot coverage standard, and a maximum density of up to 30-units per acre. In conclusion, Miss Taylor stressed the need to preserve Naples' quality of life and noted that Old Naples standards had resulted in dramatically increased property values; an out-of-town consultant had however identified a market for the "D" Downtown district that does not exist, she said.

Council Member MacIlvaine stated that he envisioned the "D" Downtown district becoming a pedestrian-friendly village with parks funded by developers containing plazas and green space. A resident, he said, could walk from home to the workplace and take advantage of all the amenities provided, therefore characterizing the plan as practical and beneficial to citizens and property owners. He said he believed that overall citizenry does understand the plan and would benefit from this ordinance.

Mayor MacKenzie stated that the changes were being made for two primary reasons: to replace pavement with landscaping and to replace commercial with residential. She said both would be beneficial. She thanked Council Member Wiseman for requesting a legal opinion relative to parking on the third-floor rooftop, and acknowledged the contributions by Council Member MacIlvaine and the HONC for their work and dedication; they had made an extraordinary contribution to the well being of the future of the City, Mayor MacKenzie concluded.

In further discussion, Council Member Herms requested that property owners in the district be notified of the zoning changes enacted and a consensus was reached that a brochure be prepared by the Planning Department and mailed to the 41-10/Heart of Naples district. The brochure would answer prospective questions from property owners. It was also noted that the Comprehensive Plan amendment relative to height and density controls, requested by Council Member Wiseman at the previous regular meeting, was currently being prepared. Council Member Russell also suggested that a master plan addressing green space be compiled at the earliest opportunity. City Manager Rambosk advised that while streetscapes were being designed, Landscape Architect Gail Boorman was currently working on the Master Plan which was expected before the August CRA meeting. Council Member Taylor stated that it would be beneficial if the open-space locations could be identified so as to integrate them into the Master Plan.

Recess: 10:22 a.m. to 10:33 a.m. It is noted that all except Council Member Taylor were present when the meeting reconvened.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 10-a
May 7, 2003 Regular (as amended on Page 18), May 19, 2003, Workshop (as amended on Pages 2 and 9), and May 19, 2003 Special.

SPECIAL EVENTS ITEM 10-b
"Thursdays on Third" – Third Street South Merchant Association July 17, 2003, August 21, 2003, and September 18, 2003.

RESOLUTION 03-10094.....ITEM 10-c
A RESOLUTION ACKNOWLEDGING THE APPOINTMENT OF AMY TAYLOR BY THE COLLIER COUNTY SCHOOL BOARD AS A NONVOTING MEMBER TO THE CITY OF NAPLES PLANNING ADVISORY BOARD; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10095..... ITEM 10-d
A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES ARMY AND THE CITY OF NAPLES, PROVIDING FOR A PARTNERSHIP FOR YOUTH SUCCESS RECRUITMENT PROGRAM; AUTHORIZING THE CITY MANAGER TO EXECUTE THE MEMORANDUM OF AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10096..... ITEM 10-e-1
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND NAPLES MARINA SERVICES, INC., FOR THE PURCHASE OF A MERCURY 250EFI BOAT MOTOR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10097..... ITEM 10-e-2
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ROYAL PALM MARINA FOR THE PURCHASE OF A 2004 PARKER CENTER CONSOLE BOAT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10098..... ITEM 10-f
A RESOLUTION AUTHORIZING THE PAYMENT OF THE CITY’S PORTION OF DESIGN SERVICES TO DESIGN A COUNTY-CITY SEWER INTERCONNECT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to APPROVE CONSENT AGENDA (EXCEPT ITEM 10-g); seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

RESOLUTION 03-10099..... ITEM 11
A RESOLUTION APPROVING A THREE-YEAR USE AGREEMENT WITH THE NAPLES GATORS, INC., FOR CONDUCTING A YOUTH FOOTBALL PROGRAM AT FLEISCHMANN PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE USE AGREEMENT; DISBANDING THE FLEISCHMANN PARK YOUTH FOOTBALL PROGRAM COMMITTEE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:33 a.m.) who indicated that the City had previously approved a one-year lease agreement with Naples Gators for use of Fleischmann Park and that a renewal for three years was being requested. Council Member Wiseman recommended approval, stating that three years was considered appropriate to allow fundraising opportunities in order for the group to purchase equipment. Additionally, she noted the existence of cancellation provisions in the event the agreement was violated and also explained that Pop Warner references had been deleted, as the Gators no longer carry this affiliation. She said that certification procedures available through the City staff adequately cover this aspect.

It is noted for the record that Council Member Taylor entered the meeting at 10:36 a.m.

Council Member MacIlvaine stated that while the lack of a Pop Warner affiliation remained a concern for him, the collaboration that was evident between the Naples Gators and the Naples

High School football coaching staff had resulted in his support. He said that he holds the Naples High football coach and athletic director in high regard and that their association with the Gator program would provide a character-building component.

Public Comment: None. (10:38 a.m.)

MOTION by Wiseman to APPROVE RESOLUTION 03-10099 AS SUBMITTED; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Wiseman voiced her appreciation to the Board of Directors and volunteers of the Naples Gators program, acknowledging their importance to the community. She noted in particular that the program provides many opportunities for River Park youth. Council Member Taylor praised Mrs. Wiseman's involvement and commitment. City Attorney Robert Pritt advised Mayor MacKenzie that the committee, which had been formed to address the program at Fleischmann, could then be officially disbanded.

Public Comment: None. (10:40 a.m.)

MOTION by Wiseman to DECLARE FLEISCHMANN PARK YOUTH FOOTBALL PROGRAM COMMITTEE DISBANDED; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes)

**RESOLUTION 03-10125.....ITEM 10-g
A RESOLUTION ACCEPTING THE PROPOSAL FOR PROFESSIONAL SERVICES BY MUNICIPAL CODE CORPORATION FOR LEGAL ANALYSIS, AND FOR POTENTIAL RECODIFICATION OF THE CITY OF NAPLES CODE OF ORDINANCES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE ACCEPTANCE OF SAID PROPOSAL; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:41 a.m.). City Clerk Tara Norman advised that Council had been provided with a revised agreement based on dividing the project into two separate parts: Phase 1 would contain the research, the legal memorandum, and the conference with City staff; and Phase 2 would contain the remainder of the \$26,000 quote.

MOTION by Wiseman to APPROVE RESOLUTION 03-10125 (PHASE 1 ONLY); seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**ORDINANCE (First Reading).....ITEM 12
AN ORDINANCE AMENDING SECTION 94-32 OF THE CODE OF ORDINANCES IN ORDER TO ESTABLISH NOTICE REQUIREMENTS FOR THE ISSUANCE OF DEMOLITION PERMITS FOR CONTRIBUTING BUILDINGS; AND PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:43 a.m.). Mayor MacKenzie noted correspondence from a homeowner who deemed inclusion of his home in the Historic District to be an undue burden. However, Planning Director Ron Lee indicated that he would further address whether the evaluation criteria allowed this home to be deleted from the list as it is considered merely a contributing structure and not actually within the Historic District. Mr. Lee however added that certain benefits are afforded historical structures, such as exemption from

FEMA (flood elevation) requirements, and that he would subsequently inform the aforementioned individual of these benefits.

Vice Mayor Galleberg commented however that inclusion was an objective process of designating a structure as opposed to a process wherein a property owner could request either inclusion or exemption.

City Manager Rambosk pointed out that as Council moves forward with discussion of the Historic District, public meetings, overviews, and informative discussions should be scheduled to elicit public response and that a mailing had notified respective residents of the demolition component. Planning Director Lee indicated that the 61 property owners, including commercial, would be invited to the Planning Advisory Board (PAB) workshop once the draft ordinance is finalized. In response to Council Member Taylor, Mr. Lee agreed to place information on the City's television channel and recommended also notifying the 61 currently listed property owners of federal law issues

In moving approval, Council Member Wiseman spoke of the 45-day waiting period as appropriate and also noted that a building permit and a demolition permit could be obtained simultaneously, thus decreasing the actual waiting period. Council Member MacIlvaine seconded the motion to approve.

Council Member Herms received clarification from Planning Director Lee that under Section 104.1.11(a) the aforementioned 61 designated historic structures have no restrictions on renovation or removal of landscaping, unless a demolition permit is sought. Mayor MacKenzie also stressed the need to protect certain trees which might be unknowingly destroyed by purchasers of older properties.

After further discussion, City Attorney Pritt advised that changing the words "historical structures" to "contributing buildings" within 104.1.11(a) could be accommodated at first reading, allowing for second reading on August 20.

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

MOTION by Wiseman to APPROVE THIS ORDINANCE AT FIRST READING, AS AMENDED, REPLACING "HISTORICAL STRUCTURES" WITH "CONTRIBUTING BUILDINGS" in Section 104.1.11(a). This motion was seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10100.....ITEM 7

A RESOLUTION DETERMINING AN OUTDOOR DINING PERMIT FOR VIVA ON 5TH LOCATED AT 898 5TH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Manager Kevin Rambosk (11:06 a.m.) who advised that A. J. Black, Vice President, would represent the petitioner. This being a quasi-judicial proceeding, Council Members made the following ex parte disclosures: Wiseman, MacIlvaine, Herms, Taylor and MacKenzie/no contact; Russell/numerous interactions with City staff and the community involving the establishment; and Galleberg/no contact but serves on Staff Action Committee (SAC) which addressed various issues relative to the site in question. City Clerk Tara Norman

then administered an oath to those intending to give testimony; all responded in the affirmative. City Attorney Robert Pritt advised that since Joelene Navy and A. J. Black were co-owners, Mr. Black would be allowed to appear as the representative.

Mr. Black addressed the issue of complaints about the establishment, noting that the general manager had been replaced some six week prior and that the owners were solving the problems inherent with a new business. He requested outdoor dining on both the Fifth Avenue South and Ninth Street sides.

Mr. Black disclosed a problem which had occurred with sidewalk crowding the prior Saturday necessitating police intervention. He noted that crowds can occur at any busy establishment, although Viva attempts to clear the flow of the sidewalk and the street. Council Member Russell referred to a charity event which had been hosted at that location despite Council's denial of usage of the second floor. Mr. Black responded that this had been conducted at no cost to the public, similar to sponsoring a private party in one's home.

In a dialog with Council Members Russell and MacIlvaine, Mr. Black indicated that although he had believed that outdoor dining had been grandfathered from the previous owner, he had removed the Fifth Avenue seating and retained it on the Ninth Street side. He also said that he had initially believed that he would be afforded an opportunity to address the Code Enforcement Board prior to making this change. It has not been his intention to violate City regulations, he added. Vice Mayor Galleberg received clarification that the establishment planned to offer outdoor dining throughout its hours of operation.

Planner Susan Golden referred to the request before Council (Attachment #3) and noted that adequate space for the pedestrians exists on both the Ninth Street and the Fifth Avenue South sides. Viva had complied with proof of insurance and the City was preparing a hold harmless agreement for the petitioner, Ms. Golden said. She also indicated staff's recommendation for approval of a maximum of 48 chairs with a maximum of 12 tables within the public right-of-way. Council Member Russell expressed the opinion however that tables positioned near the building were preferable to placement adjacent to the landscaping and provided better pedestrian flow. Ms. Golden however explained that the restaurants with outdoor dining adjacent to the landscaping had been in existence when outdoor dining regulations were established in 1991 so SAC had approved continuance.

Vice Mayor Galleberg inquired about any complaints with reference to noise or capacity regulations, pointing out that Viva appeared to be functioning more as a nightclub than a restaurant. However, he acknowledged that the recent State ban on smoking within restaurants would cause some customers to move to the sidewalk in order to smoke. City Manager Rambosk confirmed that all establishments having received Council approval for their activities had been advised that doors and windows must be closed; sound measurements are made from the property line, Mr. Rambosk advised. Mr. Galleberg noted that although a consequence of approving live entertainment petitions results in dealing with the noise and congestion, outdoor dining does promote the City's goals; therefore he said he would favor this petition. Mr. Rambosk nevertheless observed that outdoor dining was assuming more of a nightclub/lounge

atmosphere after 10:00 p.m. which, he noted, could lead to potential nuisance and noise problems on the sidewalk and street.

Council Member Taylor said that Council could however create rules that would allow outdoor dining but preclude the sidewalk from becoming an extension of the bar. In response to Council Member MacIlvaine, Planner Susan Golden explained that in this particular instance, façade limitations restrict Viva's outdoor dining to curbside table placement.

City Manager Rambosk reported that due to increasing problems with outdoor dining becoming a nightclub atmosphere on the sidewalk, the State as well as local law enforcement is considering a definition of restaurant/food service versus nightclub/lounge. Since the State controls time and service of alcoholic beverages, restaurant operation in the late evening hours may drastically change with a new interpretation, he advised. He said he would also be meeting with the Chief of Police and Emergency Services and property owners to address potential problems. Council Member Wiseman noted that New York City had been dealing with the ramifications of its smoking ban resulting in noise, nuisance, and violence associated with outdoor smoking and drinking.

Council Member Taylor then asked how the impact of both the new smoking law and a progressive increase in outdoor activity could be minimized; however, she said she had checked on three separate occasions between approximately 1:00-2:00 a.m. and had found the noise level at Viva's to be subdued and reasonable. Conversely, Council Member Russell advised that from his car he had been able to hear the music from the Four Corners (US 41 and Fifth Avenue South) intersection regardless of whether the doors were closed. However, he also pointed out that excessive noise could also be generated from recorded music with or without a disc jockey. Council Member Russell said that while many restaurants within the Fifth Avenue South area are being responsibly managed, others such as Viva are being irresponsible and constitute a nuisance to the community.

Council Member Herms asked what level of use had been approved for the former owners. Ms. Golden said that they did not have an outdoor dining permit because they had been grandfathered, which had prompted Mr. Black to make the assumption that this provision was also applicable when he purchased the property, she said. However, permits are not transferable from one owner to the next. Mr. Herms then received confirmation from Planner Golden that outdoor dining could in fact occur in the 41-10/Heart of Naples area and throughout the City for existing licensed restaurants who apply for a permit. If an establishment is located on a public right-of-way or adjacent to US 41, then that request would be presented to City Council, while outdoor dining permits for private property are issued administratively through the Planning Department, she explained. Mr. Herms also confirmed with Planning Director Lee that outdoor dining would also be permitted under the proposed "D" Downtown ordinance.

Vice Mayor Galleberg suggested that if Viva were to place outdoor dining adjacent to the dome on the Fifth Avenue side, thereby not deviating from the Code and procedures, wait staff would not be forced to deal with pedestrian traffic within the right-of-way.

Police Officers Michael O'Reilly and John Eaton then provided an overview of weekend outdoor dining activities at the site and, specifically, Saturday, June 14. Officer O'Reilly stated that the majority of his patrol time the prior weekend had been spent in the area of US 41 and Fifth Avenue South due to the large number of patrons on the sidewalks. The majority of the patrons were drinking alcohol and not sitting at the tables dining, he said, and noted that all his visits had occurred after 10:00 p.m. Furthermore, Officer O'Reilly indicated that outdoor dining prevents the police from restricting open alcohol containers because sidewalk space is considered part of a dining establishment, although once patrons leave the boundaries of a particular property, they are in violation of a City ordinance for having an open container in a commercial district. Characterizing this as a continual problem, he stated that officers had been stopping patrons from carrying beer bottles or cups from Viva's to the parking lot and patrons were found to be drinking both on and off the property. Nevertheless, he said, Viva's door managers have attempted to cooperate with police to address off-premise drinking but had found it difficult to effectively monitor exits. Officer O'Reilly also mentioned that sidewalks have become impassable due to the large number of patrons at Viva, necessitating walking in the street. City records since October 2002, Officer O'Reilly said, had shown only one noise ordinance complaint received although a noise violation could result from the side door remaining open for 1-2 minutes while patrons periodically enter and leave the restaurant.

In response to Mayor MacKenzie, Officer O'Reilly said that it is not possible to distinguish whether patrons with open containers in the parking lots are from Viva's since many restaurants provide plastic containers to patrons going outdoors. Although patrons who had been questioned indicated that they had come from Viva's, he had not spoken to each offender personally.

Expressing the belief that this establishment presented a problem for the City, Council Member Russell asked how often the police have responded with reference to a need to close doors, handle fights, and to deal with drug use and other incidents. He also requested an estimate of the amount of time police have monitored this property. Officer Eaton advised that since Viva's opening on October 18, 2002, the police had responded 29 times to incidents ranging from verbal disputes to fights, batteries, and disorderly conduct; 20 of those violations had occurred within the last 6 months and 16 had occurred within the last 6 weeks. Mayor MacKenzie pointed out that Mr. Black had indicated a new General Manager has been in the restaurant's employ for the aforementioned six-week period. Officer Eaton pointed out that the noise level is high when patrons leave the side door open near the speakers and sound booth, but the police have not cited the restaurant for a noise violation attributable to this cause.

Council Member Russell also queried staff regarding other code violations, and City Manager Rambosk stated that he believed occupancy checks to have met the standards; Officer O'Reilly added that although the fire inspector had completed spot checks, he was unaware of the results. He further noted that the fire marshal is notified when police officers witness possible fire code violations.

Vice Mayor Galleberg observed that the tenor of questions directed to staff addressed the establishment as if it were a nightclub rather than a restaurant requesting outdoor dining. In response to Council Member Taylor, Officer O'Reilly reiterated violation statistics and also

mentioned that during the prior weekend one incident had occurred at Viva involving an individual on the dance floor being struck on the head with a beer bottle.

In further discussion, City Manager Rambosk noted that a patron would be able to order a meal and an alcoholic beverage from an outdoor-dining establishment appropriately licensed by the State Division of Alcoholic Beverages and Tobacco (ABT) and that in the permitting process the establishment must provide a map of the area to be used. Council Member Herms then requested that the petitioner confirm for the record the status of the establishment's licenses.

In response to questioning by Council Member Herms, Officers O'Reilly and Eaton each confirmed that patrons with alcoholic beverages had been standing in the sidewalk area after 10:00 p.m. which was the time they had observed the restaurant. Noting that restaurants with the proper state licenses are allowed to have alcoholic beverages within the outdoor public space, Mr. Herms also predicted that the impending smoking ban would move patrons outdoors and that they would take their alcoholic beverages with them. Mr. Rambosk explained however that patrons could not have an alcoholic beverage on the sidewalk unless it is within the licensed area and that each business owner has a duty to insure that no alcohol leaves that licensed premises. The City's responsibility is enforcement, he added, but the owner must assume responsibility and compliance. In response to Council Member Russell, Officers O'Reilly and Eaton indicated that outdoor dining tables were used intermittently.

Henry Kennedy, Tarpon Road, said that while outdoor dining is enjoyable and should be allowed, pedestrian traffic flow must not be obstructed. He said he had observed areas where pedestrians were actually discouraged by restaurant personnel and expressed the view that not only had too many tables been permitted on Fifth Avenue, but that there were too many patrons loitering with drinks on the sidewalk at US 41 and Fifth. Mr. Kennedy also cited a safety concern when pedestrians are forced into the street due to sidewalk congestion.

Reiterating that his request involved outdoor dining, Mr. Black nevertheless stated that patrons carry drinks from other, less expensive establishments and loiter at Viva, forming a crowd when prohibited from entering. Mr. Black also asserted that restaurant security prevents all but very few of Viva patrons from exiting with a drink and that many of the aforementioned complaints had originated from his own staff. Noting prevailing drug and alcohol problems in the area, Mr. Black said that he had been encouraged to report disturbances to police and that he planned to institute a cover charge and a dress code.

Mr. Black also responded to concerns mentioned earlier by assuring Council that all required beverage permits were in force and that his establishment had passed fire inspections, including occupancy checks. He concluded by stating that he tries to the best of his ability to operate his establishment with integrity.

Council Member Russell however said that in recent weeks four unapproved tables had been placed on the sidewalk in the public right-of-way, but Mr. Black explained that this had been done in an effort to prevent the crowd from moving out into the street. Mr. Russell announced that he would make a motion to deny this request, as the petitioner had not shown respect for the City's rules. He also urged Council to address such issues as restaurants becoming nightclubs,

smokers moving outdoors with drinks, and noise ordinance compliance. He expressed the view that the petitioner had neither operated in good faith nor met the City's requirements which he said had been violated in a flagrant manner.

In further clarification it was noted that SAC had approved outdoor dining on the restaurant's private property which could continue. City Attorney Robert Pritt reminded Council that the issue being addressed was whether to permit outdoor dining on the public right-of-way. Mr. Pritt also clarified that if permit criteria were to change, existing businesses would be grandfathered only for the length of their one-year outdoor dining permit. Mr. Pritt also concurred that a motion to deny could articulate that this nuisance, as referenced in outdoor dining criteria, would likely reoccur at this location.

While Vice Mayor Galleberg said that he believed Viva to be in compliance with the five-foot clearance requirement in the Fifth Avenue Overlay District, it did not function as a conventional restaurant but rather as a nightclub. Council Member Russell agreed, but noting that at issue was whether to grant outdoor dining. Mr. Galleberg further observed that while this establishment's compliance history had not been positive, permitting outdoor dining does not in fact cause deterioration in either the City's or the public's interest. It had been Council's approach, he said, to bring owners back within the system and the rules rather than have continuing violations.

Council Member Wiseman however noted that both the petitioner and the police had confirmed that congestion and obstruction of a public sidewalk had prohibited clear passage between restaurant and tables. She therefore said that she was of the opinion that the request should not be approved. Council Member Taylor however suggested that use of the tables be limited until 10:00 p.m., but Mr. Russell said that based on past experience, it was unlikely that such a restriction would be adhered to by Viva management. Mrs. Wiseman said that she could not support approval for the additional police monitoring which had been needed at this site.

Council Member Herms also cited testimony regarding sidewalk congestion and noted that dining is usually conducted from 5:00 to 10:00 p.m. whereas nightclub activity in the late hours had been problematic. Vice Mayor Galleberg indicated there is nevertheless a period of time where the restaurant operates as a traditional restaurant without disturbance. Officer O'Reilly also confirmed that no congestion occurs on the sidewalks before 10:00 p.m. and indicated that other establishments did not present problems similar to those at Viva.

During the vote on the motion below, the following comments were made. Council Member Taylor expressed her opinion that time restrictions would allow the business to remain competitive on Fifth Avenue and that a restriction could be easily monitored. Council Member Russell stressed that this petitioner would continue a pattern of non-compliance and that monitoring would in fact represent an unnecessary expenditure of the City's resources. Vice Mayor Galleberg said that while he agreed with Mr. Russell's comments, the petition before Council was for outdoor dining, which had already received approval and acquiescence from the City. Council Member Herms reiterated that various problems had been occurring after 10:00 p.m. when the traditional dining hour had passed and therefore supported a restriction that tables be removed after 10:00 p.m. In supporting denial, Council Member Wiseman stated that the

petitioner had advised that he was actually before Council requesting outdoor dining due to the new smoking law.

MOTION by Russell to APPROVE RESOLUTION 03-10100, (DENYING THE PETITION DUE TO CONSISTENT VIOLATIONS AND NUISANCE FACTOR). *This motion was seconded by MacIlvaine and carried 4-3 all members present and voting (MacIlvaine-yes, Taylor-no, Russell-yes, Galleberg-no, Herms-no, Wiseman-yes, MacKenzie-yes).*

Recess: 12:42 p.m. to 1:34 p.m. It is noted for the record that all Council Members except Council Members Taylor and Russell were present when the meeting reconvened.

RESOLUTION 03-10101.....ITEM 8
A RESOLUTION DETERMINING FENCE AND WALL WAIVER PETITION 03-FWW1 FOR AN 8 FOOT WALL IN THE EAST SIDE YARD AT 458-462 11TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.). This being a quasi-judicial proceeding, Council made the following ex parte disclosures: Herms, MacIlvaine, Wiseman, and MacKenzie/no contact with the petitioner; Galleberg/visited the site, but no contact with the petitioner. (Council Members Taylor and Russell, when returning later in the meeting, disclosed that they, too, had had no contact with the petitioner.)

Kristen Petry of Pergola, Inc., represented the petitioner and proposed replacing the existing wall with an eight foot six inch privacy wall from the crown of road along the rear 75 foot portion of the east side property line at 458-462 11th Avenue South.

Vice Mayor Galleberg ascertained that two feet of the proposed installation would in fact be on the neighbor's property, as the neighbor owns the current wall, and that a retaining wall on the neighbor's property would remain as it was the basis for a patio area.

Council Member Herms suggested that instead the petitioner merely install landscaping adjacent to the neighboring wall, and Mayor MacKenzie pointed out that such an option would also close an existing gap in the barrier. Ms. Petry depicted the properties as being extremely close, thus making a maximum barrier appropriate. Although Council Member MacIlvaine moved for approval of this item, further discussion occurred.

It is noted for the record that Council Member Russell entered the meeting at 1:45 p.m.

Council then addressed such issues as the difference in elevation between the neighboring properties and the fact that the current wall and stockade fence had been grandfathered as it appeared to predate the respective regulations.

Ms. Petry however stated that landscaping had not been considered effective as a barrier in this instance because of expected plant mortality and also pointed out that the area where the ground recedes would be filled and landscaped on the neighbor's side.

It is noted for the record that Council Member Taylor entered the meeting at 1:52 p.m.

Council Member Wiseman then seconded Mr. MacIlvaine's motion. During the vote on this motion, the following comments were made. Council Member MacIlvaine explained his support due to his belief that the proposed privacy wall as illustrated appears to be more attractive than the 8-foot high barrier. He also commented on the difficulty of maintaining a hedge on a narrow

strip of ground. Council Member Wiseman agreed, but Vice Mayor Galleberg said that he believed the needs espoused could be met without a waiver. Council Member Russell said he had voted in favor because of the belief that the petition is consistent with other decisions made regarding grading and walls for the height desired. Council Member Herms however maintained his position that landscaping alternatives would be more attractive than removing the existing fence and constructing a wall, and Mayor MacKenzie said that she, too, felt that other available alternatives had not been fully explored.

Public Comment. None. (1:53 p.m.)

MOTION by MacIlvaine to APPROVE 03-10101 AS SUBMITTED; seconded by Wiseman and failed 3-4 (Taylor-no, MacIlvaine-yes, Wiseman-yes, Galleberg-no, Russell-yes, Herms-no, MacKenzie-no). (It is noted for the record that failure of a motion to approve constitutes a denial of this petition.)

ORDINANCE 03-10102.....ITEM 13
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 (1:56 p.m.) who indicated that sufficient funds had been budgeted for this expenditure.

Public Comment: None. (1:57 p.m.)

MOTION by MacIlvaine to ADOPT ORDINANCE 03-10102 ON SECOND READING AS SUBMITTED; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10103.....ITEM 14
A RESOLUTION APPROVING A JOINT PROJECT AGREEMENT BETWEEN THE CITY OF NAPLES AND THE FLORIDA STATE DEPARTMENT OF TRANSPORTATION (FDOT) FOR INTEGRATION OF THE CITY OF NAPLES COMPUTERIZED SIGNAL SYSTEM PHASE I; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:57 p.m.). Traffic Engineer George Archibald indicated that funding by the Florida Department of Transportation (FDOT) would allow a series of upgrades as a part of transferring the system from the State. In response to Council Member Taylor, Mr. Archibald explained that maintenance costs had been budgeted for this system as well as the remaining signal systems within the City. Development Services Director Ron Wallace noted that the City has an annual reimbursement agreement for traffic signals as well as lighting on US 41.

Council Member Herms received verification that the first phase was approaching completion, encompassing the system on the Goodlette-Frank corridor, the system on East US 41 and US 41 from the US 41/Fifth Avenue South intersection to Seventh Avenue North. Mr. Archibald further advised that the State had installed new mast arms, new controllers, and fiber optic cable to communicate among controllers; Phase 2 is scheduled to occur in 2004, continuing the improvements on North US 41 through Pine Ridge Road. Mr. Archibald noted that a similar agreement was being approved by Collier County.

Mayor MacKenzie however observed that frequently equipment is placed in such a way as to obstruct sidewalks, but Mr. Archibald explained that while it is not a preferred location, it is often the only one possible if adjacent easements are not available.

Public Comment: None. (2:03 p.m.)

MOTION by *Russell* to **APPROVE RESOLUTION 03-10103 AS SUBMITTED**; *seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 03-10104.....ITEM 15-a
A RESOLUTION WAIVING BIDS AND APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND TEMPLE, INC., FOR THE PURPOSE OF PROVIDING TRAFFIC SIGNAL HARDWARE, SOFTWARE, INSTALLATION SERVICES AND OPERATION AND MAINTENANCE SUPPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Titles to Item 15-a and 15-b read consecutively by City Manager Kevin Rambosk (2:03 p.m.). Traffic Engineer George Archibald noted that three separate elements comprise Item 15: 1) the services of Temple, Inc.; 2) the services of Precision Contracting Services for fiber communication components via unit pricing; and 3) the support services of a local vendor, E. B. Simmons Electrical, also via unit pricing.

Public Comment: None. (2:06 p.m.)

MOTION by *Herms* to **APPROVE RESOLUTION 03-10104 AS SUBMITTED**; *seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, Mackenzie-yes).*

RESOLUTION 03-10105.....ITEM 15-b
A RESOLUTION WAIVING BIDS AND APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND PRECISION CONTRACTING SERVICES, INC., FOR THE PURPOSE OF PROVIDING TRAFFIC SIGNAL FIBER COMMUNICATION COMPONENTS AND SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:06 p.m.).

Public Comment: None. (2:06 p.m.)

MOTION by *Galleberg* to **APPROVE RESOLUTION 03-10105 AS SUBMITTED**; *seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, Mackenzie-yes).*

RESOLUTION 03-10106.....ITEM 15-c

A RESOLUTION APPROVING A SECOND AMENDMENT TO AGREEMENT FOR TRAFFIC SIGNALS AND STREET LIGHT INSTALLATIONS AND REPAIRS WITH E.B. SIMMONDS ELECTRICAL, INC. FOR ADDITIONAL TRAFFIC SIGNAL AND STREET LIGHTING REPAIR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:06 p.m.).

Public Comment: None. (2:07 p.m.)

MOTION by Galleberg to APPROVE RESOLUTION 03-10106 AS SUBMITTED; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, Mackenzie-yes).

RESOLUTION 03-10107.....ITEM 27

A RESOLUTION APPROVING A UTILITY WORK AGREEMENT BETWEEN THE CITY OF NAPLES AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:07 p.m.). Traffic Engineer George Archibald explained that this agreement is a standard requirement of the Florida Department of Transportation (FDOT) relative to utility coordination of a future contract for Phase 2 of the city/county signal project. He cited 11 sites which have utility location conflicts for the proposed future mast arm pole foundations. Further, Mr. Archibald expressed optimism that this agreement would encourage the City and FDOT to work with their contractor to assure that conflicts do not result in lack of utility service.

Development Services Director Ron Wallace also informed Council that Phase 1 had been managed by the State and that in the past it had been difficult to effect repair for this reason. Phase 2 will however be managed by the City and Collier County through a Joint Project Agreement (JPA) affording improved coordination and more advantageous placement of mast arms.

Public Comment: None. (2:12 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10107 AS SUBMITTED; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10124.....ITEM 24

A RESOLUTION APPROVING AN INSTRUMENT ENTITLED “TERMINATION OF A PORTION OF A WATERLINE EASEMENT AND CREATION OF REPLACEMENT WATERLINE EASEMENT AGREEMENT” FROM THE HALSTATT PARTNERSHIP; AUTHORIZING THE MAYOR TO EXECUTE ANY DOCUMENTS NECESSARY FOR CLOSING; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:12 p.m.) who explained that Development Services Director Ron Wallace and City Attorney Robert Pritt had reviewed this request, which Mr. Wallace depicted as a water line relocation within Grey Oaks. Although there is an existing easement for a 12-inch water main, a

new water line was constructed due to relocation of an entrance road. Lee Tredwall of Halstatt Partnership advised that the easement would be on the southerly portion of the entrance road. Council Member Wiseman pointed out that a son had witnessed his father's signature on the document. Halstatt Attorney Richard Yovanovich advised that he would have the document re-executed.

Council Member MacIlvaine received clarification that the water line was actually east of Airport Road and physically located in Collier County. City Attorney Robert Pritt advised that normally a vacation of an easement would be required if it had been within the City, but since it was a City easement outside of the City it would be considered a relocation. The process is therefore correct as it is within the City's water service area, Mr. Pritt noted.

Public Comment: None. (2:19 p.m.)

MOTION by Herms to APPROVE RESOLUTION 03-10124 (RE-EXECUTING DOCUMENT DUE TO WITNESS SIGNATURE); seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

.....**ITEM 28**
REQUEST FOR AUTHORIZATION OF US 41 DRAINAGE/RESURFACING PROJECTS WITH FLORIDA DEPARTMENT OF TRANSPORTATION. City Manager Kevin Rambosk advised that Item 28 related to US 41 drainage/resurfacing projects. He said that staff recommended following the Florida Department of Transportation (FDOT) plan by placing the drainage within the roadway as opposed to the median. Vice Mayor Galleberg noted responses to Council's requested information via FDOT's letter of June 16, 2003, (a copy of which is contained in the file for this meeting in the City Clerk's office). By following FDOT's recommendation, he said, the medians and greenery would be saved.

Council Member Taylor commented that this would be an opportune time to install a provision for future underground power lines and reuse water lines. However, Mr. Rambosk noted that locations would require a Florida Power & Light study, which would not be available. Further, he said, the City-wide reuse plan had not been engineered nor would it be available for this project.

Public Comment. None. (2:22 p.m.)

MOTION by MacIlvaine to AUTHORIZE WORK WITH FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR U.S. 41 DRAINAGE/RESURFACING PROJECTS; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10108.....ITEM 21
A RESOLUTION RESCHEDULING THE JULY 2 AND JULY 16 AND AUGUST 6, 2003 REGULAR CITY COUNCIL MEETINGS TO THE REGULAR CITY COUNCIL MEETING OF AUGUST 20, 2003; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:24 p.m.).

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

MOTION by MacIlvaine to **APPROVE RESOLUTION 03-10108 AS SUBMITTED**; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10109.....ITEM 19

A RESOLUTION ESTABLISHING AN ADVISORY BOARD FOR THE COMMUNITY REDEVELOPMENT AGENCY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (2:25 p.m.) who advised that seven members are proposed rather than the previous nine-member board. It would be comprised of three members from the Fifth Avenue area, three members from the 41-10/Heart of Naples area, and one member appointed at large, he added. Mr. Rambosk indicated that Council approval was required, followed by the City Clerk advertising for applicants so that interviews could be set for August and appointments made in September. Mayor MacKenzie received confirmation from City Attorney Robert Pritt that the board configuration could be modified at Council's discretion. Council Member MacIlvaine moved for approval and Council Member Russell seconded the motion.

Vice Mayor Galleberg suggested two representatives from each of the aforementioned districts and three at-large representatives, and Council Member Taylor recommended that abutting neighborhoods also be represented. Mr. Galleberg however noted that the three at-large representatives could encompass adjacent neighborhoods without mandating selection of a neighborhood representative. Council Member MacIlvaine agreed and said he would amend the motion to include the change recommended by Mr. Galleberg.

Council Member Wiseman recommended revision of the resolution so that the committee configuration language is located in the body rather than in the whereas clause. She also noted that the official names are the Fifth Avenue South Special Overlay District and the "D" Downtown District, which should be correctly reflected. Mrs. Wiseman recommended incorporating individuals who actually live within the redevelopment districts, as well as work there.

While Council Member Russell said he preferred requiring one resident from each district, Council Member Taylor said that such a change as proposed would accomplish her goals of incorporating the residential component. It was also noted that the aforementioned two areas cover the entire community redevelopment district. Although Council Member MacIlvaine said that the specificity discussed may limit the pool of applicants, Council Member Wiseman said she believed that a residential component would prevent criticism that this committee is business oriented, which is not the intent. After further discussion the following motion was approved:

MOTION by MacIlvaine to **APPROVE RESOLUTION 03-10109 AS AMENDED; TWO FROM 5TH AVENUE SOUTH SPECIAL OVERLAY DISTRICT; TWO FROM "D" DOWNTOWN DISTRICT; THREE AT LARGE (TO INCLUDE AT LEAST TWO RESIDENTIAL MEMBERS FROM REDEVELOPMENT AREA)**. This motion was seconded by Russell and carried 6-1 (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess: 2:39 p.m. to 4:23 p.m. for Community Redevelopment Agency (CRA) Meeting. It is noted for the record that the entire Council was present when the meeting reconvened.

It is also noted for the record that Item 9 was tabled until later in the meeting so that a transcript of a CRA motion could be prepared.

RESOLUTION 03-10110.....ITEM 18
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 (4:35 p.m.). Planner Susan Golden advised that the only change was included in #13 of the Urban County Cooperation Agreement between Collier County and the City of Naples, stating: "City of Naples will receive its CDBG funding based on the HUD allocation formula for HUD eligible projects in Naples." (A copy of this agreement is contained in the file for this meeting within the City Clerk's office.) Ms. Golden stated that the \$141,000 would not be guaranteed annually but rather amounts would comport with that determined by the federal government. Mayor MacKenzie noted that funding amounts had been continually decreasing. Ms. Golden however pointed out that Collier County would assume the bulk of administrative reporting requirements.

In further discussion Ms. Golden advised that her time had been split between the administration of the HUD programs and City planning activities; therefore, her salary had until recently been divided between CDBG and City.

Public Comment: None. (4:39 p.m.)

MOTION by Herms to APPROVE RESOLUTION 03-10110 AS SUBMITTED;
seconded by MacIlvaine and unanimously carried, all members present and
voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes,
Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10111.....ITEM 22
A RESOLUTION APPROVING A 2003 TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES REGARDING SEMIANNUAL MONITORING OF DOCTORS PASS; AUTHORIZING THE MAYOR TO EXECUTE THE TOURISM AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:41 p.m.).

Public Comment: None. (4:41 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10111 AS
SUBMITTED; seconded by Taylor and unanimously carried, all members
present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes,
Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10112.....ITEM 23
A RESOLUTION APPROVING A 2003 TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES REGARDING MARINE TURTLE MONITORING ASSOCIATED WITH THE 2003 MAINTENANCE DREDGING OF GORDON PASS; AUTHORIZING THE MAYOR TO EXECUTE THE TOURISM AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:42 p.m.).

Public Comment: None. (4:42 p.m.)

MOTION by MacIlvaine to **APPROVE RESOLUTION 03-10112 AS SUBMITTED**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10113.....ITEM 25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPLES REQUESTING THAT NAPLES BAY BE DESIGNATED BY THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AS A SURFACE WATER AND IMPROVEMENT MANAGEMENT (SWIM) PROJECT AND BE INCLUDED IN THE SWIM PROGRAM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:43 p.m.). Council Member Herms inquired as to steps to improve water quality in Naples Bay, expressing the opinion that most pollutants however originate outside the City. Natural Resources Manager Jon Staiger advised that structural modifications to Naples Bay are planned in order to create turbulent flow thus recreating oyster bars that had been dredged during the development process. With reference to discharge of drainage, Dr. Staiger cited a proposal for a hydraulic model of the Bay so that improvements would have maximum effect. Otherwise, he said, funding is available through the Surface Water Improvement Management (SWIM) program to deal with storm water cleanliness. He also cited treatments within the stormwater management system reducing pollution loading as well as items within the actual waterway.

Dr. Staiger then described funding support by the Corps of Engineers for core navigation projects, Naples Bay having been considered a core navigation project since the 1960's. He further indicated that the funded projects were \$5-million, encompassing 75% Corps of Engineers funds, and 25% local funding (with 80% of the local portion being designated for in-kind services). Fiscal Year 2004-05 would be the earliest that projected awards could be realized, he advised, and pointed out that the SWIM designation from the Department of the Environmental Protection (DEP) allows the Water Management District to enter the planning process quickly and without cost. He further noted that data which had been accumulated for other projects affecting the Bay is readily available.

In response to Council Member MacIlvaine Dr. Staiger confirmed that the cost-sharing portion of some projects would have a local-share contribution although the City could opt out of a project. The Water Management District has funding, he added, and this would be a cooperative effort with the County, the City, and the Big Cypress Basin. Furthermore, Dr. Staiger noted, there were various funding agencies available affording opportunities for improvements without committing extensive City funds.

Public Comment: None. (4:49 p.m.)

MOTION by MacIlvaine to **APPROVE RESOLUTION 03-10113 AS SUBMITTED**; seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10114.....ITEM 26

A RESOLUTION APPROVING A PROPOSAL FOR DUANY PLATER-ZYBERK & COMPANY, ARCHITECTS AND TOWN PLANNERS, TO CONDUCT A MASTER PLAN PROGRESS REVIEW FOR FIFTH AVENUE SOUTH IN NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:49 p.m.).

Public Comment: None. (4:49 p.m.)

MOTION by Russell to **APPROVE RESOLUTION 03-10114 AS SUBMITTED**; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Prior to consideration of Item 20, City Clerk Tara Norman noted that an update on board applicant status had been provided (a copy of which is contained in the file for this meeting in the City Clerk's office) and that an additional Planning Advisory Board application had been received and would be scheduled for interview in August.

RESOLUTION 03-10115..... ITEM 20-a-1
A RESOLUTION APPOINTING AN ARCHITECT TO THE DESIGN REVIEW BOARD FOR A TERM COMMENCING JUNE 18, 2003, AND EXPIRING MAY 31, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:50 p.m.).

APPOINT RICHARD MORRIS (nominated by Herms) via Resolution 03-10115. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10116..... ITEM 20-a-2
A RESOLUTION APPOINTING AN ARCHITECT TO THE DESIGN REVIEW BOARD FOR A TERM COMMENCING JUNE 18, 2003, AND EXPIRING MAY 31, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:52 p.m.).

APPOINT FRANK DUANE (nominated by Taylor) via Resolution 03-10116. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10117..... ITEM 20-a-3
A RESOLUTION APPOINTING A CITY RESIDENT TO THE DESIGN REVIEW BOARD FOR A TERM COMMENCING JUNE 18, 2003, AND EXPIRING MAY 31, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:53 p.m.).

APPOINT CARL KUEHNER (nominated by Taylor) via Resolution 03-10117. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10118..... ITEM 20-a-4
A RESOLUTION APPOINTING A CITY RESIDENT TO THE DESIGN REVIEW BOARD FOR A TERM COMMENCING JUNE 18, 2003, AND EXPIRING MAY 31, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:53 p.m.).

APPOINT JONATHAN KUKK (nominated by Galleberg) via Resolution 03-10118. This motion was unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10119.....ITEM 20-b-1

A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR THE BALANCE OF A TERM EXPIRING JUNE 18, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:54 p.m.). Vice Mayor Galleberg noted that the year 2003 should be changed to 2005 within the table listing board member candidates provided by City Clerk Tara Norman.

APPOINT RICHARD HOUSH (nominated by Taylor) via Resolution 03-10119.

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

RESOLUTION 03-10120.....ITEM 20-b-2

A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR A THREE-YEAR TERM EXPIRING JUNE 17, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:55 p.m.).

APPOINT LOIS SELFON (nominated by Galleberg) via Resolution 03-10120.

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

RESOLUTION 03-10121.....ITEM 20-c

A RESOLUTION APPOINTING ONE MEMBER TO THE CITIZENS ADVISORY COMMITTEE FOR THE EAST NAPLES BAY SPECIAL TAXING DISTRICT FOR A THREE-YEAR TERM EXPIRING JUNE 17, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:55 p.m.).

APPOINT BEVERLY WHITE (nominated by Taylor) via Resolution 03-10121.

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

RESOLUTION (to be readvertised).....ITEM 20-d

A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 4 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM EXPIRING JUNE 17, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:56 p.m.). City Clerk Tara Norman advised that City Attorney Robert Pritt would provide a legal opinion relative to this appointment. Mr. Pritt said he had consulted the Florida Ethics Commission and that his legal opinion was that a specific prohibition did not exist; however, he referenced 112.313(7) of the Florida Ethics Code "...nor should an officer or an employee of an agency have or hold any employment or contractual relationship that would create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties." This referenced clause, Mr. Pritt stated, is used whenever a voting conflict arises. Furthermore, he said, an exemption also exists in 112.313(12) that states: "...the requirements of Subsections 3 and 7, as they pertain to persons serving on advisory boards may be waived in a particular instance by the body that appointed the person to the advisory board upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by a two-thirds vote of that body." Therefore, under State law, he said, a decision could be made either way but that he

recommended that the Council review the duties of this particular board and make a determination on whether the individual nominated would be placed in a conflicting position.

Council Member Russell praised the applicant, Detective Seth Finman, but stated that the intent of the Citizens' Police Review Board was to maintain its objectivity in the eyes of the public. Council Member MacIlvaine concurred. City Manager Kevin Rambosk confirmed for Council Member Taylor that the Citizens' Police Review Board would review cases after the internal investigation had rendered an opinion. Vice Mayor Galleberg added that a former elected official had applied for this position but was also not considered due to the reasoning already expressed. Council Member Wiseman noted that it was unfortunate this information was not known before Detective Finman's application but that applicants had not been fully completing the application by attaching a resume with references. City Clerk Tara Norman responded that in the future only applications with backup information would be forwarded to the City Council. Mayor MacKenzie advised that she would write a letter to Detective Finman explaining the reasons his nomination was not approved.

City Manager Rambosk advised that City Attorney Pritt would be working on language preventing current employees from serving on boards or committees. Mr. Pritt further advised that he opposed City employees serving on committees on the grounds of separation of power between the legislative and the executive branches. Additionally, he indicated that staff's role is to provide assistance to the boards and commissions, which they would be unable to do based on the Sunshine Law (Chapter 286, Florida Statutes). Consequently, Mr. Pritt said he would be working with the new City Manager on devising respective language and procedures to be presented to the Council after the summer break.

MOTION by Russell to NOT APPOINT AND READVERTISE (ITEM 20-d);
seconded by Wiseman and unanimously carried, all members present and
voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes,
Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10122.....ITEM 20-e
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY
BOARD FOR THE BALANCE OF A THREE-YEAR TERM COMMENCING JUNE 18,
2003, AND EXPIRING APRIL 30, 2006; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Manager Kevin Rambosk (5:07 p.m.).

APPOINT ALBERT LUER (nominated by Taylor) via Resolution 03-10122.
This motion was unanimously carried, all members present and voting
(Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-
yes, MacKenzie-yes)

RESOLUTION 03-10123.....ITEM 17
A RESOLUTION ACCEPTING A QUIT-CLAIM DEED FROM KEEWAYDIN ISLAND
COMMUNITY ASSOCIATION FOR A PARCEL OF SUBMERGED LAND ADJACENT
TO KEEWAYDIN ISLAND, MORE PARTICULARLY DESCRIBED HEREIN, FOR
THE PURPOSE OF CONDUCTING MAINTENANCE ON THE SOUTH GORDON
PASS JETTY; AND PROVIDING AN EFFECTIVE DATE. (It is noted for the record that
the area in question is also referred to as Key Island.) Title read by City Manager Kevin
Rambosk (5:09 p.m.). Vice Mayor Galleberg said he believed that the Council had been placed
in an unfortunate position where work had been completed and funds expended without an

executed agreement to acquire the jetty. Natural Resources Manager Jon Staiger advised that the transfer of title had been under discussion for several months and that the matter had been out of the City's control. Nevertheless, he stated that the Corps of Engineers completed the dredging at their cost and it was that consideration that drove the project. The next time the Gordon Pass would be dredged would be at the City's expense, Dr. Staiger added.

Dr. Staiger also indicated that the Quit-Claim Deed would satisfy the state's concern relative to grant compliance in that the jetty is in public hands. He further advised that acceptance of the title to the jetty would result in release of funds assigned to this project which was near completion, pending the final shipment of rock to armor the installation, he added. Vice Mayor Galleberg maintained however that since the deed had not been transferred to the City, approximately \$800,000 in public funds had been expended in violation of the Constitution, to which City Attorney Pritt agreed. Mr. Galleberg further indicated that the jetty was being deeded for current repairs and not for any future obligations that may arise.

Mr. Pritt confirmed for Mayor MacKenzie that a deed containing a reverter provision is sufficient to allow release of the state funding; it was also noted that Natural Resources Manager Staiger had received confirmation of this fact from the Department of Environmental Protection (DEP). Council Member Wiseman reminded the Council that another citizen had recently attempted to exercise the reverter clause.

Natural Resources Manager Staiger further advised that the jetty contains a sheet metal core, that it has a 50-year life expectancy, and that only an extremely severe hurricane could cause serious damage. Maintenance would then entail addition of more rock to the structure. Dr. Staiger also noted that island property owners are concerned that the jetty not be abandoned, forcing them to repair it. He further advised that the porous condition of the existing jetty had been a factor in the inland management plan to control the inlet along with the corresponding periodic dredging and structural stabilization of the north and south sides. Dr. Staiger expressed the opinion that it would be beneficial for the City to maintain this jetty for channel navigation to avoid having a 12-foot deep channel reduced to only a 5-foot depth. Additionally, he said that Gordon Pass would then require more frequent dredging.

Vice Mayor Galleberg expressed concern that at the conclusion of the estimated 50-year life cycle of the jetty the automatic reverter clause would be activated. Council Member Wiseman acknowledged the existence of the June 30 deadline but requested that deed revisions be made at a later date in the form of corrective conveyance. She also expressed the belief that the conveyance should have been a special warranty deed rather than a quit-claim deed. Mr. Pritt assured Mrs. Wiseman that documentation of two-thirds vote of the owners is on file with his firm (Roetzel & Andress) as well as appropriate corporate resolutions verifying authority to sign the deed. Dr. Staiger further explained that the time delay was partly due to the finalization of all the documentation assembled and recorded at Roetzel & Andress. Additionally, Mr. Pritt indicated that the quit-claim deed's cover letter included a statement that Keewaydin Island Community Association insisted that the reverter clause be included. He also conjectured that the reason for insisting on the reverter clause was to maintain control. Mayor MacKenzie pointed out that the association had informed her that should the City fail to maintain the jetty, they intended to repair it. Vice Mayor Galleberg expressed frustration with what he characterized as a

last-minute decision after months of negotiation and said that he had been under the impression that it had been the intention to deed the jetty to the City. City Attorney Pritt said that while it would not be his recommendation, the City has the right of eminent domain to take property for public purposes and to assess those who benefit from a sand-tightening project, including the cost of eminent domain proceedings.

Public Comment: None. (5:28 p.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10123 AS SUBMITTED; seconded by Herms and carried 5-2 all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

.....**ITEM 9**
CONSIDER STORM WATER IMPROVEMENTS IN THE 600 BLOCK OF 5TH AVENUE SOUTH. (5:28 p.m.) City Clerk Tara Norman presented Council Members with a transcribed copy of the action taken by the Community Redevelopment Agency (CRA) earlier that afternoon, which included Mayor MacKenzie's respective motion. (A copy of this transcript is contained in the file for this meeting in the City Clerk's Office.) Mayor MacKenzie noted that authorization had been given for staff to explore alternative solutions acceptable to property owners and the City, which would be legal and affordable. City Attorney Robert Pritt advised Mayor MacKenzie that the motion made at the CRA meeting would be required for this agenda item.

Vice Mayor Galleberg disagreed with the assumption of a public purpose in this regard, noting that water settles after heavy rains which had not affected any public lands or been reported by other neighbors. He further noted the consensus of both the City's and the petitioner's attorneys was that the City has no legal liability.

Council Member Taylor however responded by noting that the problem had been attributed to the closing of Seventh Street and the changing of the flow of water, according to long-time Naples resident Jim Smith. She further recommended that this issue be explored with the goal of an affordable and legal solution providing a favorable outcome for all parties. However, Mr. Galleberg replied by noting that this matter had not been designated a City engineering problem and that no relevant testimony to that effect had been received. Additionally, he stated, the City had a legal sovereign right to vacate an alley and although the City had reviewed water management plans, it does not insure against heavy rains on private property. Council Member Wiseman agreed with Mr. Galleberg and also noted that the motion restricting improvements to the City's right-of-way does not change the situation as public funds and resources would be diverted to a private purpose.

Mr. Galleberg further stressed that the action proposed would be a grave error and sought further clarification identifying the public purpose. Council Member Wiseman further noted that this decision would set a precedent and attach liability for future plan approval, commercial and/or residential, which is against basic legal principles. The City is not the insurer for private property problems, she added, while expressing the view that Mr. Smith's concerns were heartfelt and sincere.

Council Member Taylor however maintained that the City's complicity arose from the vacation of Seventh Street and that the City had conceivably approved plans that proved to be unworkable. Council Member Wiseman, however, stressed that the engineering staff had advised that the drainage problem had not been caused by the City and the broader public policy decision must be considered. Furthermore, she added, the City Attorney had rendered an opinion depicting no legal liability for the City. Vice Mayor Galleberg further stated that the vacation of the alley had been a legitimate government decision, and Mrs. Wiseman pointed out that if there had been any basis for legal liability, the City would have received a demand letter or other formal correspondence from the petitioner's attorney.

It is noted for the record that Council Member Russell left the meeting at 5:41 p.m.

Mayor MacKenzie questioned whether action on Agenda Item 9 should be taken that day or discussion continued to the August 20 meeting. She reiterated that the motion made at the earlier CRA meeting would be used to seek an acceptable solution for property owners and the City, which would also be legal and affordable. Subsequently, the findings would be brought back to the CRA for an evaluation and recommendation to the City Council. Council Member Herms proposed a continuance.

MOTION by Herms to CONTINUE ITEM 9 TO AUGUST 20, 2003, REGULAR COUNCIL MEETING; seconded by MacKenzie. This motion failed 2-5, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-no, Russell-no, Taylor-no, Wiseman-no, MacKenzie-yes).

Vice Mayor Galleberg indicated that the CRA had made a recommendation which the City Council had rejected. City Attorney Pritt explained however that further action should be taken that day, and City Manager Rambosk said that any subsequent motion should include instructions that no further work would be required from the staff, the issue being the property owner's responsibility.

It is noted for the record that Council Member Russell left the meeting at 5:41 p.m.

revision

Public Comment: None. (5:43 p.m.)

MOTION by Galleberg to REJECT SUBMISSION FROM CRA DUE TO A FINDING THAT THE PROPOSAL IS NOT IN THE PUBLIC INTEREST; seconded by Wiseman and carried 4-2 (Galleberg-yes, Herms-no, MacIlvaine-yes, Russell-absent, Taylor-yes, Wiseman-yes, MacKenzie-no).

Council Member Herms said that he was of the opinion that the petitioner, Mr. Smith, did not realize his presence would be advantageous during the above discussion and that another decision had taken place approximately two hours prior which had then been reversed.

.....**ITEM 29**
REQUEST TO CONSIDER SENDING LETTER EXPRESSING COUNCIL'S POSITION REGARDING BEACH RENOURISHMENT AND MAINTENANCE, INCLUDING FUNDING FROM THE TOURIST DEVELOPMENT TAX. (5:44 p.m.) Vice Mayor Galleberg advised that the Coastal Advisory Committee (CAC) asked him to bring this issue before Council. The CAC, he said, makes recommendations on beach renourishment and maintenance and the expenditure of funds from Category "A" of the Tourist Development Tax. The CAC developed a policy to be proposed to the Collier County Commission, he said, but the county staff had created a different proposal requesting funding to purchase beach access throughout the County. While public beach access is a laudible goal, Mr. Galleberg stated, the CAC was of the opinion that it should not take priority over beach restoration. An effect of the proposal from the County staff would be that large areas of the beach would not be eligible for

renourishment, although the City of Naples would be impacted less than other areas. The County would also be requesting monies from condominium owners as well as the City, Mr. Galleberg said, and this he deemed an unworkable policy. Subsequently, the County Commissioners had voted on the matter, and it was defeated 3-2 with a recommendation for further work by CAC. Another policy was drafted and was currently being forwarded to the Commission, Mr. Galleberg said.

Mr. Galleberg suggested the City of Naples therefore be on the public record as supporting beach renourishment and maintenance. He also recommended that the City state that the proposed County staff policy would not be in the best interests of the community and that the City would support the drafting of a more appropriate policy. He also noted that the City of Marco Island was transmitting a similar communication to the County Commissioners. Mayor MacKenzie concurred and stated such a letter could be mailed within 24 hours.

Council Member Wiseman stated that she approved of the draft as submitted as it was respectful and encouraged positive efforts. She recommended that copies of the proposed letter be sent to each County Commissioner, and Mayor MacKenzie also advised that copies would be forwarded to the County Manager and to Marco Island's City Council and City Manager.

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

MOTION by Taylor to AUTHORIZE THE MAYOR TO PROVIDE A LETTER OF SUPPORT WITHIN 24-HOURS TO BOARD OF COLLIER COUNTY COMMISSIONERS AND MARCO ISLAND CITY COUNCIL AND CITY MANAGER. *This motion was seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-absent, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

.....**ITEM 30**
CONSIDER REQUEST FROM COLLIER COUNTY SOIL AND WATER CONSERVATION DISTRICT AND THE COLLIER COUNTY AUDUBON SOCIETY TO SUPPORT AND ENDORSE AN APPLICATION FOR A REGIONAL OFFSITE MITIGATION AREA (ROMA), IN THE VICINTY OF THE CITY'S EAST GOLDEN GATE WELLFIELD. (5:53 p.m.) Natural Resources Manager Jon Staiger advised that a letter of support from the City had been requested with reference to this project. He characterized it as a willing seller program without condemnation, the purpose of which is to enhance the environmental situation on this land in exchange for development rights within the north area of Golden Gate Estates. Dr. Staiger further noted that it would essentially be considered a mitigation bank and would not be operated with the title and land transferring to the Soil and Land Water Conservation District. Although a current map of the proposed area was not then available, it was estimated that approximately 25% of the southern portion of the wellfield would be covered but the area could be expanded in the future. Dr. Staiger said he was of the opinion that anything that the City could do to support the wellfield would be advantageous and, in this case, would require no commitment of financial resources.

Dr. Staiger confirmed, in response to Council Member Taylor, that the County has a wellfield protection ordinance which the City assisted in drafting, although the City does not have its own. The City, he said, has no wellfields to protect within the City limits. Council Member Herms said that he believed that the City should nevertheless have a wellfield protection ordinance.

Mayor MacKenzie concurred. Dr. Staiger stated that the applicable state law actually pertains to reuse water line connection but does not allow the City to control land use to protect wellfields. Should an effluent reuse line be extended outside the municipal boundaries, the City could require connections, he advised.

Public Comment: None. (5:56 p.m.)

MOTION by Wiseman to **AUTHORIZE A LETTER OF SUPPORT OF CONCEPTUAL PLANS FOR WELLFIELD PROTECTION**; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-absent, Taylor-yes, Wiseman-yes, MacKenzie-yes).

CORRESPONDENCE & COMMUNICATIONS

Mayor MacKenzie extended to City Manager Rambosk the City's appreciation for exemplary public service over a career of 20 years and especially for the past three years as City Manager. It was noted that Mr. Rambosk's legacy would be a testament to his dedication and commitment.

PUBLIC COMMENT

None. (5:59 p.m.) See also Page 3.

ADJOURN

6:00 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk
Minutes prepared by:

Bonnie McNeill, Recording Specialist

Minutes Approved: 8/20/03