



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

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

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Tamela Wiseman, Vice Mayor

Council Members:

William MacIlvaine
Johnny Nocera
Clark Russell
John Sorey
Penny Taylor

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Chief Steven Moore, PESD
Tara Norman, City Clerk
Steve Weeks, Information Services Director
Bob Martzloff, Risk Management
Officer Bill Gonsalves, PESD
David Lykins, Community Services Director
Pamela M. Koepke, Recording Specialist
Karen Kateley, Administrative Specialist
Elizabeth Rogers, Recording Specialist

Bonnie Vohh
Jim Boula
Peter Eschauzier
Brian Leiding
Amy Patnode
Sue Smith
Chris Thornton
Other interested citizens and visitors

Media:

Ilene Stacker, Naples Daily News

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

Father Robert Tabbert, St. Ann Catholic Church

ANNOUNCEMENTSITEM 3

Mayor Barnett presented a plaque to Dockmaster Mike Klein for his actions in saving a heart attack victim at the City Dock. Dockmaster Kline acknowledged his staff, a private charter boat captain, and the Naples Firefighters, who assisted him with the stricken visitor at the City Dock. Brian Leiding, 235 Bahia Point, City Dock tenant, also offered comments of appreciation and gratitude to Dockmaster Klein for his management skills in effective operation of the facility.

Call Before You Dig Month Proclamation was then presented by Mayor Barnett. Sprint Representative Lynn Daffron acknowledged City Police Officer Bill Gonsalves and Bob Martzloff, of the City Risk Management Department for their efforts in the program.

A proclamation regarding Project HELP Crisis Center/Sexual Abuse Awareness was presented by Vice Mayor Wiseman. Project HELP Crisis Center representative Jamie Wells accepted.

SET AGENDA.....ITEM 4

In response to Council Member MacIlvaine, Mayor Barnett explained that only the Planning Advisory Board (PAB) appointments were being proposed for continuance because another candidate had applied. Council Member Sorey suggested appointing incumbents who had requested reappointment. Vice Mayor Wiseman reminded Council that consensus had been reached at the workshop meeting to continue the appointments. City Clerk Tara Norman advised that candidates awaiting interview had been advised that efforts would be made to continue the appointments. Mayor Barnett agreed that consensus had been given, therefore the appointments would be continued.

MOTION by Russell to SET AGENDA withdrawing Item 7-b and 7-f from Consent Agenda for separate discussion and vote, withdrawing Item 7-k, continuing Item 10-e (1-5) to the next regular meeting and adding Items 11, 12 and 13; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

PUBLIC COMMENT.....ITEM 5

(9:19 a.m.) **Bonnie Vohh**, 621 13th Avenue South, presented a sample of beach sand containing cigarette butts and other debris, which she said she had collected from the beach near her home. She inquired as to the maintenance schedule and suggested implementation of a beach smoking ban, better utilization of volunteers for beach clean-up, and more educational programs regarding beach preservation. **Peter Eschauzier**, 4997 Kensington High Street, (former Naples Airport Authority Commissioner) urged Council's support of the Naples Airport Authority (NAA) in its efforts to retain the State 2 jet ban, as well as its litigation against Jet 1, expressing what he said was commonly known; namely, that the company had been defrauding the City of Naples and its residents for several years.

Council Member MacIlvaine said that, being autonomous and outside the purview of the City's financial responsibility, the City does not expect the NAA to request financial assistance. Mr. Eschauzier said that the NAA has no intention of requesting financial assistance, and that it is financially solvent and is already seeing a return on fueling revenues since retaining its exclusive dispensing rights.

Council Member Nocera pointed out that while it had been citizens who had complained about airport noise, he was nevertheless concerned about the amount expended to date on the Stage 2 litigation. Mr. Eschauzier said the Part 161 Study had been extremely costly, but necessary, to respond to the community's request for mitigation of airport noise.

Council Member Taylor said that due to the fact that the Part 161 Study had been completed several years prior, another assessment regarding Stage 2 jets may be in order. She also expressed concern about a lack of grant funding and other impacts the airport could experience if the Federal Aviation Administration (FAA) prevails, and expressed additional concern that the NAA changed the rules in order to effect termination of the Jet 1 lease. She then said there was concern that the NAA attorney and Commissioners conduct executive sessions individually, rather than as a group, which increases legal costs.

Mr. Eschauzier clarified that after the Jet 1 violations, rules were changed for all airport tenants. He also pointed out the court's suggestion of possible incarceration for the principles of Jet 1 due to fraud. Regarding the Stage 2 jet ban, Mr. Eschauzier said the outcome is yet unknown.

(Withdrawn; please see Item 4)

RESOLUTION (Continued; see Item 4) ITEM 7-k
A RESOLUTION APPROVING A SETTLEMENT IN THE CASE OF CITY OF NAPLES
V. UNITED CONTRACTORS & ENGINEERING CORP., A FLORIDA
CORPORATION, AND UNITED CONTRACTORS CASUALTY SURETY COMPANY,
A FLORIDA CORPORATION (COLLIER COUNTY CIRCUIT COURT CASE NO. 02-
3884-CA), AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO
EXECUTE THE NECESSARY DOCUMENTS TO EFFECTUATE THE SETTLEMENT;
AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION (Continued; see Item 4) ITEM 10-e (1)
A RESOLUTION APPOINTING ONE ALTERNATE MEMBER TO THE PLANNING
ADVISORY BOARD FOR THE BALANCE OF THREE YEAR TERM EXPIRING
APRIL 30, 2005; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION (Continued; see Item 4) ITEM 10-e (2)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY
BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2004 AND EXPIRING
APRIL 30, 2007; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION (Continued; see Item 4) ITEM 10-e (3)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY
BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2004 AND EXPIRING
APRIL 30, 2007; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION (Continued; see Item 4) ITEM 10-e (4)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY
BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2004 AND EXPIRING
APRIL 30, 2007; AND PROVIDING AN EFFECTIVE DATE. (Title not read)

(Continued to April 7, 2004; please see Item 4)

RESOLUTION (Continued; see Item 4) ITEM 10-3(5)
A RESOLUTION APPOINTING ONE MEMBER TO THE PLANNING ADVISORY
BOARD FOR A THREE-YEAR TERM COMMENCING MAY 1, 2004 AND EXPIRING
APRIL 30, 2007; AND PROVIDING AN EFFECTIVE DATE.

It is noted for the record that Items 7-b and 7-f were removed from the Consent Agenda for separate discussion and vote.

SPECIAL EVENT ITEM 7-b
Garden of Hope and Courage Music Festival – Sunday, April 4 – 4:00 p.m. to 10:00 p.m. –
Third Street Shopping District

City Manager Robert Lee said that staff was recommending approval of the request for The Garden of Hope and Courage Music Festival with the following conditions: music ends by 10:00 p.m.; the requested noise ordinance waiver be granted from 5:00 p.m. until 10:00 p.m.; and the open container ordinance waiver be granted from 4:00 p.m. until 11:00 p.m. Additionally, City Manager Lee said he had recommended that the music acts appear in the following order: Cheap Trick, Pointer Sisters, Arturo Sandoval and Chuck Mangione. Nevertheless, events sponsors had informed him that artist contracts, executed prior to application for a special event permit, had already indicated specific performance times.

Event representative, Amy Patnode apologized for the short special event application notice and said that she understands Council's concerns. She said that The Garden of Hope and Courage, for which funds are being raised, will be located on the Naples Community Hospital campus.

Ms. Patnode cited the following event preparations: professional promoters had been hired; 44 security guards had been contracted to patrol the perimeter of Third Street South, which would be barricaded; 35 sanitation units had been secured; off-site parking at Grand Central Station will be provided and five trolleys rented to transport concert-goers to the site; off-site parking will be fully advertised; and contracts negotiated with Collier County Emergency Medical Services (EMS) and the Naples Police & Emergency Services (PESD). Additionally, Ms. Patnode said that a cap on ticket sales had been set for 8,000, and only beer, soda, and water would be served to those ticket holders who donate \$40 or more.

In response to Mayor Barnett, Ms. Patnode said every effort is being made to alter the order of performance in conformance with Council desires. She also explained that although there is a requested donation of \$40 per person, no one would be turned away for a lesser donation or who declines to donate. Mayor Barnett said while he will support the request, he maintained serious reservations, particularly with the late special event permit application and the potential for resident discord. Ms. Patnode confirmed the performers had been contracted through agent MacLean & Associates between January 20 and 29. Mayor Barnett cautioned that future requests would not be considered without sufficient notice.

Citing the contract with the musical group Cheap Trick (a copy of which is contained in the file for this meeting in the City Clerk's Office), Vice Mayor Wiseman noted that it clearly indicates that the band will be the closing performance. Ms. Patnode explained that both she and the City's Community Services Director David Lykins had contacted the agent to request the line-up change. Mr. Lykins said that agency representative Susan MacLean had indicated that she would contact the performers, through their agents, to request the changes and had expressed her understanding that compliance is a condition for approval. City Attorney Robert Pritt clarified that it is within Council's purview to require certain conditions be met prior to approval.

Council Member Nocera expressed concern for the lack of sufficient notification by the petitioner but expressed support on the grounds that the event is a benefit.

In further discussion of the scheduling of acts, Council Member Russell said that while he doubted Cheap Trick would agree to open rather than close the show, potential problems could be avoided by using more accommodating facilities, such as the bandshell in Cambier Park. Mr. Russell also said that while other events, such as the Taste of Collier, draw large numbers, crowds are more manageable because attendees neither arrive simultaneously nor stay for the duration of the event. Mr. Russell inquired as to plans to address those who arrive early, but said that he did not feel a rearrangement of the acts would lessen complaints. In response to Council Member Russell, Ms. Patnode also explained the street would be closed at midnight the night before the event to allow stages to be assembled, and approximately 100 trash receptacles would be distributed and approximately 100 volunteers would be continually present to police the area for litter. She further explained that two stages were planned so that one band could be

performing while another is preparing or departing and that the staging would be dismantled immediately following the show.

Regarding venue selection, Ms. Patnode explained that two of the founders and major sponsors of the event are Third Street South merchants who have the support of the Third Street South Association. Ms. Patnode also acknowledged that Third Street being a business area, public access could not be prohibited but that even if everyone did not donate, the event would nevertheless raise awareness.

Council Member Taylor questioned placement of a music festival in a residential district and asked why City approval had not been sought in a more timely fashion. Ms. Patnode explained that an ad in the March issue of “N” magazine had been placed in January and was donated; radio ads and ticket sales would be provided in Lee County, and radio, magazine, and newspaper ads, as well as ticket sales, would be available in Naples. Ms. Patnode also characterized the event as affordable and casual, with popular performers who want to come to Naples and is different from other events held in the area.

In a further exchange with Council Member Taylor, Ms. Patnode explained that one consideration when choosing the event location was that Richard Dimico, owner of Campiello’s on Third Street, is a major sponsor and who was offering free tickets to the residents of the area as well as a letter being prepared to inform the residents of event details, she added. Miss Taylor, however, observed that people often invite neighbors to avoid complaints and questioned the advisability of locating a rock music festival in an area where residents would be unlikely to attend. Ms. Patnode, however, said that many people are excited about the event and much planning, organization, and effort had gone into it.

Council Member Taylor also expressed doubt that the event could be considered a charity since anticipated receipts are less than 50% of the total costs, necessitating a large turnout to make the event financially worthwhile. Miss Taylor indicated she could support the event if it were to be held in a location other than downtown Naples, and reiterated her concern for the intensity of so many people in a narrow area, as well as the necessity of a noise waiver and the lateness of the request.

Council Member MacIlvaine said that despite it being a charity event, he could not support the request because of the location, the open container and noise ordinance waivers, the intensity adjacent to a residential area, the short notice provided to the City, and the fact that anticipated funds raised would not justify it as a charity event.

Council Member Sorey agreed with Council Members MacIlvaine and Taylor’s statements, but said that the decision was nevertheless a difficult one. He also remarked that achieving 50% of revenue for the charity is unlikely in this event. In response to Council Member Sorey, Ms. Patnode explained that three restaurants on Third Street South are hosting VIP dinners with special performance seating at \$250 per person.

In further discussion, Ms. Patnode indicated that compensation for PESD services had been arranged; she also reiterated that the staging would be dismantled immediately following the

event and the street would be reopened by 6:00 a.m. the next day. Ms. Patnode also confirmed that if the order of performances could not be changed, she understood the event would be cancelled. Ms. Patnode also explained that the ticket entrances are to be located at each end of the event location, and while it would not be possible to solicit ticket sales in the area prior to the event, when it is to begin people will be asked to make a donation before being allowed to enter the barricaded event area.

Council Member Russell again inquired as to crowd control plans, and Steven Moore, Chief of PESD, said that advertising would promote the free trolley service from Grand Central Station to the event location, as well as utilizing the vacant area on Broad Street with parking assistance from local ROTC units. Chief Moore advised that while every effort would be made to reduce the impact to the neighborhood, officers would issue citations when necessary. Chief Moore additionally said that the event promoters would erect barricades, hire security, and encourage concert-goers to enter through the designated admission gates, although it is expected that some would inevitably enter without making a donation.

Council Member Taylor refuted Chief Moore's comment regarding the crowd for this event as being typical to Naples due to the open containers that will be present. Chief Moore however said that prior to the City's open container ordinance there had been several events that served alcoholic beverages, with few if any incidents. He further noted the relatively short duration of this event, that drinks would not be served until the event begins, that vendors would not serve those obviously intoxicated, and that security guards would restrict coolers, backpacks and alcohol from being brought into the event. Chief Moore also predicted that re-arrangement of the order of performers would have a calming effect and thus reduce noise.

City Attorney Pritt confirmed for Council Member Taylor that there is a dram shop law whereby bar personnel can be held liable for its intoxicated patrons, however, in a situation such as this it would be difficult to pursue damages from the City.

Council Member Taylor maintained her concerns, warning against staging a rock music event with alcohol when schools are on spring break. Ms. Patnode said that while major ticket sales had not yet begun, approximately 150 \$40 tickets had been sold and that the VIP tickets were also selling well. Ms. Patnode then confirmed for Council Member Sorey that the event will carry \$5 million insurance coverage and that 16 professional bartenders would be hired and that each bar area would have two security guards. Ms. Patnode also agreed to hire police officers earlier than planned to address any situations that may arise prior to the event.

Public Comment: (10:30 a.m.) **Sue Smith**, 15-11th Avenue South, said she does not oppose the event, but requested that the location be reconsidered. She said the event is adjacent to a residential area that is highly populated at this time of year and that the event would cause great concern and difficulty for those residents. She cited the congestion and crowds on residential streets during Fourth of July celebrations and said that Council has a responsibility to ensure residents easy access to their neighborhoods. She urged Council to vote against this event.

Both Council Members Taylor and MacIlvaine urged that the event be relocated; however, it was noted that VIP ticket holders anticipated the ambience of taking their meals at the sponsoring

restaurants. Miss Taylor, however, commented that food service could be staged at an alternative location, such as Fleischmann Park. Council Member MacIlvaine further said that Council was being asked to approve a commercial event in the guise of a charity event. He too supported relocation and said that he feels the City is doing a disservice to its residents with a noise and open container ordinance waiver.

Pointing out that there is no time to relocate the event, Mayor Barnett stressed that this would be the last time he would support an event that does not give proper advance notice. He further recommended leaving the order of the performers up to the event promoters to better achieve fund raising goals.

Vice Mayor Wiseman said she did not feel the late application, in this case, was intentional and noted a similar situation recently with a Chamber of Commerce event. She suggested that it might be appropriate to review the special event application process, and she said that she took exception to assertions by some members of Council that an event to create The Garden of Hope and Courage as being quasi-commercial. Mayor Barnett agreed.

Furthermore, Vice Mayor Wiseman said, the major sponsors of the event, Campiello's, Tommy Bahamas,' and Ridgeway Bar & Grill have a record of being long-term good neighbors, who each have live entertainment permits renewed annually and who co-exist amicably with the residents in the area. Mrs. Wiseman also noted that the selection of entertainers is unknown to youngsters and would therefore attract a more adult crowd; she urged acceptance of the proposal with the hope for its success as a fund raiser.

Council Member Russell reminded Council that for several years the annual Tropicool Festival held rock concerts at Grand Central Station and, as a volunteer at those events, he recalled only one incident which was handled quickly and courteously. Nevertheless, he noted, the City is in the height of the tourist season so there is a commercial cost of the street being closed for an entire shopping day. He said that apart from some concern regarding crowd control, the manner in which the event is being managed and the time limitations on the serving of alcohol incline him to recommend it be approved based upon the net benefit to the community. Mr. Russell, however, stressed his sensitivity to the adjacent neighborhood and encouraged stringent adherence to right-of-way and on street parking regulations.

MOTION by Wiseman to APPROVE THE GARDEN OF HOPE AND COURAGE MUSIC FESTIVAL WITH SPECIAL CONDITIONS: 1) Noise ordinance waiver granted from 3:00 p.m. until 10:00 p.m.; 2) open container ordinance waiver granted from 4:00 p.m. until 10:00 p.m.; 3)\$5 million liability insurance requirement; 4) no coolers, backpacks or alcohol brought into the event; and 5) Third Street South road closure beginning at midnight on April 3 with reopening no later than 6:00 a.m. on April 5. This motion was seconded by Russell and carried 5-2 (Taylor-no, Nocera-yes, MacIlvaine-no, Russell-yes, Sorey-yes, Wiseman-yes, Barnett-yes).

During the vote, Council Member Taylor said she supports the event but not the location, that the request should have been presented earlier, and adjacent neighborhood associations advised. She said that the event could, in fact, be relocated and asserted that in approving it on Third Street South, the Council was putting commercial interests before residential interests. Council

Member MacIlvaine said, while he considered the event a worthy cause, he does not feel it is charitable, and approving it is unfair to the residents. Council Member Russell said that while there are better locations, there will be many who will enjoy the event; he nevertheless urged vigilance on the part of the organizers. Council Member Sorey offered his support and said the decision was difficult due to the impact on residents.

Recess: 10:59 a.m. – 11:12 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 04-10384..... ITEM 7-f
A RESOLUTION APPROVING A USE AGREEMENT BETWEEN THE CITY OF NAPLES AND THE NAPLES CONCERT BAND FOR THE USE OF SPACE IN THE CAMBIER PARK BAND SHELL FOR A FIVE YEAR PERIOD; AUTHORIZING THE MAYOR TO EXECUTE THE USE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Robert Lee (11:12 a.m.) who advised the City is listed as an additional insured, that banner placement requirements have been added to the use agreement, and that the petitioner has agreed to the conditions.

MOTION by Sorey to APPROVE RESOLUTION 04-10384 as submitted; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 7-a
December 18, 2004 Regular

RESOLUTION 04-10388.....ITEM 7-c
A RESOLUTION APPROVING A COLLIER COUNTY TOURIST DEVELOPMENT COUNCIL GRANT FUNDING CATEGORY “C” MUSEUM GRANT APPLICATION FOR THE NAPLES PRESERVE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPLICATION; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10389..... ITEM 7-d
A RESOLUTION APPROVING A PURCHASE AND SALE OF GOODS AGREEMENT WITH HAWKEYE SIGN & ART, INC. FOR THE PURCHASE OF DECORATIVE SIGNS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10390.....ITEM 7-e
A RESOLUTION APPROVING A THREE-YEAR AGREEMENT, WITH THE OPTION OF TWO ONE-YEAR RENEWALS, WITH VILA & SON LANDSCAPING CORP. FOR PLANTING AND MAINTENANCE OF TREES THROUGHOUT THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 03-10391.....ITEM 7-g
A RESOLUTION APPROVING AN AGREEMENT WITH NAPLES CONSTRUCTION SERVICES, INC. FOR STRUCTURAL REPAIRS TO THE CITY DOCK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10392..... ITEM 7-h

A RESOLUTION APPROVING AN AGREEMENT WITH THE ACTIVE NETWORK, INC. TO PURCHASE REWIRE SAFARI SOFTWARE FOR NETWORKING REGISTRATION AND POINT OF SALE SYSTEMS AT CITY COMMUNITY CENTERS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10393..... ITEM 7-i
A RESOLUTION APPROVING A PURCHASE ORDER WITH VERIZON WIRELESS FOR WIRELESS DATA TRANSMISSION TO MOBILE LAPTOPS AND A FRAME RELAY INFRASTRUCTURE FOR THE POLICE AND EMERGENCY SERVICES DEPARTMENT, FOR A PERIOD OF THREE YEARS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10394..... ITEM 7-j
A RESOLUTION APPROVING AN AGREEMENT WITH QUALITY ENTERPRISES USA, INC. FOR SIDEWALK CONSTRUCTION AT NAPLES LANDINGS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AMENDING THE 2003-04 BUDGET AND CIP AS ADOPTED BY ORDINANCE 03-10191; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10395..... ITEM 7-l
A RESOLUTION DECLARING THE INTENT OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, TO ENTER NEGOTIATIONS FOR AN ELECTRIC FRANCHISE RENEWAL AND UPDATE WITH FPL GROUP INC. (F/K/A FLORIDA POWER AND LIGHT COMPANY); AUTHORIZING THE CITY ATTORNEY TO NOTIFY THE FRANCHISEE; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO COMMENCE NEGOTIATIONS WITH THE FRANCHISEE; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Russell to APPROVE CONSENT AGENDA except Item 7-b, 7-f and 7-k; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

END CONSENT AGENDA

It is noted for the record that Items 6-a and 6-b were considered concurrently.

RESOLUTION 04-10385..... ITEM 6(a)
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 04-LE1 FOR TRULUCK'S SEAFOOD, LTD. LOCATED AT 698 4TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:14 a.m.).

RESOLUTION 04-10386..... ITEM 6(b)
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 04-RIS2 FOR PROPERTY LOCATED AT 698 4TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, AND SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:14 a.m.).

City Manager Robert Lee advised the request provides for a single indoor amplified pianist/vocalist between the hours of 4:00 p.m. and 11:30 p.m., Monday through Saturday and until 10:30 p.m. on Sunday.

Notary Public Pamela Koepke administered an oath to those intending to offer testimony; all responded affirmatively. This being a quasi-judicial proceeding, Council Members disclosed the following ex parte communications: Wiseman/visited the site, no other contact; Nocera and Barnett /familiar with the site, no contact; Russell/familiar with the site, spoke to Phil McCabe regarding tenant activities not related to this petition, read resident correspondences; Taylor/no contact, read resident correspondences; MacIlvaine/no contact; Sorey/familiar with the site, read correspondences, no contact.

Attorney Chris Thornton, representing the petitioner, presented an overview of the request (a copy of which is contained in the file for this meeting in the City Clerk's Office), which is for one performer to play the piano and sing on a stage inside the restaurant; the petitioner is agreeable to the time restrictions recommended by staff, he said. Mr. Thornton advised that the live amplified music his client is requesting is on a much smaller scale than two previous tenants granted live entertainment permits. Mr. Thornton said the petitioner will also comply with the requirement to close windows and doors so as to address the objection raised by an area resident. The 45 outdoor dining seats are in the same location as the previous tenant's and requested the same sandwich board sign announcing live entertainment which had been utilized by the previous tenant without approval. However, through discussion with Community Development Director Ron Lee and City Attorney Pritt, it was determined that the sandwich board request must be brought before the Staff Action Committee (SAC).

Public Comment: None (11:24 a.m.).

MOTION by Russell to **APPROVE RESOLUTION 04-10385** (Item 6-a) as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

MOTION by Russell to **APPROVE RESOLUTION 04-10386** (Item 6-b) as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

ORDINANCE (FIRST READING).....ITEM 8
AN ORDINANCE RELATING TO THE CITY OF NAPLES RETIREMENT SYSTEMS; AMENDING ARTICLE IV. OF CHAPTER 50, CODE OF ORDINANCES, CITY OF NAPES, SECTION 50-201 (b), 50-240 (a), 50-288 (2), 50-311 (b) AND (g), 50-383 (2) AND 50-401 (b) AND (g) FOR THE PURPOSE OF MAKING CORRECTIONS TO ORDINANCE 03-10213 AS REQUIRED BY THE STATE OF FLORIDA, DIVISION OF RETIREMENT AND FOR THE PURPOSE OF RECOGNIZING LIMITATIONS IN DUAL OFFICE HOLDING CONTAINED IN AN OPINION OF FLORIDA ATTORNEY GENERAL, FOR THE GENERAL EMPLOYEES', FIREFIGHTERS' AND POLICE OFFICERS' PENSION AND RETIREMENT SYSTEMS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title read by City Attorney Robert Pritt (11:25 a.m.).

Public Comment: None (11:26 a.m.).

MOTION by Wiseman to **APPROVE ON FIRST READING;** seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10387.....ITEM 9
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH GATEWAY COMPANIES, INC. TO PROVIDE FOR ADDITIONAL COMPUTER PURCHASES FOR FY 2004; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:26 a.m.). City Manager Robert Lee said the request is inclusive of the Personal Computer Replacement Plan and that funds had been budgeted.

In response to Council Member MacIlvaine, Information Services Director Steve Weeks advised that used computers are offered to those employees or residents on a waiting list. He further advised the computers have little value as the hard drives are cleared and all City registered software is removed. Council Member Taylor sought a consensus to, however, make the computers available first to lower income residents or donate them to the River Park Community Center for the computer classes that are offered there. City Manager Lee said he would review the current policy and return with recommendations. Further discussion ensued regarding the most beneficial alternative for the retired computers. It was confirmed by Mr. Weeks that the software licensing terminates upon the sale of the computer, which is disclosed at the time of purchase, and that the price obtained for the new computers was extremely competitive.

MOTION by Nocera to **APPROVE RESOLUTION 04-10387;** seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10396.....ITEM 10-a(1)
A RESOLUTION APPOINTING ONE CITY RESIDENT TO THE BOARD OF APPEALS FOR A FOUR-YEAR TERM COMMENCING APRIL 19, 2004 AND EXPIRING APRIL 18, 2008, AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Pritt (11:32 a.m.)

MOTION by Taylor to **APPROVE RESOLUTION 04-10396** appointing Robert Geroy to the Board of Appeals; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

City Clerk Tara Norman clarified that this candidate's interview had been waived because of his long years of service and that there are no term limits on Board of Appeals.

RESOLUTION 04-10397.....ITEM 10-a(2)
A RESOLUTION APPOINTING ONE CITY RESIDENT TO THE BOARD OF APPEALS FOR A FOUR-YEAR TERM COMMENCING APRIL 5, 2004 AND EXPIRING APRIL 4, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:33 a.m.).

MOTION by MacIlvaine to **APPROVE RESOLUTION 04-10397** appointing Austin Lynch to the Board of Appeals; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10398.....ITEM 10-b(1)
A RESOLUTION APPOINTING ONE RESIDENT TO AT-LARGE SEAT #3 OF THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 17, 2004, AND EXPIRING MARCH 16, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:34 a.m.). Council Member Taylor nominated Harriet Coleman and Council Member MacIlvaine nominated Lloyd Donnelley, however, discussion ensued regarding candidates' eligibility for the at-large seats versus sector seats. City Clerk Norman clarified that all candidates were eligible for the at-large seats and Lloyd Donnelly, Eugene Greener and Daniel Fontella were eligible for the Sector 5 vacancy.

MOTION by Taylor to APPROVE RESOLUTION 04-10398 appointing Harriet Coleman to the Citizens' Police Review Board at-large seat #3; failed 3-4 (Nocera-yes, Sorey-no, Taylor-yes, MacIlvaine-no, Wiseman-yes, Russell-no, Barnett-no).

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10398 appointing Lloyd Donnelly to the Citizens' Police Review Board At-large Seat #3; unanimously carried, all members present and voting (Sorey-yes, Russell-yes, MacIlvaine-yes, Wiseman-yes, Taylor-yes, Nocera-yes, Barnett-yes).

RESOLUTION 04-10401.....ITEM 10-b(2)
A RESOLUTION APPOINTING A RESIDENT TO AT-LARGE SEAT #1 OF THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 17, 2004, AND EXPIRING MARCH 16, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Pritt (11:33 a.m.).

MOTION by Taylor to APPROVE RESOLUTION 04-10401 appointing James Jessee to the Citizens' Police Review Board At-large Seat #1; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

It is noted for the record that later in the meeting this resolution was reconsidered and James Jessee appointed to a Sector 1 seat and Harriet Coleman to At-large Seat #1.

RESOLUTION 04-10399.....ITEM 10-b(3)
A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 5 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 17, 2004, AND EXPIRING MARCH 16, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Pritt (11:38 a.m.).

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10399 appointing Eugene Greener to the Citizens' Police Review Board Sector 5; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10400.....ITEM 10b-(5)
A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 3 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 17, 2004, AND EXPIRING MARCH 16, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:40 a.m.).

MOTION by Sorey to APPROVE RESOLUTION 04-10400 appointing Willie Anthony to the Citizens' Police Review Board Sector 3; carried 6-1 (Russell-yes, Sorey-yes, Nocera-no, Wiseman-yes, Taylor-yes, MacIlvaine-yes, Barnett-yes).

Council Member Sorey encouraged those candidates not selected to apply for appointment to other boards or committees as well as contacting Chief Moore for other possible volunteer opportunities. At this point it was determined that Council would revise its selections to At-large Seat #1 and Sector #1; therefore, the following actions were taken.

MOTION by Sorey to **RECONSIDER THE APPOINTMENT OF JAMES JESSE** (Item 10-b(2) Resolution #04-10401); seconded by Russell and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

MOTION by Taylor to **APPROVE RESOLUTION 04-10401** (Item 10-b(2)) appointing Harriet Coleman to the Citizens' Police Review Board At-large Seat #1; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10402.....ITEM 10-b(4)
A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 1 TO THE CITIZENS' POLICE REVIEW BOARD FOR A TWO-YEAR TERM COMMENCING MARCH 17, 2004, AND EXPIRING MARCH 16, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Pritt (11:46 a.m.).

MOTION by MacIlvaine to **APPROVE RESOLUTION 04-10402** appointing James Jessee to the Citizens' Police Review Board Sector 1; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10403.....ITEM 10-c
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB) FOR THE BALANCE OF A TWO-YEAR TERM EXPIRING DECEMBER 16, 2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:47 a.m.).

MOTION by Russell to **APPROVE RESOLUTION 04-10403** appointing Paul Lindabury to the Community Redevelopment Agency Advisory Board; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10404.....ITEM 10-d
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING MAY 6, 2006; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Pritt (11:48 a.m.).

MOTION by Russell to **APPROVE RESOLUTION 04-10404** appointing William Kennedy to the Community Services Advisory Board; failed 3-4 (Wiseman-no, Russell-yes, Taylor-no, Sorey-yes, Nocera-no, MacIlvaine-yes, Barnett-no)

MOTION by Taylor to **APPROVE RESOLUTION 04-10404** appointing Carol Olsen to the Community Services Advisory Board; unanimously carried, all members present and voting (Taylor-yes, Wiseman-yes, Sorey-yes, Nocera-yes, MacIlvaine-yes, Russell-yes, Barnett-yes).

RESOLUTION 04-10405.....ITEM 10-f
A RESOLUTION APPOINTING AN ARCHITECT TO THE STAFF ACTION COMMITTEE FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING MAY 31,

2005; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:50 a.m.).

MOTION by Russell to APPROVE RESOLUTION 04-10405 appointing Carl Erickson to the Staff Action Committee; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 04-10406 (Added Item; See Item 4)ITEM 11
A RESOLUTION OPPOSING PROPOSED LEGISLATION DEVELOPED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE FLORIDA TRANSPORTATION COMMISSION THAT COULD REORGANIZE THE METROPOLITAN PLANNING PROGRAM IN FLORIDA AND UNDERMINE THE INDEPENDENCE OF METROPOLITAN PLANNING ORGANIZATIONS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:52 a.m.).

City Manager Lee advised that a reorganization of the Metropolitan Planning Organization (MPO) could affect funding as much as 50% for transportation revenues and also could require Collier and Lee Counties to consolidate, which would negatively affect priorities established by the local MPO. Council Member Russell inquired as to other municipalities contributing to the MPO. City Manager Lee said he had spoken with the Executive Director of the MPO regarding this issue, who had advised that he was preparing several items to present to various City Councils in the near future.

MOTION by Russell to APPROVE RESOLUTION 04-10406; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 04-10407 (Added Item; See Item 4)ITEM 12
A RESOLUTION APPROVING SETTLEMENT OF WILLIAM GRUHN'S WORKERS' COMPENSATION CLAIM(S) AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:52 a.m.).

MOTION by Wiseman to APPROVE RESOLUTION 04-10407; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

(Added Item; See Item 4)

**.....ITEM 13
RECONSIDER PARKING CREDIT PETITION 03-PC2 UNDER RESOLUTION 98-8218
SUBSTITUTE PROCEDURE FOR PARKING RECONSIDERATION.** Title not read.

Mayor Barnett requested Council to approve a reconsideration for Anthony and Diane Gualario's parking credit petition for Eighth Street South due to the petitioner amending the previously submitted petition to eliminate the only other issue, a setback variance.

MOTION by Barnett to APPROVE A RECONSIDERATION OF PARKING CREDIT PETITION 03-PC2; seconded by Taylor and carried 6-1 (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-no, Barnett-yes).

Vice Mayor Wiseman said she could not support the reconsideration because it was apparent that the petition is a new request, as well as the request having been unanimously denied previously by the Planning Advisory Board (PAB).

Council Member Russell said that he is, however, willing to hear the petitioner to ensure a net benefit to the community, although he did not view it as a completely appropriate use of the reconsideration process which should be reserved for those petitions previously not heard correctly.

Council Member Taylor said that she was persuaded by Vice Mayor Wiseman's comments and moved to reconsider the previous motion, however further discussion ensued. It was determined that if Council does not reconsider the matter the petitioner would again be required to undergo the petition process.

City Attorney Pritt advised that he he had learned that the petitioner had presumed that both the setback variance request and the parking credit request had been considered concurrently, hence the petitioner's leaving the meeting prior to the second request being heard. He further explained that the motion on the floor is to reconsider the motion that had just passed to reconsider the petition at the next regular meeting. Mayor Barnett however reminded Council that the motion to reconsider the petition had just passed 6-1.

MOTION by Taylor to RECONSIDER THE MOTION TO RECONSIDER PARKING CREDIT PETITION 03-PC2; seconded by MacIlvaine; failed 3-4, all members present and voting (Taylor-yes, MacIlvaine-yes, Wiseman-yes, Sorey-no, Russell-no, Nocera-no, Barnett-no).

Vice Mayor Wiseman said petitioners hire expensive legal counsel to channel them through the process, therefore she said, she is not compelled to support a reconsideration of the petition. She said she also could not support the Planning Advisory Board (PAB) being left out of the process; this petition is a different request, she said. City Attorney Pritt confirmed that Petition 03-PC2 would be considered at the next regular City Council meeting.

PUBLIC COMMENT.....

(12:01 p.m.) **Sue Smith**, 15-11th Avenue South, said that during a Planning Advisory Board (PAB) meeting she had made a comment that then-PAB Chairman Sorey had said was incorrect. Although she had not been given an opportunity to rebut, Mrs. Smith indicated that off the record Mr. Sorey approached her and apologized for his error but this correction was never put into the record. Therefore, Mrs. Smith requested the record reflect that she in fact was correct.

Regarding a prior mention of clearing the hard drives of retired City personal computers, Mrs. Smith expressed concern for any public records that had not been retained in paper form. Mrs. Smith also said that she does not feel it is appropriate for the City to require petitioners to hire professionals to act as spokespersons; it is City Council's responsibility to protect citizens' interests, she added.

Mayor Barnett explained that a decision had not been made regarding the retired City computers, but was rather pending staff review and recommendations on the policy. Council Member MacIlvaine said he understood that the information on the retiring computer is transferred to the new computer and would remain within the City's purview. He further said that no information would be destroyed and could always be obtained from the City.

Council Member Sorey formally apologized for any embarrassment he may have caused Mrs. Smith and expressed appreciation for the time, effort, research and knowledge that she contributes. He encouraged her, and others, to continue to participate in the process.

CORRESPONDENCE AND COMMUNICATIONS.....

Notice was taken of correspondence from Attorney John Passidomo (a copy of which is contained in the file for this meeting in the City Clerk's Office) relative to the amendments to the Naples Subdivision regulations adopted by Council in 2003. Vice Mayor Wiseman said there had been an urgency because of a concern regarding lot splitting and increases in density. Residents brought this concern forward, she said, and Council had felt the necessity to act quickly, with the recognition that it would require amendments once in place. She further said that the Passidomo correspondence does highlight some of the points, that she herself had mentioned in December relative to what Council was adopting; namely, the potential for unintended consequences and that many residents impacted by these regulations had not been informed nor fully understood the ramifications. Vice Mayor Wiseman inquired as to consensus on Council to request an evaluation of the regulation and Council workshop discussion to consider refinement.

Consensus to direct an evaluation of the lot subdivision ordinance.

Vice Mayor Wiseman then inquired as to the Paddy Murphy's entertainment expansion plans and complaints regarding it. Mayor Barnett explained that the complainant and the restaurant operator are attempting to resolve the issue.

Council Member Sorey advised that he recently attended a Collier County Historical Society meeting where they entered into an agreement to acquire land adjacent to Palm Cottage to develop a garden which will supplement and increase the attractiveness to that area. Mr. Sorey said this is an example of actions the City could take to increase green space as well as it being a significant addition to the historic Palm Cottage.

Council Member MacIlvaine advised he would be attending a Regional Planning Council meeting the next day as an alternate to Council Member Russell. He then requested to be relieved of his appointment to the Noise Compatibility Committee of the Naples Airport Authority.

Council Member Nocera mentioned an e-mail from Marvin Easton (a copy of which is contained in the file for this meeting in the City Clerk's Office) requesting information regarding take-offs and landings at the Naples Municipal Airport and requested Council receive the same information. Mayor Barnett explained that he had responded to Mr. Easton as well as forwarding a copy of the e-mail to Naples Airport Authority (NAA) Executive Director Ted Soliday requesting to be copied with the NAA response. Mr. Nocera also requested an update regarding a citizen complaint against a police officer and City Manager Lee advised he would inquire.

ADJOURN

12:16 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Pamela M. Koepke, Recording Specialist

Minutes Approved: 4/21/04