



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – December 15, 2004 – 9:00 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL ITEM 1

Present:

Bill Barnett, Mayor
Tamela Wiseman, Vice Mayor

Absent:

Clark Russell

Council Members:

William MacIlvaine
Johnny Nocera
John Sorey, III
Penny Taylor

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Dan Mercer, Public Works Director
David Lykins, Community Services Director
Robin Singer, Community Development Director
Victor Morales, Asst. to the City Manager
Denise Perez, Human Resources Director

Pamela Koepke, Recording Specialist
Karen Kateley, Administrative Specialist
Lodge McKee
Jack Bowles
Ranae Bowles
Kay Wheelock
Sue Smith
Lou Vlasho
Other interested citizens and visitors

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

Dr. Robert Peterson, Covenant Presbyterian Church.

ANNOUNCEMENTS ITEM 3

None.

SET AGENDA..... ITEM 4

MOTION by Nocera to SET AGENDA, withdrawing Item 6-b(2); seconded by Sorey and carried 6-0 (MacIlvaine-yes, Nocera-yes, Russell-absent, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

PUBLIC COMMENT..... ITEM 5

None.

CONSENT AGENDA

APPROVAL OF MINUTES ITEM 6-a

November 3, 2004 Regular, as amended on page 17 amplifying Council Member Sorey's statement regarding litigation over boat speeds (Agenda Item 6); and November 15, 2004 Workshop and November 17, 2004 Regular, as submitted.

SPECIAL EVENTS ITEM 6-b

1. Christmas Eve Service – Celebration Community Church – Lowdermilk Park – December 24, 2004.

2. Blue Grass Festival Fundraiser – Collier County Fraternal Order of Police Lodge #38 – Cambier Park – 04/16/04 This item was withdrawn; see Item 4.

RESOLUTION 04-10682.....ITEM 6-c
A RESOLUTION APPROVING A THIRD AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF NAPLES AND COASTAL PLANNING AND ENGINEERING, INC., FOR ENGINEERING SERVICES REGARDING MAINTENANCE DREDGING AND ROCK REMOVAL IN THE EAST NAPLES BAY TAXING DISTRICT WATERWAYS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

Title not read.

RESOLUTION 04-10683.....ITEM 6-d
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR EB'S RESTAURANT AND FAIRFIELD INN & SUITES HOTEL, LOCATED AT 1775 AND 1785 DAVIS BOULEVARD, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10684.....ITEM 6-e
A RESOLUTION APPROVING A SUB-RECIPIENT AGREEMENT WITH COLLIER COUNTY FOR RECEIPT AND IMPLEMENTATION OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE PROGRAM YEAR JULY 1, 2004 THROUGH JUNE 30, 2005; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10685.....ITEM 6-f
A RESOLUTION APPROVING A ONE-YEAR RENEWAL WITH SUN LIFE ASSURANCE COMPANY OF CANADA TO PROVIDE STOP LOSS (SPECIFIC AND AGGREGATE) INSURANCE FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN FOR THE PLAN YEAR JANUARY 1, 2005 THROUGH DECEMBER 31, 2005; AUTHORIZING THE CITY MANAGER TO EXECUTE THE RENEWAL; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 04-10686.....ITEM 6-g
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN STEPHEN B. RUSSELL, AS STATE ATTORNEY FOR THE TWENTIETH JUDICIAL CIRCUIT OF FLORIDA AND THE CITY OF NAPLES AUTHORIZING THE STATE ATTORNEY TO SERVE AS MUNICIPAL PROSECUTOR ON BEHALF OF THE CITY FOR MUNICIPAL ORDINANCE VIOLATIONS UNDER THE AUTHORITY OF THE STATE OF FLORIDA; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

***MOTION** by Wiseman to APPROVE CONSENT AGENDA, except Item 6-b(2) which was withdrawn. This motion was seconded by Nocera and carried 6-0 (MacIlvaine-yes, Nocera-yes, Russell-absent, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).*

END CONSENT AGENDA

RESOLUTION 04-10687.....ITEM 7
A RESOLUTION DETERMINING WAIVER OF DISTANCE PETITION 04-WD2 IN ORDER TO GRANT A WAIVER FROM DISTANCE REQUIREMENTS BETWEEN LIQUOR LICENSEES IN ORDER TO PERMIT THE SALE OF ALCOHOLIC

BEVERAGES AT BLEU PROVENCE LOCATED AT 1234 8TH STREET SOUTH; AND PROVIDING AN EFFECTIVE DATE. (9:06 a.m.) Title read by City Attorney Robert Pritt.

Public Comment: (9:06 a.m.) None.

***MOTION** by Sorey to **APPROVE RESOLUTION 04-10687**, as submitted; seconded by MacIlvaine and carried 6-0 (MacIlvaine-yes, Nocera-yes, Russell-absent, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).*

.....**ITEM 8**
CONSIDER AUTHORIZING CITY MANAGER TO SPEND PROCEEDS FROM THE NAPLES DIAMOND JUBILEE FOR A HISTORICAL MARKER AT THE NAPLES DEPOT, PUBLIC INFORMATION BROCHURES AND HISTORICAL EXHIBITS AT THE NAPLES DEPOT DEPICTING THE HISTORY OF NAPLES. City Attorney Pritt advised that this request is for Council to authorize the City Manager to expend proceeds from the Naples Diamond Jubilee fund on an historical marker at the Naples Depot, and other historically related items for the Depot. City Manager Lee said staff is proposing, as a result of previous Council discussions, that funding be utilized for the marker at a cost of \$2,000 with the remainder to provide the means to incorporate other historical exhibits within the Depot. Vice Mayor Wiseman suggested that Council also authorize the City Manager to coordinate with the Board of County Commissioners (BCC) as to the best use for the available funding. Mayor Barnett and Council Member Taylor agreed.

***MOTION** by Wiseman to **APPROVE** authorizing the City Manager to expend surplus Diamond Jubilee funds for an historical marker, and other historically related exhibits, at the Naples Depot, and to coordinate appropriate expenditure of the funds with Collier County. This motion was seconded by Taylor and carried 6-0 (MacIlvaine-yes, Nocera-yes, Russell-absent, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).*

Public Comment: (9:09 a.m.) **Sue Smith, 15-11th Avenue South**, received clarification from various Council Members that the Naples Depot is a non-profit organization and, therefore, not subject to taxation. Mrs. Smith then expressed concern with reference to taxpayer funds being utilized by a private organization, commenting on previous litigation related to the Wilkinson House and the Naples Historical Society. She also inquired as to whether title of the Depot property would be transferred to either the City or Collier County and asked in what manner the Depot would operate as a facility within the Collier County Museum system. Mayor Barnett assured Mrs. Smith that the City Manager's Office would provide answers to her inquiries. Mrs. Smith also requested that copies of a recent study conducted for the Depot be provided. Mayor Barnett agreed.

Council Member MacIlvaine pointed out that, upon the sale of the Wilkinson House, funds had been returned to the Naples Historical Society, which had however chosen not to refund to the various donors. Vice Mayor Wiseman confirmed, however, that disbursement to donors was at the Historical Society's discretion, not within the purview of the City.

ORDINANCE 04-10688.....**ITEM 9(1)**
AN ORDINANCE AMENDING SECTION 110-34 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO PROVIDE FOR IMPROVED EFFICIENCIES AND MANAGEMENT OF THE BOATS ON THE BEACH PROGRAM AND TO ADD REGULATIONS FOR USE OF CITY-OWNED DINGHY STORAGE PAVILIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. (9:13 a.m.) Title read by City Attorney Robert Pritt.

Public Comment: (9:14 a.m.) **Jack Bowles, 561 92nd Avenue North**, said that he opposes the proposed fee schedule as a financial hardship when paid on an annual basis but as inordinately costly to the City to collect monthly. He, therefore, questioned the amount of staff time necessary to conduct this program. **Renae Bowles, 561 92nd Avenue North**, said that she is also opposed to the proposed fee schedule, which could create a financial hardship. She also said that removing her boat from the beach would preclude her from using it because there are no non-motorized boat accesses or ramps available. Mrs. Bowles volunteered to assist the City in maintaining the program, which would eliminate the City's expense. **Kay Wheelock, 280 Matecumbe Lane**, said that she does not just store her boat on the beach, but uses it regularly. She said the boats on the beach also add to the ambience and urged Council to reconsider implementing the proposed fee schedule.

City Manager Lee said there are, in fact, staff costs, such as notification of boat removal during storms. He said the program would also clear several derelict boats allowing opportunities for those on the waiting list. He noted an analysis supporting the City expense related to the program (a copy of which is contained in the file for this meeting in the City Clerk's Office).

MOTION by Taylor to APPROVE ORDINANCE 04-1068, as submitted; seconded by MacIlvaine and carried 4-2 (MacIlvaine-yes, Nocera-no, Russell-yes, Sorey-no, Taylor-yes, Wiseman-yes, Barnett-yes).

ORDINANCE 04-10689..... ITEM 9(2)

A RESOLUTION IMPLEMENTING SECTION 110-34 ESTABLISHING A FEE SCHEDULE IN APPENDIX "A" OF THE CODE OF ORDINANCES FOR STORING NON-MOTORIZED BOATS ON DESIGNATED PUBLIC BEACHES WITHIN THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title not read

MOTION by Wiseman to APPROVE ORDINANCE 04-10689, as submitted; seconded by MacIlvaine and carried 4-2 (MacIlvaine-yes, Nocera-no, Russell-yes, Sorey-no, Taylor-yes, Wiseman-yes, Barnett-yes).

RESOLUTION 04-10690..... ITEM 10

A RESOLUTION APPROVING, RATIFYING AND CONFIRMING ARTICLE 17 OF THE CONTRACT BETWEEN THE CITY OF NAPLES AND THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 2017; AND PROVIDING AN EFFECTIVE DATE. (9:24 a.m.) Title read by City Attorney Robert Pritt.

Public Comment: (9:25 a.m.) None.

MOTION by MacIlvaine to APPROVE RESOLUTION 04-10690, as submitted; seconded by Barnett and carried 6-0 (MacIlvaine-yes, Nocera-yes, Russell-absent, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

Mayor Barnett acknowledged staff for successful negotiations with the various unions. City Manager Lee confirmed that union contracts offer approximately equal benefits to all members, and that, for the first time in many years, all employees are now paying the same health insurance premiums.

CORRESPONDENCE AND COMMUNICATIONS.....

Council Member Sorey asked for Council support in lowering speed limits on Fifth Avenue South to 15 mph in order to reduce accidents. City Manager Lee advised that staff has been reviewing speed limits Citywide, and Public Works Director Dan Mercer confirmed that the goal is to present Council a speed limit study in January. City Attorney Pritt expressed the belief that State law may not permit reducing speed limits below 20 mph outside of school zones.

Council Member Sorey then inquired as to the status of the final order from the Department of Community Affairs (DCA) regarding the overpass amendment to the Comprehensive Plan. City Attorney Pritt advised that there was no way of determining when the final order would be received.

Council Member Sorey requested a report in response to unsigned correspondence complaining of unsanitary conditions at the Fishing Pier restrooms.

Council Member Sorey asked whether staff had addressed the issue of Naples Bay channel markers containing incorrect language and permit numbers. He also requested a copy of the November 30 letter referenced in a newspaper article on the subject and asked, which City department is responsible for ensuring compliant signage, and submittal of the required three-year report also mentioned in the newspaper. City Manager Lee explained that the channel markers had been properly permitted, although the proper language, permit and ordinance numbers had not been incorporated when the markers were replaced; he said the situation is being corrected immediately with stickers. Furthermore, City Manager Lee advised that the permit application submittal for the recently adopted boat speed regulations is anticipated for the end of the month. Council Member Sorey requested that staff initiate the required three-year report as soon as possible.

Citing a communication from Community Services Director David Lykins (a copy of which is contained in the file for this meeting in the City Clerk's Office). Council Member Sorey suggested that aeration be considered for the City's canals, as well as lakes, and that a workshop be scheduled regarding such issues as electrical sources and access requirements through private property.

Council Member Sorey requested investigation as soon as possible of potential pollution and discharge from live-aboard vessels and suggested Council consensus to develop an ordinance requiring discharge seals to ensure consistency with State law. Mayor Barnett, however, said that if the requirement is already in place, it should be enforced. City Attorney Pritt indicated that he would research current law and its application by the City. Council Member MacIlvaine also noted Federal standards and suggested the City go no further with its own legislation.

Council Member Sorey said he had recently learned of Conservation Collier's approval for the proposed acquisition of non-developable land and suggested coordination with the Pulling Property and the area just south of the wastewater treatment facility to create additional public access and viewing area, as well as creating a filter marsh system. Council Member Sorey requested an opinion from the City Attorney and possible discussion at the next Council meeting regarding beach access at Pelican Bay. He also requested a copy of a recent study by the Port Royal subdivision regarding under grounding of electrical power and acknowledged the previous evening's successful Christmas Parade.

Mayor Barnett reminded Council that the January 3 Workshop has been cancelled and requested that the legal opinion on Pelican Bay beach access be deferred. Council Member Sorey agreed. City Manager Lee advised that Attorney David Tolces is scheduled to appear before Council to offer advice on the Pelican Bay annexation and that the Pelican Bay Foundation is preparing a presentation for Council.

In response to Council Member MacIlvaine, Community Development Director Robin Singer reported that the property owner and prospective buyers of lots proposed for subdivision in Park Shore had been provided applications to file for a variance and that no response had yet been received.

Council Member Taylor called for a clear understanding of the extent of the Pelican Bay Foundation's authority and how the City would interface with it should that area be annexed. She then inquired as to the status of speed bumps on 13th Street South and 12th Avenue North. Public Works Director Dan Mercer explained that such requirements as traffic study confirmation had recently completed and meetings are being coordinated with the affected neighborhood

Council Member Nocera inquired as to a request for directional signage for Third Street South during Fifth Avenue South street closures. City Manager Lee advised that staff is in the process of addressing that request. Mr. Nocera also offered his appreciation for quick response to his inquiries regarding lake aeration.

Vice Mayor Wiseman offered her appreciation for the previous evening's successful Christmas Parade, which she characterized as a great event.

Vice Mayor Wiseman said that she had been troubled by the fact that annexation of Pelican Bay is being considered when there is much unfinished business such as not meeting the deadline for the Evaluation and Appraisal Report (EAR) and the Comprehensive Plan update. She said she had learned of this from a recent memo and inquired as to the reasons for the delay.

Vice Mayor Wiseman said she is also concerned that the residents of Pelican Bay, those most affected by annexation, have no voice in the consent process. She said that she had also learned from a member of the North Naples Fire Commission of his opposition to representations in the City's Urban Services Report (USR), as well conclusions reached by the elected officials regarding the position of the North Naples Fire District. Mrs. Wiseman-also pointed out that the Council had not been consulted regarding the funds given to the City by the Pelican Bay Foundation for development of the City's USR. She said this could appear as though the Foundation is orchestrating the annexation; therefore, the donation should be returned. Mayor Barnett said that, although, the City is moving forward with the USR, a referendum for the annexation will not proceed until all questions have been addressed with facts.

Vice Mayor Wiseman said that, upon questioning the annexation attorney, he had advised that identification of property owners would be obtained from County property tax documentation, which does not always reflect the residents, but the land mass owners, which would effectively remove the residents from the process.

Regarding the EAR deadline not being met, City Manager Lee that he had no knowledge of the memo cited by Vice Mayor Wiseman until asked by a Member of Council. Subsequently, he said he had determined that the State would readily grant an extension, with no penalties assessed.

Regarding the proposed Pelican Bay annexation, City Manager Lee explained that because the majority of the property owners are not local registered voters, a majority must first approve with residents being afforded a voice through the referendum process. He also reported conversations with the North Naples Fire District and that he was unaware of any disputes resulting from those discussions. He stressed that the City will continue to negotiate with North Naples to ensure service to residents, whether by the current Fire District or the City.

City Manager Lee then addressed the donation to the City by the Pelican Bay Foundation. He said that it was intended to offset the costs involved in complying with State annexation requirements, such as the USR. Vice Mayor Wiseman, nevertheless, expressed concern that there may be a perception that the City would look more favorably upon the proposed annexation because funding had been provided. She also noted the potential for the Pelican Bay Foundation to request a refund if the City denies the annexation. She said the process should be slowed to avoid potential surprises later on. Mayor Barnett, however, stressed that the process had, in no way, been rushed and that the request for annexation had been made nearly a year before. He suggested continuing to move through the process, while obtaining answers to the questions mentioned, and exerting Council authority to delay or stop the process if it becomes necessary. Mrs. Wiseman expressed further concern that, due to Council consensuses to submit the USR report; those residents out of town for the holidays may perceive it as a deliberate City action when residents are away. Mayor Barnett reminded her, however, that Council had agreed to not conduct a referendum in the off-season. Council Member Taylor questioned that ability of the City to prepare an ordinance when so many questions remain unanswered.

City Manager Lee said that while he understands the potential perception regarding the funding received by the Pelican Bay Foundation, it had been communicated clearly that the funds were to offset expenses the City may incur in the annexation process. He said that there are always fees associated with the land use processes, and an annexation has certain requirements that also entail a cost. City Manager Lee suggested Council take formal action regarding the funding provided by the Foundation to alleviate any wrong impressions.

City Manager Lee said that the schedule presented for the referendum was also strictly a recommendation, a February vote being the earliest in-season date that could be potentially met. He assured Council that the process would be taken carefully and that the suggestion for a presentation by the Pelican Bay Foundation was to be made to allow Council direct answers and to report on legal issues. City Manager Lee said that he was unsure as to whether the City has the authority to prevent pursuit of consent certification by the Foundation and that a cost analysis should also be provided to Pelican Bay residents depicting the various fees for being a part of the City.

Council Member Taylor said that, the occurrence of year-long annexation discussions, the public and Council publicly had not fully addressed it, nor provided adequate facts to the public, therefore, more time is necessary before consideration of an ordinance. Mayor Barnett stressed that the process had to be followed systematically, however, Council has the authority to stop or delay it at any time.

Council Member Sorey said that Pelican Bay annexation is not a new concept and that funding assistance from the Foundation was volunteered with no recourse to request a refund. However,

regarding the point of fees associated with land use petitioners, Mr. Sorey stressed that those parcels of land for which fees are charged are already in the City, where Pelican Bay is not. However, he said that he is comfortable with retaining the funds; Naples taxpayers should not be encumbered with the associated costs relating to annexation, he said. Also, from his discussions with the North Naples Fire District Mr. Sorey said that annexation, admittedly, presents various challenges, however, North Naples should remain realistic. He also said that he does agree with not setting a referendum until all issues have been resolved, since this could also delay the process.

In response to Council questions regarding pre-clearance with the U.S. Justice Department, City Clerk Norman explained that for February general elections, she applies in October, allowing 90 days for Justice Department review and response. She confirmed for Mayor Barnett that a pre-clearance for an election date could, however, be amended. She nevertheless stressed that the pre-clearance she was addressing strictly applied to a special election date and not to other issues requiring some other form of pre-clearance. In response to Council Member Taylor, City Clerk Norman said that ballot language does not require pre-clearance, however, the election date does because it constitutes a change in the voting pattern wherein general elections are held in February of even numbered years.

Council Member MacIlvaine said that because the referendum will most likely be conducted via mail ballot, he feels pre-clearance issues are not relevant. He said the timing of the proposed schedule is however appropriate. He also said that when a developer pays the various fees associated with petitions, it however does not ensure Council approval; therefore, discussing a return of Pelican Bay Foundation funds to offset the City's expenses relating to the annexation is unnecessary.

Vice Mayor Wiseman said that she could agree to accept the amount offered if the City had a schedule and a policy requiring annexation costs be paid by proposing parties. She, however, characterized this particular situation as ad hoc and arbitrary. The funds, she said, have not been equated to either the election or the USR requirement resulting in the donation being construed as an offer to sway Council's approval. She added that statements to the effect that an annexation should not cost the City are misplaced since there is costs associated with the annexation as well as projected budget deficits. Council Member Sorey however countered by asserting that in ten years the City would derive large financial benefits from annexation of Pelican Bay. Mrs. Wiseman stressed however that there is no guarantee on accuracy of the estimates presented.

Council Member Nocera said he is not opposed to retaining the funds given to the City by the Foundation.

In response to various comments by Council Members regarding the discussion of annexation, City Attorney Pritt advised that it would however not be appropriate for Council to add an item to the agenda, since the agenda had already been set. However, he said, the issue could be placed on a future agenda. Vice Mayor Wiseman said that she agrees it is not the City Manager's role to accept funding of this nature and she offered her support to place this on a future agenda.

Consensus to place the Pelican Bay Foundation contribution question on a future agenda for discussion.

Regarding the EAR report previously mentioned, Mayor Barnett said that it is common knowledge that there is a shortage of staff in the Community Development Department, however, discussions have occurred whereby suggestions have been made to Human Resources to develop creative means of recruitment, such as canvassing colleges for new graduates of urban planning and also making contact with urban planning professors such Trent Green, from the University of South Florida, who could notify graduates of the opportunity here. City Manager Lee added that Community Development Director Robin Singer has taken it upon herself to contact various universities to increase the pool of applicants.

PUBLIC COMMENT.....

(10:23 a.m.) **Sue Smith, 15-11th Avenue South**, offered her appreciation for statements made by Vice Mayor Wiseman regarding the proposed Pelican Bay annexation, which she characterized as concern and respect for taxpaying citizens of Naples. She said that more and more visitors come to this area yet; sufficient parking or beach access is unavailable and inquired as to what Pelican Bay would bring into the City regarding these two matters. Additionally, Mrs. Smith expressed concern for the City's firefighter training being insufficient to respond to fire alarms in high-rise buildings, such as those found in Pelican Bay. She also reminded Council that a straw vote for Pelican Bay annexation had been conducted in the past and the residents of Pelican Bay and the City had resoundingly defeated it. Mrs. Smith then questioned what benefits the City will derive from the annexation. Mayor Barnett assured Mrs. Smith that her questions would be addressed by the City Manager, and he suggested that staff provide a question-and-answer fact sheet which could also be placed on the City's website. **Lou Vlasho, speaking as a resident of Pelican Bay, and, as the President of the Greater Naples Better Government Committee**, offered his group's services in assisting with the proposed annexation. He also said that although, many residents live in the area only part-time, those who are interested will seek out information and make informed decisions.

ADJOURN.....
10:31 a.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Pamela M. Koepke, Recording Specialist

Minutes Approved: 1/19/05