



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – September 17, 2003 – 9:00 a.m.**

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Mayor MacKenzie called the meeting to order and presided.

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**ROLL CALL .....ITEM 1**

**Present:**

Bonnie R. MacKenzie, Mayor

**Absent:**

Gary Galleberg, Vice Mayor (absent)

**Council Members:**

Joseph Herms

William MacIlvaine

Clark Russell

Penny Taylor (arrived 9:06 a.m.)

Tamela Wiseman

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**Also Present:**

Robert Lee, City Manager

Robert Pritt, City Attorney

Ron Lee, Planning Director

Tara Norman, City Clerk

Steven Moore, Chief, Police/Emergency Svc.

Bill Overstreet, Building Official

David Lykins, Community Services Director

Jon Staiger, Natural Resources Manager

Bonnie McNeill, Recording Specialist

Karen Kateley, Administrative Specialist

Major Cleo Damon

John Norman

Erika Hinson

Willie Anthony

Gloria Kovacs

Sue Smith

Muffy Clark Gill

Debra Newman

Lodge McKee

Other interested citizens and visitors.

**Media:**

Dianna Smith, Naples Daily News

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

Major Cleo Damon, The Salvation Army.

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

None.

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

Add Item 10-f – To confirm the appointment of an American Federation of State, County, and Municipal Employees (AFSCME) representative to the General Pension Board.

**MOTION by Wiseman to ADD ITEM 10-f; seconded by MacIlvaine and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Add Item 13 – First reading of amendments to Section 50/Pensions, adjusting the amount of employee contributions.

**MOTION by Taylor to ADD ITEM 13; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Add Item 14 – Discussion of scheduling Special Meeting regarding employee health, general liability, and property insurance issues.

**MOTION by Herms to ADD ITEM 14; seconded by Taylor and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**MOTION by Herms to SET THE AGENDA WITHDRAWING ITEMS 7-h and 12; REMOVING ITEMS 7-b(1), 7-b(2), 7-b(4), 7-b(8), 7-b(9), 7-b(10), 7-b(11), 7-b(12), 7-b(13), 7-b(14), 7-b(15), 7-b(16), 7-b(17), 7-b(19), 7-d, and 7-f FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION; AND ADDING ITEMS 10-f, 13, AND 14. This motion was seconded by Russell and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

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

None.

**SPECIAL EVENT .....ITEM 7-b(1)**

**54<sup>th</sup> Annual Swamp Buggy Parade, Saturday, October 25, 2003, 10:00 a.m. to 12:00 p.m.**

John Norman, representing Swamp Buggy, Inc., requested City co-sponsorship for this year's parade. In response to Council Member Russell, Mr. Norman advised that the City had funded parade costs for the past 53 years. Mayor MacKenzie informed Mr. Norman that the Community Services Department was in the process of reviewing the City's co-sponsorship policy for every special event, including the Swamp Buggy Parade. Council Member Russell further indicated that Council was seeking a consistent and fair special events co-sponsorship policy. Although a motion for approval was then proffered by Council Member MacIlvaine with Mr. Russell seconding, stipulating that the co-sponsorship amount would be addressed later, further discussion continued. This motion then failed 3-3 (Herms, Taylor, MacKenzie dissenting; Galleberg absent).

Council Member Herms said that he was of the opinion that the City should support this long-standing community event despite lack of a current co-sponsorship policy. Subsequently, Council Member Taylor commented on the importance of the Swamp Buggy tradition, which she depicted as representative of activities enjoyed by the working population and as providing entertainment for the entire community. Council Member Wiseman therefore suggested last year's co-sponsorship funding amount (\$5,500.00).

**MOTION by MacIlvaine to APPROVE 2003 CO-SPONSORSHIP EQUAL TO LAST YEAR'S AMOUNT; seconded by Russell and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 03-10174.....ITEM 6**

**A RESOLUTION DETERMINING 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' ALONG THE NORTH SIDE YARD AND 5' ALONG THE EAST SIDE YARD, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (9:22 a.m.) following ex parte disclosures. MacKenzie reported no direct contact with petitioner but noted that Administrative Assistant Michael Moose had however provided the petitioner with presentation guidelines and responded to questions. Wiseman and Taylor/no contact; Russell/no contact but had received petitioner's communications; MacIlvaine/no contact since prior meeting; and Herms/viewed the interior and exterior of the subject property. Mayor MacKenzie then advised the petitioner to direct his comments to the factual data and the merits of his petition.

Petitioner John Mortellaro utilized a computer-generated presentation to illustrate the renovations to his home and pointed out what he referred to as the 5-foot and 3-foot infractions. Mr. Mortellaro then directed Council's attention to a photograph of a similar neighboring house that had in fact been granted a variance. He described that house however as in fact being much larger than his and expressed the opinion all adjacent property values would be elevated because of that home. (Copies of the materials presented by Mr. Mortellaro are contained in the file for this meeting in the City Clerk's Office.)

Mr. Mortellaro then continued his presentation by asserting that he had in fact met the three standards for variance approval, that he had received building permit approval and thus had been allowed to proceed with his building plans. His renovation had been close to completion, he said, when the City advised him to stop work, some 13 months after the building permit was issued. Mr. Mortellaro also pointed out that he had been the last owner/builder granted a building permit under the former rules, which did not require an architectural stamp on drawings; therefore, the City would not be faced with the recurrence of his particular situation.

Mr. Mortellaro noted that while the City had on two occasions mailed 66 notices regarding his renovation and spatial perception infraction to neighboring properties, only two individuals had responded. He said that one neighbor who attended the Planning Advisory Board (PAB) meeting actually indicated that the City had made a mistake. While the second had written to express concern over possible devaluation of property values, Mr. Mortellaro said he believed his renovations would in fact enhance the neighborhood and elevate corresponding property values. He estimated the cost to bring his home into compliance with City code at \$23,000, much of which he was no longer physically able to accomplish without a significant amount of assistance.

Council Member Herms advised that he had toured the interior and exterior of Mr. Mortellaro's house and pointed out that the air conditioning/ducts, electrical, plumbing, and hurricane structures had been fully installed. In response to Mr. Herms, Mr. Mortellaro confirmed that complying with the City's spatial perception code would require modifications to most systems and removal of the entire roof, thus exposing the house to rainfall and deterioration. Mr. Herms expressed the opinion therefore that complying with the City's request would also result in an unattractive home which would in fact be more detrimental to the neighborhood's appearance.

Mr. MacIlvaine indicated that he considered the correspondence received from neighbor William Klohn, presented at the Planning Advisory Board (a copy is contained in the file for this meeting in the City Clerk's office), as positive in nature and noted that no other responses were received from the City's second mailing.

In response to Council Member Russell, Mr. Mortellaro confirmed he had not received a professional cost analysis for a contractor to correct the spatial perception infractions at issue, and Council Member Wiseman received clarification from Mr. Mortellaro that minimal work had actually been completed on his house since the stop-work order was issued.

Planning Director Ron Lee advised Council Member Taylor that the variance had been recommended for approval based on the premise in Section 86-205(c)(3) (see Attachment #1) to the effect that the plight of the applicant must be due to unique circumstances not self-created; the building permit issuance had been deemed such a situation, he said.

Responding to Council Member Herms, Building Inspector William Overstreet summarized that during the first two reviews of Mr. Mortellaro's plan, spatial perception, along with other issues, was indicated as being problematic. However, when Mr. Mortellaro had submitted his plans a third time, the uncorrected spatial perception problem was overlooked by the Building Department and a permit was issued. Subsequently, construction continued for the next 13 months until a structural inspection determined that Mr. Mortellaro had not complied with spatial perception requirements prompting a stop-work order to be issued, Mr. Overstreet advised. In reply to Mr. Herms, Mr. Overstreet said he believed that Mr. Mortellaro had assumed that he was in compliance with all aspects of his building plans. However, Mr. Overstreet said, as an architect he was of the opinion that requiring the petitioner to meet the City's spatial perception code would not only detract from the appearance of the home but it would result in both an unattractive interior and exterior.

As Council review continued, Building Official Overstreet advised that Mr. Mortellaro had corrected a number of other items on subsequent plan submittals but that the spatial perception violation had been missed upon plan review due to the intense workload being experienced in Building & Zoning. In response to Mayor MacKenzie, Mr. Overstreet confirmed that while owner/builders are subject to the same standards as licensed contractors, most owner/builders require additional explanations and tutoring from staff.

In response to Council Member MacIlvaine, it was confirmed by Building Inspector Overstreet that current regulations require an architect to prepare the building plans, making a similar occurrence unlikely in the future. The adoption of the new Florida building code, Mr. Overstreet said, requires an architect to complete all the work for a habitable building. Mr. MacIlvaine said that since future building plans must adhere to this policy, he could make the assumption that approving Mr. Mortellaro's variance would in fact not set a precedent for other owner/builder situations.

Mr. Overstreet advised Council Member Herms he had viewed the exterior of Mr. Mortellaro's home on several occasions and had been advised by another building inspector that the petitioner's house was being well built. Mr. Herms also expressed the opinion that the

Mortellaro home had been constructed to a higher standard than used by most contractors and exceeded code requirements. Mr. Herms said that this was in fact common with owner/builders who are conscious of the threat of hurricane damage. Additionally, Mr. Herms characterized Mr. Mortellaro's trade of custom stair-building as one of the most difficult in the construction industry to master.

In response to Council Member Taylor, Planning Director Lee confirmed that 66 letters had been mailed to property owners located within 500 feet of the subject property, and that one response had been received asking for clarification and definition of spatial perception. An additional letter had been received addressed to the Planning Advisory Board (PAB) (a copy is contained in the file for this meeting in the City Clerk's office). Subsequently a second letter had been mailed to the same 66 neighboring property owners, Mr. Lee explained, without further response. Additionally, he advised City Clerk Tara Norman mailed certified letters to the two individuals listed as speakers at the prior Council hearing advising the date and time of this hearing but had also received no response.

Council Member MacIlvaine summarized the following: 1) building plans had been approved by the City; 2) a building permit had been issued; 3) one neighbor had indicated that spatial perception is difficult to define and not easily understood; 4) the building is owner occupied; 5) the building had been constructed according to approved plans; and 6) a variance had been approved by the PAB and recommended by the Planning Department. Therefore, Mr. MacIlvaine said, no precedent would be set by granting this variance, particularly since current regulations require an architectural review. Describing the circumstances as unique, Council Member MacIlvaine also pointed out that it would be unfair to require the petitioner to dismantle his home at great financial hardship, with the result being a less attractive building. Additionally, he reminded Council that the Building Department had described the house as well built, and urged Council to grant the variance based on his aforementioned reasoning.

Mayor MacKenzie assured Council, she too, had visited the site and further indicated that the prior negative vote had been based on a misunderstanding that the spatial perception error had been noted for the third time within a 30-day period rather than the actual 13-month period. Since the petitioner, unaware of the code violation, had in fact been continuing the renovation and construction throughout that 13-month period, it would be difficult to redo the work. Therefore, she said she supported Council Member MacIlvaine's position.

Stating that a binding legal precedent should not occur in this case as each variance stands alone, City Attorney Robert Pritt explained that the three standards contained in Section 86.205(c)(3) of the Code of Ordinances apply (See Attachment #1). He also stated that a variance is defined as a relaxation of the provisions of the standard building code where such variance will not be contrary to the public interest and where, owing to special conditions and circumstances peculiar to the property, a literal enforcement of the provisions of such codes would result in unnecessary and undue hardship. This, he said, should be considered along with the above-mentioned three standards. Mayor MacKenzie said that, in her opinion, the petitioner met standard (a) as he worked for 13 months without knowing that the building plans were not compliant with the spatial perception code. He had therefore not tried to circumvent the rules and regulations, she said.

Council Member Wiseman warned against Council's making determinations regarding the building code and further indicated that if the petitioner had used an architect, he would have recourse in addressing this problem. Mrs. Wiseman further emphasized that the petitioner made a business decision not to employ a professional architect or contractor. Furthermore, she stated that if the petitioner had in fact used a general contractor, she did not believe Council would consider granting a variance. Mrs. Wiseman also reminded Council that there is no separate standard for the owner/builder, although if the petitioner received the requested variance, a separate standard would indeed be created.

Petitioner Mortellaro however took the position that owner/builders are in fact different from the professionally trained and that City Council represents the homeowner's interests. He concluded that he had purchased a building permit, had received the City's approval to begin his project, and had not been informed otherwise until near completion. Mistakes had been made, he said, but variances had also been issued in the past. Therefore, Mr. Mortellaro requested Council to approve his request.

Council Member Russell indicated that his position was based solely on compliance with building code and stipulations for granting or denying variances. He further stated he would not grant this variance for either a contractor or an owner/builder and that compliance with building codes results in good architecture and design. While apologizing for the Building Department's error, Mr. Russell nevertheless expressed the view that the owner/builder is responsible for corrections as opposed to rewriting the law.

**Public Comment:** None. (10:32 a.m.)

Prior to the vote, Council Member Wiseman pointed out that it is Council's obligation to interpret and enforce the ordinances and regulations and, despite the emotional presentation just heard, it is a derogation of Council's duties not to do so. Notwithstanding sympathy toward the petitioner, she said holding the Building Department responsible for this situation would violate public policy. Mrs. Wiseman said that the neighbor's concerns must be considered with equal importance. Also, she questioned Mr. Herms' expertise regarding either the extent of required modifications to the home or in determining that the appearance of the revised structure would be unattractive.

Council Member MacIlvaine however pointed out that variances could be granted under various circumstances as had previously been noted by the City Attorney and took the position that granting a variance in this instance was rational and reasonable considering the petitioner had been allowed to work on the project for 13 months before being advised to discontinue. Additionally, he stated that the problem had not been created by the applicant but rather by a mistake in the Building Department, and disallowing the variance would benefit neither the petitioner nor the neighbors.

**MOTION by MacIlvaine to APPROVE RESOLUTION 03-10174 including conditions stated in Section 2(1) and 2(2). This motion was seconded by Taylor and carried 4-2 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-no, Taylor-yes, Wiseman-no, MacKenzie-yes).**

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**Recess: 10:38 a.m. to 10:53 a.m. It is noted for the record that all Council Members, except Vice Mayor Galleberg and Council Member Wiseman, were present when the meeting reconvened.**

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**PUBLIC COMMENT** (See also Page 2).....

Mayor MacKenzie received Council Members' concurrence to allow two public speakers to address them at that time. **Erika Hinson, 347 Central Avenue, representing the Old Naples Association**, requested that candidates for the Community Redevelopment Agency Advisory Board (CRAAB) not only be business owners but City residents. She said she was of the opinion that additional credit should be given to Lake Park, Old Naples, or River Park residents as they will be most impacted by the 41-10/Heart of Naples redevelopment. **Willie Anthony, 559 Fourth Street North**, agreed with Ms. Hinson's suggestion and expressed interest in serving on the Affordable Housing Commission. Mayor MacKenzie advised, however, that residents of Lake Park, Old Naples, River Park, and other surrounding neighborhoods had not applied for board openings, and she requested Mr. Anthony assist in recruiting volunteers from those neighborhoods. In response to Mayor MacKenzie, City Clerk Tara Norman confirmed that a system is in place whereby individuals who had indicated an interest would be advised of various volunteer opportunities as they become available. Council Member Taylor received clarification from Mr. Anthony that evening meetings would however be more advantageous for working people to volunteer.

**It is noted for the record that Council Member Wiseman entered the meeting at 10:57 a.m.**

**SPECIAL EVENT** .....**ITEM 7-b(2)**

**St. Patrick's Day Parade, March 20, 2004.** Council Member Taylor and Mayor MacKenzie concurred that an earlier start time should be presented to the event committee so as to avoid traffic congestion which occurs at a later hour. Although a motion for approval was proffered by Miss Taylor and seconded by Council Member Russell, further discussion ensued including the determination that approval would be conferred with co-sponsorship to be determined at a later date after an overall policy had been addressed. In response to Council Member Wiseman, City Attorney Pritt advised that police and emergency support is part of the special event request but was of the opinion that this need not be specifically stated.

**Public Comment: None. (11:03 a.m.)**

**MOTION by Taylor to APPROVE ITEM 7-b(2) WITHOUT CO-SPONSORSHIP. This motion was seconded by Russell and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**SPECIAL EVENT** .....**ITEM 7-b(4)**

**Heart Walk, American Heart Association, Cambier Park, November 15, 2003.** A motion of approval without co-sponsorship was proffered by Council Member Russell and seconded by Council Member MacIlvaine; however, further discussed ensued. It was noted that a prototype co-sponsorship policy was being developed by the Community Services Department, but Council Member Wiseman reminded Council of the immediacy of this event and the probability that organizers would be relying on funding support to organize it; therefore, she said she would not be able to support the motion without funding assistance being granted, to which Council Member Taylor concurred. Therefore, the maker and seconder amended the motion to approve co-sponsorship of the 2003 Heart Walk.

**Public Comment: None. (11:04 a.m.)**

**MOTION by Russell to APPROVE ITEM 7-b(4) WITH CO-SPONSORSHIP. This motion was seconded by MacIlvaine and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

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**It is noted for the record that Items 7-b(8) and 7-b(9) were considered concurrently.**

**SPECIAL EVENT .....ITEM 7-b(8)**  
**Festival of Lights, Third Street South Merchants Association, November 24, 2003** (11:06 a.m.). Although a motion for approval was proffered by Council Member Taylor without co-sponsorship and seconded by Council Member Herms, further discussion continued prior to final action.

**Lisa Paul of Neapolitan Enterprises**, representing the Third Street South Association advised that co-sponsorship of the Festival of Lights had been granted in 2002, the first time in the event's 25-year history. She described the festival as beneficial both to Third Street and the City, with participation by schools, churches, and residents. Council Member Russell supported the approval of all 2003 events with co-sponsorship that day, with the 2004 events to be reviewed after receipt of the aforementioned co-sponsorship policy guidelines.

Council Member Taylor, however, said she would not agree to amend her motion to include funding, as she distinguished this as a commercial rather than a charitable event. Council Member Herms indicated his goal in seconding the motion was to gain approval of both events being held by the Third Street South Association (Festival of Lights and Celebration of Lights) but would support withholding co-sponsorship discussion until a later time. Council Member Taylor then noted that the Celebration of Lights event, Item 7-b(9), did not request funding assistance.

**MOTION by Taylor to APPROVE ITEM 7-b(8) WITHOUT CO-SPONSORSHIP. This motion was seconded by Herms and failed 3-3 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-no, Taylor-yes, Wiseman-no, MacKenzie-no).**

An alternative motion was then offered by Council Member Herms to approve the event with the funding assistance for 2003.

**MOTION by Herms to APPROVE ITEM 7-b(8) WITH THE 2003 CO-SPONSORSHIP; seconded by Russell and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Council Member Russell reiterated the importance of a fair analysis of special-event co-sponsorship funding and noted that the new policy will differentiate between types of organizations and the resulting funds donated to charities, stressing the importance of accountability.

**SPECIAL EVENT .....ITEM 7-b(9)**  
**Celebration of Lights, Third Street South Merchants Association, November 25-29, 2003.**  
**Public Comment:** None. (11:06 a.m.)

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

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**It is noted for the record that Items 7-b(10) through 7-b(17) were considered concurrently following the discussion which appears below.**

Mayor MacKenzie advised that Items 7-b(10) through 7-b(16) were scheduled for 2004, with only 7-b(17) occurring in 2005. In response to Council Member Russell, David Lykins, Community Services Director, advised that street closures were divided into two categories depending upon whether they were slated to last four hours or more, or Categories A and B,



respectively. In the category of street closures for a longer duration, the policy allows for two such events between January 1<sup>st</sup> through Easter, and six from Easter through December 31<sup>st</sup>. Additionally, he advised that Fifth Avenue Association could be the sponsor for six of the events in this latter group with the City reserving the right for the seventh. Therefore, Mr. Lykins noted, according to the policy, up to seven major events could be held on Fifth Avenue South. Additionally, he informed Council that Category B events (longer than four hours) cannot occur on a more frequent basis than one closure per calendar month with a minimum of two weeks between the closures; the proposed events on Fifth Avenue South are in compliance, he added. He further confirmed for Council Member Russell that the addition of the Book Fair in 2004, Item 7-b(14), would not violate the rules established.

**Public Comment:** (11:18 a.m.) **Gloria Kovacs, 677 Banyan Boulevard, President Fifth Avenue South Association**, indicated that her group had originated in 1996 to assist and support the Main Street Program. It had been a goal to add a new event other than an additional art show, she said, and expressed enthusiasm for the proposed Book Fair which had been organized to promote literacy and cultural enrichment. She further indicated that funding is available for each event but suggested Tax Increment Financing (TIF) funding would be appropriate to fund those on Fifth Avenue South therefore, she encouraged Council to utilize TIF funds so that general funds would be more readily available to other groups.

Council Member MacIlvaine pointed out that the Community Redevelopment Area Advisory Board (CRAAB) would initially seek input from residents and business owners on the use of TIF funds and would seek agreement from the Community Redevelopment Agency (CRA).

Mayor MacKenzie received clarification from Ms. Kovacs that the Book Fair would not be in conflict with a Cambier Park concert as it concludes on Saturday and the Concert is the following Sunday. Council Member Wiseman also received confirmation that the street closure would be for one day only, Saturday, November 13, 2004, and would not occur on the preceding Friday. Ms. Kovacs concluded by informing Council that the Book Fair is being sponsored by the Naples Press Club.

**Muffy Clark Gill, 2725 12<sup>th</sup> Street North**, expressed support for the events held on Fifth Avenue and indicated that she participated in the art shows to promote Fifth Avenue business as well as her own business, encouraging Council to continue to support the art shows. Mayor MacKenzie pointed out however that a discussion of co-sponsorship does not equate into lack of support of Fifth Avenue events. Ms. Gill also said she was in support of using TIF funds to defray the cost of co-sponsorship.

**SPECIAL EVENT .....ITEM 7-b(10)**  
**Naples Downtown Art Festival, Fifth Avenue South Association, March 26 and 27, 2004**  
(11:14 a.m.).

***MOTION by Russell to APPROVE WITHOUT CO-SPONSORSHIP; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

**SPECIAL EVENT .....ITEM 7-b(11)**  
**Mother's Day Weekend, Fifth Avenue South Association, May 14 to May 16, 2004.**

**MOTION** by Taylor to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

SPECIAL EVENT .....ITEM 7-b(12)

Naples Downtown July Weekend Art Festival, Fifth Avenue South Association, July 9 through July 11, 2004.

**MOTION** by Taylor to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

SPECIAL EVENT .....ITEM 7-b(13)

Fall Art Show and Sale, Fifth Avenue South Association, October 15 through October 17, 2004.

**MOTION** by Taylor to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by MacKenzie and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

SPECIAL EVENT .....ITEM 7-b(14)

Naples Downtown Book Festival in Paradise, Fifth Avenue South Association, November 13, 2004.

**MOTION** by Taylor to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by Herms and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

SPECIAL EVENT .....ITEM 7-b(15)

“Tuba Christmas,” Fifth Avenue South Association, December 23, 2004.

**MOTION** by Herms to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

SPECIAL EVENT .....ITEM 7-b(16)

Main Street Christmas Walk and Avenue of Lights, Fifth Avenue South Association, December 9, 2004.

**MOTION** by Herms to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by Wiseman and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

SPECIAL EVENT .....ITEM 7-b(17)

New Years Art Festival, Fifth Avenue South Association, January 1 to January 2, 2005.

**MOTION** by Wiseman to **APPROVE WITHOUT CO-SPONSORSHIP**; seconded by Russell and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 03-10175.....ITEM 11

A RESOLUTION OF NO OBJECTION TO THE PURCHASE OF PROPERTIES WITHIN THE CITY OF NAPLES BY COLLIER COUNTY FOR THE CONSERVATION COLLIER PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Manager Robert Lee (11:30 a.m.).

Public Comment: None. (11:30 a.m.)

**MOTION** by Herms to **APPROVE RESOLUTION 03-10175 AS SUBMITTED**; seconded by Taylor and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION (Denied) ..... ITEM 7-d**  
**A RESOLUTION AUTHORIZING THE PAYMENT OF \$14,805.01 TO NAPLES COMMUNITY HOSPITAL, WITHOUT ADMISSION OF LIABILITY, FOR SHARED COSTS OF A SEWER BACKUP; AND PROVIDING AN EFFECTIVE DATE.** Title not read. Mayor MacKenzie explained (see Attachment #2) that on March 19, 2003, residents David Frey and Marvin Cecil informed City Council that a blockage in the City's sewage line had caused raw sewage to enter their homes. After inspection of the damage, she said, the City had informed the homeowners and their respective insurance companies that the City would accept full responsibility for the clean-up costs. Subsequently, Lori Parsons, the City's Risk Manager, denied the claim, stating that Naples Community Hospital (NCH) was responsible for the blockage, as well as others that had occurred in the past, Mayor MacKenzie stated. Messrs. Cecil and Frey however contended that the sewer lines leading to their homes were broken, that the City had investigated the matter and had accepted full responsibility; they therefore took the position that the problem should be addressed by the City with NCH. Prior City Manager Kevin Rambosk had reported that it could not be verified whether NCH was fully responsible for the problem since he could not determine whether the City's pipes were also not a contributing factor. Mayor MacKenzie said she had then contacted Edward Morton, Chief Executive Officer of NCH. Mayor MacKenzie further commented that her gesture was not for the purpose of underwriting half of the hospital's cost but to remove the taxpayer from responsibility of the entire amount. Therefore the Council still had the option of: 1) approving the request; 2) approving the request and authorizing payment at a later time; 3) denying the request; 4) continuing the item for further discussion; or 5) withdrawing the item.

Mayor MacKenzie further noted recurring sewage system problems with the hospital, addressed in letters of July 2 and September 5, 2003, from Public Works Director Dan Mercer (copies of which are contained in the file for this meeting in the City Clerk's office). However, she said that this is a separate matter. Although the City had received assurances from NCH in June that remedial actions would be taken, nothing had occurred to date. Therefore, she suggested setting a deadline for NCH to either solve its problem to prevent endangering the City's sewer system or install a separate sewer system. Failure to comply, she said, would then result in disconnection.

Council Member Wiseman said that she is not surprised that the City did not accept liability since it does not assume liability for flooding damage caused from excess rainwater. Council Member MacIlvaine agreed and further indicated that a mechanical solution had been suggested to NCH in July and September with no response. Citing the request that the hospital install a system to collect debris before it enters the City's sewer system, Mr. MacIlvaine concluded that due to NCH's lack of response, it would be premature to approve even partial payment.

Council Member Herms stated that he would be unwilling for the City to pay half the total repair costs until NCH installs a corrective system. In addition, he said that he was of the opinion in this instance that the expense should be totally borne by NCH. However, Mayor MacKenzie reiterated that City Manager Rambosk had been unable to clear the City from all potential liability. Although a motion to deny payment to NCH in the amount of \$14,805.01 was proffered by Council Member Taylor and seconded by Mr. Herms, further discussion continued.

Mayor MacKenzie advised she would be unable to support the motion but would agree to a postponement until receipt of further information. She said she could not absolve the City from all responsibility when raw sewage backs up into a taxpayer's home. Council Member Taylor said that insurance is available to cover such situations, and it is not the City's responsibility to cover such costs. While Mayor MacKenzie acknowledged that insurance is available, she said homeowner insurance did not cover this particular situation. However, Miss Taylor took the position that this was not the City's responsibility.

In response to Council Member Russell, City Attorney Robert Pritt advised that the estimated cost to defend such a case could be approximately \$5,000 to \$10,000; however, City Attorney Pritt cautioned against setting a precedent whereby the City could become an insurer for pipe breakage for various reasons. He further informed Council Member Russell that hurricanes often cause unwanted results to the sewer systems, but the City could not become the guarantor of corresponding sewer claims. Council Member Wiseman reiterated her caution that the Council's role is to consider sound legal and fiscal principles rather than emotional responses. Mayor MacKenzie however countered that Safety Inspector Robert Martzloff did in fact investigate the incident in question and had accepted complete responsibility on behalf of the City. Based on those representations, she said, the homeowners took certain actions, but the City then changed its mind.

**Public Comment:** None. (11:45 a.m.)

***MOTION by Taylor to DENY; seconded by Herms and carried 5-1 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).***

**RESOLUTION 03-10176.....ITEM 7-f**

**A RESOLUTION APPROVING PAYMENT OF THE 2003 COLLIER COUNTY INVOICE FOR ARTIFICIAL REEF CONSTRUCTION; AND PROVIDING AN EFFECTIVE DATE.** Title not read (11:46 a.m.). Council Member Taylor asked why Tourist Development Council (TDC) funds had not been requested, and Natural Resources Manager Jon Staiger noted that the City had been asked to cost-share to facilitate a matching grant from the Florida Fish and Wildlife Conservation Commission. Council Member Herms suggested therefore approval of the project with a request to apply for reimbursement from TDC. Dr. Staiger concurred that this would be a reasonable request in light of the benefit of artificial reefs to tourism. He further informed Council that the artificial reefs would be within four to five miles of Gordon Pass. Council Member Russell recommended that it be stated in writing that the City's cost-sharing for artificial reefs is to be for those nearby.

Council Member MacIlvaine stated his approval for payment of the Collier artificial reef program as it would benefit both tourists and local residents. Council Member Herms moved for approval of Item 7-f with a second from Council Member MacIlvaine; however, the vote on this occurred after the following discussion.

**Public Comment:** None. (11:52 a.m.)

Mayor MacKenzie stated she was unable to support this motion, indicating that when the City signs agreements, they should be upheld and had been dismayed by what she described as Council's recent tendency not to do so. Council Member Herms agreed with the payment but explained that applying for TDC reimbursement might also be considered good usage for the

TDC funds. However, Mayor MacKenzie said she believed that the County would be designating TDC funds for beach access projects.

**MOTION by Herms to APPROVE RESOLUTION 03-10176 AS AMENDED; APPROVING PAYMENT OF \$12,500 WITH STIPULATION TO APPLY FOR REIMBURSEMENT FROM TOURISM DEVELOPMENT COUNCIL (TDC) FUNDS. This motion was seconded by MacIlvaine and carried 5-1 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).**

#### CONSENT AGENDA

Council Member Taylor also requested that the Community Services Department review the Special Events Calendar as she had noted both repetition and some events not having been assigned specific locations.

**APPROVAL OF MINUTES.....ITEM 7-a**  
August 18, 2003, Workshop (as amended on Page 3), August 18, 2003, Special Meeting (as amended on Page 2), and August 20, 2003, Regular Meeting.

**SPECIAL EVENT .....ITEM 7-b(3)**  
Ridge Lakes Neighborhood Association Halloween Party, Palm Circle, October 31, 2003.

**SPECIAL EVENT .....ITEM 7-b(5)**  
The Music Makers Concert, City of Naples Community Services Department, Cambier Park Bandshell, November 2, 2003.

**SPECIAL EVENT .....ITEM 7-b(6)**  
Naples Philharmonic Orchestra Concert, City of Naples Community Services Department, Cambier Park Bandshell, November 23, 2003.

**SPECIAL EVENT .....ITEM 7-b(7)**  
The Bach Ensemble Concert, City of Naples Community Services Department, Cambier Park Bandshell, November 30, 2003.

**SPECIAL EVENT .....ITEM 7-b(18)**  
Ninth Annual Artists' Studio Tour, Friends of Art, Philharmonic Center, March 14-15, 2005.

**SPECIAL EVENT (Withdrawn).....ITEM 7-b(19)**  
Outdoor street concert/block party fundraiser – Gulf Breeze Real Estate – Sixth Avenue South, September 20, 2003.

**RESOLUTION 03-10177.....ITEM 7-c**  
**A RESOLUTION ACCEPTING A FISCAL YEAR 2003 LOCAL LAW ENFORCEMENT BLOCK GRANT FROM THE U.S. DEPARTMENT OF JUSTICE IN THE AMOUNT OF \$14,865 FOR THE PURCHASE OF TACTICAL TRAINING EQUIPMENT; AUTHORIZING THE MAYOR TO EXECUTE THE GRANT AWARD; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 03-10178.....ITEM 7-e**  
**A RESOLUTION REPEALING RESOLUTION 86-5065; CREATING A REPLACEMENT EMPLOYEE PERSONAL COMPUTER PURCHASE PLAN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 03-10179.....ITEM 7-g**  
**A RESOLUTION APPROVING AN AGREEMENT WITH MELISSA SAMPLES CLEANING TO PROVIDE JANITORIAL SERVICES FOR THE DEVELOPMENT SERVICES BUILDING; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION (Withdrawn) ..... ITEM 7-h**  
**A RESOLUTION GRANTING A TEMPORARY LICENSE AND RIGHT OF WAY TO ALLOW FOR PUBLIC USE AND REPAIR OF AN ALLEY LOCATED IN RIVER PARK EAST OF 10<sup>TH</sup> STREET BETWEEN 2<sup>ND</sup> AND 3<sup>RD</sup> AVENUE NORTH; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 03-10180..... ITEM 7-i**  
**A RESOLUTION APPROVING AN AGREEMENT WITH ENVIRO-TECH FOR ODOR AND GREASE CONTROL SERVICES FOR THE WASTEWATER COLLECTION SYSTEM; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 03-10181..... ITEM 7-j**  
**A RESOLUTION APPROVING AN AGREEMENT WITH FLORIDA CAN, INC. FOR THE PURCHASE OF FRONT LOADING REFUSE CONTAINERS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 03-10182..... ITEM 7-k**  
**A RESOLUTION APPROVING A THREE (3) YEAR AGREEMENT WITH PREFERRED GOVERNMENTAL CLAIM SOLUTIONS, TO PROVIDE THIRD PARTY CLAIMS ADMINISTRATION FOR PROPERTY, LIABILITY AND WORKERS' COMPENSATION FOR THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**MOTION by Herms to APPROVE CONSENT AGENDA EXCEPT ITEMS 7-b(1), 7-b(2), 7-b(4), 7-b(8), 7-b(9), 7-b(10), 7-b(11), 7-b(12), 7-b(13), 7-b(14), 7-b(15), 7-b(16), 7-b(17), 7-b(19), 7-d, 7-f, and 7-h. This motion was seconded by Taylor and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**END CONSENT AGENDA**

**ORDINANCE 03-10183..... ITEM 8**  
**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 Robert Lee (11:54 a.m.). City Attorney Robert Pritt advised Item 8 would be considered legislative rather than quasi judicial as it would apply throughout the City for all contributing historic structures. Planning Director Ron Lee further informed Council that the Historic District Map is appended to Section 110-84(b)(1), and is the map which includes all contributing structures within the City's Historic District. In response to Council Member Herms, Mr. Lee advised that if the map were expanded to include additional contributing structures, then those properties would also be governed by this ordinance.

Council Member MacIlvaine received clarification from Planning Director Lee that the ordinance includes a 45-day waiting period as opposed to the Planning Advisory Board (PAB) recommendation of 180 days. In response to Council Member Herms, Planning Director Lee also advised that if the main structure remained intact, or if, for example, a roof were replaced, the structure remodeled or new landscaping installed, a demolition permit would not be required.

**Public Comment:** (12:01 p.m.) **Sue Smith, 15 – 11<sup>th</sup> Avenue South**, spoke of her dissatisfaction with the above-referenced ordinance and the inclusion of her property as a contributing structure within the Historic District. Additionally, she said that all of her questions posed to Planning Director Lee and his staff had not been answered, and took exception to not being informed of the demolition permit issue. She also said that she was of the opinion that the demolition permit issue had not been properly researched, nor the possibility of negative circumstances discussed, for the benefit of property owners. Mrs. Smith concluded by stating that the Planning Department has the responsibility to provide pertinent information to the residents.

Council Member Russell asked whether Mrs. Smith's property could be excluded from the Historic District, and Planning Director Lee advised that this was currently being researched. Mr. Lee also said that 70 percent of the homes within a district must meet the criteria to be considered contributing structures; therefore, allowing removal of properties could possibly jeopardize the Federal historical district designation. He added that this classification allows relief from certain Federal Emergency Management Agency (FEMA) flood elevation regulations for those contributing structures within the Historic District. If the Historic District classification were lost, he further said, none of the contributing structures would reap these benefits.

In response to Council Member Russell, Mrs. Smith emphasized that her goal is exclusion from the list of contributing structures, and she urged Council not to enact the proposed demolition permit ordinance, reiterating her concern about potential negative ramifications by singling out certain properties. She further stressed that the homeowners did not give consent for their inclusion into the Historic District.

**Lodge McKee, 53 Broad Avenue South**, said that this ordinance allows homeowners to raise their home elevations, if so desired, and does not depreciate their property values. The problem, he said, is not with current homeowners requesting demolition permits for property, but rather for subsequent owners who want a more contemporary home. As a practical matter, he said, the Collier County Historical Society will be unable to find a site to accommodate every contributing structure in the Historic District contemplated for demolition. However, he said this is an attempt to encourage historic preservation rather than placing sanctions on the owners of such properties.

In response to Council Member MacIlvaine, Mr. McKee said the 45-day period would, in his view, be marginally successful and that the likelihood of dissuading a person from taking the contemplated action is minimal. Mr. McKee however said that he believed that 45 days is usually insufficient to raise funds for such a project, although it does allow time for discussion which he said he deemed worthwhile.

Additionally, Mr. McKee expressed disapproval of homeowners removing their properties from the national Historic District inventory, stating that in the nomination to the National Trust for Historic Preservation, the boundaries had been drawn so that 70 percent of the structures within the contiguous boundaries were contributing. Therefore, homeowners who arbitrarily decide to remove property could become problematic, he said. He also said he felt that education and the

dissemination of information would help homeowners understand the benefit of the Historic District designation.

Council Member Wiseman concurred with Mr. McKee's statements and said she disapproved of individual properties opting out of the Historic District. In addition, she reminded Council that the demolition permit and a building permit could be applied for simultaneously, if the owner's plans had been completed. While recognizing the ordinance as not being perfect, she said, that saving just one structure would be worthwhile; therefore, she moved for approval.

Council Member Taylor received clarification from City Attorney Pritt that consideration of this ordinance should be independent from opting out of the Historic District. Determination of whether a structure should be included or excluded is a separate matter, Mr. Pritt advised. In conjunction with the historic preservation ordinance, Planning Director Lee advised Council Member Russell that staff had been working with the Planning Advisory Board (PAB) at the workshop level, exploring adding additional structures and preparing a new nomination for the District; therefore, he noted that some structures might in fact be added. He said staff was also completing research to determine if some of the contributing structures should actually be removed from the list for not meeting certain criteria; he said he anticipated an updated nomination and a new historical preservation ordinance ready for Council review by the end of this year or the beginning of next.

In response to Council Member Herms, Planning Director Lee further advised that public hearings would be held for the new historical preservation ordinance once it had been finalized at the PAB level, which he estimated from November to January, thus including seasonal residents. Mr. Herms stressed the importance of obtaining resident input.

Prompted by Council Member Herms, Council then discussed deed restrictions and the previous demolition of a structure formerly known as the Carriage House. City Attorney Pritt explained that deed restrictions are private rather than public matters and are not enforceable by the City. Council Member Taylor received Council concurrence for Mr. McKee to address deed restrictions and the Carriage House situation.

Mr. McKee informed Council that deed restrictions are generally issued in favor of the prior owner, with enforcement originating from the owner. If the deed restrictions were, for example in Port Royal, then the Port Royal Property Owners Association would enforce the restriction, he said. Further, he stated that if there were no entity enforcing the deed restriction, then the deed would go undefended. Mr. McKee continued that in the case of the Carriage House, the deed restriction had been an erroneous name, The Naples Historical Society, instead of the correct name, the Collier County Historical Society. Furthermore, Mr. McKee advised, a notice provision had also not been included. Therefore, Mr. McKee said, it was not the intention of the City of Naples to enforce deed restrictions nor to have the City named as the entity required to do so.

Mayor MacKenzie concluded by noting that Planning Director Lee and staff were continuing work on a separate historical preservation ordinance and that other concerns would presumably be addressed within that ordinance.



**Public Comment:** None. (12:32 p.m.)

**MOTION by Wiseman to ADOPT ORDINANCE 03-10183 AS SUBMITTED.**

***This motion was seconded by Taylor and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

**Recess:** 12:33 p.m. to 12:40 p.m. It is noted for the record that all Council Members, except Vice Mayor Galleberg and Council Member Herms, were present when the meeting reconvened.

**RESOLUTION 03-10184.....ITEM 9**  
**A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2002-03 BUDGET ADOPTED BY ORDINANCE 02-9825; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (12:41 p.m.). Mayor MacKenzie requested that a specific bond contingency be referenced to designate the specific park bond. She said that separate park bonds had been authorized for various purposes, such as Naples Preserve, and asked that each individual issue be specified.

**Public Comment:** None. (12:42 p.m.)

**MOTION by Wiseman to APPROVE RESOLUTION 03-10184 AS SUBMITTED;** ***seconded by MacIlvaine and carried 5-0 (Galleberg-absent, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

**RESOLUTION 03-10185.....ITEM 10-a**  
**A RESOLUTION APPOINTING ONE CITY REPRESENTATIVE TO THE CITY/COUNTY AFFORDABLE HOUSING COMMISSION FOR A THREE-YEAR TERM COMMENCING SEPTEMBER 17, 2003, AND EXPIRING MARCH 18, 2006; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (12:43 p.m.). Mayor MacKenzie advised that one application had been received from a non-City resident.

**MOTION by MacIlvaine to APPOINT DOUGLAS CARMAN** ***carried 5-0 (Galleberg-absent, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

**Public Comment:** (12:45 p.m. following the vote) Willie Anthony, 559 – 14<sup>th</sup> Street North, asked permission to address Council; Council Member Taylor asked whether the City/County Affordable Housing Commission traditionally had non-City residents serving on behalf of the City. Mayor MacKenzie responded that no City residents had however applied for the past several years. City Clerk Tara Norman indicated that at one point a non-City resident had actually been appointed but had been unable to serve. However, Mr. Anthony indicated his interest in this commission and requested Mrs. Norman include him on a list of potential candidates for future openings.

Mayor MacKenzie clarified that the Affordable Housing Commission was in fact a County committee with members appointed to represent the City. She explained that this and each committee of similar configuration must achieve a quorum; therefore, in some instances the City has accepted non-residents as representatives. Mrs. Norman advised that this commission requires four City representatives but has had two vacancies for some time; however, she indicated that a legal opinion would be required from City Attorney Pritt regarding dual committee participation, as Mr. Anthony currently served as a member of the Citizens' Police

Review Board. However, Mayor MacKenzie encouraged Mr. Anthony to help publicize this vacancy on the Affordable Housing Commission.

**RESOLUTION 03-10186..... ITEM 10-b**  
**A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 4 TO THE CITIZENS' POLICE REVIEW BOARD FOR THE REMAINDER OF AN UNEXPIRED TWO-YEAR TERM EXPIRING MARCH 5, 2005; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (12:49 p.m.).

**Public Comment:** None. (12:49 p.m.)

**MOTION by Taylor to APPOINT JAMES RIDEOUTTE carried 5-0**  
**(Galleberg-absent, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 03-10187..... ITEM 10-c**  
**A RESOLUTION APPOINTING ONE MEMBER TO THE CODE ENFORCEMENT BOARD FOR A THREE-YEAR TERM COMMENCING SEPTEMBER 17, 2003, AND EXPIRING SEPTEMBER 16, 2006; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (12:50 p.m.).

**Public Comment:** None. (12:50 p.m.)

**MOTION by MacIlvaine to APPOINT FRED KLAUCKE carried 5-0**  
**(Galleberg-absent, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION 03-10188..... ITEM 10-d**  
**A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY BOARD FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING APRIL 30, 2004; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (12:50 p.m.).

**Public Comment:** None. (12:51 p.m.)

**MOTION by MacIlvaine to APPOINT JAMES SIEDEL carried 5-0 (Galleberg-absent, Herms-absent, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

It is noted for the record that Items 10-e (1), 10-e(2), 10-e(3), and 10-e(4) were considered concurrently.

**RESOLUTION (Continued to Meeting of December 17, 2003) ..... ITEM 10-e(1)**  
**A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB) FOR A \_\_\_\_-YEAR TERM COMMENCING SEPTEMBER 17, 2003, AND EXPIRING SEPTEMBER 16, 200\_ ; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (12:51 p.m.). It is noted for the record that the titles to the remaining resolutions under Item 10-e were not read. City Clerk Tara Norman advised that the expiration date depends on whether a two or three year assignment is made.

Council Member Wiseman indicated that while she appreciated those applicants who had come forward, she would be unable to vote affirmatively for any because Council barely received enough applications to constitute a quorum. She also noted vacancies on other boards but expressed the view that those who had requested formation of this particular committee should have recruited a sufficient number of candidates.

Council Member Russell suggested a postponement allowing the aforementioned individuals to recruit additional candidates; however he also expressed support for the board's concept. Furthermore, Mr. Russell indicated that the volunteer pool had been taxed recently with the formation of many new boards although he supported appointing non-City property owners as well as City residents to provide the commercial/residential representation.

Because the same people who requested the Board had applied, Council Member Taylor said that she, too, questioned its necessity. She stressed the importance of maintaining a balance between residential and commercial components and deemed representation by City residents as instrumental and critical to the success of CRAAB, expressing the concern that it would become simply a pro-growth and pro-business committee.

After further discussion occurred regarding readvertising for CRAAB applicants, a motion was made by Council Member Russell to continue this discussion until October 15; however it failed for lack of second. An alternative motion was made by Mayor MacKenzie to continue Item 10-e until the December 17 meeting to allow another cycle of advertising to seek a full complement of candidates. This motion was then seconded by Taylor; however, prior to the vote, discussion continued.

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**It is noted for the record that Council Member Herms entered the meeting at 1:05 p.m.**

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Council Member Russell stated his primary concern against postponement being that he had anticipated receiving the advice of CRAAB regarding special event co-sponsorship and the use of Tax Increment Financing (TIF) funds. However, Mayor MacKenzie noted that Council had allocated TIF funds prior to the formation of CRAAB, and therefore was of the opinion that co-sponsorship decisions would not be delayed for that reason.

Council Member Wiseman advised that the four candidates that applied for CRAAB would not be prohibited by the Sunshine Law (Chapter 286, Florida Statutes) from meeting, as they had not been officially appointed. Therefore, they would be allowed to provide recommendations, and attend meetings as public speakers. Council Member MacIlvaine supported Mrs. Wiseman's suggestion, noting that while a qualified group of candidates applied but had not been nominated, they would be allowed to meet together and recruit additional candidates interested in serving. He recommended approval of a delay until the second meeting in October.

Council Member Herms indicated that if County residents were placed on this Board, negative feedback would result from the City residents. Mayor MacKenzie encouraged interested City residents to apply for Board vacancies; Mr. Herms also noted that the Old Naples Association had stated its support of representation by City residents and predicted that this group would recruit candidates. He further stated that since the City had greatly expanded the use of volunteers, it might have maximized the volunteer pool. Alternatively, Mr. Herms suggested Council could determine requirements for the District and prioritize. He concluded by stating he was not in favor of County residents who own businesses in the City making decisions that greatly affect the residents.

**Public Comment:** None. (1:07 p.m. )

**MOTION by MacKenzie to CONTINUE ITEM 10-e UNTIL DECEMBER 17, 2003; DIRECTING: 1) CITY CLERK TO READVERTISE; 2) WORKSHOP TO BE SCHEDULED TO DISCUSS CITY RESIDENCY ISSUE AS WELL AS**

**THE POWERS, THE RESPONSIBILITIES, AND THE FUNCTION OF CRAAB; 3) CITY CLERK TO CONTACT EACH CANDIDATE TO ADVISE STATUS OF APPOINTMENTS.** *This motion was seconded by Taylor and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Mayor MacKenzie noted that although John Crider applied for CRAAB, he would prefer to be on the Downtown Improvement and Redevelopment Committee (DIRC) and requested City Clerk Tara Norman to include this item on the next Council agenda. Mrs. Norman indicated that she would complete a resolution for DIRC as so indicated and that all of the candidates would be contacted to advise the status of their application. Additionally, Council Member Taylor requested that the City Manager schedule a workshop to review the powers, duties, responsibilities, and criteria for appointments for CRAAB as soon as possible.

**RESOLUTION 03-10189..... ITEM 10-f**  
**A RESOLUTION APPOINTING ONE BARGAINING UNIT MEMBER TO THE BOARD OF TRUSTEES OF THE GENERAL EMPLOYEES' RETIREMENT SYSTEM FOR THE BALANCE OF A FOUR-YEAR TERM EXPIRING DECEMBER 21, 2006; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (1:09 p.m.).

**Public Comment:** None. (1:10 p.m.)

**MOTION** by Herms to **APPOINT ROBERT BANKER**; *seconded by Taylor and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

**ORDINANCE (FIRST READING –Withdrawn/See Page 2).....ITEM 12**  
**AN ORDINANCE AMENDING SECTION 14-2 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO ALLOW TAKE-OFF AND LANDING OF AIRCRAFT OTHER THAN AT THE NAPLES MUNICIPAL AIRPORT FOR CITY-AUTHORIZED SPECIAL EVENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

**ORDINANCE (FIRST READING).....ITEM 13**  
**AN ORDINANCE AMENDING SECTIONS 50-240(a); 50-288(2) AND (3) AND 50-383(2), (3) AND (4) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ADJUSTING REQUIRED CONTRIBUTIONS TO THE RETIREMENT TRUST FUND AS A RESULT OF THE ANNUAL ACTUARIAL STUDIES FOR THE GENERAL, FIREFIGHTERS' AND POLICE OFFICERS' PENSION AND RETIREMENT SYSTEMS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Robert Lee (1:11 p.m.) who advised that representatives of the City's four labor organizations had agreed to amend the pension ordinance to adjust the amount of employee contributions required for the various trust funds. Dr. Lee also advised Council that the Police and Firefighter unions had ratified these language changes stated in the memorandums of understanding. He further advised that the American Federation of State, County, and Municipal Employees' (AFSCME) negotiating team had agreed to the language in a memorandum of understanding also, and a membership meeting had been scheduled for September 22. City Manager Lee continued by reporting that general employees covered by their respective pension plan, as well as AFSCME employees would contribute 4.45 percent effective January 1, 2004, through September 30, 2004.

For employees covered by the police pension plan [two Fraternal Order of Police (FOP) unions], Dr. Lee said the employee contribution would be 5 percent effective October 1, 2003, and would be 5.5 percent effective January 1, 2004, extending through September 30, 2004. Dr. Lee further informed Council that employees covered by the firefighter pension plan would contribute 5 percent, effective October 1, 2003, through September 30, 2005, explaining the firefighters currently have a two-year contract.

City Attorney Robert Pritt had also added language enabling the Council to amend the percentages by resolution as opposed to amending the ordinance, Dr. Lee said. He noted that the November 2003 actuarial report would be used as a guide to make recommendations for the periods subsequent to September 30, 2004, with the one exception being for the firefighters who have a two-year agreement. City Manager Lee further conveyed that all plans are subject to collective bargaining; therefore, he advised that he would be unable to predict what the percentage requirements would be after the aforementioned time periods. He said that the challenge would be to provide comfort to both the City Council and the employees regarding their respective contributions and concluded by pointing out that he appreciated the professional manner in which the unions and the non-bargaining employees had conducted themselves.

In response to Council Member MacIlvaine, City Attorney Pritt advised that no action is needed by the pension boards at that time and Council had the authority to adopt the ordinance under consideration, although the pension boards will require updating in order to administer their respective plans, he said. Additionally, Mr. Pritt indicated that he would forward a copy of the approved language to their attorney and the respective chairs as soon as possible. He said that he therefore will have been advised of any problem areas prior to the second reading as well as whether a special meeting would be required for the pension boards.

Mayor MacKenzie expressed concern over removal of the employee contribution proration formula language which had addressed the City's responsibility under Florida Statute to cover any deficits, pointing out that the agreements cited by the City Manager had been short-term only. The City's long-term exposure, without any control, could be problematic, she said, although prior increases had been specific. Mayor MacKenzie therefore requested clarification regarding the City's exposure, stating that it would be accepting 100 percent responsibility over specific percentage contributions.

City Manager Lee stated that the formula had in fact been removed and a flat rate proposed, which is consistent with most pension plans thus providing employees a definitive obligation, with the City assuming the additional liabilities on an annual basis. However, Dr. Lee agreed that the City is, therefore, placed at risk if those obligations are high. If the City's obligation would be lower, the City's contributions would be correspondingly lower, wherein employee contribution would remain the same, he said. He further indicated that at the end of the time periods cited, the Council could consider reverting to the deleted employee contribution proration language. However, he emphasized that the intention of the discussion with the employees had been as provided, with a set amount agreed to this year, with the exception of the firefighters. The second year obligations, Dr. Lee said, would not be advised until the November 2003 actuarial report is received.

In response to Mayor MacKenzie, Dr. Lee said that it was not premature however to delete the employee contribution proration language with the understanding that something would be in place by September 2004 that would change or continue the contribution percentage provided. Council Member MacIlvaine referred to Florida Statute 112 establishing that City pension plans must be actuarially sound but without an explanation of how to accomplish it. Therefore, the issue must be evaluated yearly, he said, as circumstances are uncertain. He summarized that Council had been presented that day with the problem to be solved from October 1, 2003, until September 30, 2004, but unsure of the problems to be presented from October 1, 2004; however, the City will be provided with the actuarial report in November 2003, which will be used for guidance. Therefore, Mr. MacIlvaine noted the City must address this matter sequentially since it would most likely be an ongoing problem.

Council Member Taylor noted that the percentage rates had been subject to the collective bargaining process; therefore, she said the City would work through this year with the understanding that more information would be provided in November with discussions continuing at that time. She expressed her support of the ordinance, as it empowers the employees and states future direction.

While Council Member Taylor indicated her support for the proposed ordinance, Council Member Herms said he shared Mayor MacKenzie's concern regarding removal of the employee contribution proration language stating the uncertainty of the future and his belief that the City needs a fallback formula in light of an uncertain financial climate. Mayor MacKenzie stated that while she commended City employees for working collaboratively and cooperatively throughout a difficult situation, a terrorist attack could again negatively affect the stock market, resulting in a multi-million dollar obligation for City taxpayers. Therefore, she suggested a reasonable safeguard to recognize the contributions of the City employees while continuing to protect the City taxpayer.

Council Member Wiseman noted that the ordinance amendments should sunset based upon the dates designated and suggested additional language, after the effective date which appears in the three separate sections of the ordinance, "...unless earlier amended by resolution..." This, she said, clearly designates that dates cannot be extended in the ordinance. Council concurred.

In response to Council Member Taylor, City Manager Lee advised that the memorandums of understanding indicate that the employees would pay a flat percentage rate. If the employee contribution proration language were to remain, he said the employees might be under the impression that the City would be reverting to the formula-based language, which he predicted would not be well received. However, it would not contradict what had been agreed upon, he said, as the contracts would be renegotiated the following year, with the exception of the firefighters, which would be renegotiated in two years. Therefore, Dr. Lee said that in November of 2003 if the actuarial report indicated significant responsibility to maintain the soundness of the firefighter pension plan, then the City's responsibility would be everything above the 5 percent. Mayor MacKenzie reiterated her goal that the City be protected.

Council Member Russell concurred with the changes suggested by Council Member Wiseman and supported the deletion of the employee contribution proration language. He further stated that language could be revised in the future if Council so determined but expressed the opinion that the ordinance language as drafted was easily understood.

**Public Comment:** None. (1:36 p.m. )

**MOTION by Russell to APPROVE ITEM 13 AT FIRST READING AS AMENDED; “~~unless and until further~~ earlier amended by resolution,” in the following sections:**

- 1) Section, Article IV, Section 50-240(a);**
- 2) Section 2, Article V, Section 50-288(2);**
- 3) Section 3, Article VI, Section 50-383(2)**

***This motion was seconded by Wiseman and carried 5-1 (Galleberg-absent, Herms-no, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).***

Council Member Herms said his dissenting vote was due to a preference for the existing language that provided greater City protection and said that actuarial information would be helpful for reference before the second reading of the ordinance. Mayor MacKenzie concurred but also said she was doubtful that additional actuarial information would be available prior to November.

City Manager Robert Lee reiterated that for the general and the police employees there is less concern as the agreement is for one year; however, if the actuarial report indicates that the obligation for the firefighter plan will be substantial, the City would be obligated to make up the difference over 5 percent for that second year.

.....**ITEM 14**  
**CONSIDER REQUEST FOR SPECIAL MEETING TO DISCUSS CITY EMPLOYEE HEALTH, GENERAL LIABILITY, AND PROPERTY INSURANCE ISSUES.** City Manager Lee requested a special meeting on September 29 to discuss general liability and property insurance issues as well as employee dependent health insurance coverage and to ask that the additional 10 percent be provided for employees for the coming year. This would however constitute amendment of the collective bargaining contracts, he said.

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

**MOTION by Herms to APPROVE SPECIAL MEETING FOR SEPTEMBER 29, 2003; seconded by Russell and carried 6-0 (Galleberg-absent, Herms-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**PUBLIC COMMENT (1:41 p.m.)** .....  
None.

**CORRESPONDENCE & COMMUNICATION (1:41 p.m.)**.....

Council Member Taylor noted that a response to James Smith’s letter regarding the Fifth Avenue drainage complaint was called for. Also, she indicated she was receiving two or more copies of the same correspondence.

Council Member Herms advised correspondence had been received from Richard Imes, West Boulevard Court, asking that the Building Department check into unprotected swimming pools. Mr. Herms also requested that a discussion of tree planting plans be added to an upcoming workshop agenda so that the staff could proceed with the bidding process.

Mayor MacKenzie indicated she had recently attended a Metropolitan Planning Organization (MPO) meeting, and discovered that state funding had been awarded to the City for sidewalks and beach access by the Department of Transportation in the amount of \$161,951.

Council Member Russell also indicated that funding for the Goodlette-Frank road corridor has been allocated to the City.

**ADJOURN** .....  
1:47 p.m.

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Bonnie R. MacKenzie, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

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Bonnie J. McNeill, Recording Specialist

Minutes Approved: 10/15/03