



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – Wednesday, September 6, 2006 – 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  
Johnny Nocera, Vice Mayor

**Council Members:**

William MacIlvaine  
Gary Price, II  
John Sorey, III  
Penny Taylor  
William Willkomm, III

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**Also Present:**

Robert Lee, City Manager  
Tara Norman, City Clerk  
Robert Pritt, City Attorney  
Vicki Smith, Technical Writing Specialist  
Stephen Weeks, Technology Services Director  
David Lykins, Community Services Director  
Robin Singer, Community Development Director  
Ronald Wallace, Construction Management Director  
Stephen Olmsted, Planning Administrator  
Lori Parsons, Risk Manager  
James Rivard, Fire Marshal  
George Archibald, Traffic Engineer  
Buddy Bonollo, Police Officer  
Richard Scarcella  
Raymond Bowie  
Joseph Guanino  
Matt Joyner  
Scott Cameron

Reverend Clayton Hodge  
Colin Kelly  
C. W. Colt  
Louis Moore  
Duke Warringer  
Peter Eschauzier  
Judith Chirgwin  
Doug Finlay  
Richard Yovanovich  
Sue Smith  
Henry Kennedy  
Joy Lowth  
Harold Oldak  
Robert Bennett

**Media:**

Aisling Swift, Naples Daily News  
Other interested citizens and visitors.

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

Reverend Clayton Hodge, Bethel AME Church

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

None.

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

***MOTION by Nocera to SET AGENDA with the following revisions: Renaming Item 8 (executive session regarding Biasella v. City of Naples) as Item 8-a and adding Item 8-b (executive session regarding A&B Charters, Inc., Byron C. Thomas, and Jeffery Player v. City of Naples) at 11:55 a.m.; withdrawing Item 9-j (picnic tables and benches); removing from the Consent Agenda for separate discussion Item 9(b)(1) (Outdoor Family Movie Night), Item 9-c (funding for development of the Pulling property), Item 9-d and 9-f (Anthony Park improvements), Item 9-k (contract regarding water production wells), Item 9-m (renewal of Cigna employee health insurance), Item 9-n (property, liability, and Workers' Compensation insurance and self-insurance loss fund), and Item 9-r (budget amendment regarding Legal Department); withdrawing Item 20-b (Design Review Board appointment) due to candidate's withdrawal; and considering Item 21 (closure of alley between 868 and 878 Fifth Avenue South) prior to Items 11 and 12 (outdoor dining and other permits at 868 Fifth Avenue South). This motion was seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

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

**Colin Kelly, 6651 Mangrove Way**, proposed construction of an amphitheater for the arts at Fifth Avenue South and the beach as a means of drawing interest to the western end of the street. (It is noted for the record that illustrations provided by Mr. Kelly are contained in the file for this meeting in the City Clerk's Office.) C. W. Colt then sang a ballad to illustrate the type of entertainment that could be offered. **Louis Moore, 768 Sixth Avenue North**, praised the efforts of the Naples Airport Authority (NAA) for providing the community with a modern facility with no taxation while attracting millions annually in business activity. He therefore opposed any increase in lease charges by the City which he said would be passed on to customers. He contrasted this to what he described as poor service at the airport prior to the creation of NAA. In conclusion, he recommended that the current members whose terms have expired be reappointed. **Duke Warriner, 2200 Gordon Drive**, said he had met with City Manager Robert Lee and Joseph Boscaglia, Parks & Parkways Superintendent, as well as Kathy Granoff representing Port Royal Property Owners Association, and Connie Tackett of Aqualane Shores Association regarding damage to the City's street tree inventory as a result of Hurricane Wilma in 2005. He read his letter to City Manager Lee into the record (Attachment 1) in which he expressed concern about the extent to which the City planned to remove trees which are not at imminent risk of loss; he therefore recommended actions that would, in particular, save mahogany and banyan trees on Gordon Drive. **Peter Eschauzier, 4997 Kensington High Street**, urged Council to reappoint the two incumbent NAA members, pointing out the success of the airport operations. He disputed claims which he attributed to an NAA candidate, stating that in fact airport users do pay sizeable fees of various types. Mayor Barnett clarified that one incumbent, Richard Cobb, had withdrawn his name from consideration. **Judith Chirgwin, 112 Tenth Avenue South**, spoke regarding her proposal for establishing a land bank to save public areas, providing a brief community history identifying some of the individuals who had contributed to establishment of the library and hospital as well as the locales which had in earlier times been set aside for worker housing. She referred to an effort in Nantucket where lands were preserved for public use and for work force housing. **Doug Finlay, 3430 Gulf Shore Blvd., North**, first indicated that he believed the views expressed by Duke Warriner regarding trees are

shared throughout the community. Mr. Finlay also indicated support for the speed limit ordinance which was to be considered by the Council at that meeting, but urged that the same limits not be applied to collector streets, which are set at 30 mph. Equating the setting of speed limits to water restrictions, which he said are frequently disregarded, Mr. Finlay said that the action contemplated with regard to speed limits may be reassuring but frequently has little effect due to lack of enforcement. In addition, lower speeds can actually be more hazardous from the standpoint of a cyclist, because traffic takes longer to pass those cyclists who travel at higher rates of speed.

### CONSENT AGENDA

**APPROVAL OF MINUTES ..... 9-a**

June 5, 2006, Workshop; June 5, 2006 Special Meeting; June 7, 2006, Regular Meeting; June 12, 2006, Workshop and June 14, Regular Meeting (with various amendments submitted as part of the information contained in the packet).

**APPROVE SPECIAL EVENTS..... 9-b**

- 1) Outdoor Family Movie Night – City of Naples – Cambier Park – 09/23/06 and 10/21/06
- 2) Naples on the Run 20k – Gulf Coast Runners – Mooring Line Drive and Crayton Road – 09/24/06

- 3) Fundraiser (for local charities) – Culinary Concepts Charities and Yabba Island Grill – Sugden Theatre Courtyard – 12/06/06

(While this item was approved as part of the Consent Agenda, Council Member Taylor expressed concern that the City should not compete with movie nights used as school fundraising and urged that the City contact the schools in this regard.)

**RESOLUTION 06-11302.....ITEM 9-e**

**A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NAPLES AND ASPLUNDH TREE EXPERT COMPANY TO PROVIDE ADDITIONAL TRIMMING OF HARDWOOD AND PALM TREES LOCATED THROUGHOUT THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 06-11303.....ITEM 9-g**

**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR PADDY MURPHY’S IRISH PUB LOCATED AT 457 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 06-11304..... ITEM 9-h**

**A RESOLUTION APPROVING A THIRD AMENDMENT TO THE CONTINUING CONTRACT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF NAPLES AND WILSONMILLER, INC., TO PROVIDE SURVEYING CONSULTING SERVICES RELATING TO THE LEGAL DESCRIPTION OF THE CITY LIMITS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 06-11305..... ITEM 9-i**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND ALLIANCE STEEL CONSTRUCTION, INC., FOR STORMWATER AND SANITARY SEWER REPLACEMENT AND SELECTIVE DEMOLITION AT CAMBIER PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION (Withdrawn-see Item 4)..... ITEM 9-j**  
**A RESOLUTION APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF GOODS BETWEEN THE CITY OF NAPLES AND BLISS PRODUCTS AND SERVICES INC. FOR PICNIC TABLES AND BENCHES FOR FLEISCHMANN PARK AND VARIOUS OTHER PARK LOCATIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR PURCHASE AND SALE OF GOODS; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 06-11306..... ITEM 9-l**  
**A RESOLUTION APPROVING A FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NAPLES AND WILSONMILLER TO PROVIDE DESIGN AND ENGINEERING SERVICES FOR THE WORK ON TENTH STREET NORTH FROM CENTRAL AVENUE TO SEVENTH AVENUE NORTH AND SIXTH AVENUE NORTH ALONG THE LAKE AND LINEAR PARK EAST OF TENTH STREET NORTH; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 06-11307.....ITEM 9-o**  
**A RESOLUTION APPROVING A FIRST AMENDMENT TO STORMWATER COOPERATIVE GRANT AGREEMENT #OT060484 WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO REALLOCATE FUNDS FROM BASIN III WATER QUALITY IMPROVEMENTS TO SOLANA ROAD/BURNING TREE PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 06-11308..... ITEM 9-p**  
**A RESOLUTION ADOPTING A FINANCIAL POLICY FOR THE CITY, CONSISTING OF BUDGETARY AND FINANCIAL PLANNING, FINANCIAL REPORTING, CAPITAL IMPROVEMENT, DEBT MANAGEMENT AND INVESTMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 06-11309..... ITEM 9-q**  
**A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2005-06 BUDGET FOR A CHANGE IN ACCOUNTING FOR POLICE AND FIRE PENSIONS/STATE CONTRIBUTION; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 06-11310.....ITEM 9-s**  
**A RESOLUTION RELATING TO THE GEORGE WASHINGTON CARVER APARTMENTS PROPERTY; APPROVAL OF THE SECOND AMENDMENT TO LEASE AGREEMENT TO EXTEND THE GROUND LEASE TERM TO AUGUST 1, 2056, AND APPROVAL OF THE AMENDMENT TO AMENDED AND RESTATED GROUND SUBLEASE TO EXTEND THE TERM OF THE GROUND SUBLEASE TO JULY 8, 2056. Title not read.**

***MOTION by Nocera to APPROVE CONSENT AGENDA (including corrected minutes pages provided) except Items 9-c, 9-d, 9-f, 9-k, 9-m, 9-n and 9-r; seconded by MacIlvaine and unanimously carried, all members present and voting. (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**END CONSENT AGENDA**

**RESOLUTION 06-11311.....ITEM 9-c**  
**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES AND COLLIER COUNTY RELATING TO THE FUNDING FOR THE DEVELOPMENT OF THE PULLING PROPERTY PROJECT; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:40 a.m.). Council Member Sorey noted that staff had been requested to examine the cost impact of Collier County residents utilizing City facilities. He said that he did not believe that the County had adequately compensated the City in this regard. Therefore, he said, the aforementioned estimate could be shared with the County Commission in a future joint meeting and made available in conjunction with the 2007-08 budget year. Mr. Sorey said that over the course of a 20-year term of the interlocal agreement under consideration, the County would be providing just \$20,000 per year toward funding of this site and the City would be precluded from assessing any additional charges against County users. He therefore proposed a motion to continue this item, pending receipt of a financial/usage analysis and also to develop an annual maintenance agreement for the County to contribute in this regard. (No second was heard at that time.)

Council Member Taylor said that her concerns instead resided with the amount that the County had indicated it would contribute to the Fleischmann Park renovation; namely, \$500,000 as compared to the City's request for \$6-million. Therefore, she recommended continuing to seek funds for the various recreational improvements in the City while also accepting the contribution shown in the interlocal agreement under consideration. Council Member Price, however, urged that accurate percentages of County resident usage be developed prior to seeking any particular amount of funding for City parks, pointing out that the percentages might vary among facilities. City Manager Lee said that the percentages had been calculated for Fleischmann Park and that the City's \$6-million request had been realistic. However, with regard to the Pulling property, the request to Collier County had been for half of the projected \$800,000 improvement costs although usage percentages would of necessity be projected in this regard.

Council Member MacIlvaine also supported the current proposal for Pulling property funding, but urged further negotiations with regard to Fleischmann while also stressing the need for usage information. City Manager Lee reiterated that the City had in fact provided usage statistics to Collier County when requests for funding were made with reference to Fleischmann. Council Member Sorey pointed out that the City was not at risk if the interlocal agreement for the Pulling property were deferred, repeating his concern that no additional funding would be received for future maintenance on the Pulling property even though this should be included. Council Member Willkomm then seconded Mr. Sorey's motion (see above) to continue this item.

While Council Member Taylor questioned whether the proposed boat slips at the Pulling site could be designated for City residents and others assigned to Collier County residents, City Manager Lee predicted that an enforcement issue would arise if this were done. Miss Taylor further contended that since the majority of users would be City residents, they should receive the majority of the boat slips which would help to balance the inequity of County funding discussed above. She said that, as noted in the past, City Council and Board of County Commission (BCC) should meet ~~often~~ more often than twice a year.

Council Member Price called for further information on whether the County's level of service (LOS) reporting includes City venues, in particular Fleischmann Park, which would be an issue in obtaining additional funding by virtue of the benefit the County receives in regard to State LOS mandates. Citing the fact that City residents are not asked to pay additional entrance fees at the County's new water park, Miss Taylor said that it appeared the County is aggressively addressing the necessity for additional parks. Vice Mayor Nocera nevertheless stressed the need for a formula that is fair to all concerned in order to ascertain the appropriate degree of sharing between the City and Collier County with regard to park and recreational funding.

Although Mayor Barnett urged that the interlocal agreement currently under consideration be honored, Council Member Price pointed out that at \$400,000, the County is not contributing half of the \$1,462,000 cost of the project. City Manager Lee said that the County share had however been calculated when the cost of the project had been \$800,000; he suggested that the City make a further request to the County to raise the contribution to \$700,000. City Manager Lee also expressed the belief that the County does in fact realize the need for additional facilities and that Collier County residents will also utilize the facilities on the Pulling site.

Council Member Taylor said that not only did she disagree with City Manager Lee's suggestion to seek an increase in funding for the Pulling site, which she said she did not believe would be well received but also that her chief concern is future maintenance costs. City Manager Lee nevertheless maintained that the County should be given the opportunity to increase its contribution, pointing out that the actual cost of the Pulling site facility is considerably higher than the initial estimate.

Additional discussion then centered on the need for joint meetings with the BCC and the possibility that such meetings could follow the monthly Metropolitan Planning Organization (MPO) sessions attended by some members of both bodies. Miss Taylor asked Council to keep in mind that County residents are an important component to the viability of the City's downtown merchants and that this must be taken into consideration when negotiating with Collier County for funding of any sort.

Council Member Sorey however stressed the need for the City to address its budgetary issues and that County residents must therefore contribute for their usage of City funded facilities; Mr. Sorey also pointed out that the County had not hesitated to request additional funding from the City for the portion of Haldeman Creek in the City that was being dredged. He also noted that the City Council's recent request to the BCC for quarterly meetings had been denied. Mayor Barnett then suggested amending this resolution to represent the funding needed, to which Council Member Price strongly agreed.

In response to Council Member Taylor, Construction Management Director Ron Wallace explained that the initial \$880,000 cost had been estimated prior to any design plans being formulated. However, it was since learned that additional dredging would be needed, restroom facilities were added, and construction costs were found to have increased, bringing the total to \$1,462,000. Director Wallace said that he had appeared before BCC at its last budget review, presenting information regarding Fleischmann Park, Sandpiper linear park and the Pulling project, and at that time he requested a fifty percent commitment of both design and construction costs.

Council Member Willkomm withdrew his second to the motion to continue this item, stating that he believed a motion to amend the agreement to fifty percent funding would be forthcoming. Council Member MacIlvaine then made the motion to amend the amount contained in the

agreement to \$700,000, or one-half of the total cost of the project; he however declined an amendment suggested by Council Member Sorey that half of the future maintenance costs be included, stating that this would not be an issue due to the passive nature of the park. He also declined Council Member Taylor's suggestion that the amount be exactly half the cost, or \$731,197.

It is noted for the record that City Attorney Robert Pritt stated that in the title for this resolution, the authorizing officer would be the Mayor, not the City Manager, and that the title should therefore be amended.

**MOTION by MacIlvaine to APPROVE RESOLUTION 06-11311 with the following amendments: In the second and fourth whereas clause and Section 1: “ ~~\$400,000~~ \$700,000...”. This motion was seconded by Nocera and carried 6-1; all members present and voting (Willkomm-yes, Nocera-yes, MacIlvaine-yes, Taylor-yes, Price-yes, Sorey-no, Barnett-yes).**

**RESOLUTION 06-11312..... ITEM 9-d**  
**A RESOLUTION APPROVING THE SUBMITTAL OF A 2007-2008 FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM GRANT APPLICATION FOR RECREATIONAL FACILITY IMPROVEMENTS WITHIN ANTHONY PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT APPLICATION; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:15 a.m.). In response to Council Member Sorey, City Manager Robert Lee confirmed that Items 9-d and 9-f both relate to the same restroom facilities and that any grant funding received would not be impacted.

**MOTION by Sorey to APPROVE RESOLUTION 06-11312 as submitted; seconded by MacIlvaine and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-absent, Barnett-yes).**

**RESOLUTION 06-11313..... ITEM 9-f**  
**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND COASTAL CONSTRUCTION MANAGEMENT OF SOUTHWEST FLORIDA, INC., FOR THE CONSTRUCTION OF AN ADDITION AT THE EXISTING ANTHONY PARK ACTIVITY BUILDING CONSISTING OF AN ENTRY AREA AND TWO NEW RESTROOMS (THE HVAC SYSTEM AND UNDERGROUND UTILITIES UP TO FIVE FEET FROM THE BUILDING WILL BE INSTALLED BY THE FACILITIES MAINTENANCE DIVISION AND ARE EXCLUDED FROM THIS BID); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:16 a.m.) Council Member Taylor noted that her questions had been answered and therefore moved approval.

**MOTION by Taylor to APPROVE RESOLUTION 06-11313 as submitted; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**RESOLUTION 06-11314..... ITEM 9-k**  
**A RESOLUTION APPROVING A FIFTH AMENDMENT TO THE CONTINUING CONTRACT BETWEEN THE CITY OF NAPLES AND TETRA TECH, INC.,-HARTMAN AND ASSOCIATES, INC., TO PROVIDE PROFESSIONAL PERMITTING, BIDDING AND CONSTRUCTION ADMINISTRATION SERVICES FOR TWO WATER PRODUCTION WELLS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE**

**FIFTH AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:17 a.m.). Council Member Taylor noted that her questions had been answered and Council Member Sorey asked whether any regulations pertained to septic tanks located above a well field. Construction Management Director Ron Wallace explained that a 75-foot separation would be necessary between the well field and the septic tanks for any future construction.

**MOTION by Taylor to APPROVE RESOLUTION 06-11314 as submitted; seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**RESOLUTION (Continued) ..... ITEM 9-m**  
**A RESOLUTION APPROVING RENEWAL OF GROUP MEDICAL, PRESCRIPTION, VISION AND STOP LOSS INSURANCE THROUGH CIGNA; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:19 a.m.). Council Member Price requested information on the reasoning that had been involved in the decision to change insurance carriers to Cigna, pointing out his dissatisfaction with the service rendered by Cigna, a situation that he said he had also discovered with other users. He requested a continuance in order to research other options. Council Member Taylor also expressed her displeasure with Cigna, relating conversations with area providers ~~that had not reflected favorably on~~ concerning the insufficiency of Cigna's reimbursement policy. ~~dependability with regard to disbursements.~~

In response to Mayor Barnett, Risk Manager Lori Parsons said that in order to change carriers it would be necessary to undertake another RFP (request for proposals) process and to request from Cigna a month-by-month continuance of coverage for approximately three months beyond October 1. She also said that while feedback from the employee health care committee had been fairly positive, it had been in comparison to dissatisfaction with the services of a prior carrier. Various Council Members expressed surprise at this comment. In a brief discussion regarding the cost comparisons provided, Council Member Taylor suggested that the City consider rejoining the consortium involving Collier County, the School Board, the Sheriff's Department and Naples Community Hospital in an effort for better coverage at a lower cost.

Council Member Sorey and Mayor Barnett stated that they share their colleagues' concerns regarding the Cigna coverage but, due to time constraints, Mayor Barnett requested that Council Members convey specific issues to staff so that action could be taken at the next regular meeting. Miss Taylor suggested polling City employees with regard to their satisfaction with Cigna, and Mr. Price asked for an explanation as to why United Health Care, which had in fact presented a lower cost, had not been selected by the committee over Cigna. Mr. Sorey suggested offering Cigna an opportunity to respond to service concerns and to contact area physicians regarding reimbursement issues.

**MOTION by Barnett to CONTINUE ITEM 9-m TO SEPTEMBER 20, 2006, REGULAR MEETING; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**RESOLUTION 06-11315..... ITEM 9-n**  
**A RESOLUTION APPROVING THE CITY'S PROPERTY, LIABILITY, AND WORKERS' COMPENSATION INSURANCE PROGRAM, PROVIDING FOR THE PAYMENT OF PREMIUMS AND ESTABLISHING THE SELF-INSURANCE LOSS FUND FOR FISCAL YEAR 2006-07; AUTHORIZING THE CITY MANAGER TO**



**ISSUE PURCHASE ORDERS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:35 a.m.).

***MOTION by Price to APPROVE RESOLUTION 06-11315 as submitted; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**RESOLUTION 06-11316.....ITEM 9-r**  
**A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2005-06 BUDGET ADOPTED BY ORDINANCE 05-10962, FOR THE PURPOSE OF APPROPRIATING FUNDING FOR INCREASE IN PROFESSIONAL AND LEGAL SERVICES IN THE LEGAL DEPARTMENT'S BUDGET; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:35 a.m.) Council Member Price noted that his questions had been answered and that he would therefore recommend approval.

***MOTION by Price to APPROVE RESOLUTION 06-11316 as submitted; seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**ORDINANCE 06-11317.....ITEM 10**  
**AN ORDINANCE PERTAINING TO THE CODE OF ORDINANCES, CITY OF NAPLES; RECODIFYING, RE-ADOPTING AND REENACTING SAID CODE FOR THE CITY OF NAPLES, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:36 a.m.).

**Public Comment:** (10:37 a.m.) **Attorney Richard Yovanovich, 4001 Tamiami Trail North,** said that he believed changes in Section 2-571 pertaining to the Fifth Avenue South Action Committee, formerly the Staff Action Committee (SAC), had not been approved by City Council to be included in the recodification. City Attorney Pritt said he believed however that the changes reflected an approval by Council on June 14. He further explained that the issue of dual office holding had been a consideration in this regard, but recommended that Council consider this matter at a future meeting. Council Member Price said that it was his recollection that the matter of the powers of SAC/FASAC were to come before Council after the summer recess for possible amending; Council Member Willkomm agreed and further said that he felt strongly that SAC works well, although if necessary he would resign his position as a City Council delegate on the committee so that the powers of SAC could be retained.

Council Member Taylor however said that she believed that the changes were in fact the direction of Council, and Council Member Sorey agreed, citing what he described as multiple memos from City Attorney Pritt. Miss Taylor cited the need to remove a staff member from the committee to allow staff to communicate freely. Mr. Yovanovich said that he concurred with this aspect of the changes and agreed that the Council member should be ex officio, non-voting; however, he said, the changes reflected in the Council's meeting minutes of June 5 did not involve the powers of FASAC and that this aspect was to be considered after the Council's summer recess.

City Attorney Pritt stated that he feels FASAC, Community Redevelopment Agency Advisory Board (CRAAB), Design Review Board (DRB) and possibly the Planning Advisory Board (PAB) may have overlapping jurisdiction and that Council at some future time address this issue. He suggested that the amended Code as presented be approved with the understanding that any changes could then be addressed at a later date, stressing that this new Code would not become effective for 30 days following approval.

Mr. Yovanovich however recommended that only the changes reflected in the June 5, 2006, minutes be adopted and that any other changes be held in abeyance for a later discussion. At that time he read into the record the following excerpt from the June 5 minutes: “Mr. Pritt suggested proceeding with the name change, maintaining a Council Member ex officio on the committee, and removing the staff member. This, he said, would allow the recodification ordinance to proceed to second reading with further amendments regarding the powers of the committee in question anticipated at a later date.” Council Member Taylor pointed out that if this were done, the entire recodified Code of Ordinances must be returned to first reading status; City Attorney Pritt agreed. She suggested instead a workshop discussion with FASAC members present, further setting the ordinance for amendment at that time if necessary. Mr. Price said that his recollection of the matter matched the excerpt from the minutes read into the record by Attorney Yovanovich and that substantial changes to the powers of the committee had in fact been delayed; therefore, he said he could not support the recodification ordinance in its present form. Mr. Pritt however restated his belief that the changes reflected Council’s direction, but if not, the ordinance could be changed. Miss Taylor again noted that she believed that the changes reflected a need to protect committee members from dual office holding issues and reiterated her desire for a detailed workshop discussion. Mr. Pritt then noted that whether this ordinance was adopted during this meeting or not, a discussion regarding dual office holding should be put on a future agenda, noting that new State legislation of which Council should be aware.

**Public Comment: (cont.) (10:59 a.m.) Sue Smith, 11<sup>th</sup> Avenue South**, urged Council to delay adoption until further discussion regarding the above comments. **Henry Kennedy, Pelican Avenue**, said that he strongly felt the changes discussed above should be further reviewed before the recodifying ordinance is adopted. Council Member Sorey however pointed out that numerous public hearings had taken place and that he personally had invested hours in reviewing the changes and that they reflected the public record; he recommended moving forward with the adoption. Miss Taylor also pointed out that the Code of Ordinances was in need of updating to reflect State legislative changes and had been done by a company specializing in this type of work, followed by City Attorney review. She concluded by noting a timeline of the recodification process provided by staff (Attachment 2).

***MOTION by MacIlvaine to ADOPT ORDINANCE 06-11317 as submitted; seconded by Sorey and carried 6-1, all members present and voting (Sorey-yes, Price-no, MacIlvaine-yes, Willkomm-yes, Taylor-yes, Nocera-yes, Barnett-yes).***

During the above roll call, Council Member Sorey said that if changes were needed, this could be done in the future. Council Member Price however maintained that the changes noted in the above discussion did not comport with his recollections and therefore he could not vote approval. Council Member Willkomm agreed with Mr. Price’s comments with reference to SAC, but said that he would vote to adopt, with the understanding that this concern would be addressed by Council as soon as possible. Council Member Taylor, Vice Mayor Nocera, and Mayor Barnett, while voting yes, also expressed the desire for further discussion of the above stated concerns.

**Recess: 11:18 a.m. to 11:29 a.m. It is noted for the record that all Council Members were present when the meeting reconvened.**

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**EXECUTIVE SESSION.....ITEM 6**  
(11:30 a.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to Marine Industries Association of Collier County, Inc., v. Florida Fish and Wildlife Conservation Commission and City of Naples.

**Executive Session: 11:30 a.m. to 11:39 a.m. It is noted for the record that all Council Members were present when the meeting reconvened. There was no action taken on this item.**

**EXECUTIVE SESSION.....ITEM 7**  
(11:39 a.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to Biasella v. City of Naples.

**Executive Session: 11:39 a.m. to 11:58 a.m. It is noted for the record that all Council Members were present when the meeting reconvened. There was no action taken on this item.**

**EXECUTIVE SESSION.....ITEM 8-a**  
(11:58 a.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to Biasella v. City of Naples and Russell Ayers.

**Executive Session: 11:58 a.m. to 12:11 p.m. It is noted for the record that all Council Members were present when the meeting reconvened. There was no action taken on this item**

**EXECUTIVE SESSION..... ITEM 8-b**  
(12:11 p.m.) Mayor Barnett advised that Council would enter into an executive session pertaining to A&B Charters, Inc., Byron C. Thomas, and Jeffrey Player v. City of Naples.

**Executive Session: 12:11 p.m. to 12:33 p.m. It is noted for the record that all Council Members were present when the meeting reconvened.**  
(12:34 p.m.)

**MOTION by Taylor to PURSUE NO FURTHER ACTION REGARDING ADDITIONAL APPEALS PERTAINING TO A&B CHARTERS, INC., BYRON C. THOMAS, AND JEFFREY PLAYER V. CITY OF NAPLES, CIRCUIT COURT CASE NO. 04-2386-CA; seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**It is noted for the record that Item 21, 11, and 12 were considered concurrently; titles were read by City Attorney Robert Pritt at 12:35 p.m.**

**RESOLUTION 06-11318.....ITEM 21**  
**A RESOLUTION AUTHORIZING CLOSURE OF THE 15' NORTH-SOUTH ALLEY BETWEEN 868 AND 878 FIFTH AVENUE SOUTH, LOCATED IMMEDIATELY WEST OF 878 FIFTH AVENUE SOUTH, TO VEHICULAR THROUGH TRAFFIC FOR AN INDETERMINATE PERIOD; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 06-11319.....ITEM 11**  
**A RESOLUTION DETERMINING OUTDOOR DINING PETITION 06-ODPB1 FOR OUTDOOR DINING ON PUBLIC PROPERTY FOR CAMBIER PLACE LOCATED AT 868 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 06-11320.....ITEM 12**

**A RESOLUTION DETERMINING SAC WAIVER 06-SAC2 FROM SECTION 58-1134 (c)(4)(FORMERLY SECTION 102-1095(c)(4)) OF THE CODE OF ORDINANCES WHICH REQUIRES SEATING FOR OUTDOOR DINING TO LEAVE A FIVE FOOT PEDESTRIAN PASSAGE BETWEEN THE OUTDOOR DINING AND RIGHT-OF-WAY LANDSCAPING OR PAVED ROADWAY FOR OUTDOOR DINING AT CAMBIER PLACE LOCATED AT 868 FIFTH AVENUE SOUTH; AND PROVIDING AN EFFECTIVE DATE.** City Attorney Robert Pritt noted that Item 11 and 12 are quasi-judicial and recommended that the three matters under consideration at that time be treated as such. City Clerk Tara Norman administered an oath to those intending to offer testimony; all responded in the affirmative. Council Members offered the following ex parte disclosures: Nocera, Barnett and Sorey/visited the site but no contact; Taylor and MacIlvaine/familiar with the site but no contact; Price/visited the site and contact with the petitioner's agent; and Willkomm/visited the site, spoke with petitioner's agent and was present when these items were before the Staff Action Committee (SAC), of which he is a member.

Community Development Director Robin Singer gave an electronic presentation and explained that four petitions are required to enable the plan to go forward, three of which are in that day's meeting packet (see also Attachment 3). (It is noted for the record that documentation and exhibits pertaining to these items and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.) In the future, a conditional use permit would be required if the petitioner wished to position seating in the alley since this is not included in the 100 square feet in question; seating would then involve a total of 291 square feet if in the future the alley area is requested. Despite several establishments on Fifth Avenue South having been grandfathered with reference to dining in the right-of-way, staff feels that the approval process being undertaken is appropriate. Director Singer in addition noted that with the alley conversion to pedestrian use only, configuring of curbing would be changed and landscaping adapted to accommodate seating and the movement of servers; therefore staff recommends that the Fire Marshal convey final approval of the landscaping changes due to concerns regarding a clear and visual egress from the second floor entrance. The first petition concerns only that portion of the right-of-way adjacent to the building, she said; the south end of the alley would retain vehicular use because it serves other buildings. In conclusion, she pointed out that SAC had reviewed and approved this plan and also that Public Works had reviewed and approved it in conjunction with a public right-of-way petition.

Council Member Sorey asked whether pedestrian traffic had been estimated should a parking garage be constructed at Sixth Avenue South and Eight Street. Director Singer stated that Traffic Engineer George Archibald had reviewed this petition and had determined that the alley being converted to pedestrian use would benefit the community, that a future parking garage had been taken into consideration, and that no problems were anticipated with pedestrian traffic. Council Member Taylor questioned whether approving seating in this location would set a precedent, but Director Singer said that while the actual alley seating for this petitioner would be considered at a future date, each such petition would be considered on its own.

In response to Council Member MacIlvaine, Ms. Singer explained that an annual charge is in fact made for use of public property for outdoor dining and that there are no parking requirements associated with outdoor dining on Fifth Avenue South.

City Attorney Pritt reported that clauses were inserted into the resolution to deal with his concern that a permanent alley closure was being affected without vacating the right-of-way involved. Mr. Pritt also noted that should the petition in question be approved, a public right-of-way use permit would be required containing its own conditions. Mr. Pritt also noted that in conjunction with granting permission for the Hotel Escalante to gate and improve an alleyway, the City had made it clear that the hotel would assume any risks associated therewith.

**MOTION by Nocera to APPROVE RESOLUTION 06-11318 (Item 21) as submitted; seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

Attorney John Passidomo, agent for the petitioner, presented diagrams to illustrate alleyway improvements proposed, such as those implemented by Vergina's, and asserted that the petitioner understands the risk undertaken as referenced above. He continued that the purpose of the design is to create a pedestrian via from the proposed parking garage which would prevent pedestrians from entering the path of vehicular traffic. Mr. Passidomo concluded by saying that uses of this sort are a common occurrence in the Fifth Avenue South area. Mayor Barnett agreed that this concept goes well with existing establishments, but Council Member Sorey asked whether palm trees were to remain and whether the petitioner would be willing to use five instead of six tables, and whether the tables could be anchored. Mr. Passidomo said that the date palm in question will be replaced since it is dying and that the petitioner would be willing to review the stability of the tables with staff if deemed necessary.

**MOTION by Nocera to APPROVE RESOLUTION 06-11319 (Item 11) with the following conditions: 1) petitioner is to replace the existing date palm; and 2) review the stability of tables with staff. This motion was seconded by Willkomm and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**MOTION by Taylor to APPROVE RESOLUTION 06-11320 (Item 12) as submitted; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**RESOLUTION 06-11321.....ITEM 20-a(1)  
A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 3 TO THE CITIZENS' POLICE REVIEW BOARD FOR THE BALANCE OF A TWO-YEAR TERM EXPIRING MARCH 16, 2008; AND PROVIDING AN EFFECTIVE DATE.** Title read by city attorney Robert Pritt (1:16 p.m.).

**MOTION by Taylor to NOMINATE Stella Hackel-Sims to The Citizens' Police Review Board (Sector 3); unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**RESOLUTION 06-11322.....ITEM 20-a(2)  
A RESOLUTION APPOINTING ONE RESIDENT OF POLICE PATROL SECTOR 5 TO THE CITIZENS' POLICE REVIEW BOARD FOR THE BALANCE OF A TWO-YEAR TERM EXPIRING MARCH 16, 2008; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:16 p.m.). Deputy City Clerk Jessica Rosenberg clarified that Ms. Hackel-Sims would be representing Police Patrol Sector 5 and Nicholas Calvin Sector 3; therefore Council Member Taylor made the following motion:

**MOTION by Taylor to RECONSIDER NOMINATION for The Citizens' Police Review Board (Sector 3); seconded by Nocera and unanimously carried, all**

*members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).*

**MOTION** by Taylor to **NOMINATE Nicholas Kalvin** to the Citizens' Police Review Board (Sector 3); *unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).*

**MOTION** by Taylor to **NOMINATE Stella Hackel-Sims** to The Citizens' Police Review Board (Sector 5); *unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).*

RESOLUTION (Withdrawn-See Item 4) ..... ITEM 20-b

RESOLUTION 06-11323..... ITEM 20-c(1)

**A RESOLUTION APPOINTING ONE COMMISSIONER TO THE CITY OF NAPLES AIRPORT AUTHORITY FOR A FOUR-YEAR TERM COMMENCING SEPTEMBER 6, 2006, AND EXPIRING SEPTEMBER 5, 2010; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:18 p.m.)

**MOTION** by Barnett to **NOMINATE Eric West** to the City of Naples Airport Authority; *failed 5-2, all members present and voting (Taylor-no, Willkomm - no, Sorey-yes, Nocera-no, MacIlvaine-no, Price-no, Barnett-yes).*

**MOTION** by Willkomm to **NOMINATE John Allen** to the City of Naples Airport Authority; *carried 6-1, all members present and voting (Willkomm-yes, Nocera-yes, MacIlvaine-yes, Taylor-yes, Price-yes, Sorey-no, Barnett-yes).*

RESOLUTION 06-11324..... ITEM 20-c(2)

**A RESOLUTION APPOINTING ONE COMMISSIONER TO THE CITY OF NAPLES AIRPORT AUTHORITY FOR A FOUR-YEAR TERM COMMENCING SEPTEMBER 6, 2006, AND EXPIRING SEPTEMBER 5, 2010; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:21 p.m.).

**MOTION** by Sorey to **NOMINATE Donald Peacock** to the City of Naples Airport Authority; *failed 5-2, all members present and voting (Sorey-yes, Taylor-no, Price-no, Willkomm-no, Nocera-no, MacIlvaine-no, Barnett-yes).*

**Public Comment:** (1:23 p.m.) Robert Bennett, 285 W. Naomi Drive, spoke in favor of Donald Peacock as a candidate to the Naples Airport Authority (NAA). Scott Cameron, 690 Banyan Circle, President of Friends of the Naples Airport, noted the high caliber of interviewees for the positions available on the NAA (see September 5, workshop minutes). He said that he supported reappointing Eric West, noting that term limits should not be considered in the midst of appointments.

**MOTION** by Willkomm to **NOMINATE James Lennane** to the City of Naples Airport Authority; *unanimously carried, all members present and voting (Taylor-yes, Nocera-yes, MacIlvaine-yes, Price-yes, Sorey-yes, Willkomm-yes, Barnett-yes).*

In response to Council Member Sorey, Mayor Barnett indicated that it had been an oversight that public comment had been overlooked prior to nominations.

..... ITEM 22

**REQUEST FOR RECONSIDERATION OF VARIANCE PETITION 06-V8 (Requested by Council Member Sorey).** (1:29 p.m.). City Attorney Robert Pritt read into the record the criteria for requesting reconsideration of an item (City Council Resolution 98-8218). If this request is

not approved by a majority vote during that meeting, the matter is considered concluded, he added, and further explained that if approved for reconsideration by a majority vote, this matter would be heard at the next regularly scheduled City Council meeting; all persons who initially spoke regarding the matter originally would be notified by the City Clerk's Office of the intent to reconsider the item. Mr. Pritt cautioned that no testimony be heard since Council is merely to determine whether this petition is to be reconsidered.

**Public Comment:** (1:32 p.m.) **Harold Oldak, 1700 Dolphin Court**, stated that he lives next door to the project in question and asked Council to consider the impact to the neighbors if this project goes forward. He also presented to Council a book entitled *Stand for Something* by John Kasich. **Henry Kennedy, Pelican Avenue**, urged that this item not be reconsidered, stating that he believes the project also encroaches into the rear setback. Vice Mayor Nocera stated that it is Council's duty to consider each variance request on its own merits. Council Member Willkomm said that he believed new information existed and should be heard, although this should not be interpreted that he would change his vote in any way. Council Member MacIlvaine said that while every case is judged on its own merits, it in reality has a bearing on any similar case to follow. Council Member Taylor said that she feels that the criteria for granting a variance in this case had not been met. Council Member Sorey noted that Council has the responsibility to listen to its citizens and that he feels strongly that if new information is brought to light, a petitioner has the right to be heard. Mayor Barnett noted that the reconsideration policy was intended for circumstances such as these.

**MOTION by Sorey to RECONSIDER Variance Petition 06-V8 regarding 1680 Dolphin Court; seconded by Willkomm and carried 5-2, all members present and voting (Nocera-yes, Sorey-yes, Taylor-no, MacIlvaine-no, Willkomm-yes, Price-yes, Barnett-yes).** Editor's Note: Pursuant to the Council's policy (Resolution 98-8218), the matter to be reconsidered is to be heard at the next regularly scheduled meeting; in this case, this item appeared on the City Council regular meeting agenda of September 20, 2006.

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**It is noted for the record that Items 14-a and 14-b were considered concurrently; titles were read by City Attorney Robert Pritt at 1:52 p.m. It is also noted that Council Member MacIlvaine left the meeting at 1:52 p.m.**

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**RESOLUTION (Continued) .....ITEM 14-a**  
**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 06-LE2 FOR LIVE ENTERTAINMENT AT CJ'S BOARDWALK BAR AND GRILL LOCATED AT 1100 SIXTH AVENUE SOUTH #10, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION (Continued) ..... ITEM 14-b**  
**A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 06-RIS6 TO ALLOW LIVE ENTERTAINMENT AT CJ'S BOARDWALK BAR AND GRILL LOCATED AT 1110 6<sup>TH</sup> AVENUE SOUTH #10, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/visited the site, spoke with petitioner's agent James Maguire and Race Garcella, a tenant at the site; Price/spoke with petitioner's agent, Mr. Maguire and received letters concerning this item; Nocera/familiar with the site and spoke with Mr. Maguire; Barnett/ visited the site and spoke with Messrs. Maguire, Scarcella, and Bowie and Ann Barrows, President of Marina Manor; Taylor/familiar with site and has dined at the

restaurant, spoke with Mr. Maguire and in 2002 had an election victory celebration at the site; and Sorey/visited the site and spoke with Agent Maguire, and had received numerous telephone calls and letters regarding this item.

Planning Administrator Stephen Olmsted stated that staff was recommending denial due to previous citations; however, the applicant had submitted a revised proposal noting a reduction in hours and number of entertainers as well as letters recommending that these petitions be granted. (It is noted for the record that documentation and exhibits pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.) Nevertheless, he said, staff is still concerned with noise, although noting that no citations since February of 2005 had been written concerning the establishment. James Maguire, agent for the petitioner, noted additional petitions and letters of recommendation and read into the record a letter from the petitioner (see Attachment 4). He stated that no new complaints had been received for the past seven months and that errors in judgment had occurred during the first months of the new ownership. Mr. Maguire then presented photos of the establishment and surrounding area (copies of which are contained in the file for this meeting in the City Clerk's Office), noting the landscaped buffer and the distance between the establishment and residential areas. Discussion followed regarding hours of operation, the number of entertainers permitted inside and outside the establishment, and also allowable seating in those areas. Fire Marshal James Rivard stated that 56 persons would be permitted, but if music is allowed, a seating plan should be approved by his staff. In response to Council Member Willkomm, Fire Marshal Rivard explained that the exits would be reviewed, and if the doors are to be closed during the live entertainment, any seating over 50 persons is considered an assembly which requires two exit doors. He further stated that he considers this an intense use of the premises.

Council Member Taylor said that she could not support such an intense use in a primarily residential area and that this intensity must be addressed before further Council discussion on the item. Council Member Willkomm asked Miss Taylor whether she would support the petition if the amount of entertainment were limited. She said that she would because Council is dealing with the viability of a business enterprise and that the sound could be monitored due to its location at the boardwalk area, allowing the permit to be revoked if that is warranted. Mayor Barnett reported a communication from the Marina Manor complex to the effect that owners there had not been afforded the opportunity to express an opinion regarding the petitioner's amended requests which, he said, was an important part of Council's decision making process. Vice Mayor Nocera then ascertained from Mr. Maguire that the petitioner would be willing to limit the number of entertainers to three. Council Member Sorey pointed out that past infractions, having been rectified, should not be held against the present owner; therefore he moved approval. City Manager Robert Lee pointed out that Police Officer Buddy Bonollo, who investigated the complaints, was present and that live entertainment had not been allowed at the establishment for the past seven months.

**Public Comment: (2:24 p.m.) Raymond Bowie, 705 Tenth Street South, #202, attorney for and director of the Victor del Ray Condo Association,** stated that these units are the closest residences to CJ's and therefore the most impacted. He contended that noise complaints had in fact occurred under the current ownership and urged denial of these petitions.

Officer Bonollo explained that he had met with Mr. Maguire on three separate occasions, that he has aided Mr. Maguire in measuring noise levels to the property lines, and that live entertainment in the outside breezeway area had not been mentioned during any of the aforementioned



meetings. He said he strongly opposed live entertainment in this area and that egress and ingress would in his opinion create a fire hazard. If all doors and windows were kept closed, he further said, then the interior room would support live entertainment, however any outside entertainment would in his view constitute a fire hazard. Officer Bonollo also stated that the owner had been informed but chose to ignore the permitting process. After enumerating the various requirements and restrictions for indoor and outdoor entertainment in proximity to a residential zone, Mr. Olmsted recommended that if this item were to be continued, staff work with the petitioner to rectify the issues raised.

***MOTION by Sorey to CONTINUE Live Entertainment Petition 06-LE3 and Residential Impact Statement Petition 06-RIS7 to October 4, 2006, meeting. This motion was seconded by Taylor and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

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**Recess: 2:42 p.m. to 2:55 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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**RESOLUTION 06-11325.....ITEM 13**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU4 TO ALLOW FOR CONSTRUCTION OF A 14' X 14' CHICKEE THAT WILL ENCROACH 5' INTO THE REAR YARD SETBACK LOCATED AT 1725 CRAYTON ROAD, MORE FULLY 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 (2:55 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Price, Nocera, Barnett and Taylor/no contact; and Sorey/visited the site and spoke with the petitioner. Planning Administrator Stephen Olmsted presented this item, saying that ordinarily a 30-foot rear yard setback is required in the R1-15 Residence District and that the petitioner proposes to place a chickee that will encroach 5 feet into this setback. He continued by citing Section 110-54 of the Code of Ordinances, which allows construction of a chickee in a rear yard setback without a variance; the Planning Advisory Board (PAB) recommended approval on August 9, by a vote of five-to-one, and staff recommends approval also, he said. Petitioner Michael McCormick clarified for Council that the proposed structure is to be built entirely on his lanai on a diagonal, which results in one corner of the chickee, not the entire structure, encroaching five feet into the setback.

***MOTION by Taylor to APPROVE RESOLUTION 06-11325 as submitted; seconded by Willkomm and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

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**It is noted for the record that Items 15-a and 15-b were considered concurrently; titles were read by City Attorney Robert Pritt at 2:58 p.m.**

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**RESOLUTION 06-11326.....ITEM 15-a**  
**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PETITION 06-LE3 FOR LIVE ENTERTAINMENT AT BAMBUSA BAR AND GRILL LOCATED AT 600 GOODLETTE ROAD NORTH, #111, #112 AND #113, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 06-11327.....ITEM 15-b**  
**A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 06-RIS7 TO ALLOW LIVE ENTERTAINMENT AT BAMBUSA BAR AND**

**GRILL LOCATED AT 600 GOODLETTE ROAD NORTH, #111, #112 AND #113, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm and Nocera/no contact; Price/spoke with petitioner; Barnett/familiar with the site; Taylor/familiar with the site and spoke with the petitioner in the past regarding fallen trees; and Sorey/visited the site but no contact. Planning Administrator Stephen Olmsted presented this item explaining that the live entertainment involved karaoke within the enclosed building and noting that the Police & Emergency Services and other staff are recommending these petitions for approval. Council Member Sorey asked whether a seating plan was necessary as discussed earlier during the proceedings (see Item 14 above) to which Mr. Olmsted said that a seating plan had been submitted with the application and that it had been reviewed by the Fire Marshal. Petitioner Mel Biondi explained that a total of 150 persons could be seated and that the structure has a total of five exits, adding that the Fire Marshal had inspected the establishment.

***MOTION by Sorey to APPROVE RESOLUTION 06-11326 (Item 15-a) with the conditions of Section 2, 1-5 being met; seconded by Taylor and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

***MOTION by Taylor to APPROVED RESOLUTION 06-11327 (Item 15-b) with the conditions of Section 2, 1-4 being met; seconded by Price and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**ORDINANCE (First Reading).....ITEM 16**  
**AN ORDINANCE AMENDING SUBPARAGRAPHS (a) AND (c)(2)d. OF SECTION 56-126 AND SUBPARAGRAPHS (a), (b), (c) AND (d)(2)i. OF SECTION 56-127 OF THE CODE OF ORDINANCES PERTAINING TO OUTDOOR DINING IN ORDER TO ALLOW OUTDOOR DINING FOR ALL RESTAURANTS AND EATING ESTABLISHMENTS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:04 p.m.). Council Member Taylor noted that she had ascertained that grocery stores are in fact included but asked whether they would have to undertake the usual procedure for obtaining an outdoor dining permit. Community Development Director Robin Singer explained that the Planning Advisory Board (PAB) had suggested that establishments wanting to extend the dining area beyond the 100 square foot area adjacent to the structure should undergo the usual permitting process. Council Member Sorey confirmed with Director Singer that this ordinance would exclude the Fifth Avenue South Special Overlay District. City Attorney Pritt agreed.

***MOTION by Taylor to APPROVE THIS ORDINANCE on First Reading; seconded by Price and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

**ORDINANCE 06-11328.....ITEM 17**  
**AN ORDINANCE AMENDING SUBSECTIONS (10) AND (12) OF SECTION 106-104, NUMBER OF PARKING SPACES, OF THE CODE OF ORDINANCES IN ORDER TO AMEND THE PARKING REQUIREMENTS FOR MEDICAL OFFICE AND MULTIFAMILY DWELLING UNITS TO ACCOMMODATE SEASONAL INCREASES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:07 p.m.). Mr. Pritt then

confirmed that the number of spaces required was subject to change if necessary and Council Member Taylor said that she feels that the requirements, especially where condominiums are concerned, will indeed warrant amendment.

**MOTION by Sorey to ADOPT ORDINANCE 06-11328 as submitted; seconded by Taylor and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**ORDINANCE (First Reading).....ITEM 18**  
**AN ORDINANCE AMENDING SECTION 46-70(c) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF REVISING RULES AND REGULATIONS TO ALLOW ANIMALS IN CITY PARKS; PROVIDING FOR A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:08 p.m.). Council Member Taylor requested the wording be added to ban pets within the playground areas of City parks.

**MOTION by Nocera to APPROVE THIS ORDINANCE on First Reading with the following amendment to Section 1(c): “...Animals are not permitted in playground areas. Animals are not allowed on any city beach.” This motion was seconded by Barnett and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**ORDINANCE 06-11329.....ITEM 19**  
**AN ORDINANCE AMENDING SECTION 62-37, SPEED RESTRICTIONS, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES IN ORDER TO ESTABLISH SPEED LIMITS ON LOCAL RESIDENTIAL CITY STREETS; AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO INSTALL APPROPRIATE SIGNAGE; AND PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:14 p.m.) who noted Council’s previous discussion (August 16, 2006) regarding defining streets wherein Council has the ability to lower speed limits per state mandates. Following a traffic study, residential local street speed limits may be lowered, but not collector streets which must remain at 35 miles per hour (mph). Council Member Willkomm noted that numerous residents had told him that they do not support the lowering of speed limits; therefore he asked whether present limits could be reinstated if the new speeds were found to be unnecessary. City Attorney Pritt indicated that the ordinance could in fact be amended on a street-by-street basis with no necessity for additional traffic studies. Council Member Sorey stressed that the enforcement of the new limits would be essential and asked whether the 25 mph posted at the Naples Beach Hotel and Golf Club on Gulf Shore Boulevard North is deemed a legal posting and therefore enforceable. Vice Mayor Nocera noted that Gulf Shore actually remains 30 mph.

**Public Comment:** (3:23 p.m.) **Matt Joiner, 2625 13<sup>th</sup> Street North**, questioned the validity of the proposed reduction except in areas heavily used by pedestrians; however, he also urged that the current speed limits be enforced. **Sue Smith, 11<sup>th</sup> Avenue South**, agreed with the previous comments, noting that she feels other issues are more important from the standpoint of safety such as sidewalk and pathway installation.

Mayor Barnett pointed out that overwhelming support from the public had been indicated for the speed limit reductions and that this was a project that had been studied and researched thoroughly by staff.

**MOTION by Sorey to ADOPT ORDINANCE 06-11329 as submitted: seconded by Taylor and unanimously carried (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).**

**CORRESPONDENCE and COMMUNICATIONS**.....

Council Member Taylor noted discussion during Item 9-i regarding sewer line repairs and questioned whether during the excavation for the stormwater system underway in the Port Royal area, inspection of existing sewer lines is taking place. She also noted a drainage problem in the north/south alley behind the Shelton auto dealership and the Urology Building which she said is causing erosion of nearby streets. Vice Mayor Nocera and Council Member Willkomm expressed interest in the proposal made earlier in the meeting (Item 5) by Colin Kelly for a Fifth Avenue amphitheatre.

**PUBLIC COMMENT**.....

None.

**ADJOURN**.....

3:31 p.m.

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Bill Barnett, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

---

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: \_\_\_\_\_

*Attachment 1 / Page 1 of 3*

**FAX COVER SHEET**

**RECEIVED**

**SEP 20 2006**

**CITY OF NAPLES  
CITY CLERK**

**From: JA Duke Warriner  
2200 Gordon Dr  
Naples, FL 34102  
Ofc 1-239-262-3214  
Fax 1-239-643-7630**

**RECEIVED**

**SEP - 5 2006**

**CITY MANAGER'S OFFICE**

**Re: Hurricane Wilma/Tree Damages**

**Cover plus (2) pages**

**Message:**

**Please Cc: Mayor  
City Manager  
All City Council Members  
Com. Svcs Dir, Dave Likens  
City Arborist, Joe Boscaglia**



Dr Robt E Lee, City Manager  
City of Naples, Florida  
735 8<sup>th</sup> St. South  
Naples, FL 34102

Re: Informational Meeting  
Tree Removal

Dr. Lee:

8/30/06

Thank you for meeting with us on August 23, 2006. Our discussions involving any potential tree removal was informative. After reviewing the Hazard Tree Report, *we are extremely concerned about the potential for a large number of mature trees in the City's inventory that have been recommended for removal.*

Joe Boscaglia, the City's staff Arborist explained that uprooting, broken branches and bark inclusions were the reasons why most of the trees were listed on the Report. He indicated that there were only 10 to 12 trees listed on the Report that exhibited root problems that would have to be addressed immediately. He went on to say that he did not necessarily subscribe to the notion that broken branches and bark inclusions were a precursor to a tree's decline due to rot and cited instances within the City's inventory where trees had survived for 20 years after sustaining such damage. *He also said that with only a very few exceptions, none of the trees listed in the Report are currently being targeted for removal. Of those exceptions he said, none were on Gordon Dr.*

It is noteworthy that the University of Florida and the USDA's Forest Products Laboratory list the *American Mahogany* as "very rot resistant".

Our research shows that removal of mature Mahogany and Banyan trees can cost from \$3000 to \$10,000.00 per tree depending on the size. The replacement of an 8"-12" Mahogany tree would cost approximately \$5000.00.

We feel that the City should re-assess it's pruning practices to include crown reduction and thinning. If these practices are implemented, the canopy can be reduced by 30%-50%. This would result in a 30%-50% reduction in the sail effect that potentially damaging winds can have on the trees. If this system were in place prior to Hurricane Wilma, it seems logical that as much as 50% of the damage to the City's tree inventory could have been avoided. Accordingly, per the City Council's Workshop of 06/05/06, the Tree Recovery Cost Impact Summary of damages might have been reduced by over \$1,300,000.00.

South Florida, specifically South of Ft Myers is one of the only locations in the lower 48 States where Banyans and Mahoganies are found. To erase them unnecessarily from the landscape would be a travesty. In the past, the City has had a much more active pruning program in place. As a result, through numerous weather events over the past 30-40 years these trees have remained standing. Now however, since the City has adopted a revised program which precludes the most effective pruning techniques, our beautiful Banyan trees, along with Mahoganies and others are falling because of a lack of crown maintenance

Attachment 1 / Page 3 of 3

Joe Boscaglia said that the City currently has some 6000 plus trees in its inventory and an annual tree pruning budget of \$240,000.00. The current pruning schedule calls for 1/3 of the trees to be pruned per year. This equates to less than \$40.00 per year per tree. It is not possible for the City to support any reasonable crown maintenance program of its inventory on any schedule for that price. *We can only conclude that a very limited portion of the City's tree inventory is receiving effective crown maintenance at this time.* The damage assessment speaks for itself.

Given the prohibitive cost of replacement of wind damaged trees on a never ending annual basis, it would seem eminently more logical from a public safety as well as a fiscally responsible point of view, to begin a revised pruning program, the goal of which would be, first to restore the damage to the existing tree inventory and secondly, to insure to the extent possible, that future damages and safety concerns are minimized and the beautiful shaded avenues of Naples, a designated Tree City USA, can remain.

*We were grateful for your promise* that prior to deciding on the removal of any tree, the adjacent homeowners and the affected Property Owners Association *would be contacted and included in the process* and that every effort would be made to conserve the existing mature trees in our neighborhoods.

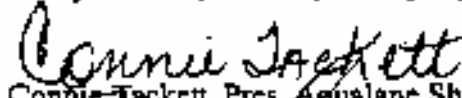
This is an enormously important issue that will affect the City and its residence in perpetuity. We would like to propose the formation of a task force made up of the interested parties and City representatives to formulate a current and future plan of action to save our trees.

Thank you.

Sincerely, Representative Attendees:



Kathy Granoff, Port Royal Property Owners Association



Connie Jackett, Pres. Aquilane Shores Association



Michael DeGroote Estate, Port Royal

Cc: Bill Barnett, Mayor  
Johnny Nocera, Vice-Mayor  
William R. MacIlvaine

John Sorey III  
Penny Taylor  
Bill Willkomm

Gary B. Price II



**TO:** Dr. Robert E. Lee, City Manager  
**FROM:** Robin D. Singer, Community Development Director  
**DATE:** September 5, 2006  
**SUBJECT:** Cambier Place, 868 Fifth Avenue South – Agenda Items 11 and 12

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There are three petitions involving the above address on the September 8, 2006 City Council agenda. Two address the outdoor dining at the front of the proposed new restaurant and the third addresses the alley abutting the east side of the property. The property owner is proposing to reconfigure the landscaped area on Fifth Avenue South to accommodate additional seating and add landscaping at the end of the alley. The Staff Action Committee has reviewed and approved that request subject to the approval of a Right of Way permit by the Public Works Department. The following petition approvals are required to implement the plan as shown:

- 06-ODPB1 -- Outdoor dining establishments in the public right of way exceeding 100 square feet in area require approval of an outdoor dining permit (Section 110-129(b)(1)a.). This approval will cover the seating area both adjacent to the storefront and closer to the right of way. This does not include seating in the alley. The petitioner is aware that a separate petition is required for seating in the alley.
- 06-SAC2 – The code requires that seating in the right of way be located adjacent to the storefront of the restaurant (Section 110-129(c)(1)d. and e. and 102-1095(c)(4)). This requirement reduces conflict between the servers and pedestrian traffic along the sidewalk. The SAC recommended approval of the waiver to allow seating in the landscaped area adjacent to the road. There will be a 5 foot minimum clear path between the seating adjacent to the restaurant and the seating in the landscaped area. Several restaurants have seating not immediately adjacent to the restaurant. Staff is checking the records to confirm approval of these seating arrangements.
- Alley conversion -- Currently the alley abutting the property is paved with asphalt and only 15 feet in width. A minimum of 20 feet is recommended for safe vehicular passage. The SAC approved the proposed improvements to the alley subject to the approval of a Right of Way permit by the Public Works Department and approval of the conversion of the alley to pedestrian use only. This resolution has been discussed in detail between the City Attorney and the attorney for the petitioner to insure that the appropriate mechanism is used in granting this approval.
- Conditional Use Permit – In order to allow outdoor dining in the Fifth Avenue South Overlay District where it does not abut Fifth Avenue South, a conditional use permit is required (Section 102-1095(c)(1)). The petitioners are aware of this requirement and will apply if the alley conversion and improvements are approved.

### RECODIFICATION TIMELINE

- 6/18/03 – Council approved proposal from Municipal Code for Legal Analysis.
- 2/17/04 – Memo to City Manager - Recommendations received from Muni Code and requested input from department directors.
- 2/28/05 – City Council Workshop – Update on recodification. Memo submitted to Council.
- 9/28/05 - Post conference Editorial Memorandum received from Muni Code.
- 12/19/05 - Distribution of Legal Memorandum to Mayor, Council, City Manager, Department heads, Planning Advisory Board and City Clerk requesting comments for the Council Workshop on 1/17/06. Copy of Code available on City's network.
- 1/17/06 - City Council Workshop – Copy of 12/19/05 memo and Legal Memorandum in packet. Code was available for viewing.
- 3/8/06 - Planning Advisory Board approval. (Copies of Code submitted)
- 4/27/06 - Memo to City Council advising Work Proof available in Sunshine Room and City's website.

The following is the text of the letter from petitioner Joseph Pappaceno read into the record of this meeting by Mr. Maguire:

“As owner of CJ’s Boardwalk Bar and Grill on 1100 South Sixth Avenue, I would like to publicly thank the Mayor, City Council, City Manager, Chief of Police, and all the extended staff for listening and studying our recent application regarding live entertainment. As the new owner of CJ’s and the new owner of a business in Naples, some mistakes were made in getting to know the licensing landscape and the restaurant business in general. I adopt an apologist’s posture related to these oversights to our City neighbors, the community at large, the staff and decision makers of City Hall. I remain confident that under Mr. Maguire’s leadership the administration direction we have turned the corner here at CJ’s. My only hope is that I may be able to keep him on board to steer our ship. To our neighbors you are most welcome to our newly managed and owned restaurant.”