



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – September 3, 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:

Robert Lee, City Manager
Robert Pitt, City Attorney
Ron Lee, Planning Director
Tara Norman, City Clerk
Ron Wallace, Development Services Director
David Lykins, Community Services Director
Denise Perez, Human Resources Director
Laura Spurgeon, Planner
Linda Bevard, Human Resources Analyst
Kerry Nielson, Planner
Karen Kateley, Administrative Specialist

Henry Kennedy
Jack Houton
John Mortellaro
Ellie Krier
Tony Ridgway
Jerry Alajajian

Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News

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

Father John Fitch, St. William's Catholic Church

ANNOUNCEMENTSITEM 3

Employee Recognition Awards presented by Human Resources Director, Denise Perez

SET AGENDA.....ITEM 4

Item 17 – Consider utilizing Tax Increment Financing (TIF) to fund the purchase of property at 1098 Third Avenue North in River Park for the purpose of providing a passive park.

MOTION by Galleberg to ADD ITEM 17; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Item 18 – Reconsideration of Variance Petition 03-V2, side yard spatial perception on single-family home at 509 First Avenue South, and waiving the 48-hour requirement for notification of the Mayor, pursuant to Resolution 98-8218. Council Member MacIlvaine requested that this item be added to the agenda due to what he described as receipt of new information that day

relative to an incorrect citation of the time period which had elapsed between the building permit issuance and the stop-work order; namely 13 months rather than 1 month. City Attorney Pritt opined that Council could waive provisions of Resolution 98-8218 (reconsideration policy); however, Vice Mayor Galleberg voiced his opposition describing such a waiver as effectively abolishing the reconsideration policy. Mr. Pritt however stated that while the Council has this option it could weaken the policy. He also advised that if Council did not that day waive the 48-requirement for notification of the Mayor, the issue could not be reconsidered at a further meeting.

MOTION by MacIlvaine to ADD ITEM 18; seconded by Taylor carried 5-2 (Galleberg-no, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

MOTION by Galleberg to SET THE AGENDA ADDING ITEMS 17 AND 18, REMOVING ITEM 9-c FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION, AND CONTINUING ITEMS 10 AND 11 TO THE REGULAR MEETING OF OCTOBER 1, 2003. This motion was seconded by Russell and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Editor's Note: See Page 14 for clarification of dates of continuance of Items 10 and 11 which had originally been stated as October 8, 2003.

PUBLIC COMMENT.....ITEM 5
None.

RESOLUTION 03-10158.....ITEM 6
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 03-CU5 TO ALLOW A WHOLESALE BAKERY ACTIVITY, AT 600 GOODLETTE ROAD, UNITS 106 AND 107, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. During ex parte disclosures, all Council Members indicated that they had had no contact with the petitioner. City Clerk Tara Norman then administered an oath to those intending to offer testimony; all responded affirmatively. Title of the resolution was then read by City Manager Robert Lee (9:19 a.m.).

John Houton, attorney for the petitioner, indicated that David Spanguolo's family had operated two bakeries and a successful restaurant in Massachusetts and is requesting permission for wholesale bakery activity at 600 Goodlette Road. Mr. Houton requested one daily van delivery between the hours of 7:00 and 9:00 a.m., which requires conditional use approval. The family, he said, will be providing breads to local restaurants as well as their own restaurant at 467 Fifth Avenue South, scheduled to open on November 1.

Vice Mayor Galleberg suggested that "outgoing" be added to Section 2 of the resolution, thereby clarifying that the one delivery time will encompass multiple delivery destinations rather than a single customer. In response to Council Member Herms, Planning Director Ron Lee advised that imposing the conditional use process upon bakery van deliveries was unique in the Code of Ordinances but had been in place for over 20 years. Although retail bakeries had been allowed, the distribution of the bakery products had not been permitted as a principal use. Council

Member Russell recommended allowing deliveries throughout the day, and Mayor MacKenzie agreed, speculating that extremely early hours of baking might have been the cause for the Code restriction. Planning Director Lee noted that the provision could however be changed with a future text amendment. A motion for approval was proffered by Council Member MacIlvaine; however, Council Member Russell urged eliminating the restriction on bakeries, citing the probability of multiple daily incoming and outgoing deliveries to other types of businesses. In seconding the motion, Vice Mayor Galleberg pointed out that the petitioner had in fact requested a conditional use and that the ordinance could be amended at a later time. It was determined that the motion included the aforementioned amendment in Section 2.

Public Comment: None. (9:30 a.m.)

During the vote on this item, Council Member Taylor sought clarification as to whether Council had the authority to provide for flexibility in delivery; however, City Attorney Pritt recommended that the vote in progress first be completed since it had commenced to the affirmative stage.

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10158 AS AMENDED IN SECTION 2: “that this approval allows one outgoing van delivery per day....” This motion was 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).

Council Member Taylor then asked for reconsideration to instead allow deliveries throughout the day; however this failed to receive the required support. (Wiseman-yes, Russell-no, MacIlvaine-no, Galleberg-no, Herms-yes, Taylor-yes, MacKenzie-no). In response to Mayor MacKenzie, Attorney Houton then confirmed that the petitioner was pleased with the decision as reflective of his client’s request.

CONSENT AGENDA

SPECIAL EVENTSITEM 9-a
U.S. Flag Retirement Ceremony – Boy Scouts of America (Alligator District of Collier County)
– Lowdermilk Park, September 11, 2003

RESOLUTION 03-10159..... ITEM 9-b
A RESOLUTION APPROVING AN AGREEMENT WITH HAVERLAND BLACKROCK CORPORATION FOR RE-SODDING THREE BASEBALL FIELDS IN FLEISCHMANN PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Herms noted that he had read the report and received confirmation from staff that the new drainage systems would not be located in the above-stated baseball fields.

RESOLUTION 03-10160..... ITEM 9-d
A RESOLUTION APPROVING SUBDIVISION PLAT PETITION 03-SD1 FOR PRELIMINARY AND FINAL PLAT APPROVAL TO SUBDIVIDE PROPERTY KNOWN AS TRACT E IN THE ESTUARY AT GREY OAKS, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10161.....ITEM 9-e
A RESOLUTION APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF GOODS WITH EVANS OIL COMPANY, LLC FOR THE PURCHASE OF MOTOR OIL, GREASES, LUBRICANTS, ETC. FOR FISCAL YEAR 2003-2004, WITH THE OPTION OF TWO ONE-YEAR RENEWALS; AUTHORIZING THE CITY MANAGER

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

RESOLUTION 03-10162..... ITEM 9-f
A RESOLUTION APPROVING A STIPULATED DISMISSAL REGARDING THE CHARTER CLUB LITIGATION; AUTHORIZING THE MAYOR TO EXECUTE THE STIPULATED DISMISSAL; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10163.....ITEM 9-g
A RESOLUTION CORRECTING THE LEGAL DESCRIPTION SET FORTH IN THE AMENDMENT TO LEASE AGREEMENT BETWEEN CARVER FINANCE, INCORPORATED AND G.W. CARVER, LIMITED AND THE LEGAL DESCRIPTION SET FORTH IN THE AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF NAPLES AND CARVER FINANCE, INCORPORATED RELATING TO THE GEORGE WASHINGTON CARVER APARTMENTS PROPERTY; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10164..... ITEM 9-h
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE SOFTWARE SERVICE AGREEMENT WITH VISIONAIR FOR SOFTWARE MAINTENANCE SERVICES FOR FISCAL YEAR 2003-2004; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read. While characterizing this as a fair price, City Manager Robert Lee confirmed that staff is checking into other options.

Public Comment: (9:39 a.m.) **Henry Kennedy, Tarpon Road**, referred to Item 9-b (Fleischmann Park sodding) and stressed that Cambier Park, too, is in need of renovation due to poor drainage. He took issue with City Manager Lee's September 3rd report (a copy is contained in the file for this meeting in the City Clerk's office) since it had indicated that Cambier Park requires less extensive improvements than Fleischmann. Mayor MacKenzie pointed out however that sodding the Fleischmann fields had been included in a park improvement bond issue and that general departmental funds would be used to renovate Cambier's baseball field. David Lykins, Community Services Director, further advised that the Cambier Park infield would be improved to the Little League standards within the coming year's operating budget; however, because the more extensive outfield upgrading is not currently budgeted it will be accomplished as funds become available. Mr. Kennedy, however, disagreed with this premise, contending that unless the entire field is renovated, drainage problems will in fact be exacerbated.

In response to Council Member Taylor, Mr. Lykins explained that the Fleischmann Park baseball field difficulties stem from uneven areas, overseeding, and generally unplayable conditions. Furthermore, he cited a clause in the agreement with Johnson Engineering to the effect that the drainage improvements would not disrupt any of the ballfields nor create any damage.

MOTION by Russell to APPROVE CONSENT AGENDA (EXCEPT ITEM 9-c); seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

RESOLUTION 03-10165ITEM 9-c
A RESOLUTION APPROVING RULES AND REGULATIONS FOR THE CITY OF NAPLES DESIGN REVIEW BOARD PURSUANT TO SECTION 2-493(d) OF THE

CODE OF ORDINANCES OF THE CITY OF NAPLES, MORE PARTICULARLY DESCRIBED HEREIN, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Robert Lee (9:47 a.m.). In response to Mayor MacKenzie, Planning Director Ron Lee indicated that there would be administrative costs relating to the operation of the Design Review Board (DRB) but none associated with its formation. After Council discussion, it was indicated that City Attorney Robert Pritt would be required to attend the Design Review Board (DRB) meetings only on an as-needed basis, although Mayor MacKenzie cautioned against incurring legal expenses similar to the \$16,000 for Mr. Pritt's attendance at Planning Advisory Board (PAB) meetings. She also stressed the importance of completion of the DRB manual, but Planning Director Lee explained that the resolution under consideration deals with administrative rules and regulations rather than the DRB manual.

Vice Mayor Galleberg then expressed the view that it is excessive to require that materials be provided 30 days in advance of a DRB meeting. Planning Director Lee explained that because City Attorney Pritt had deemed DRB meetings to be quasi-judicial, a staff report must be prepared on each item, public notices mailed, and legal notices published, necessitating a 30-day time frame. In addition, Mr. Lee said that DRB members had asked to receive documentation two to three weeks in advance. He also clarified that the 24-hour advance requirement for PAB documentation referred only to supplemental information since PAB materials are also submitted 30 days in advance and provided to PAB members at least six days before the meeting.

Council Member Taylor received clarification that the initial project review is at the DRB level and that it is deemed the petitioner's responsibility to coordinate compliance with established deadlines. Planning Director Lee further noted that the DRB process could add 30 days to the review time of a petition.

Council Member Wiseman said that while the rules and regulations are easily understood, she questioned the provision relating to obtaining a legal opinion based on a majority vote. She said she envisioned a scenario whereby the City could incur legal expenses for items not within the City Attorney's purview. Additionally, she stated that for an architectural review to be meaningful, significant lead time would be necessary.

In response to Council Member Herms, Planning Director Lee estimated 10 to 12 DRB reviews monthly requiring an estimated 25 percent of a full-time employee's time therefore necessitating no additional hiring. Mr. Herms said he estimated a petitioner's charges to be approximately \$500, covering preliminary review fee, design review, and advertising costs.

Council Member MacIlvaine received clarification from City Attorney Robert Pritt that the law requires meeting minutes which will be under the jurisdiction of the City Clerk's Office. City Clerk Tara Norman indicated that another position had been budgeted in her department to cover the DRB minutes as well as other boards, although the Clerk's Office had staffed the first DRB meeting and would do so in the future. Mr. MacIlvaine then pointed out a typographical error on Page 1. Additionally, he stated that the advisory declarations could be provided to petitioners in written form rather than read aloud at each meeting by the Chair.

Council Member Taylor received clarification from Planning Director Lee that prior to the establishment of the DRB, plans would have been reviewed by the Building Department but to a lesser extent than the criteria and handbook the DRB will be following.

Mayor MacKenzie stated she had envisioned the DRB working as a subcommittee of the PAB and similar to the Staff Action Committee (SAC) which however meets less formally and more frequently than the schedule anticipated for the DRB. She said she had also anticipated petitioners having more opportunities for interaction with the DRB than merely a monthly review hearing. City Attorney Pritt indicated that most hearings would be quasi-judicial, applying the ordinance to the petition; therefore, he said, the DRB would establish more formal meetings with corresponding disclosures due to a need to follow due process. However, he stated, more frequent meetings could be held, provided notification of the meeting is posted three days in advance. Mr. Pritt further indicated that properties within 500 feet of the project must also be notified.

Council Member Russell voiced approval of the rules and regulations as providing structure to a process he said had been previously described as arbitrary. He agreed with the requirement for a petitioner to submit plans 30 days in advance, and while acknowledging it as an additional layer in the petitioner's process, nevertheless expressed optimism that the results would be positive. Mr. Russell also recommended that the DRB be allowed to request advice from the City Attorney via the Planning Director. However, City Attorney Pritt recommended that the City Manager instead be designated to request legal assistance, and Mr. Russell agreed.

Council Member Wiseman said she opposed the DRB making binding decisions without benefit of the required handbook, stating that she also shared the concerns stated by Mayor MacKenzie. In addition, Mrs. Wiseman noted that the DRB is currently operating without a fully constituted Board and that minute-taking had not even been resolved. She also said that it should be self-evident that additional administrative effort and expense would be tied to an additional board.

In further discussion, Planning Director Lee explained that he anticipated monthly DRB meetings with additional sessions at the Chair's request. However, if Council deems that the DRB should meet more frequently, then that should be so indicated in the procedural manual, Mr. Lee said.

Vice Mayor Galleberg questioned the need for the DRB to conduct quasi-judicial proceedings since its decisions impact design and not land use. The Staff Action Committee (SAC) hearings should also then be quasi-judicial, he said. City Attorney Pritt however explained that the application involves authority to recommend approval/disapproval and apply ordinances and Charter provisions as opposed to formulating policy. Therefore, he said, the DRB is likely to be quasi-judicial even though its policy making function generally would not be. In response to Mayor MacKenzie, Mr. Pritt also noted that the Downtown Improvement and Redevelopment Committee (DIRC) should also be viewed in this context.

Council Member Herms then received clarification from Planning Director Lee that the property located 1 1/2 blocks into the downtown area (near U.S. 41/Fifth Avenue intersection) would

receive SAC review based on the principles outlined in the Fifth Avenue Overlay District rather than those from the DRB.

Council then dealt with the issue of implementation of the requirement for projects to undergo the design review process. Vice Mayor Galleberg and Council Members Taylor, MacIlvaine, and Russell recommended that implementation go forward as planned, citing work that had already been accomplished in drafting the Design Review Board (DRB) ordinance, and Mr. Galleberg and Miss Taylor noting that design review boards had been widely implemented elsewhere to the benefit of their respective communities. Mayor MacKenzie and Council Member Wiseman however suggested various methods of phased implementation, with Mrs. Wiseman expressing concern that guidelines should be in place prior to requiring applicants for building permits to have the design of their projects reviewed.

City Manager Lee advised Council that staff would review time frames to expedite the process and further indicated that he and the City Clerk had been in discussions relative to minute-taking for the DRB, with the information to be provided at the upcoming budget meeting.

While various motions were proposed but not voted upon, final action appears below. Noting the effective date of the ordinance (#03-10047, May 7, 2003), Council Member Herms asked whether any building permits had been issued for projects, which had not in fact received the required design review. City Attorney Robert Pritt stated that this information would be needed and should be provided by the administration. Also, the possibility of partial implementation was also considered; namely, requiring review by the Design Review Board (DRB) but without the board's recommendations considered binding until the DRB guidelines had been drafted and published. It was however determined that effecting such changes would require amendment of the aforementioned ordinance, including a Planning Advisory Board (PAB) review, that could not be commenced until October.

Public Comment: None. (10:25 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10165 AS AMENDED: 1) correct typographical error on Page 1 (first line of Purpose section); 2) amend order of testimony on Page 4 (1. Staff introduction, 2. Petitioner's presentation, 3. Staff presentation, and 4. Members of the public); and 3) in Section XIII, Legal Opinions, change to authorize City Manager instead of Design Review Board (DRB) to request legal opinions. This motion was seconded by Taylor and carried 6-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).

Following the vote, Council Member Herms requested that City Manager Lee determine whether building permits for properties requiring DRB approval had in fact been issued after Ordinance #03-10047 was passed on May 7, 2003.

It is noted for the record that Items 7-a and 7-b were considered concurrently.

**RESOLUTION 03-10166.....ITEM 7-a
A RESOLUTION DETERMINING PETITION 03-LE7 FOR A LIVE
ENTERTAINMENT PERMIT AT RIDGWAY BAR & GRILL LOCATED AT 1300
THIRD STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT
TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.
RESOLUTION 03-10167..... ITEM 7-b**

A RESOLUTION DETERMINE RESIDENTIAL IMPACT STATEMENT PETITION 03-RIS14 FOR RIDGWAY BAR & GRILL LOCATED AT 1300 3RD STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Titles read by City Manager Robert Lee (10:47 a.m.) after disclosure of the following ex parte communications: MacKenzie/familiar with site but no contact; Wiseman/visit to the site and conversation with the petitioner but not relevant to this matter; Russell/visit to the site and correspondence; MacIlvaine/no contact for two years; Galleberg/familiarity with site and brief discussion with the petitioner; Herms/no contact; and Taylor/familiar with site and conversation with the petitioner on an unrelated matter. City Clerk Tara Norman then administered an oath to those intending to offer testimony; all responded affirmatively.

Petitioner Tony Ridgway advised that his business had been in operation since 1978 and that he is currently seeking permission to continue presenting one amplified indoor performer between 8:00 and 11:30 p.m. on Thursday through Saturday, and from 7:00 to 10:00 p.m. on Sunday. In response to Council Member Wiseman, Mr. Ridgway clarified that instead of the 9:00 p.m. start time on Thursday through Saturday listed in the resolution, he was requesting to commence entertainment at 8:00 p.m.

Discussion among Council Members continued regarding whether to grant an 11:00 p.m. or 11:30 p.m. closing. It was also determined that Ridgway's indoor entertainment did not generate neighborhood complaints and that there had been a longstanding and positive relationship with the City. However, Mayor MacKenzie pointed out that Ridgway's does border single-family residences. Furthermore, Council Member MacIlvaine noted that neighboring restaurants (Tommy Bahamas and Campiello's) had been required to cease entertainment at 11:00 p.m. Mayor MacKenzie indicated her support for the 11:00 p.m. requirement, and Mr. MacIlvaine made a motion for the hours of 8:00 p.m. to 11:00 pm Thursday through Friday and 7:00 p.m. to 10:00 pm on Sunday; however, this motion failed for lack of second.

It is noted for the record that Council Member Herms left the meeting at 10:59 a.m.

Vice Mayor Galleberg moved for approval of entertainment between 8:00 p.m. and 11:30 p.m. Thursday through Friday and 7:00 p.m. to 10:00 p.m. on Sunday. Council Member Russell seconded the motion, supporting an 11:30 p.m. cessation. Additionally, Council Member Taylor cautioned that one commercial district not be given an advantage over another, citing the 11:30 p.m. entertainment closure at many Fifth Avenue South restaurants. However, Mayor MacKenzie stressed that allowing Ridgway's a later hour than neighboring restaurants would in fact promote like requests at the time of their permit renewals.

MOTION by Galleberg to APPROVE RESOLUTION 03-10166 AS AMENDED in Section 1 "...between the hours of ~~9:00~~ 8:00 p.m. and 11:30 p.m. on Thursday through Saturday...". This motion was seconded by Russell and carried 4-2 (Galleberg-yes, Herms-absent, MacIlvaine-no, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

MOTION by Wiseman to APPROVE RESOLUTION 03-10167 AS AMENDED in Section 1: "...between the hours of ~~9:00~~ 8:00 p.m. and 11:30 p.m. on Thursday through Saturday...". This motion was seconded by Galleberg and

carried 5-1 (Galleberg-yes, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

Recess: 11:02 a.m. to 11:18 a.m. It is noted for the record that the entire Council except Council Member Taylor was present when the meeting reconvened.

RESOLUTION 03-10168.....ITEM 8
A RESOLUTION DETERMINING RENEWAL OF LIVE ENTERTAINMENT APPROVAL FOR TOMMY BAHAMA’S CAFÉ, LOCATED AT 1220 THIRD STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. The title was read by City Manager Robert Lee (11:19 a.m.) after the following Council Members ex parte disclosures: MacKenzie, Herms, and MacIlvaine/no contact; Wiseman/visit to the establishment and conversation with petitioner’s agent regarding the petition and live entertainment in general; Russell/visit to the site, conversations with residents and greeting of the petitioner earlier in the meeting; Galleberg/visit to the site but no contact; and Taylor (upon her return to the meeting)/no contact. City Clerk Tara Norman then administered an oath to those intending to offer testimony; all responded affirmatively.

It is noted for the record that Council Member Taylor entered the meeting at 11:20 a.m.

Jerry Alajajian, General Manager of Tommy Bahamas, advised that music had been provided at the restaurant for eight years and that he knew of only one noise complaint nevertheless focused on the Third Street area in general rather than specifically Tommy Bahama’s.

MOTION by Wiseman to APPROVE RESOLUTION 03-10168 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).

Following the vote, Mayor MacKenzie requested that City Manager Lee determine a means of addressing the disturbance of Third Street area residents caused by buses parked on private property with engines running.

Second Reading Of Ordinance (Continued to 10/1/03; see Page 2).....ITEM 10
AN ORDINANCE GRANTING COMPREHENSIVE PLAN AMENDMENT PETITION 03-CPA1, TO AMEND THE CONSERVATION AND COASTAL MANAGEMENT ELEMENT OF THE COMPREHENSIVE PLAN BY ADDING OBJECTIVES AND POLICIES TO ESTABLISH MARINA SITING CRITERIA; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

First Reading Of Ordinance (Continued to 10/1/03; see Page 2).....ITEM 11
AN ORDINANCE DETERMINING LARGE SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 03-CPA2, AMENDING THE FUTURE LAND USE ELEMENT IN ORDER TO ADD DENSITY AND HEIGHT LIMITS FOR PROPERTIES WITHIN THE DOWNTOWN MIXED USE DISTRICT, AMENDING THE TRANSPORTATION ELEMENT TO ADD POLICY 6-2 THAT RESTRICTS CONSTRUCTION OF ROAD OVERPASSES IN THE CITY, AND DELETING THE FOLLOWING POLICIES: PARKS, RECREATION AND OPEN SPACE ELEMENT, POLICY 3.1, POLICY 4-6, HOUSING ELEMENT, POLICY 3.10, FUTURE LAND USE ELEMENT, POLICY 5-3.1, VISION 2005 WORK PLAN, POLICY 1-1.1, POLICY 1-1.2, POLICY 1-1.3, POLICY 2-2.5, POLICY 2-2.10, POLICY 2-3.3, POLICY 3-3.8, POLICY 4-2.6, POLICY 4-3.5, POLICY 5-2.1, POLICY 6-1.5, POLICY 6-2.2, POLICY 7-2.1,

POLICY 7-3.4, POLICY 8-1.1, POLICY 8-2.4, POLICY 8-3.1, POLICY 8-3.3, POLICY 8-3.4, POLICY 8-3.5, POLICY 9-2, CAPITAL IMPROVEMENTS ELEMENT, POLICY 2-6, CONSERVATION AND COASTAL MANAGEMENT ELEMENT, POLICY 1-2, POLICY 3-1, INTERGOVERNMENTAL COORDINATION ELEMENT, POLICY 1-7, PUBLIC FACILITIES AND WATER RESOURCES ELEMENT, POLICY 2-20, POLICY 3-3, POLICY 4-10, POLICY 7-8; AND PROVIDING FOR RENUMBERING; AND PROVIDING AND AN EFFECTIVE DATE.

ORDINANCE 03-10169.....ITEM 12
AN ORDINANCE AMENDING SECTION 106-39 OF THE CODE OF ORDINANCES IN ORDER TO MODIFY SETBACK REQUIREMENTS FOR EXEMPT SIGNS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Robert Lee (11:25 a.m.). Vice Mayor Galleberg moved approval of Item 12, which was seconded by Council Member Russell.

Public Comment: (11:26 a.m.) **Ellie Krier, Naples Area Board of Realtors (NABOR)**, received clarification from City Attorney Pritt that the guidelines granted by Section 106-39 do not require prior permission but rather allow individual decision making on sign placement based upon the ordinance guidelines. In response to Council Member Herms, Ms. Krier confirmed that NABOR had requested the respective changes to eliminate the written waiver process and to work around structures and landscaping impediments within a designated range. She said she was pleased with the changes. City Manager Lee pointed out that the ordinance was established to accommodate sign placement in instances where vegetation and structures impede easy placement as well as to request resolution from the City Manager or his designee only in cases that do not comport with those stipulated requirements.

Public Comment: None. (11:31 a.m.)

MOTION by Galleberg to ADOPT ORDINANCE 03-10169 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).

ORDINANCE 03-10170.....ITEM 13
AN ORDINANCE AMENDING SECTION 2-403 “PROCEDURES, RULES AND REGULATIONS” OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF REVISING THE REQUIRED INTERVALS AT WHICH THE CODE ENFORCEMENT BOARD IS REQUIRED TO MEET; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Robert Lee (11:31 a.m.). Vice Mayor Galleberg as well as Council Members Russell and Wiseman each indicated discussions with Code Enforcement Board (CEB) member Jim Dean regarding CEB Chairman Terry Green’s letter requesting an ordinance amendment (a copy of this letter is contained in the file for this meeting in the City Clerk's office). Mr. Galleberg also said that while Mr. Dean had concurred with the changes, he had opposed the actions of the CEB Chair done without prior knowledge of other board members. Council Member Wiseman indicated that the CEB had however at a recent meeting decided not to take further action relative to Chairman Green’s submittal. City Attorney Pritt also noted that as opposed to the nature of the action, Mr. Dean’s opposition had been directed toward the submission without prior knowledge of the board. Mr. Pritt said that he believed the board members to therefore be in agreement with the proposed action.

Public Comment: None. (11:36 a.m.)

MOTION by Wiseman to ADOPT ORDINANCE 03-10170 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 03-10171.....ITEM 14

A RESOLUTION APPROVING A TWO-YEAR AGREEMENT WITH CHEMICAL LIME COMPANY OF AL., INC., FOR FURNISHING QUICKLIME FOR FISCAL YEAR 2003-2004, WITH THE OPTION OF TWO ONE-YEAR RENEWALS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Robert Lee (11:37 a.m.).

Public Comment: None. (11:37 a.m.)

MOTION by Wiseman to APPROVE RESOLUTION 03-10171 AS SUBMITTED; seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

ORDINANCE 03-10172.....ITEM 15

AN ORDINANCE AMENDING SECTIONS 62-61; ADDING A NEW SECTION 62-135; AND ADDING SUBSECTION (f) TO SECTION 62-159 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF PROVIDING A SURCHARGE ON PARKING FINES FOR FUNDING THE SCHOOL CROSSING GUARD PROGRAM; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Robert Lee (11:37 a.m.).

Public Comment: None. (11:38 a.m.)

MOTION by MacIlvaine to ADOPT ORDINANCE 03-10172 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).

.....ITEM 16

CONSIDER A LETTER FROM PETER G. ESCHAUZIER REGARDING HIS SERVICE ON THE NAPLES AIRPORT AUTHORITY (NAA) RELATIVE TO HIS MOVE FROM THE CITY. Vice Mayor Galleberg cited an August 8th letter from Naples Airport Authority (NAA) Chairman Peter Eschauzier (a copy of which is contained in the file for this meeting in the City Clerk's office) and noted that Mr. Eschauzier had changed his residence to a location outside the City limits. While Mr. Eschauzier had therefore offered his resignation, Mr. Galleberg said, he had also offered to continue as Chair until the end of his term. Mr. Galleberg further said that he believed Mr. Eschauzier not only enjoyed the support of the Council, but that his NAA colleagues favored his continuing to serve until the end of his term. Acknowledging that the residency requirement was designed to insure that a member supports City interests, Mr. Galleberg described the Eschauzier situation as however unique and emphasized the benefit to the City of Mr. Eschauzier completing his term.

Characterizing Mr. Eschauzier's service as outstanding, Council Member MacIlvaine nevertheless stressed the importance of City residency for NAA members in adherence to the ordinance requirement. City Attorney Robert Pritt however referred to the Special Act of the Florida Legislature that created the NAA, which states that a commissioner may hold office until a successor is appointed and has qualified. Council Member MacIlvaine proffered a motion for

Mr. Eschauzier to continue serving until the end of his term (November 19, 2005), which was seconded by Vice Mayor Galleberg; however, intervening discussion occurred prior to final action.

City Attorney Pritt cautioned, however, that action instead be based on service until the appointment of a replacement. Council Member Wiseman said that due to the sensitivity of the residency requirement, Mr. Eschauzier should serve until a successor is appointed but not as Chair. However, noting that the residency requirements might limit recruitment, Council Member Russell nevertheless said that the City must abide by its legal requirements. However, he also supported Mr. Eschauzier continuing in his position until a replacement is appointed.

Council Member Taylor said that in light of the above comments, the City Clerk should publicize this vacancy. While Council Member Herms also described Mr. Eschauzier's work on NAA as outstanding, he reminded Council that the residency requirement had been imposed due to citizen concerns about noise and pollution issues, seeking to have the Naples Airport Authority responsive to City as opposed to Collier County interests. Therefore, Mr. Herms said, expeditious replacement of Mr. Eschauzier is paramount in order to deter controversy, predicting that the legality of a NAA split vote could be challenged. Mayor MacKenzie therefore articulated a majority consensus to direct the City Clerk to advertise this vacancy, asking Mr. Eschauzier to continue serving until a replacement is named.

Vice Mayor Galleberg however cited a distinction between Mr. Eschauzier completing his term and a new non-City applicant applying for the position. He said that Mr. Eschauzier's concern for the City and his abilities as a board member make completion of his term beneficial to both the City and NAA. Council Member MacIlvaine agreed and indicated that he would amend his motion to ask Mr. Eschauzier to serve until a replacement is appointed, with a clarification noted that this included the request to publicize the vacancy. Vice Mayor Galleberg stated that the motion simply indicated Mr. Eschauzier did not have to leave his post.

After Council discussion, both the above motion and second were withdrawn based on advice by City Attorney Pritt that such action was not required since the law already dictates that NAA commissioners serve until replaced. Vice Mayor Galleberg commented that the risk of such a motion would in fact unfairly remove Mr. Eschauzier. Council Member Wiseman however urged that Council respond to Mr. Eschauzier's letter which, she noted, included various options.

Public Comment: None. (11:56 a.m.)

MOTION by Russell to DIRECT CITY CLERK TO ADVERTISE VACANCY, WRITING MR. ESCHAUZIER TO THANK HIM FOR SERVICE AND REQUEST THAT HE SERVE UNTIL HIS REPLACEMENT IS APPOINTED. *This motion seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 03-10173.....ITEM 17
A RESOLUTION AUTHORIZING THE USE OF CRA FUNDS BUDGETED AS "41-10 REVITALIZATION" FOR THE PURCHASE OF THE REAL PROPERTY LOCATED AT 1098 THIRD AVENUE NORTH, NAPLES, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Robert Lee (11:56 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 03-10173 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).

.....ITEM 18
DETERMINE WHETHER COUNCIL WILL RECONSIDER VARIANCE PETITION 03-V2 FROM SECTION 102-206(2) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES SIDE YARD SPATIAL PERCEPTION REQUIREMENTS, IN ORDER TO PERMIT THE CONSTRUCTION OF A SINGLE FAMILY HOME AT 509 FIRST AVENUE SOUTH THAT ENCROACHES 3 FEET ALONG THE NORTH SIDE YARD AND 5 FEET ALONG THE EAST SIDE YARD. Council Member MacIlvaine indicated that he had been advised by Petitioner John Mortellaro that one year and one month had in fact transpired between the building permit issuance and the City's order to cease construction. This information is opposed, he said, to the understanding at the August 20th regular meeting that just one month had elapsed between these events. At that point, Mayor MacKenzie noted that Mr. Mortellaro had registered to speak but cautioned that he restrict his comments to the issue of a reconsideration and not address the merits of his position.

Public Comment: (11:58 a.m.) **John Mortellaro, 509 First Avenue South,** urged reconsideration of his variance request.

At this juncture Vice Mayor Galleberg received clarification that added Item 18 was a request not to reconsider the Mortellaro variance petition at that meeting but merely a proposal for reconsideration at a subsequent meeting. In response to Council Member Wiseman, City Attorney Pritt stated that Council Members could discuss their understanding of the merits of the case in order to make a decision on reconsideration, but could not hear further testimony.

Council Member Russell asked for a description of any new information that would warrant reconsideration. Mr. Mortellaro referred to an incorrect citation of the time period which had elapsed between building permit issuance and the stop-work order; namely 13 months rather than 1 month. Additionally, Mr. Mortellaro said, one, not two, neighbors had actually opposed his project and had written a letter to that effect. However, Vice Mayor Galleberg pointed out that while Council had a single letter, an additional neighbor had addressed the Planning Advisory Board. In response to Council Member Taylor, Mr. Mortellaro expressed the opinion that the aforementioned discrepancies could have led to a negative vote. Council Member Taylor moved to reconsider, and Council Member MacIlvaine seconded the motion.

Prior to vote on this matter, Vice Mayor Galleberg took the position that in fact nothing had changed since Council last considered this petition, explaining that the underlying matter remained, that being no undue hardship not created by the petitioner in a situation unique to the property. Mr. Galleberg also cited testimony to the effect that the spatial perception issue had been pointed out to the petitioner on two separate occasions but had not been addressed. Therefore he expressed the opinion that changed factors had not been presented to Council and that it was therefore working outside its reconsideration process. Council Member Wiseman echoed Mr. Galleberg's opinion, declining support for the request and characterizing reconsideration as an erosion of a system designed to create certainty and fairness in the event of

changed circumstances. She also noted that City Attorney Pritt made a clear, unequivocal statement that a variance could not be granted if conditions for the variance had not been met. The time period, she advised, had however not factored into her decision, pointing out that it was only logical for the building process to take longer than one month from permit issuance to stoppage. Furthermore, she said, an intervening period of time had resulted from an owner/builder renovating and constructing his home according to his own schedule, which did not change the circumstances that would authorize a variance.

Noting what he described as an underlying policy to be reasonable and fair, Council Member Russell expressed support to engage in the proposed discussion despite the fact that he did not believe new information had been presented. Mr. Russell stated that the law must be followed and that he did not believe that the particular situation met the conditions for a variance.

Mr. Mortellaro replied however that he believed he had met all three variance stipulations, that City Council had in fact erred, and that he therefore deserved a fair chance for reconsideration.

MOTION by Taylor to RECONSIDER ON SEPTEMBER 17, 2003; seconded by MacIlvaine and unanimously carried 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Russell-no, Taylor-yes, Wiseman-no, MacKenzie-yes).

Following the vote, Council Member Wiseman pointed out that petitioners make business decisions and in this case the decision had been made not to employ a licensed contractor or attorney. City Manager Lee advised that the neighbors would be notified of the reconsideration.

Mayor MacKenzie then corrected the record to the effect that Items 10 and 11 would be continued to October 1, rather than October 8, as so stated earlier in the meeting. (See Item 4) City Attorney Pritt advised that this statement would suffice as correction on the record.

PUBLIC COMMENT.....
None. (12:12 p.m.)

CORRESPONDENCE & COMMUNICATIONS.....
Mayor MacKenzie congratulated City Attorney Robert Pritt for being recognized Outstanding Municipal Attorney by the Florida Municipal Attorney Association.

Council reached consensus not to proceed with legislation to eliminate alternate positions on the Planning Advisory and Code Enforcement Boards.

Mayor MacKenzie referred to a recent petition by Attorney John Passidomo requesting approval for one floor of parking below FEMA elevation and asked whether Council wished to seek voter interpretation on the forthcoming general election ballot. It was the consensus of Council however not to institute a referendum question to clarify whether a level of parking below FEMA elevation comports with the intent of the Charter height amendment.

In response to Council Member Taylor, City Attorney Pritt advised that he had distributed two reports: an annual report and a litigation report. The annual report covers the fiscal year to date, while the litigation report is a running status update. Mr. Pritt further advised that while the active cases listed Hamilton Harbor and the Walburn matter, both had been effectively

concluded; a Comprehensive Plan amendment relative to Hamilton Harbor was still pending, and the appeal period for the Walburn case had not yet expired.

Council Member Herms presented a printed hard copy of a website that he noted had combined descriptive material of Naples, Florida, with photographs of Naples, Italy. (A copy of this material is contained in the file for this meeting in the City Clerk's Office.) It was therefore the consensus of Council for the City Manager to request a correction.

As a measure to guard against wellfield contamination, Council Member Herms requested that ground water in the proximity of golf courses be investigated to determine arsenic levels. He cited a recent article depicting this problem on the East Coast and that the problem was believed to have originated from herbicides applied to golf courses.

Mr. Herms then pointed out what he described as conflicting zoning standards in a 1-1/2 block area of the U.S. 41 corridor which is bordered by both the Fifth Avenue South Special Overlay District and the "D" Downtown District. He therefore urged a determination of whether the area would remain with zero setback or be designated with the 22-foot setback contained in the "D" Downtown District. Vice Mayor Galleberg, however, stated that Council had been advised by staff that there in fact is no overlap, pointing out that the Fifth Avenue South Special Overlay District extends to Fourth Avenue South and "D" Downtown commences from there. Mayor Mackenzie nevertheless requested that City Manager Lee obtain clarification from staff.

With reference to information on the City's pension plans, Council Member Herms indicated that a prior request of City Manager Lee had actually been to determine the specific impact of funding needs on the individual employee's take-home pay. Council Member MacIlvaine however said that such a discussion would be premature with negotiations underway, although Vice Mayor Galleberg said that a cost/benefit analysis of the existing collective bargaining agreement would be beneficial at the appropriate time.

Vice Mayor Galleberg suggested that the Council be queried relative to settlement prior to the hearing on the Wilkinson House matter in late October. Various Council Members indicated approval for such a determination. Council Member Taylor stressed the importance of meeting with the attorney representing the City in the Wilkinson House matter in order to avoid additional taxpayer cost. Miss Taylor also noted that she had learned from members of the public that various Council Members had in fact refused offers of settlement tendered by Plaintiff Sibcy. However, Mayor MacKenzie cautioned against conveying information in this manner.

Council Member Wiseman then indicated that she had met with Plaintiff Sibcy in July to hear a proposal but had done so with the concurrence of Lawrence Farese, the City's legal counsel. She emphasized however that she would not consider negotiating on behalf of other members of the Council and supports meeting with Attorney Farese if he deems it appropriate.

In further discussion it was determined that although City Attorney Pritt's firm, Roetzel & Andress, had registered a conflict with reference to representation of the City in this matter, Mr. Pritt would not be precluded from requesting an attorney/client session in that day's forum.

Therefore, he said, pursuant to Section 286.011(8), Florida State statutes, the City Attorney through outside counsel (Cummings & Lockwood) desired advice concerning litigation pertaining to the Wilkinson House (Sibcy v. Naples) and that the subject matter would be confined to settlement negotiations or strategy sessions related to litigation expenditures. The entire session, he said, would be recorded by a certified court reporter that would record the commencement and termination of the session, all discussion and proceedings, the name of all persons present at the time, and the names of all persons speaking. The City will also give reasonable notice of the time and date of the attorney/client session and the names of the persons who will be attending the session, which he presumed would be each member of the City Council plus the City Manager and the attorney handling the matter, Larry Farese. The time and date proposed would be either September 29, 2003, or October 1, 2003.

MOTION by Galleberg to HOLD EXECUTIVE SESSION (requested by City Attorney) on Sibcy v. City of Naples (Wilkinson House) on Monday, September 29, 2003, lasting approximately 1/2 hour. This motion was 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).

Council Member Russell then reported that he had received complaints from residents regarding a barge which had remained anchored for approximately four months near Keywaydin Island. While noting a lack of City jurisdiction over federal waters, he nevertheless expressed concern that the vessel would in fact be virtually stored there until employed on another project. City Attorney Pritt however indicated the federal government had in fact recognized local jurisdiction over the docking and mooring of boats. It was therefore the consensus of Council that the City Attorney request that the owner move the barge.

In response to City Manager Robert Lee, City Attorney Pritt advised that a request similar to the one above is not required in order to schedule an executive session relative to the employee pension issue (labor negotiations).

ADJOURN.....
12:38 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Bonnie J. McNeill, Recording Specialist

Minutes Approved: 10/1/03