



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – June 2, 2004 – 9:00 a.m.**

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Mayor Barnett called the meeting to order and presided.

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

**Present:**

Bill Barnett, Mayor  
Tamela Wiseman, Vice Mayor

**Council Members:**

William MacIlvaine  
Johnny Nocera  
Clark Russell  
Penny Taylor  
John Sorey, III

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**Also Present:**

Robert Lee, City Manager  
Robert Pritt, City Attorney  
Tara Norman, City Clerk  
Dan Mercer, Public Works Director  
David Lykins, Community Services Director  
Ron Wallace, Community Development Director  
Jon Staiger, Natural Resources Manager  
Steven Moore, Chief, PESD  
Cheryl Boutot, Information Services  
Kerry Nielson, Planner  
Pamela Koepke, Recording Specialist  
Dr. Robert Peterson  
Grover Whidden  
Arlene Guckenberger  
Henry Kennedy  
Judy Hushon  
Lee Lyon  
Harry Timmins  
Sonja Garland  
Peter Peterson  
Richard Baker  
Bill Barton

Frank Matthews  
Gary Davis  
Marney Reed  
Eric Alexander  
Jerry Green  
Doug Finlay  
Jack Hail  
Capt. Will Geraghty  
Capt. Kevin Bill  
Allen Walburn  
Ted Maupin  
Gloria Kovaks  
William Dempsey  
Maria Furetta  
**Media:**  
Trey Radel, WINK TV  
Kathy Saenz, Fox 4  
Ilene Stackel, Naples Daily News  
Tom Rosse, NBC 2  
Kristen Natashia, ABC 7

Other interested citizens and visitors

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

Dr. Robert Peterson, Covenant Presbyterian Church

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

Proclamation of “Celebrate the Arts Month in Naples” November 2004 – Presented by Council Member Taylor.

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

***MOTION by Nocera to SET AGENDA; continuing Item 7-i to June 16 and withdrawing Item 8; 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**

(9:05 a.m.) **Gloria Kovaks, President, Fifth Avenue South Association**, extended an invitation to the Florida Main Street Program Conference Quarterly Meeting at 8:00 a.m., Thursday, June 10 at the Naples Women's Club.

**CONSENT AGENDA**

**APPROVAL OF MINUTES .....ITEM 7-a**

May 3, 2004 Workshop (as amended on Pages 8 and 9) and May 5, 2004 Regular (as amended on Page 7).

**SPECIAL EVENTS ..... ITEM 7-b**

- 1) 4<sup>th</sup> of July Concert – Naples Daily News Jazz Band – Cambier Park Bandshell, July 3, 2004.
- 2) 4<sup>th</sup> of July Private Block Party – James B. Haynes, 415 11<sup>th</sup> Avenue South, July 4, 2004.

**RESOLUTION 04-10469.....ITEM 7-c**

**A RESOLUTION APPROVING AN AGREEMENT WITH CJ'S SALES AND SERVICE, IN THE AMOUNT OF \$37,435.00 TO FURNISH AND INSTALL ONE 180 KW STANDBY POWER SYSTEM AND AUTOMATIC TRANSFER SWITCH; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

In response to Council Member Nocera, Community Services Director David Lykins indicated that the retired generator would be available for sale at the next City surplus auction. City Manager Robert Lee also advised that the equipment had aged to a point where repairs and maintenance had become cost prohibitive. Director Lykins also confirmed for Mr. Nocera that the retiring equipment was diesel powered.

**RESOLUTION 04-10470..... ITEM 7-d**

**A RESOLUTION APPROVING A 2004/2005 TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES FOR SEMI-ANNUAL MONITORING OF DOCTOR'S PASS; AUTHORIZING THE MAYOR TO EXECUTE THE TOURISM AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 04-10471.....ITEM 7-e**

**A RESOLUTION APPROVING A 2004/2005 TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES FOR MARINE TURTLE MONITORING IN ASSOCIATION WITH THE 2003 GORDON PASS DREDGING PROJECT; AUTHORIZING THE MAYOR TO EXECUTE THE TOURISM AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 04-10472..... ITEM 7-f**

**A RESOLUTION APPROVING AN AGREEMENT WITH NEW ROOTS LANDSCAPE, INC., FOR THE INSTALLATION OF LANDSCAPING AND IRRIGATION AT THE CITY MUNICIPAL OPERATIONS COMPLEX; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 04-10473.....ITEM 7-g**

**A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT WITH BENTLEY ELECTRIC COMPANY, FOR STREET LIGHTING, IRRIGATION**

CONDUIT AND BRICK PAVERS ON U.S. 41 IN THE ADDITIONAL AMOUNT NOT TO EXCEED \$224,922.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10474..... ITEM 7-h  
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT WITH BONNESS, INC., FOR THE RECONSTRUCTION OF MEDIANS ON U.S. 41 AS PART OF THE MASTER LANDSCAPE PLAN IMPROVEMENTS FOR THE CITY OF NAPLES, IN AN AMOUNT NOT TO EXCEED \$216,903.96; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Continued to 06/16/04; see Item 4) ..... ITEM 7-i  
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT WITH QUALITY ENTERPRISES USA, INC. FOR SIDEWALK CONSTRUCTION AT NAPLES LANDING; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10475.....ITEM 7-j(1)  
A RESOLUTION APPROVING A LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR SIDEWALK IMPROVEMENTS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10476.....ITEM 7-j(2)  
A RESOLUTION APPROVING A LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR BIKE PATH FUNDING; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10477..... ITEM 7-k  
A RESOLUTION APPROVING AN AGREEMENT WITH SYNAGRO SOUTHEAST, INC., FOR THE HAULING AND DELIVERY OF BIO-SOLIDS FROM THE WASTEWATER TREATMENT PLANT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10478..... ITEM 7-l  
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS WITH COMMUNICATIONS INTERNATIONAL, INC., FOR THE PURCHASE OF 12 ERICSSON PORTABLE RADIOS AND ACCESSORIES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10479..... ITEM 7-m  
A RESOLUTION WAIVING BIDS AND APPROVING AN AGREEMENT WITH TAMIAMI FORD, INC., FOR THE PURCHASE OF ONE FORD F-350 PICK-UP TRUCK IN THE AMOUNT OF \$18,326 UPON EXPIRATION OF THE CURRENT LEASE; AMENDING THE 2003/04 OPERATING AND CAPITAL IMPROVEMENT BUDGET ADOPTED BY ORDINANCE 03-10191 TO UTILIZE UNEXPENDED FUNDS FROM PROJECTS 03E12, 03E17, 03E18, AND 03E21; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

***MOTION** by Sorey to **APPROVE CONSENT AGENDA** except Item 7-i;  
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).*

**END CONSENT AGENDA**

**RESOLUTION (Withdrawn; see Item 4).....ITEM 8**  
**A RESOLUTION APPROVING THE DESIGN REVIEW HANDBOOK DEVELOPED**  
**BY THE DESIGN REVIEW BOARD; AND PROVIDING AN EFFECTIVE DATE.** Title  
not read.

**RESOLUTION.....ITEM 9**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 04-CU4 TO**  
**MODIFY THE PARKING NEEDS ANALYSIS APPROVED BY RESOLUTION 96-7758**  
**FOR ANDRE’S STEAKHOUSE, AT 2800 NINTH STREET NORTH, MORE**  
**PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK TO**  
**RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE**  
**AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:09 a.m.). This being  
a quasi-judicial proceeding, Council Members disclosed the follow ex parte communications:  
Sorey, Taylor, Barnett, Russell, Nocera and Wiseman/visited the site, no contact; and  
MacIlvaine/no contact. Notary Public Pamela Koepke then administered an oath to those  
intending to offer testimony; all responded affirmatively.

City Manager Robert Lee advised that this is a request to modify a 1996 parking needs analysis  
to allow for lunch as well as dinner service. The restaurant had been permitted to open only at  
5:00 p.m. daily because of shared parking with other adjacent businesses. The Planning Advisory  
Board (PAB) however recommend denial, finding that parking requirements had not been met,  
City Manager Lee noted.

Petitioner Andre Cottoloni advised that the establishment now seeks to serve local businesses  
and their employees and that no more than 25 to 50 diners are anticipated during lunch. Mr.  
Cottoloni also said that the site is deficient by just three parking spaces and that he had deemed  
hiring the necessary expertise to reconfigure the parking to be a prohibitive cost in this instance.

Council Member Nocera supported the request since, he said, the Council had already approved  
dinner hours, but Council Member Sorey explained that the 5:00 p.m. opening had been set in  
order to avoid a conflict with shared parking. In response to Council Member Taylor, Planner  
Kerry Nielson explained that construction of additional spaces was being proposed, thereby  
increasing the current 49 to 56, and that the restaurant currently requires 32 spaces to operate,  
although because these spaces are shared with four other businesses, there is insufficient parking  
to allow lunch service. She also confirmed that there had been one letter of objection from an  
adjacent resident, but none from the property where the restaurant is located.

Council Member Nocera raised the possibility of issuing a temporary permit with re-evaluation  
in six months, but Council Member Russell recommended against deviating from established  
parameters in the Code of Ordinances. He however asked whether another parking needs  
analysis would accurately depict the actual vehicle activity on the site. Planner Nielson advised  
that the parking needs analysis had been conducted when the original conditional use permit had  
been issued.

In further discussion, Planning Manager Walker explained that the parking requirement is  
determined by the square footage of the business, which is consistent with the lunch or dinner

hours; however, a literal interpretation of the Code would require the petitioner to include spaces for the additional storage space he rents in the rear of the building not included in the current request. Furthermore, the petitioner has relied on street-side parking to meet the required 56 spaces, which is not allowed in the “HC” Highway Commercial district, Ms. Walker added. Staff had also experienced difficulty determining whether the additional spaces to be constructed can be accommodated since the drawings submitted are not to scale. With regard to the aforementioned storage space, staff had deferred to Council as to whether it would be considered as adjunct to the restaurant due to concern for the setting of a precedent.

Council Member Sorey suggested continuing this item until the next regular meeting to allow the petitioner to provide a scaled drawing, conduct a more accurate parking needs analysis, and to allow staff an opportunity to confirm support from the other adjacent businesses. Mr. Sorey however advised that he could not support setting a precedent whereby storage facilities are not required to be considered for parking needs analysis. Planner Walker confirmed for Council Member Taylor that while the petitioner cannot meet the requirement that a parking needs analysis be conducted during the tourist season, a minimum of a scaled plan depicting sufficient detail would be needed to determine feasibility and appropriateness. It was also confirmed that closing a portion of the restaurant during the lunch time hours would not alter the number of required parking spaces.

Petitioner Cottoloni presented a map depicting his suggestions for meeting the parking requirement (Attachment 1) and although additional discussion ensued, Council Members requested more accurate documentation before making a decision. The petitioner therefore agreed to continue his request until September 15.

**MOTION by Russell to CONTINUE to September 15 Regular Meeting; seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).**

**RESOLUTION 04-10480.....ITEM 10**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 04-CU6 TO ALLOW FOR AN EXPANDED COCKTAIL LOUNGE AT 455 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:37 a.m.). This being a quasi-judicial proceeding, Council Members disclosed the following ex parte communications: Wiseman/phone conversation with Attorney John Passidomo representative for the adjacent business The Bilini Bar; Nocera/no contact; Russell/familiar with site, phone conversation with Attorney Passidomo; Barnett/spoke with petitioner several months before, spoke with Attorney Passidomo, petitioner’s representative Will Dempsey and The Bilini Bar owner; Taylor/familiar with site, spoke with associate of Attorney Passidomo, and discussed concerns regarding recent problems occurring at the location; MacIlvaine/familiarity with the site and discussion with The Bilini Bar owner; and Sorey/two visits to the site, conversation with lunchtime chef, and conversation with Will Dempsey. Notary Public Pamela Koepke then administered an oath to those intending to offer testimony; all responded affirmatively.

City Manager Robert Lee also explained that the petitioner had advised that the request involves an expansion of the existing business and that customers would be able to enter the lounge area

from the restaurant through an exterior door without leaving the petitioner's property. Additionally, he noted that a report from Steven Moore, Chief of Police & Emergency Services, had been provided, and that the Planning Advisory Board (PAB) had recommended approval. (It is noted for the record that a copy of Chief Moore's report is contained in the file for this meeting in the City Clerk's Office.)

Petitioner Michael O'Regan explained that the space being considered for a lounge is an unused room which is unappealing to patrons without amenities. Therefore, this request was submitted in order to maximize use of the space, Mr. O'Regan said.

During response to various Council Members, Mr. O'Regan explained that under his current beverage license, food service is allowed and is offered but that smoking is permitted because food sales are less than 10%. Mr. O'Regan also confirmed that the restaurant and lounge areas would remain separated by a wall and that patrons would exit the restaurant to enter the lounge. He also said that he anticipated an older, upscale lounge patrons.

**Public Comment:** (9:45 a.m.) **Will Dempsey, agent for Maria Furetta**, said that the petitioner has addressed the majority of his client's concerns, however, there were lingering fears that live entertainment in the proposed lounge could interfere with diners in her restaurant. Mr. Dempsey requested a commitment that the aforementioned wall remain intact. **Maria Furetta, owner of Buongustaio Restaurant**, expressed concern that any live entertainment conducted in the proposed cocktail lounge would however interfere with her patrons because the businesses share a common wall.

The petitioner confirmed that he has no intention of removing the wall that separates the restaurant from the cocktail lounge, and Planning Manager Ann Walker confirmed that a building permit would be required and a live entertainment request needed for entertainment in the cocktail lounge. Council Member Sorey requested that should a permit for this purpose be sought, stipulation be incorporated into the resolution requiring Council notification. Council Member Taylor recommended requiring sound proofing between the two businesses. Planning Manager Walker however pointed out that some of the complaints received were not because of activity inside the business, but rather the activity occurring outside. It was also noted that there is a requirement that adjacent businesses are alerted when live entertainment or construction permits are requested. The petitioner confirmed that permission was in fact going to be requested for a pianist or an Irish entertainer, upon renewal of his current live entertainment permit.

Ms. Furetta confirmed for Mayor Barnett that the kitchen in her restaurant closes at 10:30 p.m. and Mr. O'Regan confirmed that any live entertainment permitted in the lounge would not occur until after Ms. Furetta's kitchen had closed for the evening. Council Member Sorey inquired as to the anticipated percentage of sales from food versus alcohol. Mr. O'Regan said his alcohol sales far exceed food sales.

In response to Council Member Sorey, Chief Moore advised that Fifth Avenue South is a high activity area and that the complaints cited in his report were quite varied and cannot be specifically attributed to the petitioner's business. Chief Moore also advised that patrols are concentrated during the time establishments are closing to reduce the level of unacceptable and illegal activity. He confirmed that the petitioner's beverage license allows patrons to consume

alcoholic beverages on premises which includes the outside seating area under the awning. Council Member Taylor expressed concern regarding late night activity on Fifth Avenue South, as well as the fact that the petitioner's live entertainment permit allows for performances much later than any other business in the area.

Council Member Russell observed that the conditional use process allows Council to impose specific limitations on activities and that there is, within reason, a role for cocktail lounges in the community. He then received further clarification from Chief Moore that the beverage license retained by the business covers the entire property owned or operated by the petitioner, which is contained under one roof and awning. Chief Moore also confirmed that sales receipts are tracked by the State authorities.

Although City Manager Lee noted that permits issued by Council could be revoked if violations of their provisions occur, various Council Members expressed concern that two lounge-type businesses would be next door to each other, despite the fact that they are owned by the same individual and considered one business under State beverage regulations. Petitioner O'Regan reiterated that there would be two separate rooms, that there is only one business, that he has made a commitment to leave the dividing wall intact, and that his customers would be welcome to go back and forth between the restaurant and cocktail lounge.

Will Dempsey, on behalf of his client, requested that not only the conditional use resolution stipulate that the separating wall cannot be removed, but that she be notified regarding any live entertainment requests that come before Council for the petitioner. Mayor Barnett explained that that live entertainment request was, however, not being considered by Council at that time, although Council Member Russell asserted that the conditional use process was in fact intended to allow Council to place restrictions upon petitioners not otherwise required.

Council Member Sorey said that he was not in favor of adding another cocktail lounge to Fifth Avenue based upon observations of the petitioner's business, coupled with the number of incidents that have occurred in that area. Therefore he proffered a motion to deny the request. Vice Mayor Wiseman, seconded, noting that Council should be concerned about allowing Fifth Avenue South to evolve into an entertainment district. Three drinking establishments in the same area is too excessive, she said, and pointed out that former Councils had discussed distances between like establishments in order to maintain a balance for the district.

**MOTION by Sorey to DENY (RESOLUTION 04-10480) CONDITIONAL USE PETITION 04-CU6; seconded by Wiseman and carried 5-2, all members present and voting (Sorey-yes, Russell-no, Wiseman-yes, Nocera-no, MacIlvaine-yes, Taylor-yes, Barnett-yes).**

During the vote, Council Member Russell said that he believed there might have been an appropriate way to grant the petitioner's request while maintaining the vision of the district. Council Member MacIlvaine said it was important for Council to establish leadership in maintaining the vision for the City. Council Member Taylor stressed the importance of staying the course and maintaining the vision for Fifth Avenue, therefore allowing the area to evolve into an entertainment district is inappropriate.

**RESOLUTION 04-10481.....ITEM 11  
A RESOLUTION DETERMINING VARIANCE PETITION 04-V1 FROM SECTIONS  
102-174 AND 102-175 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES**

**WHICH ESTABLISHES MINIMUM LOT SIZES AND MINIMUM LOT WIDTHS FOR PROPERTY IN THE R1-10 ZONING DISTRICT IN ORDER TO APPROVE AN EXISTING LOT AT 265 SECOND AVENUE NORTH WHICH DOES NOT MEET THE MINIMUM LOT SIZE AND LOT WIDTH REQUIREMENTS AND AN EXISTING LOT AT 275 SECOND AVENUE NORTH WHICH DOES NOT MEET THE MINIMUM LOT WIDTH REQUIREMENTS, SAID PROPERTIES MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:16 a.m.). This being a quasi-judicial proceeding, Council Members disclosed the following ex parte communications: Wiseman/telephone conversation with petitioner's agent regarding the merits of the petition, and receipt of a memorandum regarding equitable estoppel; Nocera/visited the site; Russell/met with petitioner and petitioner's agent at the site and conducted a brief phone conversation with petitioner's agent; Barnett/held a brief conversation with the petitioner's agent; Taylor/familiarity with the site and conversed with petitioner's agent; MacIlvaine/ conversed by phone with the petitioner; and Sorey/spoke by phone with the petitioner and conferred with the City Attorney regarding voting eligibility since he resides near the site, although there is no possibility of financial gain. Notary Public Pamela Koepke then administered an oath to those intending to offer testimony; all responded affirmatively.

Attorney Richard Yovanovich, representing the petitioner, characterized the request as an effort to obtain a practical solution to a unique situation which has existed for approximately 14 years. Before acquiring an adjacent parcel at 275 Second Avenue North in 1987, the petitioner received an affirmative response from the City of Naples Building Official that a residence could be built between the two existing residences located at 265 Second Avenue North, which he already owned, and 275 Second Avenue, Mr. Yovanovich said. After the property was acquired, but prior to constructing a home, another inquiry had been made to the City Building Official, and approval was given in writing (a copy of which is contained in the file for this meeting in the City Clerk's Office). A home was therefore constructed, a Certificate of Occupancy (CO) issued, and taxes paid on three individual single-family homes since that time, Mr. Yovanovich explained.

In subsequently consulting a realtor, however, it was discovered that 265 Second Avenue North does not meet minimum lot width and size requirements, and 275 Second Avenue North does not meet the lot width requirement, Attorney Yovanovich explained; the petitioner has therefore been instructed to pursue a variance to rectify the situation. Of the 75 letters sent to the neighbors within 500 feet of the site, only one letter of objection was received, he said, that letter requesting a larger home be considered instead of two smaller homes on the individual lots that currently exist.

Citing Section 86-205 (c) (1) Method of Approval of the Code of Ordinances (Attachment 2), Mr. Yovanovich said that he believes that no error has been committed by the petitioner and that the situation clearly represents a hardship because if the variance request were to be denied, the existing structures on 265 and 275 Second Avenue become illegal and cannot be occupied, insured, or mortgaged. Mr. Yovanovich then presented photographs to illustrate that the home on 265 Second Avenue North is consistent with the other homes in the neighborhood, therefore, a variance approval will not negatively impact the aesthetics and ambiance of the area. (Copies of these photographs are contained in the file for this meeting in the City Clerk's Office.) He also asserted that of the 82 other homes in the immediate area, 27 did not meet current zoning



criteria for minimum lot size, confirming a pattern of lots smaller than allowed by Code. Mr. Yovanovich further pointed out that the Planning Advisory Board had recommended approval, which is the fair and appropriate action to take under the circumstances, and that the petitioner has met the criteria for the granting of a variance.

Regarding applicability of the doctrine of equitable estoppel, Attorney Yovanovich said that if the City provided information and reliance was based upon that information, although the approval by the City was technically inappropriate, the City can be estopped from changing that position. Although applicable, this is not, however, being currently argued because the petitioner has met the variance criteria, he said, which is a logical and practical resolution since it would avoid an injustice. Mr. Yovanovich urged Council to approve the request that is supported by both the PAB and the staff.

Council Member Sorey inquired as to how an owner of two of the 33 1/3 foot wide lots could build a new structure while the lot is non-conforming. Planning Manager Ann Walker explained that there are provisions in the Code that specifically allow the construction, or the use of, property that is non-conforming, provided that all other criteria, such as setback standards, are met.

Council Member Russell inquired as to lots becoming legally non-conforming when the new lot sizes were adopted. Manager Walker explained that a legal non-conformity results when a legal parcel is rendered illegal by government implemented criteria which had occurred throughout the history of the community. City Attorney Pritt also took the position that a wrongfully issued permit does not prevent revocation, stating that this is supported by considerable case law. He also cited the following from an article entitled *Pertinent Revocations: Making Right What Was Once Wrong* from the Florida Municipal Attorney Association.

***“Equitable estoppel will not lie for illegal acts in determining whether to revoke a permit. Equitable estoppel is the critical issue. If a permit was wrongfully issued resulting in an illegal act, estoppel will not prevent its revocation...A governing body develops ordinances and codes through its legislative discretion. These ordinances and codes provide the framework for proper development and permitting. When permits are issued in violation of such ordinances and codes they are illegal. In such cases, Florida law clearly provides the right to revoke illegal issued permits.”***

He distinguished a permit that was issued illegally from a legally issued permit that subsequently becomes non-conforming. Therefore, he continued, if the permit is illegal, it has no standing or basis and estoppel does not lie against it. Mr. Pritt said that the question in the instance before Council is whether or not there was an illegal permit issued or illegal advice given at the time the permit was issued.

Mr. Yovanovich however distinguished a case City Attorney Pritt had referred to in a PAB meeting since that violation had been revealed during construction. Mr. Yovanovich also noted that a different equitable estoppel position had been argued by a partner in Mr. Pritt’s law firm in a matter involving the City of Marco Island. Mr. Pritt however took the position that reference to the Marco Island case was irrelevant and inappropriate in the current proceeding.

Council Member Russell then inquired as to how the situation might be remedied while fulfilling the community's goals. Council Member Sorey questioned whether, in keeping with the character of Olde Naples, two small houses would be more appropriate than one large house. He said that he believed that variance criteria had been satisfied and reminded Council that both staff and the PAB had recommended approval.

**MOTION by Sorey to APPROVE RESOLUTION 04-10481; seconded by Nocera and carried 4-3, all members present and voting (Nocera-yes, Sorey-yes, Taylor-no, MacIlvaine-no, Wiseman-no, Russell-yes, Barnett-yes).**

During the vote Vice Mayor Wiseman said that, although the homes are older and smaller, there was presently no prohibition against building three new homes, maximizing the lots in question. She also said that there are remedies available to the property owner and that rectification is not the City's responsibility. Council Member Russell said he was supporting the request because, while flawed, it is in keeping with the smaller lot sizes and character of Olde Naples.

**ORDINANCE (First Reading).....ITEM 12**  
**AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA PROVIDING FOR THE**  
**ISSUANCE OF A NOT TO EXCEED \$3,500,000 CITY OF NAPLES, FLORIDA**  
**GENERAL OBLIGATION REFUNDING BOND, SERIES 2004 WHICH WILL BE**  
**PAYABLE FROM AD VALOREM TAXATION, AND WHICH WILL BE ISSUED FOR**  
**THE PURPOSE OF REFINANCING A PORTION OF THE OUTSTANDING CITY OF**  
**NAPLES, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2000, WHICH WERE**  
**ISSUED TO FINANCE THE ACQUISITION OF CERTAIN LAND WITHIN THE CITY;**  
**PROVIDING FOR THE LEVY OF NECESSARY AD VALOREM TAXES; PROVIDING**  
**THE SALE OF THE SERIES 2004 BOND TO THE ORIGINAL PURCHASER NAMED**  
**HEREIN AND FOR OTHER COVENANTS WITH RESPECT TO THE SERIES 2004**  
**BONDHOLDER; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION**  
**THEREWITH; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF IF**  
**DECLARED INVALID; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:44 a.m.). City Manager Robert Lee explained that this is an opportunity to refinance bonds at a lower interest rate resulting in an annual savings of approximately \$200,000. Council Member MacIlvaine said that based upon the documentation provided (a copy of which is contained in the file for this meeting in the City Clerk's Office) it appears that the City will be reducing its long-term debt by \$1,400,000. City Manager advised that this had been confirmed.

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

**RESOLUTION 04-10482.....ITEM 13**  
**A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT WITH TARA A.**  
**NORMAN AS CITY CLERK; AUTHORIZING THE MAYOR TO EXECUTE THE**  
**AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:46 a.m.). Mayor Barnett noted that he had fulfilled Council's direction and had negotiated an employment contract with City Clerk Tara Norman. He further advised that City Clerk Norman had requested one change. (See pertinent documents, which are contained in the file for this meeting in the City Clerk's Office.) Council Member Russell proffered a motion to approve and Council Member Nocera seconded, however, further discussion ensued.

Council Member MacIlvaine said that he would prefer that a 45-day termination notice be required of both the employee and the City. Council Member Sorey agreed but said that this notice period should be six months for both parties. Mr. Sorey noted that Mrs. Norman had indicated to him support for goal setting and performance appraisals. He therefore advocated that goals and objectives be provided annually for the upcoming year, with written documentation outlining achievements of the previous year.

Council Member Taylor said that she would prefer that the termination agreement be comparable to other department head employment agreements where the term is four months.

Council Member Russell said submission of an annual report, while acceptable, should not be part of an employment contract. Mr. Russell also said that he does not support requiring the employee to provide a six month termination notice because someone wishing to leave should not be forced to stay. He said Mrs. Norman is a highly recognized and valuable employee and it is understandable that her contract would have characteristics different from other employment agreements.

**MOTION by Russell to APPROVE RESOLUTION 0410482, ACCEPTING THE CITY CLERK EMPLOYMENT AGREEMENT AS SUBMITTED; seconded by Nocera and carried 4-3 (Sorey-no, Russell-yes, MacIlvaine-no, Wiseman-yes, Taylor-no, Nocera-yes, Barnett-yes).**

During the vote on this matter, Council Member Sorey said that although the Clerk is a valued employee and he supports her and her staff, he could not support the agreement as proposed, cautioning that it could set a precedent. He also expressed concern for the previous lack of performance appraisals. Council Member MacIlvaine said that because the City Manager was subject to a performance appraisal and equitable termination terms, it should be inclusive and required that in the City Clerk's agreement as well. Council Member MacIlvaine however expressed what he characterized as great appreciation and respect for Mrs. Norman, although he said he could not support the agreement without the aforementioned elements.

Council Member Taylor maintained concern that, length of service notwithstanding, all department directors should have equitable employment contracts. She said there is no question regarding Mrs. Norman's dedication, professionalism, her understanding of her functions, and her historical memory of the City. Miss Taylor also said that the City Clerk's staff is always more than professional and helpful in meeting her needs, however, she said she believes, the Council, as stewards of the agreement, should bear in mind other directors' agreements. Council Member Nocera said comments made are valid and could possibly be considered in the future, but not in this particular instance.

**ORDINANCE (First Reading).....ITEM 14**  
**AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF NAPLES, FLORIDA; REPEALING ORDINANCES 2074 & 2459; AND PROVIDING FOR AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:56 a.m.). Council Member Taylor inquired as to whether the City would suffer a financial loss if the franchise agreement is not accepted. City Attorney Pritt confirmed that franchise fees would no longer be collected and Florida Power & Light (FPL) would provide service until such time as the City arranges for an alternative source.

City Manager Robert Lee advised that the franchise rate, as proposed, is being reduced from 6% to 5.9%. While this represents a slight decrease in fees for residential and commercial customers, assessing industrial customers will result in the net effect of an increase of approximately \$100,000 to the City, he said. He however said that he was not comfortable with the 30-year franchise term which, while consistent with the industry, does not take into account advancements in technology. While not contemplated at this time, he noted, these advances could in future years allow the City to consider providing its own electrical service. Citing allowances for increases in franchise fees and provisions covering the utility making its best efforts to install facilities underground, City Manager Lee recommended Council approval.

Council Member Sorey commented on the fact that there is normally little negotiation which occurs in franchise issues of this type, utilities and municipalities generally adopting standardized agreements. He, however, said that FPL representative Grover Whidden had advised him that the issue of non-storm outages is being addressed and that the situation was attributed to the tree trimming. While characterizing it as a minor concession, Mr. Sorey said that Mr. Whidden had also noted a new provision allowing the City to underground its power and that FPL would include the repayment process in its monthly billing. Mr. Sorey also noted that if the franchise term were shortened, the overall fees would decrease.

Council Member MacIlvaine moved approval of the agreement and Council Member Russell offered a second; however, further discussion ensued. Council Member Nocera noted negotiations between Royal Harbor and FPL regarding undergrounding and Mayor Barnett said that a resident had advised him that these talks had gone well. FPL representative Grover Whidden said that the utility is committed to being a full and equal partner with the City regarding undergrounding. However, only recently had the Public Service Commission allowed utilities to pass on to their customers the differential between the cost of overhead lines and undergrounding, thereby providing for recovery of investment, albeit over a long period of time. Fortunately, he noted, in several neighborhoods within the City, the current power system is substantially depreciated, making recovery of those particular costs less.

Council Member Russell complimented staff and FPL on their negotiations and he said that he feels positive results will be obtained in negotiations to underground power in both Port Royal and Royal Harbor. Mr. Russell however said that he does not support taxes on central services since they, in reality are merely passed on from the rate payers in their utility bills.

Council Member MacIlvaine requested amplification regarding comparative maintenance requirements of underground and overhead facilities. Mr. Whidden explained that maintenance is considered to be comparable; however repairs to underground failures can be extensive in comparison to overhead lines. Initial installation of undergrounding is more costly than overhead, he added.

Mr. Whidden also commented on measures being taken by FPL to address service-related complaints from both Port Royal and Royal Harbor, including accelerating the tree trimming program, to which a majority of service interruptions are attributed. Also, Mr. Whidden advised that service interruptions average 30 minutes per customer per year in the City while the remainder of FPL customers experience approximately 70 minutes, and the industry average is 140 minutes.

City Manager Lee asked whether FPL would be receptive to the City bidding out the cost differential when neighborhoods choose to install underground power. Mr. Whidden said that FPL would welcome a review of other contractors that the City may be considering, however, FPL also bids large projects in an effort to obtain the best price for its customers.

Noting that when tree trimming is more frequent there can be less impact to the tree canopy, City Manager Lee requested that the City be notified when FPL plans to schedule this work. Mr. Whidden agreed and also stated that FPL is proud of its designation as a Tree USA Utility, and that FPL is committed both to providing good electrical service and maintaining the health of trees. He added that when concerns are raised, representatives will meet with residents to address them.

Council Member Sorey inquired as to FPL's desire to address the installation of the underground reclaimed water system concurrently with the undergrounding of power lines. Mr. Whidden said that this would be more cost effective for both. Mr. Sorey requested that staff consider this when undergrounding requests are received.

**Public Comment:** (11:21 a.m.) None.

**MOTION** by MacIlvaine to **APPROVE THIS ORDINANCE AT FIRST READING**; 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).

**RESOLUTION 04-10483.....ITEM 15-a(1)**  
**A RESOLUTION APPOINTING AN ARCHITECT TO THE DESIGN REVIEW BOARD FOR A THREE-YEAR TERM EXPIRING ON MAY 31, 2007; AND PROVIDING AN EFFECTIVE DATE.** City Attorney Robert Pritt read title (11:21 a.m.) City Clerk Tara Norman advised that there had been no other applicants for this position.

**MOTION** by Sorey to **APPROVE RESOLUTION 04-10483** appointing William Reddick to the Design Review Board; and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 04-10484.....ITEM 15-b(2)**  
**A RESOLUTION APPOINTING ONE MEMBER TO THE CITIZENS ADVISORY COMMITTEE FOR THE EAST NAPLES BAY SPECIAL TAXING DISTRICT FOR A THREE-YEAR TERM EXPIRING JUNE 18, 2007; AND PROVIDING AN EFFECTIVE DATE.** City Attorney Robert Pritt read title (11:22 a.m.)

**MOTION** by Taylor to **APPROVE RESOLUTION 04-10484** appointing Frank Hartvelt to the Citizens Advisory Committee for the East Naples Bay Special Taxing District; and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**CORRESPONDENCE AND COMMUNICATIONS.....**  
(11:23 a.m.) Mayor Barnett inquired as to Council's desire to delay second reading of the vessel speed ordinance until September so as to accommodate a request from County Commissioner Fred Coyle for a joint City/County meeting on the subject. (See also discussion under Item 6 below.) Mayor Barnett also requested comments on Commission Chair Donna Fiala's memorandum regarding dual office holding (Attachment 3). City Attorney Robert Pritt advised that with reference to advisory boards, dual office holding is not a legal issue but rather a policy issue on the County's part.

Council Member Sorey recommended opposition to Commissioner Fiala's suggestion regarding dual office holding, noting the Tourist Development Council (TDC) discussion when this matter was raised and explaining that, according to the Assistant County Attorney, there is no legal issue. He also pointed that a County ordinance clearly states that an individual can serve on as many as two advisory boards, and more upon approval by the Board of County Commissioners. Mr. Sorey said that he supports this County ordinance because of the advantage of continuity and experience among board members.

Mayor Barnett pointed out that the various boards and committees referred to by Chairman Fiala are strictly advisory and decisions are the responsibility of the County Commission; therefore he said he was unsure of the perceived problem. Vice Mayor Wiseman said that it would be appropriate to discern the impetus behind the concern when Mayor Barnett meets with Chairman Fiala the following day. Mrs. Wiseman therefore suggested that Council consider a response to the Fiala letter at the next regular meeting. Council Member Russell agreed, noting that more specific identification of the issue is necessary.

Council Member Sorey advised that Naples Airport Authority (NAA) Executive Director Ted Soliday had agreed to review the NAA's approach to public speakers relative to a recent incident involving a former NAA employee. Council Member Sorey also suggested that Council add to the forthcoming Evaluation and Appraisal Report (EAR) the Gordon River greenway and undergrounding of electrical power.

Council Member Taylor inquired as to the status of documentation of NAA Commissioner Eric West's residential address and confirmation regarding the functions of his businesses in the City. City Manager Lee advised that City Clerk Tara Norman had confirmed Mr. West's City residency and the Finance Department was currently in the process of confirming whether Mr. West's business is properly licensed.

Questioning newspaper coverage of the previous day's Community Redevelopment Agency (CRA) meeting, Council Member Russell said that he nevertheless feels that a healthy debate between the CRA and Community Redevelopment Advisory Board (CRAAB) representatives had occurred regarding two legitimate business models for the selection and reporting responsibilities of a CRA Executive Director. He also noted that a good, cooperative choice had been made. Mayor Barnett agreed.

Council Member Nocera requested visual aids for that afternoon's public hearing regarding vessel speed regulations. City Manager Lee advised that a large chart would be posted depicting current conditions in Naples Bay.

Council then concurred with Vice Mayor Wiseman's suggestion that the notification policy be revised to include adjacent tenants, as well as property owners, regarding various permit requests impacting them. Also, Mrs. Wiseman inquired as to the status of the recodification project and requested clarification on the relationship of the tree canopy ordinance to various other right-of-way limitations.

Council Member Taylor inquired as to the status of a review of mechanical equipment noise standards and measurements in the noise ordinance.

Council Member Sorey requested that Council discuss the latest information regarding a consultant to be hired by the City relative to the proposed Golden Gate Parkway/Airport Road overpass.

Mayor Barnett requested that Council Members consider allowing non-City residents to serve on advisory boards and committees, while maintaining a majority of City residents; he recommended that this matter be discussed during a workshop after the summer recess. Council Member Russell suggested that this be a part of a general review of advisory boards and their requirements which had also been slated for discussion. Council Member Nocera said that he would like the ability to select the best possible candidates for board appointments.

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**Recess: 11:37 a.m. – 1:30 p.m. It is noted for the record that Council Member Taylor was absent when the meeting reconvened.**

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**ORDINANCE (FIRST READING).....ITEM 6**  
**AN ORDINANCE RELATING TO BOATING SPEEDS IN THE CITY OF NAPLES; AMENDING ARTICLE III, BOATS, OF CHAPTER 78 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES BY AMENDING SECTION 78-136, DEFINITIONS; REPEALING SECTION 78-140, SLOW SPEED ZONES; TRANSFERRING AND AMENDING SECTION 78-145, DESIGNATION OF RESTRICTED AREAS, TO SECTION 78-143, SPEED LIMIT IN CERTAIN RESTRICTED AREAS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:30 p.m.). Mayor Barnett advised that, in light of the many differing opinions anticipated, all views be treated with decorum and respect, that no extra time would be permitted for public speakers, and that there would be no staff presentation as one had previously been provided. Mayor Barnett also announced that public comment would be heard first.

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**Editor's Note: All documentation and presentations offered during Public Comment are contained in the file for this meeting in the City Clerk's Office.**

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**Public Comment: (1:34) Judy Hushon, 1659 Chinaberry Court,** said she supports regulating the boat speeds because of environmental concerns.

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**It is noted for the record that Council Member Taylor entered the meeting at 1:34 p.m.**

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**Lee Lyon, 3491 Poinciana Street, representing the Marine Industries Association of Collier County,** said that they oppose revising boat speeds because of insufficient data to support it. He also pointed out that regulatory agencies would in fact require such data. Mr. Lyon also characterized such environmental programs as the Manatee Protection Plan as effective and stressed that boater education is more appropriate than regulation. **Harry Timmins, President, Citizens to Preserve Naples Bay,** said he supports the proposed boat speed regulations because of the environmental and safety benefits derived. Mr. Timmins submitted correspondence and a chart depicting his organization's recommendations. **Sonja Garland, 263 Candy Cane Lane, #5,** expressed concern that the proposed regulations would negatively impact her marine vessel business if customers are not allowed to conduct test runs. She also recommended that waterfront homeowners be required to install riprap, and stressed that while boaters do not harm the environment, the City should halt its discharge of reuse water into Naples Bay and agriculture run-off should be controlled. **Peter Peterson, 909 Tenth Street South,** said he opposed boat speed regulations because of the elimination of the boat testing area which would result in a financial impact to his business. It is impossible to properly test a boat at idle or slow speed, he added. In response to Council Member Sorey, Mr. Peterson said that an appropriate test area is from Marker 26 down the Bay to Marker 21 and that area should be designated at 30 MPH.

**Richard Baker, 2330 Kingfish Road**, said that he supports adoption of the proposed speed zones for safety reasons and added that, as a waterfront property owner, he has on many occasions witnessed boats having to stop or pull over because of one large, fast-moving vessels creating non-navigable wakes. **Bill Barton, 605 Palm Circle East**, said he opposed the proposed regulations as an infringement on the freedom of City and County residents and because of the lack of a compelling reason that the health, safety and well being of the community is being endangered. **Frank Matthews, Attorney for the Marine Industries Association of Collier County**, contended that the proposed regulations are an encroachment upon the rights of both boaters and boat vendors and that the City will not prevail at the regulatory agency level, which will require more data than the City can provide. Furthermore, there is not sufficient data to support that the current speed zones negatively affect the manatees or the environment, he added. **Gary Davis, The Conservancy of Southwest Florida**, submitted for the record a box containing what he described as supporting documentation for stricter vessel speed regulations. An inventoried indicated the following:

- Naples Bay Boat Traffic Study and Model, 2002 Update, November 2002
- Naples Bay Boat Traffic Study and Model, Final Report, March 1999
- Final Biological Status Review of the Florida Manatee, December 2002
- Florida Manatees respond to Approaching Vessels, on-line article, Elsevier Biological Conservation, 2004
- Collier County Environmental Services Division, Boating Study and Facility Inventory, April 1994
- Collier County Environmental Services Division, Collier County Manatee Protection Plan, May 1995
- Collier County Environmental Services Division, Collier County Seagrass Protection Plan, May 1991
- Collier County Sheriff's Office Boating Citations, January 1, 1999 – April 30, 2004
- Boat Traffic Study, City of Naples, Phase I Report, June 1989

Mr. Davis also presented other related documentation and The Conservancy's comments on the proposed Naples Bay vessel speed zones via a graphic presentation, a copy of which is contained in the file for this meeting in the City Clerk's Office. Mr. Davis asserted that the City in fact does have justification under state law for reducing boat speeds' and he also displayed The Conservancy's suggested changes to the current zones.

Council Member Taylor inquired as to how a boat testing area in Naples Bay would affect The Conservancy's position. Mr. Davis advised that The Conservancy was willing to consider support for a boat testing area, but that the Marine Industries Association had removed itself from discussions on the matter. The area from Marker 26 to Marker 22 may however be an appropriate area for boat testing, on a very limited basis, Mr. Davis noted.

**Marney Reed, 11675 Night Heron Drive**, expressed her support for stricter boat speed regulations and advised that she relocated her boat tour business out of Naples Bay due to unsafe conditions. The current 3½ mile stretch of slow speed/minimum wake area, she said, is an adjustment which she, and all charter boat captains should make, she concluded. **Eric Alexander, 654 Squire Circle, #201**, stated that the new regulations would force him out of the charter boat business and the need is instead for more enforcement and better control of the agriculture runoff. **Jerry Green, 2200 Tarpon Road**, said that he opposed further regulations,



although some additional regulation may be necessary to address increased weekend and holiday boat traffic, especially from Marker 26 to Marker 21, which is an area of high congestion and excessive speed which creates dangerous wake conditions for small boats. He predicted people would move to other areas where they can better enjoy their boating experiences, a situation he said he had witnessed in Discovery Bay, California, when stricter regulations were adopted. **Doug Finlay, 3430 Gulf Shore Boulevard North**, said that he does not support further speed regulation even though he is a member of The Conservancy. He said that as a boater, as well as kayak and canoe enthusiast, he does however not support the regulations because there is insufficient supporting data, except for the heavily traveled area near the future location of Hamilton Harbor. He suggested replacing bulkheads with riprap, increasing enforcement, developing the Pulling property for exclusive non-motorized vessels, and controlling pollution and runoff into the Bay which, he asserted, is more of a deterrent to sea grasses and mangroves than boat wakes. Mr. Finlay also said that the proposed regulations violate citizen rights. **Captain Will Geraghty, 2424 Harbor Road**, expressed opposition to the proposed boat speed zones and presented manatee death statistics, which he said clearly do not support boat speed regulations. He further said the degradation of Naples Bay can be directly attributed to agricultural runoff and discharge into the Bay. Also, he said, it has been scientifically proven through turbidity studies that reducing boat speeds is not effective in conserving and preserving waterways. **Captain Kevin Bill, 1535 Chesapeake Avenue**, voiced his opposition to the proposed regulations, nevertheless noting heavy boater traffic on holidays and weekends that could be controlled with more enforcement. He further said that the tourists will not pay for charter fishing when two hours are taken out of their trip because of speed restrictions.. **Jack Hail, 2675 Bayview Drive**, said he is opposed to the proposed regulations because of the extra time it will take to arrive at fishing areas which will effectively ruin his business as a seafood supplier to Kelly's Fish House. Mr. Hail compared the proposed regulations to placing a 6 MPH speed limit on US 41 and said that slowing boats will not represent a sufficiently positive effect on the environment to support the regulation. **Ted Maupin, general manager Naples Marina and Boating Center**, said his is a certified clean marina, one of the largest in the nation, and is launching approximately the same number of boats currently as it did in 2000. He said that an unintended consequence of the proposed regulations is the impact to recreational boating sales and the ambience which draws tourists. Mr. Maupin then presented a letter from the owner of Naples Marina. **Alan Walburn, 925 Eighth Avenue South**, said that the boat speed issue has been an ongoing dialog for over 20 years and conveyed his opposition to the proposed speed zone regulations because increased travel times would negatively affect and even eliminate commercial enterprises on the Bay. Commercial activity is already diminishing, he said, and the Army Corps of Engineers, which dredges the Bay and provides navigational aids, is considering withdrawing funding because of this diminishing commercial presence. Mr. Walburn suggested efforts to encourage the Corps of Engineers to retain its presence in this area and noted what he characterized as nearly unanimous rejection by the Board of County Commissioners due to the lack of sufficient independent data supporting further regulations.

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**Recess: 2:49 p.m. – 2:58 p.m. It is noted for the record that all members were present when the meeting reconvened.**

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In response to questioning by Council Member Russell, Natural Resources Manager Jon Staiger explained that idle speed is defined as that which is as slow as possible while still maintaining control of the vessel. Regarding the area near the former fueling station, during high seas it is difficult to maintain steerage with the idle speed restrictions, so the recommendation is to increase to slow speed/minimum wake at that location. Dr. Staiger further explained that marine

patrol officers are adept at judging boating conditions. Mr. Russell said an improvement to that area of Gordon Pass is acceptable to him.

Council Member Russell then inquired as to the reason for the greater number of citations issued at the intersection of Naples Bay and Gordon Pass. Police & Emergency Services Chief Steven Moore explained that officers patrol areas of high activity and this is the most dangerous, hence more citations are issued there. Chief Moore added that marine patrol officers also respond to complaints. Dr. Staiger acknowledged that the number of wet boat slips has diminished over time in the northern portion of the City and that he does not believe the usage levels of the Bay have increased. There are many boat owners, he said, but very few boat users, pointing out the increased prevalence of more than one vessel and/or personal watercraft at individual homes which he characterized as resulting in small marinas at various Port Royal homes.

Council Member Taylor asked whether Natural Resources Manager Staiger was taking into consideration the expansion of the Naples Sailing & Yacht Club or the proposed project at the former Boat Haven site; she expressed concern that the number of boats on Naples Bay would therefore greatly increase. He said that those projects had not been incorporated into previous boat count studies, pointing out that while both will allow for more boats, it is not possible to determine an accurate number at that time.

Council Member Nocera inquired as to Dr. Staiger's recommendation of the most appropriate area to allow boat testing. Dr. Staiger said that he believed the area between Marker 26 and Marker 21 to be the best because it consists of a natural shoreline on one side and riprap on the other, which would result in the least amount of reflective wave action. Council Member MacIlvaine however expressed opposition to allowing boat testing around Marker 21 because of its proximity to the Hamilton Harbor entrance, as well as being near the Gordon Pass intersection. Chief Moore confirmed that patrol officers do not stop boats at this location but prefer to wait for the vessel to exit that area due to safety concerns from wake conditions. Citing the prevalence of speed violations in this area, Dr. Staiger said that boat traffic is low enough to allow boat testing during the weekdays, however, weekend traffic is quite heavy.

Council Member Sorey cited discussions with various interested parties as well as time spent on the water with Dr. Staiger and marine patrol officers, and said that the compelling safety issue could not be questioned. He, however, suggested allowing testing Monday through Friday between Marker 26 and Marker 21 and further recommended extending it the slow speed/minimum wake zone to Marker 71 in Dollar Bay, an area for boats to slow before entering the intersection area. He also expressed support for increasing the current idle speed/no wake zone at the mouth of Gordon Pass (Marker 5) to slow speed/minimum wake and recommended adoption of the ordinance and proceeding with permitting through the regulatory agencies and providing additional data if requested. Dr. Staiger confirmed that regulations could however not be enforced until the Florida Fish & Wildlife Conservation Commission grants permits to post the navigational signage. Council Member Sorey then made a motion incorporating his aforementioned proposals, however, further discussion ensued, including his further recommendation that the idle speed/no wake zone be increased to slow speed/minimum wake at Marker 5, clarifying that this anticipated vessel testing zone be on weekdays from 8:30 a.m. to 5:00 p.m.

Council Member Russell confirmed that staff recommended slow speed/minimum wake from Marker 32 to Marker 10; however, Vice Mayor Wiseman pointed out that the ordinance under consideration was based on Council direction, not staff recommendation. City Manager Lee clarified that staff recommends expanding the slow speed/minimum wake zone from Marker 22 to Marker 71 on weekends and holidays and increasing the speed from idle speed/no wake to slow speed/minimum wake from Marker 10 to Marker 7. He further noted that the ordinance before Council indicates slow speed/minimum wake throughout the entire Naples Bay (Marker 32 to Marker 7) and that the map presented depicts only the current regulations. (It is noted for the record that a copy of the aforementioned map is contained in the file for this meeting in the City Clerk's Office.)

Council Member Nocera proffered a second to Council Member Sorey's motion above.

Council Member Taylor inquired as to anticipated changes in travel times out Naples Bay from the City Dock. Natural Resources Manager Staiger replied that under current regulations it takes approximately 13 minutes to travel from Gordon Pass (Marker 5) to the City Dock and on weekends it takes approximately 25 minutes, as determined with actual boat trips made by him and City Manager Lee. He added that based upon the Naples Bay Study, imposing the current slow speed/minimum wake zones around the clock, seven days a week, indicates a travel time of 33 minutes; if the area between Marker 26 and Marker 21 were converted to a slow speed zone, an additional 8 to 10 minutes is added, for a total of 30 to 45 minutes' travel time. A maximum travel time of approximately 50 minutes from Gordon Pass to the City Dock had been determined by the Florida Marine Patrol if the maximum restrictions were imposed.

Council Member Taylor pointed out that an update of the 1989 Hamilton Harbor boat traffic study had predicted a service level of "C" for Naples Bay. This rating, she said, would indicate support for restrictions on speed and maneuverability because of boat congestion. While confirming that the study had been updated in 2002, Dr. Staiger stressed that it did not consider transit times.

Vice Mayor Wiseman expressed doubt that the City would be able to convince the State that it had acted reasonably, rationally and with proper supporting data, noting a conversion of weekend and holiday speed restrictions to 24-hours and 7-days. Also, she said, if a regulatory agency is expected to require additional data, it would be more appropriate to possess that data before taking action.

Mrs. Wiseman was also critical of the Council's amending language in what she described as an ad hoc manner, expressing concern for effects upon livelihoods, quality of life and values. Despite all the reasons given for the amendment, including protection of manatees, she said, supporting data is insignificant. Council Member Taylor however pointed out that the box of documentation entered into the record by The Conservancy contains a study that does justify manatee protection. Mrs. Wiseman however contended that the documentation contained in the aforementioned package had not been reviewed by Council. While she encouraged Council to be deliberate in its actions, she also noted the advisability that the City reconcile and verify the various studies and data just received.

Mayor Barnett said that despite his lack of support for the motion on the floor, there is a safety issue on weekends. He therefore stated a preference for imposing a slow speed/minimum wake

requirement 24 hours a day throughout Naples Bay from 7:00 p.m. Friday until 7:00 p.m. Sunday as well as on holidays. Council Member MacIlvaine said that he, too, could not support the motion because he opposes the proposed test zone; he also suggested a speed limit of 20 MPH between Marker 26 and 22.

Council Member Russell said because the Bay is a concern for everyone, the County should be included in the discussion and that sufficient and accurate data is needed to make an informed decision. He said he also supports staff's recommendation to extend the slow speed/minimum wake zone beyond Gordon Pass into Dollar Bay to mitigate traffic at it approaches the intersection, based on citations issued and boat counts. He also said that he supports increasing the idle speed zone at Marker 5 in the interest of consistent and manageable speed zones, and that he concurs with Mayor Barnett's suggestion of weekend and holiday speed zones. Mr. Russell concluded by stating that he could, based on data provided to date, support slow speeds, minimum wake, from Marker 22 to Marker 32 and extending that regulation out Dollar Bay to Marker 71.

Council Member Nocera called the question, but offered a modification: Marker 26 to Marker 32, slow speed/minimum wake from 7:30 a.m. to 6:00 p.m.; Marker 26 to Marker 21, 20 MPH; Marker 21 to Marker 11, slow speed/minimum wake from 7:30 a.m. to 6:00 p.m.; and extending the slow speed/minimum wake standard to Marker 71. Council, however first voted on the first motion on the floor.

**MOTION by Sorey to APPROVE AT FIRST READING, AS AMENDED:** a) *add vessel test zone from Marker 26 to Marker 22; and b) extend slow speed/minimum wake to Marker 71. This motion was seconded by Nocera and failed 3-4 (Russell-no, Sorey-yes, Nocera-yes, Wiseman-no, Taylor-yes, MacIlvaine-no, Barnett-no).*

Mayor Barnett then proffered a motion to approve slow speed, minimum wake on weekends and holiday's from Marker 32 to Marker 7 and extending to Marker 71 that failed due to lack of second. In response to City Attorney Pritt, Natural Resources Manager Staiger explained that from Marker 21 to Marker 71 in Dollar Bay the permitted speed is 30 MPH.

**MOTION by Nocera to APPROVE AT FIRST READING, AS AMENDED:** a) *Marker 26 to 32 slow speed minimum wake, 7:30 a.m. to 6:00 p.m., 7 days a week; b) Marker 26 to Marker 21, 20 MPH, seven days a week; and c) Marker 21 to Marker 5 slow speed, minimum wake, including to Marker 71, slow speed, minimum wake, 7:30 a.m. to 6:00 p.m., seven days a week. This motion was seconded by Sorey and carried 5-2. (Wiseman-no, Russell-no, Taylor-yes, Sorey-yes, Nocera-yes, MacIlvaine-yes, Barnett-yes).*

In response to Mayor Barnett's inquiry as to whether Council wished to postpone second reading until September for a joint workshop to receive County input, the following comments were heard. While Vice Mayor Wiseman agreed, Council Member Nocera indicated that he wished to proceed with second reading as scheduled; Council Member Russell indicated support for a delay; Council Member Taylor said she felt the County had been sufficiently represented and therefor did not support a delay; Council Member MacIlvaine indicated opposition to a delay; and Council Member Sorey said he, too, could not support a delay. Therefore, agreement was not reached on the proposal to delay. City Attorney Pritt advised second reading would therefore occur on June 16.

**ADJOURN** .....  
3:48 p.m.

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Bill Barnett, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

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Pamela M. Koepke, Recording Specialist

Minutes Approved: 8/18/04