



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – January 7, 2004 – 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:

William MacIlvaine
Clark Russell
Penny Taylor
Tamela Wiseman (arrived 9:04 a.m.)

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Ron Lee, Community Development Director
Tara Norman, City Clerk
Denise Perez, Human Resources Director
Ron Wallace, Construction Management Dir.
Kerry Nielsen, Planner
David Lykins, Community Services Director
Ann Walker, Planning Manager
Bonnie McNeill, Recording Specialist
Karen Kateley, Administrative Specialist
Reed Jarvey

Robert Petterson
Henry Kennedy
John Passidomo
Pamela Arsenault
Sue Smith
Howard Elkus
Robert Weissenborn
Anthony Pires
Edward Morton
Other interested citizens and visitors.

Media:

Dianna Smith, Naples Daily News

Editor's Note: It is noted for the record that Council Member Herms resigned from the City Council on December 22, 2003.

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

Robert Petterson, Covenant Presbyterian Church.

ANNOUNCEMENTSITEM 3

Purple Martin Week Proclamation, January 18-24, 2004, presented by Council Member Russell.

SET AGENDA.....ITEM 4

Add Items 18-c and 18-d – Authorize the use of Collier County's voting equipment and the submission of names for preparation of the February 17, 2004, Special Election ballot.

MOTION by Taylor to ADD ITEMS 18-c AND 18-d; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 19 – Appoint one member to the Blue Ribbon Committee.

MOTION by MacIlvaine to ADD ITEM 19; seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 20 – Discuss collective bargaining issues during an Executive Session.

MOTION by Taylor to ADD ITEM 20; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Galleberg to SET AGENDA, WITHDRAWING ITEMS 6, 7, 11-b(3), 12, and 16, REMOVING ITEMS 11-c and 11-f FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION, AND ADDING ITEMS 18-c, 18-d; 19, AND 20. This motion was seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

PUBLIC COMMENT.....ITEM 5

None.

RESOLUTION (Withdrawn. See Item 4).....ITEM 6-a

A RESOLUTION DETERMINING PETITION 03-LE9 FOR LIVE ENTERTAINMENT PERMIT AT STONEY’S STEAKHOUSE, 403 BAYFRONT PLACE, UNIT 301, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn. See Item 4)..... ITEM 6-b

A RESOLUTION DETERMINING PETITION 03-LE9 FOR LIVE ENTERTAINMENT PERMIT AT SYRAH RESTAURANT, 475 BAYFRONT PLACE, UNIT 505, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn. See Item 4).....ITEM 6-c

A RESOLUTION DETERMINING PETITION 03-LE9 FOR LIVE ENTERTAINMENT PERMIT AT CATCH 22 RESTAURANT, 489 BAYFRONT PLACE, UNIT 507, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn. See Item 4)..... ITEM 6-d

A RESOLUTION DETERMINING PETITION 03-LE9 FOR LIVE ENTERTAINMENT PERMIT AT BELLAGIO RESTAURANT, 492 BAYFRONT PLACE, UNIT 407, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn. See Item 4).....ITEM 6-e

A RESOLUTION DETERMINING PETITION 03-LE9 FOR LIVE ENTERTAINMENT PERMIT AT JAZZ RESTAURANT, 452 BAYFRONT PLACE, UNIT 401, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn. See Item 4)..... ITEM 6-f

A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 03-RIS18 FOR LIVE ENTERTAINMENT AT FIVE (5) RESTAURANTS AND FOR OUTDOOR DINING AT ONE LOCATION AT 401-499 BAYFRONT PLACE, MORE

PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Withdrawn, See Item 4)ITEM 7-a
A RESOLUTION DETERMINING VARIANCE PETITION 03-V3 FROM SECTION 102-536 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES A MINIMUM REAR YARD SETBACK OF TWENTY-FIVE FEET IN ORDER TO PERMIT THE CONSTRUCTION OF A NEW COMMERCIAL BUILDING WITH A REAR SETBACK OF 18 FEET 8 INCHES, AT 791-795 10TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION (Withdrawn, See Item 4) ITEM 7-b
A RESOLUTION DETERMINING PARKING CREDITS PETITION 03-PC2 TO OBTAIN CREDIT FOR 50% OF PARKING SPACES CONSTRUCTED WITHIN THE RIGHT OF WAY ADJACENT TO THE PROPERTY AT 791-795 10TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION 04-10316.....ITEM 11-c
A RESOLUTION APPROVING A THIRD AMENDMENT TO THE ARCHITECTURAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND A. GAIL BOORMAN & ASSOCIATES TO PROVIDE FOR ADDITIONAL COMPENSATION FOR ADDITIONAL SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

Title not read. City Manager Robert Lee noted that property managers south of Central Avenue had indicated that they were receptive to the design and in agreement with moving the landscaping project forward. Therefore, he recommended the landscape architect begin developing the specifications.

Council Member Taylor however urged that landscape architect Gail Boorman be removed from this project, describing her as an advocate for the 41-10/Heart of Naples Plan, a situation which Miss Taylor said she believed to be problematic. As a subcontractor of the City, Miss Taylor said that Mrs. Boorman could to a degree be considered employed by the City and should therefore not advocate in a public forum.

In response to Mayor MacKenzie, City Attorney Pritt however clarified that being in favor of a plan does not create a legal conflict and that it would be Council's determination whether supporting the plan would be considered suitable. Mayor MacKenzie and Council Member Russell each said that they deemed it beneficial for a subcontractor to support and share enthusiasm for an assigned project. Mr. Russell also reminded Council of what he said was Mrs. Boorman's excellent reputation and her history of participating in City government committees and volunteer projects.

Council Member MacIlvaine expressed strong disagreement with Council Member Taylor's position that an individual serving as a subcontractor should not be able to advocate a personal point of view. Vice Mayor Galleberg moved for approval and Mr. MacIlvaine seconded, but prior to the vote, discussion continued.

Council Member Taylor indicated that because parking would be lost, property owners north of Tenth Street and near Central Avenue were in fact not pleased with the Boorman plan. She reiterated, however, that her concern was regarding Mrs. Boorman's advocacy.

While supporting the motion to approve, Council Member Wiseman nevertheless recommended a separate and distinct contract for this project rather than adding to an existing contract. Otherwise, there could be the mistaken impression that Mrs. Boorman continues to request additional funding for the same job, she said. City Manager Lee assured Mrs. Wiseman that henceforth specific details would be rendered. While agreeing that maximum efficiency is derived with a refined, logical approach, Council Member Russell nevertheless pointed out that during the initial planning stages, the scope was in fact appropriately broad.

Council Member MacIlvaine noted that an ordinance was passed resulting from the Heart of Naples Committee's work and said he supported employees and subcontractors favoring the City's ordinances since it showed support of the City's position.

City Attorney Pritt informed Council that this particular document is more generalized because it is a continuing contract and also pointed out that the selection of services in various professional areas like landscape architecture must undergo a process prescribed by the state Consultants Competitive Negotiation Act. The organizations chosen may receive continuing contracts, with specific work requiring approval and release by the City Council. Therefore, he added, Mrs. Boorman's situation is an example of this process, representing additional work under an existing contract. Alternatively, he said, to change landscape architects would require the entire state-mandated selection process.

In response to an earlier comment by Council Member MacIlvaine, Council Member Taylor stated that Mrs. Boorman had spoken in favor of the 41-10/Heart of Naples plan prior to the zoning ordinance being passed.

Public Comment: None. (9:26 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10316 as submitted; seconded by Russell and carried 5-1 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10317..... ITEM 11-f
A RESOLUTION FINDING THE DREDGING OF NAVIGABLE CHANNELS TO BE IN THE PUBLIC INTEREST AND REQUESTING THE TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND TO ISSUE A PUBLIC NON-EXCLUSIVE SOVEREIGN SUBMERGED LANDS EASEMENT FOR THE CHANNEL FROM BAYVIEW PARK TO THE FEDERAL CHANNEL, AT THE SOUTH END OF NAPLES BAY; AND PROVIDING AN EFFECTIVE DATE. Title not read. While Council Member MacIlvaine said that he had asked that this item be removed from the Consent Agenda for separate discussion, subsequent information from the City Manager had caused him to deem this as filling a legitimate purpose.

Public Comment: None on Item 11-f. (9:27 a.m.) (See next page regarding Item 11-g.)

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10317 as submitted; seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Public Comment: (9:28 a.m.) **Henry Kennedy, Tarpon Road**, said that while he supported the dredging associated with Item 11-g as a public benefit, the dredging allowed the Naples Sailing and Yacht Club would be considered entrance dredging as opposed to dredging the yacht basin. It did not correspond to the location that had been delineated in Ordinance 02-9907; Mr. Kennedy said, and characterized this as circumventing the system. (See Page 9 for Item 11-g, title and discussion.)

City Attorney Robert Pritt advised Council that in order to conduct separate discussion of Item 11-g, a motion removing that item from the Consent Agenda would be necessary.

MOTION by Taylor to REMOVE ITEM 11-g FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION; seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Natural Resources Manager Jon Staiger referred to an illustration of the proposed project, saying that he saw no conflict in the dredging area. (See Attachment #1) While the Naples Sailing and Yacht Club would benefit from the work, he said, this project had been initiated by Basil Street Partners and Middlesex Holdings, which are area property owners. The Yacht Club's marina expansion project, approved approximately one-year before, was awaiting amendment of building plans, he said. Additionally, Dr. Staiger noted that the Yacht Club would be required to obtain permits from both the Department of Environment Protection (DEP) and Army Corps of Engineers (ACOE) for the marina expansion. Part of that permitting process, he said, would be to obtain a letter from the City stating that the project does not violate the City's Comprehensive Plan or Comprehensive Development Code. Therefore, during the application process, the Yacht Club must provide assurances that there would be no conflict with what had been previously approved and must also undergo a dredge-and-fill permitting process. Therefore, Dr. Staiger said that he saw no conflict with this particular project and pointed out that the Yacht Club's projected dredging would be to the south.

Council Member Russell however called attention to the fact that the resolution did nevertheless include the Naples Sailing and Yacht Club in the first whereas clause. Dr. Staiger indicated that this had been an error and that only the other two property owners would be participating financially.

Public Comment: (9:41 a.m.) **John Harkins, representing Naples Sailing and Yacht Club**, confirmed that the Club was not participating in this project and was not sharing in the financial responsibility, although the Club was not opposed to it.

In further discussion it was determined that consideration of Item 11-g would be deferred until later in the day so that a revised resolution could be provided showing that Basil Street Partners and Middlesex Holdings were the entities financially responsible. Dr. Staiger confirmed that no costs would be borne by the City. In addition to the aforementioned correction, Vice Mayor Galleberg requested that a concise, declarative sentence be included as to whether this item would violate any existing ordinance.

CONSENT AGENDA

APPROVAL OF MINUTES**ITEM 11-a**
November 17, 2003 Workshop (as amended on Pages 6 and 9); December 1, 2003 Workshop (as amended on Pages 5, 7, 16, 17, and 18), and December 3, 2003 Regular Meeting (as amended on Pages 4, 7, 9, 11, 12, 13, and 26).

SPECIAL EVENTS **ITEM 11-b**

- 1) Royal Harbor Association Annual Picnic, 25 Dolphin Court (vacant lot), January 18, 2004.
- 2) Naples Cultural Heritage Celebration, City of Naples, River Park Community Center, February 22, 2004.
- 3) Concert to Benefit Cambier Park Bandshell, City of Naples, Cambier Park, January 10, 2004. (Withdrawn. See Item 4.)
- 4) Academy Awards Style Presentation, Boys and Girls Club of Collier County, Sugden Theater and Plaza, January 25, 2004.

RESOLUTION 04-10318..... **ITEM 11-d**

A RESOLUTION DETERMINING RENEWAL OF LIVE ENTERTAINMENT PERMIT APPROVAL FOR THE COMFORT INN & MARINA, LOCATED AT 1221 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title not read.

RESOLUTION 04-10319.....**ITEM 11-e**

A RESOLUTION DETERMINING RENEWAL OF LIVE ENTERTAINMENT PERMIT APPROVAL FOR PIER 41 AT TIN CITY, LOCATED AT 1200 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Galleberg to ***APPROVE CONSENT AGENDA*** (except Items 11-c, 11-g, and 11-f); seconded by Taylor and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

(Withdrawn. See Item 4.).....**ITEM 12-a**

A RESOLUTION DETERMINING CONDITIONAL USE PETITION 03-CU9 TO ALLOW FOR 12 EXTERIOR BAR SEATS IN ADDITION TO THE EXISTING 24 OUTDOOR SEATS IN A PRIVATELY OWNED ALLEY, AT 837 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title not read.

(Withdrawn. See Item 4.)..... **ITEM 12-b**

A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 03-RIS16 LOCATED AT 837 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

ORDINANCE 04-10320.....**ITEM 13**

AN ORDINANCE GRANTING REZONE PETITION 03-R7 FOR PROPERTY LOCATED AT 896 RIVERPOINT DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM PD, PLANNED DEVELOPMENT, TO PD, PLANNED DEVELOPMENT, IN ORDER TO CHANGE THE

EXTERIOR ELEVATIONS OF THE NAPLES SAILING AND YACHT CLUB, AMENDING SECTION 2.2 OF ORDINANCE 02-9907 TO REFLECT SAID CHANGES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:45 a.m.). Vice Mayor Galleberg moved for approval and Council Member MacIlvaine seconded. This being a quasi-judicial proceeding, Council Members disclosed the following ex parte communications: MacKenzie, Wiseman, and Russell/no contact; MacIlvaine and Galleberg/greeted John Harkins of Naples Sailing and Yacht Club that morning; and Taylor/received a call from Bill Kroeschell but unable to respond to the voice-mail message. Notary Public Bonnie McNeill then administered an oath to those intending to offer testimony; all responded affirmatively.

Public Comment: None. (9:46 a.m.). **Henry Kennedy, Tarpon Road,** said that the Naples Sailing and Yacht Club building would be a credit to the area but reiterated his disapproval of what he described as a circumvention of the normal process. Additionally, he said he was of the opinion that parking was inadequate and would in fact be contrary to the Code, stating that calculations should have been based on gross square footage.

Community Development Director Ron Lee reminded Council Members that the matter before them was solely an elevation change and not a review of the Yacht Club's Planned Development (PD). In summary, he said the new building is 500 square feet smaller than the version previously approved, despite the lot coverage being slightly increased. Mr. Lee further indicated that the parking standard applied to private clubs is one space per 200 square feet, while administrative areas are calculated at one parking space per 300 square feet, consistent with standards for office use. Therefore, it had been determined that the parking was in fact compliant with the Code, he said.

MOTION by Galleberg to ADOPT ORDINANCE 04-10320 as submitted; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10321.....ITEM 14
A RESOLUTION APPROVING A CONTRACT RENEWAL WITH SUN LIFE ASSURANCE COMPANY OF CANADA, TO PROVIDE STOP-LOSS (SPECIFIC AND AGGREGATE) INSURANCE FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN FOR THE PLAN YEAR JANUARY 1, 2004, THROUGH DECEMBER 31, 2004; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:55 a.m.). City Manager Robert Lee explained that this plan reinsures the City for single-occurrence medical expenses once an individual employee's medical costs reach a certain level. An actuarial review had indicated that the City should increase its stop-loss deductible from \$75,000 to \$100,000, or in the aggregate, from \$3,906.836 to \$4,087.788. City Manager Lee further said that this increase in deductible would nevertheless result in a savings of \$157,168 in premiums to the plan. In response to Mayor MacKenzie, Human Resources Director Denise Perez confirmed that this is strictly a City expense and does not entail employee contributions.

Public Comment: None. (9:58 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10321 as submitted; seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10322.....ITEM 15

A RESOLUTION APPROVING A SPECIAL EVENTS FINANCIAL ASSISTANCE POLICY, AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:58 a.m.). Community Services Director David Lykins confirmed to Council Member Taylor the currency of the organization list provided (Attachment #2). While Council Member Wiseman indicated that City Manager Lee had included the New Year’s Eve fireworks display as a traditional event in his supplemental memorandum, she noted it had not been included within “Traditional Community Events” (Item Q) of the financial assistance policy, and Mr. Lykins said it would be added.

In response to Mayor MacKenzie, Mr. Lykins clarified that the Great Dock Canoe Race had been listed under traditional events because of its long history, making it eligible for consideration of full City funding, although previously funded at \$1,000.

Vice Mayor Galleberg indicated that he did not support expanding the list of traditional events to include the New Year’s Eve fireworks display, which had been privately funded. Mr. Lykins clarified that other than the City contributing to some of the staging elements the first year of the event, the sponsoring company had underwritten all expenses other than advertising, which had been derived from the Special Events account. Inclusion under the category of traditional community events, Mr. Lykins said, had not been based on specific financial assistance but on the event itself and on previous Council discussions. Vice Mayor Galleberg said that he believed expansion of the list to be counterproductive to the process of developing a policy and procedure.

Also in response to Vice Mayor Galleberg, Director Lykins said that he would obtain further staff clarification as to whether the St. Patrick’s Day Parade should have in fact been designated a traditional community event in the financial assistance policy. Mr. Lykins also clarified that while the administrative process for handling large and small events is relatively comparable, the other financial impacts of larger events should be offset by the fees and charges policy as opposed to a special event permitting policy.

Council Member Russell urged that traditional community events however be defined to preclude still other long standing events from requesting full City funding. While he said including the New Year’s Eve fireworks display for possible future funding would protect it from loss of outside sponsorship, Mr. Russell said that the St. Patrick’s Day Parade did not require inclusion due to the high degree of volunteer support. Mr. Lykins however clarified that inclusion as a traditional community event simply stated that the Council would consider, not guarantee, financial assistance.

Council Member Taylor commended the Allen Systems Group and the City for the fireworks display. She also said that the policy language on traditional events would provide future Councils the opportunity for review while keeping participants and groups informed that they would be eligible for full funding consideration as opposed to guaranteed financial assistance.

Council Member Wiseman however suggested that instead of an exemption for traditional events, organizations wishing to apply for that category be considered at the time of application

rather than the Council conducting the current debate on whether events should be included under a category entitled traditional.

Council Member Russell differed, however, reiterating that designating traditional events would prevent other long-standing events from attempting to obtain this classification in the future. Therefore, he said he approved of the policy set forth by the Community Services Department as a means to streamline the process. Mayor MacKenzie agreed, pointing out that a future Council could adjust the list as appropriate.

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

MOTION by Russell to APPROVE RESOLUTION 04-10322 as submitted; seconded by Taylor and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION (Withdrawn. See Item 4)ITEM 16
A RESOLUTION TO ESTABLISH POLICY AND PROCEDURES FOR THE SALE AND DONATION OF THE CITY OF NAPLES ‘NEAPOLITAN SPRINGS’ BOTTLED WATER; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION (Continued).....ITEM 11-g
A RESOLUTION FINDING THE DREDGING OF NAVIGABLE CHANNELS TO BE IN THE PUBLIC INTEREST AND REQUESTING THE TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND TO ISSUE A PUBLIC NON-EXCLUSIVE SOVEREIGN SUBMERGED LANDS EASEMENT FOR THE EAST CHANNEL OF THE GORDON RIVER, SOUTH OF FIFTH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE. (See also Page 5.) Council Member Wiseman suggested that this item be continued to a later date to allow the City Attorney sufficient opportunity to revise language. Council Member Russell said he, too, believed that the item required a more thorough review. Natural Resources Manager Jon Staiger indicated that a continuance to the next Council meeting would be agreeable to the petitioner.**

MOTION by Russell to CONTINUE ITEM 11-g until January 21, 2004; seconded by Wiseman and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**ORDINANCE 04-10323.....ITEM 17
AN ORDINANCE RELATING TO OCCUPATIONAL LICENSE TAXES AND PEDDLER’S FEES; AMENDING SECTION 58-66, EXEMPTIONS, SUBSECTION 58-70(b), EXEMPTION; APPROVAL OF LOCATION OF BUSINESS; SUBSECTION 58-76(2), TRANSFER LOCATION OR CHANGE OF NAME; AND SECTION 58-81, SCHEDULE OF TAXES, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF INCREASING OCCUPATIONAL LICENSE TAXES; AMENDING SECTIONS 18-62 AND 18-65 OF APPENDIX A FEE SCHEDULE FOR THE PURPOSE OF AMENDING THE LICENSE AND PERMIT FEES FOR PEDDLERS AND SOLICITORS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:13 a.m.).**

Public Comment: None. (10:14 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10323 as submitted; seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10324.....ITEM 18-a

A RESOLUTION DESIGNATING TARA A. NORMAN, CITY CLERK, AS CHIEF ELECTION OFFICIAL FOR THE CITY OF NAPLES SPECIAL ELECTION OF FEBRUARY 17, 2004; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:14 a.m.). City Clerk Tara Norman indicated that Items 18-b, 18-c, and 18-d are also specific to the February 17, 2004, Special Election.

Public Comment: None. (10:14 a.m.)

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10324 as submitted; seconded by Galleberg and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10325.....ITEM 18-b

A RESOLUTION APPOINTING A CITY ELECTOR TO THE CANVASSING BOARD FOR THE CITY OF NAPLES SPECIAL ELECTION OF FEBRUARY 17, 2004; AND PROVIDING AN EFFECTIVE DATE. City Clerk Tara Norman announced that Mary Ellen Hawkins had agreed to serve on the Canvassing Board for the Special Election on February 17, 2004. Mayor MacKenzie noted that the Canvassing Board includes one elector, the City Clerk, and the Mayor. Mayor MacKenzie also said that she would invite the three mayoral candidates to attend the Canvassing Board meetings to ensure the next mayor would be informed of the process for the February 17th Special Election. Mrs. Norman clarified that when the City Clerk is appointed as the Chief Election Official, it is necessary for an elector to serve as the third member of the Canvassing Board.

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

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10325 appointing Mary Ellen Hawkins as the city elector for the February 17, 2004, Special Election; seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10326.....ITEM 18-c

A RESOLUTION AUTHORIZING THE USE OF THE COLLIER COUNTY VOTING AND BALLOT TABULATION SYSTEM FOR THE CITY OF NAPLES SPECIAL ELECTION TO BE HELD FEBRUARY 17, 2004; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:18 a.m.).

Public Comment: None. (10:18 a.m.)

MOTION by Russell to APPROVE RESOLUTION 04-10326 as submitted; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10327.....ITEM 18-d

A RESOLUTION AUTHORIZING THE CHIEF ELECTION OFFICIAL TO SUBMIT TO THE COLLIER COUNTY SUPERVISOR OF ELECTIONS THE NAMES OF LEGALLY QUALIFIED CANDIDATES FOR THE SPECIAL ELECTION OF FEBRUARY 17, 2004; DIRECTING THE CHIEF ELECTION OFFICIAL TO, FOLLOWING THE LAST DAY OF CANDIDATE QUALIFYING, PLACE THE COMPLETED BALLOT INTO THE PUBLIC RECORD; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:20 a.m.). City Clerk Tara Norman pointed out that the ballot for the February 3 General Election had been provided to the Council Members.

Public Comment: None. (10:20 a.m.)

MOTION by Russell to **APPROVE RESOLUTION 04-10327** as submitted; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 04-10328.....ITEM 19

A RESOLUTION APPOINTING ONE MEMBER TO THE BLUE RIBBON COMMITTEE RELATING TO EMPLOYMENT BENEFITS FOR ELECTED OFFICIALS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:20 a.m.). Council Member Russell corrected the appointee's name to Henry rather than Michael Watkins as listed within the resolution.

Public Comment: None. (10:20 a.m.)

MOTION by Russell to **APPROVE RESOLUTION 04-10328 as amended** appointing Henry Watkins; seconded by MacIlvaine and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess: 10:21 a.m. to 10:36 a.m. It is noted for the record that the same Council Members were present when the meeting convened.

.....ITEM 20
DISCUSS COLLECTIVE BARGAINING ISSUES AT EXECUTIVE SESSION. City Manager Robert Lee advised that he had requested the Executive Session to discuss collective bargaining issues. Human Resources Director Denise Perez also attended the session.

Executive Session: 10:35 a.m. to 11:18 a.m. It is noted for the record that the entire Council was present when the meeting convened.

Mayor MacKenzie indicated that no action had been required for Item 20 at that time.

ORDINANCE (First Reading).....ITEM 8

AN ORDINANCE DETERMINING REZONE PETITION 03-R8 FOR PROPERTY LOCATED ON THE AREA OF LAND BOUNDED ON THE EAST BY US 41 NORTH, ON THE SOUTH BY FIFTH AVENUE NORTH, ON THE WEST BY 8TH STREET NORTH AND ON THE NORTH BY 6TH AVENUE NORTH, MORE PARTICULARLY DESCRIBED HEREIN, TO PERMIT REZONING FROM PD, PLANNED DEVELOPMENT, TO A NEW PD, PLANNED DEVELOPMENT, IN ORDER TO MODIFY THE PARKING ALLOCATION AND TO ALLOW A NEW MONUMENT SIGN; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:19 a.m.). This being a quasi-judicial proceeding, Council Members disclosed the following ex parte communications: MacKenzie/met with the petitioner while viewing the site but items discussed had been included in the information provided; Wiseman/unable to schedule meeting requested during telephone conversation with the petitioner on an unrelated matter; Russell/met with the petitioner at the site and discussed the proposal; MacIlvaine/no contact; Galleberg/met with the petitioner at the site and received an explanation of the petition; and Taylor/familiar with site and spoke to petitioner. Notary Public Bonnie McNeill then administered an oath to those intending to offer testimony; all responded affirmatively.

William Klohn, President, MDG Capital Corporation, said he represented the multiple petitioners in this matter and indicated that the parking allocation change does not affect the current total of 218 spaces but is intended to afford the residences at City Centre two spaces per dwelling unit. He further indicated that Code requirements are met or exceeded with nine spaces yet unassigned

and that staff had recommended approval of the request. (It is noted for the record that the current and proposed parking allocation plans are contained in the file for this meeting in the City Clerk's Office.)

In further discussion, it was clarified that the proposal would allocate five more spaces in the northwest corner and reduce the excess of 14 spaces constructed around the perimeter of the property. It was later clarified however that this arrangement would result in five fewer on-street parking spaces afforded for usage by the general public.

At the request of Council Member Wiseman, Mr. Klohn agreed to meet with all owners of the TIB condominium association so that the association's consent to the petition could be confirmed prior to second reading of the rezone ordinance.

In response to Council Member Russell, Community Development Director Ron Lee indicated that the two Planning Advisory Board (PAB) negative votes had centered on the signage request and not on the parking issue.

Mr. Klohn however stressed the need for a second sign on Sixth Avenue North to provide further identification for the tenants on the second and third floors and noted that it would in fact be appropriate under the site-specific flexibility afforded by PD zoning. He described the most appropriate location for the sign as being near the TIB bank drive-through signage on Sixth Avenue North and said the petitioners would hold the City harmless if necessary.

In discussion of the proposed signage changes, Community Development Director Lee clarified that when Council originally reviewed the project, "D" Downtown zoning requirements had been followed as closely as possible, which allow monument signs only on US 41 and Goodlette-Frank Road. Therefore, he said, while this particular PD is silent regarding signage, one monument sign of five feet in height and 60 square feet in area with lettering on both sides would be permitted. To permit two such monument signs, however, it would be necessary for the petitioner to have a total of 300 feet of frontage on one of the aforementioned streets.

Community Development Director Lee also explained that staff had continued to follow the original November 4, 1998, City Council approval which had indicated that project signage would reflect the regulations of the "D" Downtown district. This standard had also been applied to other elements of the project, such as parking, he added. Mr. Klohn however urged a compromise to allow the requested signage to be installed.

Council Member Russell said that he would consider an additional ground sign on US 41 if no reasonable solution resulted from the tenant discussions, although he was not inclined to do so. City Attorney Pritt said that if the necessary changes were not made that day, another reading would be required.

Council Member Taylor indicated that aesthetically, monument signs were preferable to banner signs, but Mayor MacKenzie expressed concern that a monument sign on Sixth Avenue North might cause traffic visibility problems. Council Member Taylor however moved approval of the proposed parking change as well as the monument sign concept, provided tenants determine that

an alternative is not possible, and dependent upon staff determination that the proposed signage would not present a safety hazard. At the recommendation of City Attorney Pritt, however, Miss Taylor amended her motion to approve the amendment to the ordinance regarding the allocation of parking within the development and a monument sign on Sixth Avenue North, so as to separate the petition approval from instruction to staff. However, the motion died for lack of second.

Council Member MacIlvaine said that he disagreed with circumventing the “D” Downtown regulations stating that the sign ordinance was established to provide continuity and an orderly appearance to the area. Therefore, Mr. MacIlvaine said he would move approval of the parking portion but denial of the sign portion. Council Member Wiseman seconded. Council Member Russell also voiced disapproval of a monument sign on Sixth due to safety concerns but said he would be willing to consider the addition of a second sign on US 41. He also urged consideration of sign bands as a more tasteful alternative.

Characterizing it as commonplace for tenants with less square footage not to be granted on-street signage, Council Member Wiseman said that she did not deem the reason given to be valid for deviating from the “D” Downtown ordinance in this instance.

City Attorney Pritt indicated that changes should be made on Pages 19 and 20 of the PD document (Section VIII) to indicate that signage would be in accordance with the “D” Downtown requirements. The motion maker and seconder agreed with that revision. Vice Mayor Galleberg then added that for buildings with many tenants, monument signs would not serve the intended purpose and alternative solutions should be considered.

Mr. Klohn then proposed that the existing drive-through directional sign be replaced with a monument sign of the same height to be used for listing no more than four additional tenants. However, Council Member MacIlvaine declined to amend his motion.

In response to Council Member Taylor, Community Development Director Lee clarified that signage requirements from the original, 1998 “D” Downtown zoning would be considered identical to the requirements approved June 2003 and that these are the standards being applied in this instance.

Public Comment: None. (12:15 p.m.)

MOTION by MacIlvaine to APPROVE ITEM 8 at First Reading as amended, approving the parking portion and denying the signage portion:

- 1) Change ordinance title as follows: “...TO PERMIT REZONING FROM PD, PLANNED DEVELOPMENT, TO A NEW PD, PLANNED DEVELOPMENT, IN ORDER TO MODIFY THE PARKING ALLOCATION AND TO ~~ALLOW A NEW MONUMENT SIGN~~ MAKE PROVISIONS FOR SIGNAGE; ...”***
- 2) Delete Section 2 entirely and replace with: “Signage shall be in accordance with the standards contained in the “D” Downtown Ordinance, see Section 102-854.”***
- 3) Change Page 19 and 20 of the Planned Development (PD) document, Section VIII, by replacing the title Sixth Avenue North Monument Signage with Signage and***

entirely replacing the language of Section VIII with, “Signage shall be in accordance with the standards contained in the “D” Downtown Ordinance, see Section 102-854.”

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

Recess: 12:15 a.m. to 1:32 p.m. It is noted for the record that Vice Mayor Galleberg was absent when the meeting reconvened.

EXECUTIVE SESSION.....ITEM 9
ATTORNEY/CLIENT SESSION RELATING TO PENDING LITIGATION AS FOLLOWS: CITY OF NAPLES VS. UNITED CONTRACTORS & ENGINEERING CORP., AND CUMBERLAND CASUALTY AND SURETY COMPANY; CASE NO 02-3484-CA-TB, FILED IN THE CIRCUIT COURT OF COLLIER COUNTY, FLORIDA. Mayor MacKenzie indicated that the Executive Session would commence regarding pending litigation and that City Attorney Robert Pritt had requested advice of City Council concerning the pending litigation, City of Naples vs. United Contractors and Engineering Corp. and Cumberland Casualty Surety Company, Circuit Court Case #02-3484-CA-TB. Therefore, she announced that the City Council would commence an Attorney/Client session to discuss settlement negotiations and/or strategy related to litigation expenditures. The estimated time for the session is 30 minutes, after which the meeting would be reopened. The persons attending the attorney/client session are the following: Mayor Bonnie MacKenzie; Vice Mayor Gary Galleberg; Council Members Bill MacIlvaine, Clark Russell, Penny Taylor, and Tamela Wiseman; City Manager Robert Lee; Attorneys Robert Pritt and John Clapper; and Court Reporter Pamela Arsenault of AAF Reporting. The City Council had given notice of the time and date of the attorney/client session, Mayor MacKenzie said.

Executive Session: 1:32 p.m. to 1:58 p.m. It is noted for the record that Vice Mayor Galleberg arrived at 1:59 p.m., at the close of the Executive Session.

In response to Vice Mayor Galleberg, City Attorney Pritt indicated he would be required to vote on the item, unless he had a financial interest.

MOTION by Wiseman MOVED THAT OFFER OF JUDGMENT SUBMITTED BY THE DEFENDANTS IN THE CASE OF THE CITY OF NAPLES VS. UNITED CONTRACTORS & ENGINEERING CORP., AND CUMBERLAND CASUALTY & SURETY COMPANY, CASE NO 02-3484-CA-TB, FILED IN THE CIRCUIT COURT OF COLLIER COUNTY, FLORIDA, BE DISAPPROVED. *This motion was seconded by Russell and carried 6-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

ORDINANCE (First Reading).....ITEM 10
AN ORDINANCE DETERMINING REZONE PETITION 03-R9 FOR PROPERTY LOCATED AT 300 GOODLETTE ROAD SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM PD, PLANNED DEVELOPMENT, TO A NEW PD, PLANNED DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:00 p.m.). This being a quasi-judicial proceeding, Council Members disclosed ex parte communications, first to the effect that each had received a packet of information from Robert Weissenborn of Naples Armature Works. In addition, Mayor MacKenzie indicated a brief conversation with the petitioner’s agent regarding information he planned to present but not the merits of the petition in any way.

Council Member Wiseman stated familiarity with the site and reported a conversation with petitioner's Attorney John Passidomo relative to concerns that had been raised regarding the petition and the procedure Council would follow in hearing it. Council Member Russell also indicated familiarity with the site and disclosed meetings with the petitioner and his agent as well as attendance at public sessions which the petitioner had held. He said he had also met with the owners of Naples Armature Works to discuss their concerns. Council Member MacIlvaine reported a brief discussion that morning with Attorney Passidomo. Vice Mayor Galleberg said he had had conversations with the petitioner, his principals, and his agent but had not specifically discussed the petition. Council Member Taylor said that in addition to being familiar with the site, she had received a phone call from Mr. Weissenborn and had spoken with Attorney Passidomo regarding traffic concerns. Additionally, Miss Taylor indicated that James Kessler had requested that she read a letter into the record, although she would defer to Council on this matter. In conclusion, Miss Taylor said she had had a conversation with Sue Smith regarding Mrs. Smith's concerns over the project.

It is noted for the record that photographs of exhibits and scale model used by the petitioner's representatives are contained in the file for this meeting in the City Clerk's Office.

Petitioner's Attorney John Passidomo said that Jack Antaramian heads Antaramian Development and is under contract to acquire the 17.67-acre Grand Central Station site from NCH Healthcare System. He further noted that Elkus/Manfredi Architects had been selected for the project.

Attorney Passidomo listed goals for the Grand Central Station project: 1) reinforce the role of the downtown as a community center; 2) promote pedestrian scale, reducing traffic impacts by converting commercially zoned land into mixed and residential usage; 3) provide for a prosperous, viable downtown in a mixed-use environment; and 4) improve aesthetic appeal. The master plan, he said, is intended to integrate the site into the City's downtown.

Key components of the master plan were then described by Mr. Passidomo: 1) extension of Third Avenue South to Goodlette-Frank Road via right-of-way to be dedicated; 2) open space, green space, courtyards, and public areas in the project's square; 3) a density cap of 12 units per acre with lot coverage at 39%; and 4) building heights capped at 42 feet for commercial, mixed-use, or residential units. Within that strictly interior residential component, Attorney Passidomo pointed out, the Planning Advisory Board (PAB) had approved that within a 42-foot building envelope, the petitioner would be allowed three habitable floors over one story of parking. Furthermore, Mr. Passidomo noted that 300 square feet of landscaping per parking space would be included which exceeds the current zoning requirements by tenfold. Attorney Passidomo also noted a decrease in traffic achieved by mixed use over commercial. (It is noted for the record that traffic analyses provided are contained in the file for this meeting in the City Clerk's Office.)

Mr. Passidomo then pointed out that his client's public forums had been well attended and that suggestions by the Design Review Board (DRB), the PAB, and staff had been incorporated. In approving the project, he said, the PAB had recommended allowing continued use of the Grand Central Station property by neighbors and that, to this end, setbacks had been extended and the parking structure relocated 30 feet to the north. No drainage, structures, or landscaping would be placed on that section of the property, he added. Other design suggestions, particularly relative

to the commercial component would be considered during the General Development Site Plan (GDSP) process, Mr. Passidomo explained. He also pointed out that the development agreement was an instrument for securing development rights in exchange for the improvement to, and extension of, Third Avenue South through the property.

Attorney Passidomo then made reference to his firm's memorandum (Attachment #3) regarding the acquisition of title through adverse possession, which he said had been prepared at the request of City Attorney Pritt. In addition to the traffic analyses aforementioned, Mr. Passidomo said that a revised ordinance containing language consistent with recommendations made by the PAB and staff had been submitted for consideration. (A copy of this material is also contained in the file for this meeting in the City Clerk's Office.) Furthermore, he said, the petitioner would abide by all the conditions within the staff report.

In response to Vice Mayor Galleberg, Attorney Passidomo indicated that Naples Armature Works had for the past ten years used a 30-foot area of Grand Central Station land adjacent to the west wing of its building. While there is neither title nor adverse possession involved, Mr. Passidomo said that the petitioner has granted continued usage, would not install drainage, structures or landscaping there, but would nevertheless grant neither an easement nor title. This condition was manifested, he said, by a 30-foot setback although the petitioner would include more restrictive language in the ordinance as a condition for approval of the PD.

Mayor MacKenzie received clarification from Attorney Passidomo that by accommodating the Naples Armature Works regarding the aforementioned 30-foot area, landscaping had nevertheless been significantly diminished.

Council Member MacIlvaine commended the project for its compliance with Heart of Naples standards and for building within the 42-foot height limitation. Mr. MacIlvaine also received confirmation that the 212 units would be independently owned and operated. Mr. Passidomo further clarified that Third Avenue South would be constructed at the developer's expense and dedicated to the City which would then assume maintenance.

In response to Council Member Wiseman, Attorney Passidomo said that the specific language referencing ingress and egress had been extrapolated from the title insurance policy which had noted that there would be no access within Grand Central Station to the area being used by the adjoining parcels.

Howard Elkus of Elkus/Manfredi Architects described the petitioner's vision as creating a gateway project that sets the tone for Fifth Avenue South. He also predicted the extension of Third Avenue South would benefit not only Bayfront Marketplace and Grand Central Station, but the City, and increase surrounding property values as well. Architect Elkus noted visibility of the project from both Goodlette-Frank Road and US 41 which he predicted would enhance the views of motorists as well as pedestrians.

Describing the architectural design, Mr. Elkus cited variety in rooflines and the use of extensive landscaping to achieve a natural privacy barrier with appropriate lighting. The pedestrian character, he said, is emphasized by use of vias, courtyards, trellises, landscaping, and fountains

with walkways throughout. The fountain he described as a landmark which will be visible from the street.

Architect Elkus described placement of parking areas and noted that the three parking garages would be camouflaged by landscaping and other building elements with the ground floor containing the commercial development. Access to the upper decks would be through the neighborhood entrances only, he said. The retail shops would favor local businesses as opposed to national chains, thus promoting the village concept, he added. Architect Elkus then noted that loft units had been placed above retail and restaurants, with residents of the loft units being able to circulate separately from the first-floor commercial area. In response to Council Member Russell, Mr. Elkus concurred that buildings should appear attractive from the front and back.

Council Member Wiseman then received information from Attorney Passidomo regarding development phasing which Mr. Passidomo said would be driven by the marketplace, although the first step would be relocating the NCH Wellness Center, which he predicted would take approximately one year. The commercial corner on the southeast side, he said, could be sold and developed independently on an accelerated basis, and clarified that the Third Avenue South roadway would be open and dedicated before a certificate of occupancy was issued for any portion of the project. It was also clarified later in the meeting that this street would be dedicated via easement over private property and not as a public right-of-way. City Attorney Pritt distinguished a dedicated right-of-way from a non-exclusive easement as involving liability for the City with the dedication wherein the property owner may retain the liability with the easement, which also allows retention of underlying property rights.

Attorney Passidomo responded to Council Member MacIlvaine that the townhouses would be priced between \$400,000 and \$600,000 and the size of the units would range from approximately 1,000 to 2,000 square feet. Community Development Director Lee also clarified for Council Member MacIlvaine that this project conforms to the Heart of Naples zoning regulations in all respects except for the three habitable floors with first floor parking. Additionally, he pointed out that the parking garages for the residential buildings on Tenth Street are conditional uses, which are considered a procedural matter covered by the PD.

Council Member Russell received clarification from Community Development Director Lee that the Naples Armature Works would be allowed to continue functioning as it has in the past. However, if the property were developed, the parking and setback requirements imposed at that time would accommodate deliveries and other service vehicles.

In response to Council Member Taylor, Community Development Director Lee clarified that the “D” Downtown ordinance passed by City Council in June 2003 established a three-story and 42-foot height limitation, regardless of use; however, in the Grand Central Station project there are two exclusively residential buildings with three habitable floors over one floor of parking, and the parking area by definition would be considered a story. Mr. Lee further indicated that the Antaramian project would therefore by definition be considered a four-story building which would be in violation of the “D” Downtown district ordinance regarding the number of stories but that it was in compliance with the 42-foot height limitation established by the zoning district.

Council Member Taylor said that she wished to establish for the public record that this project would exceed the existing ordinance relative to density. She therefore received clarification from Community Development Director Lee that the “D” Downtown zoning district allows 12 units per acre as a base, up to a 30 with purchase of green space/open space, and 8 units per acre would be allowed for PD’s. However, this PD project would be approved by an ordinance, Mr. Lee said, which would supersede the “D” Downtown ordinance.

Council Member Russell expressed concern over the closeness of the project’s south entrance to that of the Depot. Planning Manager Ann Walker indicated that the Engineering Department had also expressed concern and had discussed a shared entrance although no definitive resolution had yet occurred in this regard. Additionally, Mr. Russell recommended allowing right turns only for the north and south entrance, but Ms. Walker advised that traffic pattern specificity had not been discussed at the PAB level.

Council Member MacIlvaine indicated that this project would actually exceed the Heart of Naples plan and acknowledged the compliance with the 42-foot height restriction, with three habitable floors with parking below, thus allowing more green space/open space and an improved and aesthetically pleasing environment. However, Council Member Taylor differed and indicated the choice could have been made to design two stories over one story of parking.

Engineer Reed Jarvey then addressed Council Member Taylor’s questions regarding the peak traffic hour, noting that the traffic analysis for the Grand Central Station project had indicated that peak hours were 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. Commercial trip generation is typically measured in the afternoon as this is traditionally the largest peak time period, he noted. Mr. Jarvey also pointed out that the project indicated three fewer trips during the morning peak hours and 28 fewer trips during the afternoon peak time period based on commercial only traffic projections versus the proposed mixed use.

Public Comment: (3:24 p.m.) **Robert Weissenborn, Naples Armature Works**, said that he owns two buildings on the south side of the proposed project and requested that service alleys be established between the adjoining property owners before the project is approved. He also requested a written agreement setting forth access by service vehicles. Mayor MacKenzie expressed appreciation for the aforementioned information packets Mr. Weissenborn had provided to Council. **Sue Smith, 15 – 11th Avenue South**, received clarification from Community Development Director Lee that the urban design study for the US 41 East corridor would not exceed \$20,000. As a neighboring property owner, she said that she was concerned that Council would be voting on the Grand Central Station project prior to the urban design study commencing. Additionally, she voiced frustration with escalating traffic and limited arterial roads and urged protection of existing residents from increased traffic which would result from development in the “D” Downtown area, Boat Haven, and Grand Central Station. **Attorney Anthony Pires** indicated representation of Mr. Weissenborn’s company, Suncoast Investment Company of Naples, owner of Naples Armature Works. Mr. Pires requested language be included within the PD document to the effect that the area used as an alley be maintained as such to provide ingress/egress to his client’s property. In response to Council Member Taylor, Attorney Pires reiterated that he was seeking a written obligation within the PD document to maintain and provide the access on the north/south strip and east/west strip, which he said would

be consistent with the “D” Downtown ordinance regulations in Sections 82.10, 102.855 5(b), and 102.715(4). City Attorney Pritt noted that Section 3(8) of the ordinance under consideration attempted to resolve that issue and requested that for Council’s consideration Mr. Pires edit that language in accordance with his client’s requests. Council Member Wiseman said that she had read language earlier in the exception of the Title Commitment which defines what the purposes are and referred to a sketch, which could be incorporated.

While Community Development Director Lee said that interconnection of Mr. Wissenborn’s property with the Grand Central Station property would be addressed when Mr. Weissenborn redevelops, Council Member Taylor predicted that with increasing traffic on both Tenth Street and Goodlette-Frank Road, motorists would find it necessary to travel through the development to avoid the congestion.

Edward Morton, representing NCH Healthcare System, described the Grand Central Station project as an opportunity to best reflect the character of Naples and that the project would appeal to a broad spectrum of the community. While he said he understood the importance of private property rights, it was also important to consider what he characterized as extraordinary efforts on the part of the developer to provide reasonable solutions. He recommended the approval of the project and predicted that if it were to fail, the property could deteriorate further, comparing it to blight in downtown Ft. Myers.

Attorney Passidomo noted that the interior residential buildings result in 39% lot coverage. Regarding traffic issues, Mr. Passidomo indicated that the developer shared the same traffic concerns addressed by others, which had prompted the traffic analysis. He reiterated the reduction in traffic impact of residential over commercial. Further, with reference to the Naples Armature Works element, Mr. Passidomo asserted that private property could not be taken to serve another purely private benefit. Notwithstanding, he said his client had offered to preserve the status quo. He added that the petitioner would enhance the language to provide an assurance to Mr. Weissenborn that they would not use the aforementioned 30-foot area for any purpose and that it would be preserved as a setback area and not used for drainage, landscaping, or structures. However, Mr. Passidomo said he would be unwilling to agree to an easement or a property right over the land owned by NCH Healthcare System which was to be acquired by Antaramian Development without a public purpose being served. Nothing would be changed to impair the public he said, and referred to the ordinance draft provided by his firm. He further suggested inclusion of language to provide that the 30-foot area shall not be used for structures, drainage, landscaping, or any other physical purposes.

Council Member MacIlvaine said that when connection of commercial, not residential, properties had been discussed by the Heart of Naples Committee it had been with the understanding that such connections would benefit both parties as opposed to merely an entry onto another property. Additionally, he said he disagreed with relinquishing private property rights absent a public need or benefit. Attorney Passidomo clarified for Mr. MacIlvaine that a condition would be attached to the PD rezone and run in perpetuity. Regarding the Naples Depot, Attorney Passidomo advised Mayor MacKenzie that joint access and other related issues would be addressed during the GDSP process including the Design Review Board (DRB) review, reiterating that the PD however was the matter then under review. Nevertheless, he said

the developer would work with the Naples Depot to preserve the bridge over the drainage area, as had been done historically. Additionally, Mr. Passidomo confirmed to Mayor MacKenzie that the developer would participate in the charette regarding the eastern US 41 corridor.

Mayor MacKenzie then noted that the current “C-2” Commercial zoning would allow approximately 400,000 square feet of commercial although the Antaramian project was in fact requesting 150,000 square feet of commercial with 212 residences. While Council Member Taylor acknowledged the quality of the proposed, she also noted that residential units are currently more marketable than commercial. She said she continued to fear increased traffic impact. However, Attorney Passidomo countered that with the proposed Grand Central Station project, 227 fewer trips would be generated than with the existing Grand Central Station usage. Additionally, Mr. Passidomo said the proposed project added significant public benefits of green space/open space, and amenities for the community at large.

Community Development Director Lee replied to Council Member Taylor’s concerns regarding the interconnectedness of Grand Central Station and the Naples Armature Works. He stated that the Code indicates that, where practical and possible, property should be interconnected. However, since the property in question is actually owned by Grand Central Station, that section of Code is not applicable because the need is being fulfilled in the way the property is currently being used.

Mayor MacKenzie indicated that the following would be added to the public record: 1) a packet provided by Robert Weissenborn of Naples Armature Works, dated December 4; 2) the January 6, packet hand-delivered to Council from Cheffy, Passidomo, Wilson & Johnson; 3) Attorney Passidomo’s memorandum of January 7 regarding the justification of an easement; 4) a handwritten letter from Nadia Silber received that day; 5) a letter from James Kessler delivered that day; and 6) a hand-written notation from Attorney Pires regarding proposed ordinance language. (Copies of the referenced items are contained in the file for this meeting in the City Clerk’s Office.)

Mayor MacKenzie said she concurred that replacing commercial with residential reduces traffic and has both stimulated improvement and prevented deterioration in other communities. She also said she had supported such replacement in prior years noting that market pressures could be utilized for the betterment of the City. This project, she said, would provide maximum benefit with the minimum amount of traffic and would be good for the overall community.

Council Member Russell also commended the quality of the proposed project, but cautioned that if the Grand Central Station proposal were not to move forward and the property were to decline, NCH Healthcare System might find it necessary to hasten a sale and that a buyer could install such uses as a discount store. Commenting on the proposal, Mr. Russell noted that the best practice is to disguise parking in the interior, creating accessible lines of sight and promoting a pedestrian friendly environment on Tenth Street South and Goodlette-Frank Road. He also praised the Antaramian plans to shield large residential buildings from view, using residential quality construction in the commercial areas, and promoting the maximization of green space/open space.

Council Member Russell nevertheless suggested the inclusion of commercial enhancements along Goodlette-Frank Road to ensure attractiveness of the backs of buildings and urged that curb cuts on Tenth Street be carefully addressed to alleviate traffic concerns. He said the use of the aforementioned 30-foot strip of property is being continued in a reasonable manner and that there is however no reason to connect the properties. Additionally, he indicated that Naples Armature Works would also be given the opportunity to redevelop its property in compliance with the new code, promoting further value. He encouraged Council to support this project and said that the community and PAB backed it. Mr. Russell then moved approval, and Council Member MacIlvaine seconded. However, prior to the vote, additional discussion ensued.

Calling the design outstanding and stating that it would function as a village, Council Member Taylor nevertheless noted that the Chairman of the County Commission had recently said that he did not understand how the City Council could complain about the addition of an overpass when an ordinance allowing 30 units per acre had been passed in the Heart of Naples plan. Additionally, she said, that at the City/County Joint Meeting of January 5, the Chairman had questioned whether the units would be affordable. Those who would work at this development, she said, would not be able to live in the area, thus requiring more workers to drive into the City. The cumulative effect, she said, along with the Boat Haven/Ruffina project would be too intense. In addition, she said that she was troubled by the lack of connectivity and would prefer to see an alley maintained since it would be necessitated by increased traffic. Miss Taylor also expressed concern regarding driveway cuts on Tenth Street South and said they too would result in increased traffic. Stating that three stories over parking should not be allowed, she said she could not support the project and therefore opposed the rezone ordinance.

Council Member Wiseman said she found it necessary to respond to statements by Council Member Taylor, pointing out that 12 units per acre is in fact the correct figure, with an allowance for up to 30-units per acre only in exchange for the addition of green space. The 42-foot height limit had been maintained, she said, and allowing three rather than two habitable floors over parking is part of the process of compromise. She then noted the reduced lot coverage and additional green space and open space provided. Furthermore, Mrs. Wiseman indicated that by not moving forward with the project, the site would continue to deteriorate and remain a blight at the gateway of the City. She also refuted the perception that only the developer would benefit, citing the increased tax base, opening Third Avenue South giving interconnectivity from Bayfront Marketplace to the rest of the City, and reducing potential traffic impact by converting commercial to residential. She said that she therefore wholeheartedly supported the project, also commending the quality of Antaramian projects.

Council Member Russell noted that the petitioner is actually dedicating a street to the City; therefore, to delay approval based on a driveway issue would not be logical, he said. Mr. Russell also pointed out that other than Wellness Center users, very few people use Grand Central Station and commended NCH Healthcare System for its continued attention to upkeep while seeking a buyer. He said that mixed-use maintains a closeness of customers with goods and services, thus reducing trips and traffic.

City Attorney Pritt then read the suggested language presented by Attorney Pires representing Naples Armature works as a substitution for Section 3(8) of the ordinance (a copy of which is contained in the file for this meeting in the City Clerk's Office).

~~In an interchange between Attorneys Pires and Passidomo, it was noted that the diagram displayed concerning the 30-foot section of property was in fact incorrect.~~ Attorney Passidomo then reconfirmed that the developer would not create an easement for the benefit of an adjacent property owner and reiterated that the property would not be used for structures, drainage, landscaping, or any other physical purposes. Mr. Passidomo acknowledged that rights could be asserted in the north/south bisecting easement and within that 30-foot strip behind the western component of the Weissenborn property; therefore, the status quo would be preserved as a condition to the zoning.

Revised

Vice Mayor Galleberg noted that Mr. Antaramian is being a good neighbor and under no obligation to grant easement rights to benefit the adjacent property owners. Additionally, Mayor MacKenzie said that the concession by the petitioner to accommodate a private property owner reduced the landscaping area, which she described as a loss to the entire City. She further noted that Mr. Weissenborn of Naples Armature Works had not yet indicated what he would do to his property to alleviate this situation and commended the petitioner for the accommodating efforts made.

Council Member Russell agreed with the amended motion restated by City Attorney Pritt with which Attorney Passidomo concurred and Attorney Pires acknowledged. Council Member MacIlvaine seconded.

MOTION by Russell to APPROVE ITEM 10 at first reading as amended below; Reference Ordinance dated January 7, 2004, included in Attorney John Passidomo's packet which had been addressed to Council, dated January 6, 2004, Section 6(c).

- 1) Adding the following to the ordinance title: "...TO A NEW PD, PLANNED DEVELOPMENT; AND PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE."***
- 2) Revising Section 2 as follows: "That this approval is based upon the Planned Development Document for Grand Central Station prepared by Cheffy Passidomo Wilson & Johnson, LLP, dated November 10, 2003, ~~with the conditions that the document be amended to reflect a maximum building height of three stories and 42 feet~~ as modified herein."***
- 3) Adding the following to Section 3(4): "The intersection design of Third Avenue South and 10th Tenth Street..."***
- 4) Changing Section 3(5): "...the intersection of 10th Tenth Street and the 3rd Third Avenue South extension, the developer...."***

- 5) *Underlining the added language in Section 3(6): “~~The proposed driveway immediately north of the Depot should be eliminated.~~ A shared driveway with The Depot should be investigated.”*
- 6) *Adding the following to Section 3(8): “...parking garage C must be set back a minimum of 30 feet from the property line and that the 30-foot area shall not be used for structures, drainage, landscaping, or any other physical purposes.”*
- 7) *Add new Section 5 as follows: “That all sections or parts of sections of the Code of Ordinances, City of Naples, all ordinances or parts of ordinances, including without limitation Ordinance 80-3570, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.”*
- 8) *Renumber Section 5 to Section 6.*

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

PUBLIC COMMENT (4:41 p.m.).....
None.

CORRESPONDENCE & COMMUNICATIONS (4:42 p.m.)
Vice Mayor Galleberg referred to City Manager Lee’s memorandum of January 6 regarding the Federal Emergency Management Agency (FEMA) update and asked whether structures were now required to be built at higher elevations and whether flood zones had been revised, thereby increasing flood insurance premiums. City Manager Lee indicated that he was awaiting information from FEMA and would provide it upon receipt.

Council Member Russell expressed optimism regarding future joint meetings with the Collier County Commission, that they would define issues of interest such as the Heart of Naples and Comprehensive Plan, and that the dissemination of appropriate information could prevent an adversarial position on such issues.

Mayor MacKenzie reminded Council Members that the Norris Center’s ribbon-cutting ceremony had been scheduled for January 30, 2004, with specifics to be provided shortly. She asked that Council note that date and plan to attend. Additionally, she requested that the upcoming charette for the urban design study of the US 41 East corridor be videotaped for rebroadcast on the City’s cable television channel; Community Development Director Lee indicated that this had been planned.

ADJOURN
(4:45 p.m.)

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Bonnie McNeill, Recording Specialist

Minutes Approved: 2/4/04