



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – December 6, 2006 – 9:00 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor

Council Members:

William MacIlvaine
Gary Price, II
John Sorey, III
Penny Taylor (arrived 9:03 a.m.)
William Willkomm, III (arrived 9:06 a.m.)

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Vicki Smith, Technical Writing Specialist
Tara Norman, City Clerk
Dan Mercer, Public Works Director
Paul Bollenback, Building Official
David Lykins, Community Services Director
Robin Singer, Community Development Director
Adam Benigni, Planner
Tony McIlwain, Planner
Denise Perez, Human Resources Director
John Passidomo
Ted Soliday
Paul Lindabury
Betsy Rutter
Teresa Heitmann
Pam Watson
Sue Smith
Henry Kennedy
Glen Harrell
Charles Glisson
Joan Henry
Matthew Kragh
Will Dempsey
Santa Claus

Dorothy Hirsch
Anita Yehuda
Falconer Jones II
Falconer Jones III
James Lennane
Dottie Craige
Doug Finlay
Judith Chirgwin
Scott Congress
Stephen Gacek
Peter Spears
Lisa Garmon
William Buol
Fran Albergo
Alan Ryker
David Curtin
Alan Mengel
Dave Ball
Tom Selck
Brett Moore
Steve Weiss
Bill Wicka
Shinpei Kuo
Dr. Robert Pettersen

Media: Eric Staats, Naples Daily News
Other interested citizens and visitors

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

Dr. Robert Pettersen, Covenant Presbyterian Church

ANNOUNCEMENTSITEM 3

Mayor Barnett proclaimed November 28, 2006, as American Association of University Women Day in the City of Naples.

SET AGENDA (add or remove items).....ITEM 4

***MOTION** by Taylor to **SET THE AGENDA** continuing Item 6-k (WGPU appropriation) to 12/20/06; continuing Item 7 (Rezone Petition 06-R7 and Residential Impact Statement Petition 06-RIS9 regarding Fourth Avenue South and Fourth Street) to 01/17/07; continuing Item 20 (anchorage ordinance) to 12/20/06; withdrawing Item 23-a (General Pension Board appointment); and continuing Item 23-b(2) (Community Redevelopment Agency Advisory Board (CRAAB) at-large appointment) to 12/20/06. This motion was 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).*

PUBLIC COMMENT (See also Page 4).....ITEM 5

(9:13 a.m.) **Anita Yehuda, 480 Fifth Street South**, questioned the continuance of Item 8 and its order of consideration, saying she felt that Item 8 should be considered prior to Item 7. **Falconer Jones III, 1255 Cobia Court**, requested a delay regarding the consideration of an ordinance pertaining to new Federal Emergency Management Agency (FEMA) regulations due to the resignation of the City's FEMA coordinator. He also expressed concern that the ordinance pertaining to mechanical equipment in side yards (Item 19 below) may be extensively revised during that meeting when additional study would be warranted; Mr. Jones also cited pertinent issues related to stormwater management. Mr. Jones also said that he felt continued discussion of the "D" Downtown zoning requirements could have a chilling effect on future redevelopment projects for that area. **James Lennane, 200 Patriot Way**, attributed a December 4 memorandum by Ted Soliday, Executive Director of the Naples Municipal Airport (Attachment 1), to comments Mr. Lennane had made to Council during its Workshop on that day. As the owner of Continental Aviation Services, Mr. Lennane took issue with reference in the Soliday memo to "draining of petroleum products onto Authority property", which he said was untrue of his facility. Mr. Lennane attested to Continental's adherence to Environmental Protection Agency (EPA) practices and emphasized that his concern had been with the adjacent location of the Collier County Sheriff's Department Special Weapons and Tactical (SWAT) Team facility. He further took the position that Mr. Soliday's action will prove to be a preface to litigation by the Naples Airport Authority (NAA), pointing out that he serves as an NAA Commissioner, and urged that the purported problem be addressed in a reasonable manner. Furthermore, he said he felt that the NAA and Collier County should reconsider the location of the aforementioned facility away from what he termed a 27-year-old septic tank system. He said he felt that the City should become involved, perhaps reviewing the use of the entire parcel. Council Member Willkomm noted that he had recently supported the appointment of both Mr. Lennane and John Allen to the NAA in the hope of alleviating some of the litigation surrounding operation of the airport. In response to Mr. Willkomm, Mr. Lennane said that he frequently finds himself at odds with the longer-term members, Mr. Soliday and NAA's legal counsel. He said that he has also been accused of conflict of interest and unethical behavior. Council Member Price ascertained that the December 4 memo is the first instance wherein the drainage issue of petroleum products

had arisen; he also expressed the belief that the same method of handling drainage of this type had been used for 27 years by all facilities on the airport property. However, he said he believed that heavy truck traffic in conjunction with the SWAT facility construction had compromised this filtration system to an unknown degree. Responding again to Mr. Willkomm, Mr. Lennane confirmed his belief that the declaration of a state of emergency noted in the Soliday memo was unnecessary. Council Member Sorey cautioned that while he appreciated the update provided by Mr. Lennane, the Council should not make decisions which are within NAA's jurisdiction; Mayor Barnett agreed. Council Member MacIlvaine however commented that the airport is City property and therefore subject to its zoning, and Council Member Taylor said that she felt whenever a state of emergency is declared within the City's jurisdiction, it in fact does fall under Council's authority. Miss Taylor encouraged the NAA to avoid litigation and come to an amicable agreement with all parties involved. **Dottie Craige, 388 Fourth Avenue South**, indicated a desire to address Items 7 and Item 8. City Attorney Robert Pritt however stated that testimony pertaining to specific quasi-judicial items is to be heard only during consideration of those items. He suggested that Council however hear Item 7 and Item 8 prior to the Consent Agenda to facilitate public comment; it was agreed that this recommendation would be followed. **Doug Finlay, 3430 Gulf Shore Boulevard North**, expressed support of the proposal regarding a park on the northern end of Keewaydin Island which had been presented during the December 4 City Council Workshop. Also, he recommended that the measurement of mechanical equipment noise be taken at the property line (see Item 19 below). **Stephen Gacek and Peter Spears** waived comment until consideration of Item 7 and Item 8. **Judith Chirgwin, 112 Tenth Avenue South**, suggested the City lease the Women's Club property as a possible solution to parking shortages. (Ms. Chirgwin provided a printed copy of her statement which is contained in the file for this meeting in the City Clerk's Office.) **Alan Ryker and Scott Congress** waived comment at that time. **Ted Soliday, NAA Executive Director**, supported his declaration of a state of emergency regarding the Continental Airlines site (see Attachment 1), stating that he and the Chairman of the NAA had believed it to be necessary, also noting that City Manager Robert Lee was directly notified of the declaration prior to its release. He confirmed his belief that there are serious environmental and ethical issues with regard to this controversy. Council Member Taylor however urged negotiation to resolve the matter. Mr. Soliday further explained that the declaration of the state of emergency, in this instance, was necessary to enable him to enter into contracts for amounts that exceed his spending authority, pending subsequent NAA approval. Council Member Sorey also noted that Council appoints the NAA members but does not manage the NAA; he thanked Mr. Soliday for his update.

(9:56 a.m.) It is noted for the record that Mayor Barnett announced that Item 7 and Item 8 would be considered prior to Item 6 (Consent Agenda); it is also noted that continuance of Items 7-a and 7-b was considered concurrently.

ORDINANCE (Continued-see below).....ITEM 7-a
AN ORDINANCE DETERMINING REZONE PETITION 06-R7 FOR PROPERTY
LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH
STREET SOUTH, MORE FULLY DESCRIBED HEREIN, IN ORDER TO PERMIT
REZONING FROM R3-12 TO PD, PLANNED DEVELOPMENT; APPROVING THE
PLANNED DEVELOPMENT DOCUMENT FOR FOURTH AND FOURTH
ASSOCIATES, LLC; PROVIDING A SEVERABILITY CLAUSE, A REPEALER
PROVISION AND AN EFFECTIVE DATE. Title not read.

RESOLUTION (Continued-see below)..... ITEM 7-b
A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 06-RIS9 IN ORDER TO CHANGE THE ZONING FROM R3-12 TO PD, PLANNED DEVELOPMENT, IN ORDER TO CONSTRUCT A 12-UNIT, MULTI-FAMILY DEVELOPMENT AND MULTI-LEVEL PARKING FACILITY LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Sorey entered a motion that these items be continued and this motion was seconded by Vice Mayor Nocera. Mayor Barnett cautioned public speakers that Council would entertain comments only regarding the continuance of Items 7-a and 7-b to January 17, 2007, not the merits of the items.

Public Comment: (9:57 a.m.) **Anita Yehuda, 480 Fifth Street South**, took issue with the length of the period for which a continuance was being requested and disagreed with the reasons stated in a press release (Attachment 2) issued by the petitioner's attorney, John Passidomo. She asked that Council nevertheless keep the public informed as to the status of this item if a continuance were granted. Mayor Barnett, however, pointed out that the petitioner would be working with City staff, not Council, in the interim period. **Dottie Craige, 388 Fourth Avenue South**, stated that a decision regarding this item should however be rendered as quickly as possible. **Stephen Gacek** waived comment at that time.

MOTION by Sorey to CONTINUE ITEMS 7-a and 7-b TO JANUARY 17, 2007; seconded by Nocera and carried 6-1, all members present and voting (Taylor-yes, Willkomm-yes, Sorey-yes, Nocera-yes, MacIlvaine-no, Price-yes, Barnett-yes).

RESOLUTION (Continued-see below).....ITEM 8
A RESOLUTION DETERMINING AN APPEAL IN ACCORDANCE WITH SECTION 2-571 OF THE CODE OF ORDINANCES FILED BY KENSINGTON GARDENS CONDOMINIUM ASSOCIATION, INC. OF APPROVALS GIVEN TO FOURTH AND FOURTH ASSOCIATES BY THE FIFTH AVENUE ~~STAFF~~ SOUTH ACTION COMMITTEE, SAID PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:04 a.m.); Mr. Pritt also noted for the record that the title should read Fifth Avenue South Action Committee (FASAC) rather than Staff Action Committee. He then explained to Council the following options: 1) consider this item at that time and then determine whether to adjudicate or withhold adjudication; or 2) continue this item to a later date. In response to Council Member MacIlvaine, City Attorney Pritt said that it would be Council's decision whether the rezone and related petition or the FASAC appeal would be heard first. Council Member Price said that it was his understanding that this item is an appeal of a FASAC decision, although the content of the appeal involves the aforementioned petition. City Attorney Pritt pointed out that, in light of the 45-day continuance of Item 7 and possible amendments to the petition, the issue may become moot. Furthermore, he pointed out that should this item be continued, no disclosure of ex parte communication would be necessary at that time and testimony would be restricted to the continuance. Council Member Sorey then moved for continuance of this item to the aforementioned meeting, explaining that while there is a need to be sensitive to the residents of Kensington Gardens, Council's responsibility includes all residents in solving parking issues. Vice Mayor Nocera seconded this motion, however further discussion occurred.

In response to Council Member Price, Planner Adam Benigni pointed out that the appeal is for the conceptual approvals given by FASAC and that final approvals had not yet been given. Mr. Price however noted that approval had also been given for a multi-leveled parking garage, setbacks and lot coverage issues, and architectural embellishments in excess of 42 feet; he in addition requested a review of the adequacy of traffic flow in conjunction with the structure. City Attorney Pritt, however, cautioned that the discussion above was dealing with the merits of the petition (Item 7) and that no further dialog of this nature should take place. Council Member Sorey supported this position, noting a continuance would allow possible changes to take place that in fact could negate this appeal. Council Member Willkomm, a FASAC member who noted that he had participated in the subject approval, also urged continuance, stating that additional information had come to light which would have prompted a change in his position.

Public Comment: (10:20 a.m.) **Anita Yehuda, 480 Fifth Street South**, stated that she strongly objects to continuing the appeal, that it is relevant and not moot unless the petitioner were to withdraw or this appeal were denied. Furthermore, she said that she felt this appeal should be heard before the petition in that if the appeal were sustained, it would be the petition that becomes moot. **Stephen Gacek, 375 Fourth Street South**, said that he urged Council to proceed to consider this item at that meeting. **Peter Spears, 395 Fourth Street South**, Chairman of the Board of the Lantana Condominium Development, said that this complex is located directly across from the proposed structure and that the Lantana organization fully supports the actions of the Kensington Gardens residents. They in fact intend to join any further litigation against the proposed project. He said the matter of the appeal should be heard at that meeting. **Lisa Garmon, 480 Fourth Street South**, asked that this item be considered during that meeting.

**MOTION by Sorey to CONTINUE ITEM 8 TO JANUARY 17, 2007;
seconded by Nocera and carried 4-3, all members present and voting (Sorey-
yes, Taylor-yes, Price-no, Willkomm-no, Nocera-yes, MacIlvaine-no, Barnett-
yes).**

Further discussion followed during which Mayor Barnett requested staff to provide Ms. Yehuda, Mr. Spears, and all other members of the public any written documentation, which falls under public domain, as soon as it is received by Council. City Manager Robert Lee concurred, explaining that staff reports and any other documentation would be transmitted to the aforementioned residents at the time they are provided to Council. Council Member Taylor pointed out that residents are also encouraged to contact the petitioner and/or its agent for additional input or information.

Public Comment (reopened) (10:34 a.m.) **William Buol, 380 Fourth Avenue South**, expressed appreciation for the recently installed sidewalks on Neapolitan Way and urged public input as to where future parking structures could be located to relieve parking shortages.

Recess: 10:35 a.m. to 10:52 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 6-a
October 16, 2006, Workshop; October 18, 2006, Regular Meeting; October 30, 2006, Workshop; November 1, 2006, Regular Meeting; November 13, 2006, Workshop; November 13, 2006, Special Meeting; and November 15, 2006, Regular Meeting, as submitted.

SPECIAL EVENTS ITEM 6-b

- 1) Martin Luther King Parade and Celebration – NAACP Branch of Collier County – Cambier Park – 01/15/07.
- 2) Naples ½ Marathon – Gulf Coast Runners – Cambier Park – 01/21/07.
- 3) Charity Event – Ms. Kimberley Miller – Von Liebig Art Center – 02/17/07.
- 4) Cultural Heritage Celebration – City of Naples – River Park Community Center – 02/24/07.
- 5) St. Patrick’s Day Parade – St. Ann’s Church and St. Patrick’s Day Committee – 03/17/07.
- 6) St. Patrick’s Day Celebration 2007 – McCabe’s Irish Pub and Grill – Sugden Plaza – 03/17/07.
- 7) Kid’s Fishing Clinic – Florida Foundation for Responsible Angling, Inc. and Wildlife Foundation of Florida – Naples Municipal Pier – 06/09/07.

RESOLUTION 06-11452.....ITEM 6-c
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND A PERSONAL TOUCH LAWN SERVICE, INC. FOR CITYWIDE EXPANDED LAWN MAINTENANCE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11453..... ITEM 6-d
A RESOLUTION APPROVING AN URBAN AND COMMUNITY FORESTRY GRANT MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES OF THE STATE OF FLORIDA AND THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE SAME; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11454.....ITEM 6-e
A RESOLUTION APPROVING A FRANCHISE AGREEMENT BETWEEN NAPLES HORSE AND CARRIAGE COMPANY, INC. AND THE CITY OF NAPLES, RELATING TO THE USE OF CITY STREETS AND DESIGNATED CARRIAGE STOPS WITHIN THE LIMITS OF THE CITY OF NAPLES FOR THREE HORSE-DRAWN CARRIAGES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FRANCHISE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11455..... ITEM 6-f
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA, AMENDING THE 2006-07 BUDGET TO APPROPRIATE \$12,000 FOR PROMOTING THE UNDERGROUNDING UTILITY PROJECT STUDY BY PRESENTING THE FINDINGS OF THE STUDY TO THE PUBLIC SERVICE COMMISSION FOR FINAL DETERMINATION OF AN APPROPRIATE CREDIT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11456.....ITEM 6-g
A RESOLUTION APPROVING THE CONTRACT BETWEEN THE CITY OF NAPLES AND THE GOVERNMENT SUPERVISORS ASSOCIATION OF FLORIDA, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 100, AFL-CIO, FOR THE PERIOD OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2009; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11457.....ITEM 6-h(1)
A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NAPLES AND THE GOVERNMENT SUPERVISORS ASSOCIATION OF FLORIDA, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION,

LOCAL 100, AFL-CIO, FOR THE PURPOSE OF RECLASSIFYING THE POSITION OF TECHNICAL WRITING SPECIALIST; AND PROVIDING AN EFFECTIVE DATE.

Title not read.

RESOLUTION 06-11458.....ITEM 6-h(2)

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NAPLES AND THE GOVERNMENT SUPERVISORS ASSOCIATION OF FLORIDA, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 100, AFL-CIO, FOR THE PURPOSE OF RECLASSIFYING THE POSITION OF TECHNICAL WRITING SPECIALIST. Title not read.

RESOLUTION 06-11459..... ITEM 6-i

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT WITH WASTE MANAGEMENT, INC. TO PROVIDE ADDITIONAL CURBSIDE RECYCLING SERVICES; AMENDING THE 2006-07 BUDGET AS ADOPTED BY ORDINANCE 06-11363; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11460..... ITEM 6-j

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND QUALITY ENTERPRISES USA, INC. FOR STORMWATER REPAIR IN THE ALLEY EAST OF 11TH STREET AND 3RD AVENUE NORTH IN RIVER PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION (Cont.)(See Item 4 above) ITEM 6-k

A RESOLUTION APPROVING CONTRIBUTING \$8,000 IN FISCAL YEAR 2007 AS A FINANCIAL PARTNER WITH COLLIER COUNTY GOVERNMENT FOR WGCU PUBLIC BROADCASTING TO PRODUCE THE DOCUMENTARY SERIES “UNTOLD STORIES”. Title not read.

Public Comment: (10:52 a.m.) None.

MOTION by Sorey to APPROVE CONSENT AGENDA except Item 6-k; 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).

END CONSENT AGENDA

It is noted for the record that Items 9-a and 9-b were read and considered concurrently.

RESOLUTION 06-11461.....ITEM 9-a

A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU13 TO ALLOW FOR THE PURCHASE OF AN ADDITIONAL 6 UNITS OF RESIDENTIAL DENSITY IN THE ‘D’, DOWNTOWN ZONING DISTRICT AT 101 8TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITION SET FORTH 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 (10:53 a.m.).

RESOLUTION 06-11462..... ITEM 9-b

A RESOLUTION DETERMINING A RESIDENTIAL IMPACT STATEMENT FOR PETITION 06-RIS14 TO ALLOW FOR THE PURCHASE OF AN ADDITIONAL 6 UNITS OF RESIDENTIAL DENSITY IN THE ‘D’, DOWNTOWN ZONING DISTRICT

AT 101 8TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:53 a.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 and Taylor/familiar with the site and spoke with the petitioner's agent; Price and Sorey/visited the site and spoke with the petitioner's agent; Barnett/spoke with the petitioner and the petitioner's agent; Nocera/familiar with the site but no contact; and MacIlvaine/familiar with the site and spoke with the petitioner's agent regarding unrelated topics. Planner Adam Benigni explained that this petition is for an additional six units of residential density in the "D" Downtown Zoning District for property located at 101 Eighth Street South.

Agent for the petitioner, Attorney Will Dempsey, stated for the record that two of the proposed ten residential units had been eliminated from the mixed-use structure; therefore, an additional four instead of six units of residential density is being sought for purchase by the petitioner. City Attorney Pritt noted that the resolutions would be amended to reflect this change; he also noted that the reduction to eight residential units instead of ten is a result of concerns expressed by the Planning Advisory Board (PAB) regarding the site density and building elevation. Attorney Dempsey continued that the parking allocation approved by the Community Redevelopment Agency Advisory Board (CRAAB) was based on the proposal before Council at that meeting, as amended, that eight residential units would be constructed above the 6,000 square feet of commercial space with approval of the four units of purchased residential density. Council Member Willkomm clarified that CRAAB would have jurisdiction over parking in the subject area, not the Fifth Avenue South Advisory Committee (FASAC).

Using computerized maps and site plans of the proposed project, Attorney Dempsey pointed out that the "D" Downtown District encourages mixed-use development through allowing purchase of additional density. (It is noted for the record that printed copies of all aforementioned materials are contained in the file for this meeting in the City Clerk's Office.) He noted that the petitioner would pay \$20,000 per unit of additional density into a fund that would allow acquisition by the City of open space. Attorney Dempsey also explained that this project promotes the primary functions of the District regulations and is one of the first redevelopment projects in that area. Additionally, he noted the approval of similar requests by Council in November.

In response to Council Member Willkomm, Attorney Dempsey noted that with the decrease in the residential portion of this project, units per acre would decrease from just over 27 to 21 units per acre. Attorney Dempsey stated that 15 parking spaces would be provided on site interiorly, with those nearest the building covered; ten street-side spaces would be derived from an existing, unused six on Eighth Street South and those to be constructed by the petitioner on First Avenue South; however, there would be no cost to the City for construction of these spaces. He pointed out that abundant parking is available in the area used only during special events; approximately 30 of these spaces are along the west side of Eighth Street South. Responding to Council Member MacIlvaine, Attorney Dempsey assured Council that the existing royal palm trees along Eighth Street South would indeed remain.

Attorney Dempsey concluded by pointing out that residential use is encouraged in the “D” Downtown District due to the fact that it has less impact both on the surrounding neighborhood and the City’s resources. He further explained that the commercial element in this project had anticipated use by professionals with operating hours from 9 a.m. to 5 p.m., thereby further lessening the impact to the surrounding residential residents. Urging Council to approve this project, he said that projects in the “D” Downtown District must be considered on a case-by-case basis; nevertheless, the project under consideration is unique due to the presence of the 30 spaces of unused parking. In response to Council Member Sorey, Mr. Dempsey said that the petitioner would be willing to limit the eight requested parking spaces to reservation only, between the hours of 6 p.m. and 9 a.m., therefore opening these spaces to all vehicles during the day; Council agreed.

Council Member MacIlvaine voiced his support on this project but said that he would also support an increase in the amount charged for future purchases since the current pricing is obsolete and should be reconsidered by Council.

Attorney Dempsey pointed out in response to Council Member Taylor that he felt the site would be precluded from medical use due to limitations of size and parking.

Planner Benigni noted that staff recommended approval based on the residential density units requested and the decrease in units per acre; namely, 21.62 from the original 27.03 units per acre, to be realized from the reduction by two of the residential units.

Public Comment (11:19 a.m.) **Alan Ryker, 300 Fifth Street South**, urged approval of the project, noting that it in fact met the Heart of Naples Committee criteria; he also pointed out that the 30 spaces along the west side of Eighth Street South have been so unused in the past that he had thought they were a bike lane. **Paul Lindabury, 101 Eighth Street South**, reviewed the history of the “D” Downtown District regulations and their conception, reading into the record excerpts from the minutes of May 7, 2003 City Council minutes, saying that he felt this project follows the intent of a small town neighborhood, or village, and urged approval. He however cautioned that, if the pricing for the residential density units is addressed, the cost should not increase dramatically so as not to defeat the reasoning behind the “D” Downtown concept.

Council Member Taylor noted that the undergrounding of utilities had not been discussed and Council Member Sorey pointed out that this should be considered as part of a Master Plan to include placement of greenspace, parking garages, fees, and pathways.

MOTION by Nocera to APPROVE RESOLUTION 06-11461 amended as follows: Title: “...OF AN ADDITIONAL 6 4 UNITS OF ...”; 2nd Whereas & Section 1: “...purchase of 6 4 additional...”; and Section 2: “...the following condition: Approval by the Community Redevelopment Agency...” “8 off-street parking spaces may be restricted for exclusive use of residential tenants between the hours of 6 p.m. and 9 a.m.”. This motion was seconded by MacIlvaine and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-no, Willkomm-yes, Barnett-yes).

MOTION by Sorey to ***APPROVE RESOLUTION 06-11462*** amended as follows: Title: “...OF AN ADDITIONAL ***6 4*** UNITS OF ...”; 1st Whereas: “...an additional ***6 4*** units of ...”; and Section 1: “...an additional ***6 4*** residential units...”. This motion was seconded by MacIlvaine and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-no, Willkomm-yes, Barnett-yes).

Following the above roll calls, Council Member Taylor sought Council support for reconsidering the allotment of residential density units; however no consensus was forthcoming. Council Member Price noted that the redevelopment of this area had been a long-term goal and that this incentive appears to be effective in promoting redevelopment; therefore, he said he could not support Miss Taylor’s request. Council Member MacIlvaine however reiterated his desire to revisit the requirements, especially the unit pricing for residential density; during further discussion, Mayor Barnett suggested that the topic be addressed in correspondence and communication below. City Manager Robert Lee explained that staff was in fact currently reviewing the ordinance with regard to parking and density based on prior Council direction; he offered to provide a timeline later in the meeting.

It is noted for the record that Items 10-a and 10-b were read and considered concurrently.

RESOLUTION 06-11463.....ITEM 10-a
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU15 TO ALLOW FOR A BANK DRIVE THROUGH AT 4901 TAMIAMI TRAIL NORTH, 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 (11:39 a.m.)

RESOLUTION 06-11464.....ITEM 10-b
A RESOLUTION DETERMINING PETITION 06-GDSP6 FOR APPROVAL OF A GENERAL DEVELOPMENT AND SITE PLAN FOR A .69 ACRE SITE, LOCATED AT 4901 TAMIAMI TRAIL NORTH, MORE FULLY DESCRIBED HEREIN, TO ALLOW A BANK DRIVE THROUGH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:39 a.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/no contact; Price, Nocera, Barnett and Sorey/visited the site but no contact; and Taylor and MacIlvaine/familiar with the site but no contact. Planner Adam Benigni explained that the petitioner proposes to add a bank drive-through to an existing bank at 4901 Tamiami Trail North and that staff recommended approval of this item as presented.

Attorney John Passidomo, agent for the petitioner, said that General Development and Site Plan (GDSP) approval is required for any proposed improvements in the “HC” Highway Commercial district along US 41 (Tamiami Trail North) and requires Conditional Use approval for drive-through facilities in the underlying zoning district. Architect Matthew Kragh, Architectural Network, Inc., gave an electronic presentation consisting of aerial photographs depicting existing parking and entrance to the site, an existing drive-through facility, site plan and vicinity map, and proposed site plan. (It is noted for the record that a printed copy of this material is contained in the file for this meeting in the City Clerk’s Office.) He explained that the building had been designed as a bank in 1992, and in 2001, his firm had designed a renovation to the interior and exterior to accommodate a real estate company. He indicated on the site plan 18 existing parking

spaces, one loading space, and a refuse container enclosure. He explained that the building is 4,500 square feet in size and existing parking exceeds the required 15 spaces for the banking use. He noted on the proposed site plan the porte cochere and drive-through lane which has stacking for seven to eight cars, reporting that the new tenant (Citibank) will install a sign indicating a drive-through lane only. He explained that the property line cuts through the water retention area and is shared by the three-story building to the west; since the drive-through will be installed behind the building, the water retention area has been redesigned as an underground vault system to be located beneath the asphalt drive-through lane, which will mimic existing conditions while changing the operational dynamics. He noted that the loading space will be relocated closer to the front entrance which will allow for the installation of additional landscaping on that side of the building. He described on-site vehicle movement patterns including use of the single teller window and exiting onto US 41. He noted approval by the Planning Advisory Board (PAB) on November 8 and therefore urged approval of Council.

Public Comment: (11:48 a.m.) None.

MOTION by Taylor to APPROVE RESOLUTION 06-11463 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).

MOTION by Taylor to APPROVE RESOLUTION 06-11464 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).

RESOLUTION 06-11465.....ITEM 11
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU16 TO ALLOW FOR THE USE OF AN EXISTING DRIVE-UP FACILITY LOCATED AT 3003 9TH STREET NORTH, SUITE 100, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; REPEALING RESOLUTION 96-7624; 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 (11:49 a.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/no contact; Price, Nocera, Barnett, MacIlvaine and Sorey/visited the site but no contact; and Taylor/familiar with the site but no contact. In response to Council Member Sorey, City Attorney Pritt explained that while conditional use approvals usually are granted to the property, not an entity, in the subject case, a conditional use was granted to the tenant, necessitating the current petition.

Planner Adam Benigni said that the petitioner wishes to utilize an existing one-lane drive-through for a new tenant, Encore Bank, and that staff is recommending approval; no increase in size or scope of the bank drive-through is however being requested. Attorney Will Dempsey, agent for the petitioner, reiterated prior approval for a former tenant (see Resolution 96-7624 contained in the file for this meeting in the City Clerk's Office) and therefore urged approval being granted to the land.

Public Comment: (11:53 a.m.) None.

MOTION by Willkomm to **APPROVE RESOLUTION 06-11465** as submitted; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11466.....ITEM 12

A RESOLUTION DETERMINING VARIANCE PETITION 06-V11 FROM SECTION 58-146 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHES A SIDE YARD SETBACK OF 10 FEET IN ORDER TO ALLOW AN EXISTING 6-INCH ENCROACHMENT AT 300 BOW LINE DRIVE, MORE FULLY DESCRIBED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID VARIANCE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney

Robert Pritt (11:54 a.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, Nocera, Barnett, Taylor and MacIlvaine/no contact; and Price and Sorey/visited the site and reviewed the Planning Advisory Board (PAB) November 8 meeting video but no other contact. Council Member Taylor suggested clarification to staff regarding administrative variances in conjunction with structures under construction, asking whether the ordinance regarding such variances could be amended. City Attorney Pritt confirmed that staff in fact has the option to bring a variance before Council if it so chooses, even under the provisions relative to an administrative grant of variance. However, if legislative changes are desired, City Attorney Pritt explained, it should not be considered during a quasi-judicial hearing.

Petitioner William Wicka explained that he contracted with a construction company to enclose an existing deck and extend it two feet into the side yard in order to construct a room addition. The encroachment had therefore occurred by accident and no benefit would be derived from the six-inch encroachment; nevertheless, it would be a hardship if the construction was demolished and the project rebuilt. He said he believed the mistake was made by the builder in following the existing line of the building, not knowing how the house was situated on the lot; it is a portion of the corner that encroaches six inches, he added. It was determined that the structure could not be reduced in size at the encroaching corner since it would affect the structure of a window. He also noted that adjacent neighbors are supportive of the request (copies of applicable correspondence are contained in the file for this meeting in the City Clerk's Office), as was the PAB during its November 8 meeting; he therefore requested that Council approve this six-inch corner encroachment, noting that the remaining 11 feet of the addition is within the Code.

Recess: 11:58 a.m. to 1:29 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Item 12 continued.

(1:30 p.m.) In response to Council Member Willkomm, Mr. Wicka disclosed that the contractor in this project had been Varian Construction. Mr. Wicka said that the project had been progressing well and he had paid the contractor 80% only to find two days hence that a setback variance would be needed; however, he said he was unaware that it could in fact be considered administratively. Subsequently, he said he had learned from the City that the contractor had been notified that an administrative grant of variance was however not available. He further explained that the addition is complete except for installation of the windows, exterior stucco and interior sheet rock. In addition, he had found later in the process that the contractor had not submitted the petition for a formal variance petition despite representations by the contractor that

this had been done. Now the contractor no longer returns his calls, Mr. Wicka said. Nevertheless, he said that he was still hopeful that the contractor would return and complete the construction; it is important that the work be completed as soon as possible as the eaves are open allowing palm rats to migrate into the attic. Mr. Willkomm then read into the record promotional statements contained on the Varian Construction website (a printed copy is contained in the file for this meeting in the City Clerk's Office), saying that he hoped this matter would be forwarded for action to the proper licensing authorities. Mr. Willkomm further asserted that the contractor had not ceased construction despite knowing that a variance was indeed required; therefore, he said he would support this petition based on the petitioner's testimony and the materials provided. Council Member Taylor said that, regardless of the legislation in effect, a stop-work order should have been issued earlier in the process.

Community Development Director Robin Singer first explained that this particular project had pre-dated the recent legislation in this regard; however construction can no longer go forward beyond the slab until an inspection and spot survey are completed; this violation had nevertheless been noted on a spot survey. Utilizing an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office) Ms. Singer further explained that the Wicka home is not positioned equidistant to the property lines, therefore necessitating the variance. Furthermore, while the encroachment is minimal, the plight of the applicant must be due to unique circumstances not created by the applicant or an agent of the applicant. However, there had been sufficient time (see timeline, Attachment 3) to make revisions to achieve compliance since the slab had shown to be noncompliant. In addition, staff determined that one of the criteria in Group 1 had been met and only eight out of the nine criteria in Group 2; therefore denial is recommended. Although staff recognizes the minimal nature of the encroachment (5%) into the required side yard, she said, it could not be approved administratively since the error was discovered during the construction review process and did not meet the criteria. She also pointed out that the project is still under construction.

In response to questions by Council Members, Director Singer explained that administrative variances must meet the same criteria as the variances which come before City Council, and Building Official Paul Bollenback reviewed the timeline involved in this petition (see Attachment 3) reiterating that the problem was discovered as early as June 6, and the contractor notified by letter of rejection. Further discussion followed during which Mr. Bollenback explained that software will now curtail further inspections if a spot survey is found defective in any way and a stop-work order is immediately issued. This will therefore ensure that a variance of this type will no longer be necessary.

Council Member Sorey however said that, despite recent amendments, this variance does not qualify for approval, pointing out that an amendment he had proposed to that legislation had not been adopted; namely, that factors should be considered rather than required to be in place. Council Member MacIlvaine said that although he would not usually vote approval of a petition of this type, the inspection process improvements would in fact eliminate future need for such variances and would therefore not constitute a precedent.

Public Comment: (1:55 p.m.) None.

MOTION by Taylor to APPROVE RESOLUTON 06-11466 as submitted; seconded by Willkomm and carried 5-2 (Sorey-no, Taylor-yes, Price-no, Willkomm-yes, Nocera-yes, MacIlvaine-yes, Barnett-yes).

Following the above roll call, Building Official Bollenback indicated that he would confer with the petitioner regarding courses of action available to him; he also noted that staff works closely with Collier County contractor licensing and that the City would be taking further action where the contractor in this project is concerned. Council Member Willkomm requested that Council be given updates regarding these actions. Council Member Price said that he believes it unfair to staff to expect that no further variances will be necessary and requested that the aforementioned legislation be reviewed to allow consideration of variances such as this one; that despite his compassion for the petitioner, he did not vote approval although he would have preferred to be allowed to use his judgment, not just criteria. Council Member Sorey agreed.

RESOLUTION 06-11467.....ITEM 13
A RESOLUTION APPROVING RUTTER ESTATES PETITION 06-SD1, FOR FINAL PLAT APPROVAL FOR THE REPLAT OF LOT 8 AND PART OF LOT 9, BLOCK B, LAKE REPLAT, PARTS F, TIERS TWO AND THREE, TOWN OF NAPLES, ACCORDING TO THAT PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 79, PUBLIC RECORDS OF COLLIER COUNTY; AUTHORIZING EXECUTION AND RECORDING OF SAID PLAT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:56 p.m.), noting that the proposed replat had met all requirements. He explained further that although a quasi-judicial matter, this item could be handled summarily. Community Development Director Robin Singer waived comment, noting that she considered her report complete. (It is noted for the record that documentation pertaining to this item and referenced during the discussion are contained in the file for this meeting in the City Clerk's Office.)

Public Comment: (1:57 p.m.) None.

MOTION by Taylor to APPROVE RESOLUTION 06-11467 as submitted; seconded by Price and unanimously carried (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-absent, Barnett-yes).

RESOLUTION 06-11468.....ITEM 14
A RESOLUTION DETERMINING PETITION 06-WD4 FOR A WAIVER OF DISTANCE IN ORDER FOR VICENTE OF LONDON, INC. TO OBTAIN AN ALCOHOLIC BEVERAGE LICENSE WITHIN 500 FEET OF OTHER ESTABLISHED LICENSEES THAT SERVE ALCOHOL IN THE C1, RETAIL SHOPPING DISTRICT, AT 1170 3RD STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:58 p.m.).

It is noted for the record that Santa Claus (aka Council Member Willkomm) arrived at 1:59 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 indicated no contact during ex parte disclosures except Council Member Sorey who disclosed that he had visited the site and spoke with the petitioner while at the site.

Planner Adam Benigni said that staff recommended approval of this petition requesting a waiver of distance in order for the petitioner to obtain an alcoholic beverage license. Attorney Joan Henry, agent for the petitioner, stated that the proposed establishment is a small scale retail

tobacco shop and wine bar commonly referred to as a cigar bar. The subject property is approximately 1,163 square feet in size, of which 100 square feet is dedicated to office space and restrooms and the seating capacity would be 20 to 25 with 7 bar stools. She indicated that the prior establishment in this space had been the Third Street Café, which also served alcohol and pointed out that a similar establishment with the same owner exists in the Galleria in North Naples. Ms. Henry also noted written endorsements, and read into the record from the Third Street Merchants Association's letter to the effect that this establishment would be a welcomed, successful addition to the plaza which would aid in the present competitive atmosphere for businesses within Collier County. (It is noted for the record that this document is contained in the file for this meeting in the City Clerk's Office.)

Discussion followed regarding the hours of operation and the desire for fairness among similar businesses in the area; staff clarified that neither live entertainment nor outdoor seating would be considered in this proposal. Council Member Sorey said that, after visiting the site, the proposed use appeared benign and that the hours of operation are in fact the key topic due to the proximity to residential uses and quality of life; therefore Mr. Sorey suggested that the hours of operation be added as a condition. Additional discussion of operational hours for the Blu Sushi and Il Posto (adjacent establishments) were discussed. Mr. Sorey also noted that letters of opposition had been received; however, Attorney Henry pointed out that the proposed establishment is not to be a restaurant and therefore would not additionally impact the nearby residents.

Public Comment: (2:19 p.m.) **Pam Watson, 1160 Gordon Drive**, noted that her residence is directly across from the plaza where this establishment is proposed. She questioned the wisdom of Blu Sushi and Il Posto being granted past approvals due to lack of required parking and the live entertainment allowed in such close proximity to homes; she therefore asked that Council direct staff to provide to the public corresponding answers in these matters. In conclusion, Ms. Watson clarified that while she does not object to retail, the serving of alcohol in a residential area should not be permitted, this business being less than 75 feet from her home. She said that the initial shops in the plaza had in fact been strictly retail.

In response to Council, City Manager Robert Lee indicated that staff would research the following with reference to the Blu Sushi and Il Posto establishments: live entertainment permits, actual hours of operation, parking requirements, and alcoholic beverage licenses.

In response to Council Member Willkomm, Planner Benigni reiterated staff's findings that the petition represents a small retail establishment and that no live entertainment is desired by the petitioner; he also said that a quiet atmosphere in the establishment would not negatively impact the neighborhood. City Manager Lee added that staff had taken into consideration the current environment in the immediate area and found no additional impact indicated with existing conditions in the plaza, to which Mayor Barnett agreed. Community Development Director Robin Singer reminded Council that if the establishment proved to be a nuisance due to noise or other issues, code enforcement would enter into the situation. City Attorney Pritt cautioned Council that, while possible, it would then not be prudent to attach a time limitation to the subject waiver. Further discussion followed regarding the direction of commercial activities in the Third Street South and Fifth Avenue South areas, but Council Member Willkomm said that he feared an atmosphere similar to that of Key West's Duvall Street in that the mix of businesses seems to be largely entertainment and alcohol consumption related.

Council Member Sorey cautioned that Council discussions not appear anti-business, noting increasing competition from businesses elsewhere in Collier County. Mr. Sorey said that he agrees that the proposal is a benign endeavor and moved approval with conditions regarding hours of operation (see motion below). Council Member Taylor suggested that Council consider discussing with the Third Street Merchant's Association and Fifth Avenue South Association the challenges of marketing their respective areas; these discussions should also include the public, she added.

Public Comment (cont.): (2:46 p.m.) **Judith Chirgwin, 112 Tenth Avenue South**, gave a brief history of the Third Street South business district, but asked that Council protect the residential areas from projects such as this that she said would adversely impact the residential element. **Teresa Heitmann, Aqualane Shores Property Owner Association**, asked Council to consider this item and the corresponding discussion during the visioning process; namely, to identify the type of growth actually desired in Naples, especially where the number of businesses serving alcohol is concerned.

Attorney Henry closed her comments by reiterating that the subject project is an extremely small retail establishment, with no outdoor seating or live entertainment, no food service nor accompanying refrigerated truck deliveries, and a seating capacity of 20 to 25 patrons. She stated that the petitioner would agree with the hours of operation requested by Council and therefore asked approval.

MOTION by Sorey to APPROVE RESOLUTION 06-11468, amended as follows: (Section 2) to allow hours of operation until 11 p.m. on Sunday-Thursday and until midnight on Friday and Saturday. This motion was seconded by Nocera and carried 4-3 (Willkomm-no, Nocera-yes, MacIlvaine-no, Taylor-yes, Price-no, Sorey-yes, Barnett-yes)

RESOLUTION 06-11469 (see related Item 14 above).....ITEM 15-a
A RESOLUTION DETERMINING CONDITIONAL USE PETITION 06-CU17 TO ALLOW FOR A RETAIL ESTABLISHMENT WITH A COCKTAIL LOUNGE LOCATED AT 1170 3RD STREET SOUTH UNIT F-103, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; PROVIDING FOR THE CITY CLERK TO RECORD SAID CONDITIONAL USE; AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title not read.

Public Comment: (3:11 p.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 06-11469, amended as follows: (Section 2): to allow hours of operation until 11 p.m. on Sunday – Thursday and until midnight on Friday and Saturday. This motion was seconded by Nocera and carried 4-3, all members present and voting (Sorey-yes, Price-no, MacIlvaine-no, Willkomm-no, Taylor-yes, Nocera-yes, Barnett-yes).

RESOLUTION 06-11470 (see related Item 14 above)..... ITEM 15-b
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 06-RIS17 IN ORDER TO ALLOW A RETAIL ESTABLISHMENT WITH A COCKTAIL LOUNGE AT 1170 3RD STREET SOUTH UNIT F-103, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITION SET FORTH HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

Public Comment: (3:11 p.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 06-11470** amended as follows: (Section 2): to allow hours of operation until 11 p.m. on Sunday-Thursday and until midnight on Friday and Saturday. This motion was seconded by Nocera and carried 4-3, all members present and voting (Taylor-yes, Willkomm-no, Sorey-yes, Nocera-yes, MacIlvaine-no, Price-no, Barnett-yes)

Recess: 3:13 p.m. to 3:29 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

RESOLUTION 06-11471.....ITEM 16
A RESOLUTION DETERMINING PETITION 06-WD5 FOR A WAIVER OF DISTANCE IN ORDER FOR TMG OF FLORIDA, LLC. (TED'S MONTANA GRILL) TO OBTAIN AN ALCOHOLIC BEVERAGE LICENSE WITHIN 500 FEET OF OTHER ESTABLISHED LICENSEES THAT SERVE ALCOHOL IN THE PD, PLANNED DEVELOPMENT, DISTRICT AT 1700 9TH STREET NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:29 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 indicated no contact in conjunction with ex parte disclosures. Planner Adam Benigni explained that this petition is for a waiver of distance in order for the petitioner to obtain an alcoholic beverage license and noted that the establishment is to be located within the Coastland Mall.

Shinpei Kuo, architect with GHER Architects, represented the petitioner and stated that this would be a 4,500 square foot restaurant, with a seating capacity of 136 patrons; 330 square feet of which is dedicated to a bar accommodating 13 barstools. The service will be similar to nearby establishments such as the Kona Grill, Ruth Chris Steakhouse and the Cheesecake Factory, all of which had obtained waivers of distance such as requested in this petition, he explained. He said that he knew of no nearby residential areas, concluding that this is to be a family oriented business but stressing that the bar area is part of the overall uniqueness of the design of the structure. A brief discussion followed concerning hours of operation and the petitioner's representative agreed to the hours cited in the motion below.

Glen Harrell, Coastland Mall representative, gave a brief update regarding redevelopment and explained that the facility has a parking ratio of five spaces per 1,000 square feet; he also indicated that no complaints regarding parking had been received. Additionally, new entrances are intended to encourage use of existing parking decks; valet parking service and golf cart conveyances are presently in use. He also noted the addition of one additional restaurant which had been contained in the proposal brought before Council for prior consideration.

Public Comment: (3:36 p.m.) None.

MOTION by Taylor to **APPROVE RESOLUTION 06-11471** amended as follows: (Section 2) to provide for hours of operation of 11 a.m. to 10 p.m. Sunday –Thursday, and 11 a.m. to 11 p.m. Friday and Saturday. This motion was 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 06-11472.....ITEM 17

A RESOLUTION DETERMINING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE, DECKING, LANDSCAPING, EXTERIOR LIGHTING, AND A PORTION OF A DRIVEWAY SEAWARD OF THE COASTAL CONSTRUCTION SETBACK LINE AT 70 7TH AVENUE SOUTH; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:37 p.m.). Attorney Will Dempsey, agent for the petitioner, explained that the owner of the property wishes to construct a single family residence, decking, landscaping, exterior lighting, and a portion of a driveway seaward of the Coastal Construction Setback Line (CCSL) which line, he said, transverses the middle of the property. He noted that the property satisfies the CCSL intent that it be separated from the dune system and the beach, the separation being 190 to 200 feet in which an alley and another single family residence are contained and are also seaward of the CCSL. Attorney Dempsey pointed out that this project had received approval from staff, including Natural Resources Director Michael Bauer, and therefore asked approval of Council.

Public Comment: (3:48 p.m.) None.

MOTION by MacIlvaine to **APPROVE RESOLUTION 06-11472** as submitted; 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).

ORDINANCE (First Reading).....ITEM 18

AN ORDINANCE PERTAINING TO THE R1-15A RESIDENCE DISTRICT; AMENDING SECTIONS 58-116(4), 58-118, 58-122(c), 58-124(a)(2)d.1. AND 58-124(a)(4) OF THE CODE OF ORDINANCES, CITY OF NAPLES, IN ORDER TO INCORPORATE CURRENT REQUIREMENTS OF THE PORT ROYAL DEED RESTRICTIONS GOVERNING HEIGHT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:41 p.m.) who explained that as a general rule the City does not enforce private deed restriction, however, in the past the City has incorporated the deed restriction of the Port Royal area into the Code of Ordinances; this is the case with the current amendment. Community Development Director Robin Singer additionally stated that the aforementioned amendment largely represents clarifications as to height requirements.

Public Comment: (3:45 p.m.) None.

MOTION by Taylor to **APPROVE THIS ORDINANCE** on First Reading as submitted; 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).

ORDINANCE (First Reading).....ITEM 19

AN ORDINANCE RELATING TO REDUCTION OF NUISANCE CONDITIONS; AMENDING THE FOLLOWING SECTIONS OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES: ADDING SUBSECTION 16-291(b)(10), AMENDING SUBSECTIONS 16-291(e)(1)(4) and (5), 16-291(g), 16-291(i), 16-291(n), AND 16-291(p) OF SECTION 16-291, CONSTRUCTION SITE MANAGEMENT, TO FURTHER REGULATE CONSTRUCTION SITE CONDITIONS AND HOURS OF WORK; AMENDING SUBSECTIONS 22-37(a), (b), (h)(1) AND (l) OF SECTION 22-37 NOISE, TO LIMIT NOISE FROM MECHANICAL EQUIPMENT, TIMES OF WORK FOR

LAWN AND TREE SERVICES, REDUCING ALLOWABLE NOISE LIMITS; SECTION 22-38 LIGHTING, TO REDUCE GLARE; SECTION 56-41 MECHANICAL EQUIPMENT, TO REGULATE MECHANICAL EQUIPMENT; SECTION 56-45(a) POOLS, TO REGULATE LOCATION AND FENCING; AND SECTION 56-54(a) AND (a)(1) YARDS, OF THE CODE OF ORDINANCES IN ORDER TO PROVIDE ADDITIONAL STANDARDS FOR NEW CONSTRUCTION; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (3:49 p.m.). Discussion followed in which various amendments to this ordinance were considered; those requested by Council appear in the motion below.

Public Comment: (4:06 p.m.) **Charles Glisson, 625 Regatta Road**, voiced approval of this ordinance, noting that he would support measurement of noise levels from the property line. With regard with the visioning process recently began, he urged residents to become involved thereby making the information gathering for the visioning more comprehensive. **Alan Mengel, 50 Broad Avenue South, President of the Old Naples Society**, said that the Society had recently approved three resolutions: 1) asking that the City of Naples continue to allow mechanical equipment to be placed in the side yard setback for new and existing homes; 2) asking that emergency generators be added to the list of currently approved equipment and that they be allowed in the side yard setback also; and 3) requesting that the City take a more proactive enforcement of existing noise levels. **Dave Ball, 1655 Third Street South**, stated that he believes that the amendment under consideration had begun with noise abatement; that the simplicity of shielding gave way to limitations on placement of mechanical equipment on private property. He also noted the recent heightened public interest in this item and agreed with the advisability of restricted times for routine maintenance cycling of emergency generators. **Dorothy Hirsch, 626 Regatta Road**, expressed appreciation for this ordinance and supported property line measurement of the noise levels and sound buffering to shield mechanical equipment. **Falconer Jones III, 1255 Cobia Court**, pointed out that due to the scope of this ordinance, further review was still needed. He also recommended a 60 day implementation period once this ordinance is approved, and supported sound level measurement from the property line; however, he questioned the demolition noticing provision, and with regard to pool decks, questioned whether corner lots with only one side yard had been addressed. **Falconer Jones II, 1435 Blue Point Avenue**, also asserted that the extensive nature of the ordinance would make it difficult to enforce, noting what he said he believes is a lack of enforcement personnel staffing by the City.

Acoustical Consultant Steve Weiss stated that noise is a growing problem for communities and is associated with redevelopment. In response to comments regarding the actual measurement of noise, he explained that the inclusion of octave band levels is necessary due to the fact that different types of sounds with the same decibel reading nevertheless sound vastly different to hearers. He also explained that the noise level is usually measured from the property line which more readily facilitates enforcement. Consultant Weiss also noted that the required noise levels can be complied with due to advances in the manufacture of equipment; placing equipment away from frequently occupied areas, and/or utilizing alcoves which are lined with sound absorbent materials and then shielded with screening in order to further buffer sound.

MOTION by Sorey to **APPROVE THIS ORDINANCE** on First Reading amended as follows: (See Attachment 4); 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).

ORDINANCE (Continued to 12/20/06; See Item 4).....ITEM 20
AN ORDINANCE PERTAINING TO WATERWAYS; AMENDING SECTION 42-81, DEFINITIONS; SECTION 42-141, DEFINITIONS; SECTION 42-142(a), PROHIBITIONS ON MOORING AND ANCHORING; SECTION 42-143(5), (6), AND (7) RULES AND REGULATIONS; SECTION 42-144, MOORING RENTAL RATE; SECTION 42-145, MOORINGS SIGNAGE; OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF AMENDING RULES AND REGULATIONS FOR WATERWAYS FACILITIES AND RESOURCES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.
Title not read.

RESOLUTION 06-11473.....ITEM 21
A RESOLUTION ESTABLISHING A NEW PROCEDURE FOR CONSIDERATION OF ANNEXATION PETITIONS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:10 p.m.). Discussion regarding the notification to Collier County resulted in amending the resolution as contained in the motion below. City Manager Robert Lee noted that a discussion of annexation is contained on the agenda of the upcoming joint workshop of City Council and the Board of County Commissioners on December 18.

Public Comment: (5:11 p.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 06-11473** amended as follows: (See Attachment 5); seconded by Taylor and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-absent, Barnett-yes).

Following the above roll call, Council Member Sorey requested that a copy of the amended resolution be provided to all Council Members for review.

RESOLUTION 06-11474.....ITEM 22
A RESOLUTION DIRECTING THE CITY MANAGER, ON BEHALF OF THE NAPLES CITY COUNCIL, TO FILE A COPY OF THE URBAN SERVICES REPORT WITH THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY; DIRECTING THE CITY MANAGER TO MAIL WRITTEN NOTICE TO EACH PERSON WHO RESIDES OR OWNS PROPERTY WITHIN THE AREA PROPOSED TO BE ANNEXED REGARDING THE COLLIER PARK OF COMMERCE ANNEXATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:20 p.m.) who also noted that an incorrect legal description had been provided in the packet for the item and instructed that the correct one be attached to the resolution (see motion below).

Public Comment: (5:20 p.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 06-11474** amended as follows: (See Attachment 6); seconded by MacIlvaine and carried 5-1 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-no, Barnett-yes).

It is noted for the record that Santa Claus (aka Council Member Willkomm) and Council Member Taylor left the meeting at 5:15 p.m. Council Member Willkomm returned at 5:20 p.m.

RESOLUTION (Withdrawn-See Item 4)ITEM 23-a
A RESOLUTION APPOINTING ONE BARGAINING UNIT MEMBER TO THE BOARD OF TRUSTEES OF THE GENERAL EMPLOYEES' RETIREMENT SYSTEM FOR A FOUR-YEAR TERM COMMENCING DECEMBER 22, 2006, AND EXPIRING DECEMBER 21, 2010; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11475.....ITEM 23-b(1)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB) FOR A TWO-YEAR TERM COMMENCING DECEMBER 17, 2006, AND EXPIRING DECEMBER 16, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:24 p.m.).

Public Comment: (5:24 p.m.) None.

MOTION by Sorey to NOMINATE Alexander Pezeshkan to the Community Redevelopment Agency Advisory Board (CRAAB); carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION (Continued to 12/20/06-See Item 4).....ITEM 23-b(2)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB) FOR A TWO-YEAR TERM COMMENCING DECEMBER 17, 2006, AND EXPIRING DECEMBER 16, 2008; AND PROVIDING AN EFFECTIVE DATE. Title not read.

Public Comment: (5:24 p.m.) None.

RESOLUTION 06-11476.....ITEM 23-b(3)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB) FOR A TWO-YEAR TERM COMMENCING DECEMBER 17, 2006, AND EXPIRING DECEMBER 16, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:25 p.m.).

Public Comment: (5:25 p.m.) None.

MOTION by Sorey to NOMINATE Lou Vlasho to the Community Redevelopment Agency Advisory Board (CRAAB); carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11477.....ITEM 23-b(4)
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB) FOR A TWO-YEAR TERM COMMENCING DECEMBER 17, 2006, AND EXPIRING DECEMBER 16, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:25 p.m.).

Public Comment: (5:25 p.m.) None.

MOTION by MacIlvaine to NOMINATE Jacques Groenteman to the Community Redevelopment Agency Advisory Board (CRAAB); carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11478.....ITEM 24
A RESOLUTION RESCHEDULING THE JANUARY 3, 2007 REGULAR CITY COUNCIL MEETING TO A REGULAR CITY COUNCIL MEETING OF JANUARY 10, 2007; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:26 p.m.).

Public Comment: (5:26 p.m.) None.

MOTION by Barnett to APPROVE RESOLUTION 06-11478 as submitted;
seconded by Price and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11479.....ITEM 25
A RESOLUTION APPROVING A SALARY INCREASE FOR THE CITY CLERK; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:26 p.m.). City Clerk Tara Norman expressed appreciation for the positive comments contained within the evaluation received. She responded to comments regarding the turnaround time for minute preparation with regard to City Council; namely, that short of hiring an additional Technical Writing Specialist, the minutes could not be composed in the three business days available between a regular meeting and the meeting packet deadline the following week. She also clarified that her employment contract specifies January 1, as the effective date for increases; therefore the percentage of increase differs from that of other staff.

Public Comment: (5:28 p.m.) None.

MOTION by Barnett to APPROVE RESOLUTION 06-11479 as submitted;
seconded by Price and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11480.....ITEM 26
A RESOLUTION APPROVING A SALARY INCREASE FOR THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:29 p.m.).

Public Comment: (5:29 p.m.) Sue Smith, 11th Avenue South, expressed what she described as disappointment with the evaluation process regarding the City Manager. She voiced disagreement with Mayor Barnett's comments contained in his evaluation of City Manager Robert Lee (contained in the file for this meeting in the City Clerk's Office); he however said that he stood behind his comments. He also said that he agrees that an Assistant City Manager is needed, and entered a motion for approval of this item.

MOTION by Barnett to APPROVE RESOLUTION 06-11490 as submitted;
seconded by MacIlvaine and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-absent, Willkomm-yes, Barnett-yes).

CORRESPONDENCE AND COMMUNICATIONS.....
(5:39 p.m.) Council Member Willkomm requested an update of the ongoing review of parking in rights-of-way adjacent to private property.

It is noted for the record that Council Member Willkomm left the meeting following the above comment; correspondence and communications continued.

City Manager Robert Lee noted a recent email from Collier County Manager James Mudd regarding agenda items for the December 18 joint workshop between City Council/Board of County Commissioners. He said that Mr. Mudd had requested the following be added at that meeting: 1) discussion of the placement of the Freedom Memorial at the Water Quality Park (located at the northeast corner of Golden Gate Parkway and Goodlette-Frank Road); 2) Community Redevelopment Agency (CRA) update regarding spending in the Fifth Avenue

City Council Regular Meeting – December 6, 2006 – 9:00 a.m.

Special Overlay District and concerns regarding the continuation of the CRA; 3) Four Corners (US 41 and Fifth Avenue South) update; and 4) discussion on an interlocal agreement for mutual review of land use on City/County boundaries (annexation). City Manager Lee then indicated that the City agenda items for the meeting would include: 1) annexation; 2) federal and state lobbyists presenting funding requests; 3) preservation of Keewaydin Island; and 4) City service fees and County subsidies for capital improvements within the City. Mayor Barnett indicated that City/County relations should also be a topic of discussion and requested this be added to the aforementioned agenda.

PUBLIC COMMENT.....

(5:41 p.m.) None.

ADJOURN.....

5:42 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 1/10/07

*******MEMORANDUM*******

TO: Honorable Chairman and Commissioners

FROM:
Theodore D. Soliday
Executive Director

DATE: 04 December 2006

RE: STATE OF EMERGENCY

Following consultation with staff today, the Executive Director declared an emergency due to the following circumstances:

- The draining of petroleum products onto Authority property, and potentially beyond, by Continental Aviation Services, Inc. (CAS) has necessitated the Authority to expend funds for the testing and removal of potential contaminated Stormwater waste, the cost of which may exceed the Executive Director's spending authority of \$25,000.

Any emergency action taken by the Executive Director will be brought before the Board for ratification at its next meeting.

PRESS RELEASE

In 1994, the City of Naples adopted a master plan to stimulate redevelopment on Fifth Avenue South. As part of the master plan's objective of revitalizing the west end of Fifth Avenue, the City designated land owned by Jack Antaramian and his partners at the southeast corner of Fourth Avenue South and Fourth Street South for a public structured parking facility. The City reiterated that proposal at the tenth anniversary of the adoption of the Fifth Avenue South master plan in 2004 and again last year. We responded to the City's proposal for a structured parking facility several months ago by submitting our own proposal to create multi-family residential units around the perimeter of a parking facility and otherwise dealing with the proposal as sensitively, aesthetically and cost effectively as possible. We felt that it was imperative that if the City wanted a parking structure on our land we wanted the most beautiful parking structure we could present. We felt so confident in our ability to achieve this imperative that we proposed to construct multi-family residential units around the perimeter of the parking facility and take the economic risk that we could sell those units for a profit. As we now near the end of the public hearing process, we propose to take whatever time is needed to work with the City to see if together we can ensure that we have collectively exhausted every reasonable means to achieve the City's objectives in the best way possible. We have therefore requested a 45 day continuance of our pending petition. We look forward to working with the City in achieving their objectives for Fifth Avenue.

Inquiries respond to: John Passidomo at 436-1529

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Tony McIlwain

From: Christa Carrera
Sent: Friday, October 20, 2006 1:08 PM
To: Tony McIlwain
Subject: 300 Bow Line Dr

Permit was issued: 3/27/06
Slab Inspection: 4/24/06
Cells/Tiebeam Inspection: 5/25/06

Spot Survey Submitted: 5/26/06
Spot Survey Rejected: 6/1/06

Roof Tin Inspection: 6/15/06 On Sub-card Permit
Roof In Progress Inspection: 6/27/06
Roof Final Inspection: 6/27/06

Tony you and I did a site inspection on 8/2/06 – I have photos showing roof and walls exterior with no stucco on the side yet.

No other inspections have been called in, no stop work order was issued.

*Christa Carrera
City of Naples Zoning Tech
295 Riverside Circle
Naples, FL 34102
239-213-5049*

Amend as follows Item 19:

Page 2: Sec. 16-291(a)(10) “...within 100 feet of the outer limits of the subject property,...”

*Page 11: Sec. 22-37(a)(1) “...However, if the closest point...similarly occupied space.
Mechanical equipment installed...”*

Page 14: Sec. 22-37(h)(1) “...~~prescribed in Table 1 60-55 dBA between the hours of 9:00 a.m. and 10:00 p.m. and 50 dBA between the hours of 10:p.m. and 9:00 a.m.~~ as measured at the ...”

*Page 15: (Table 1) add as follows below the table “*These uses pertain to the receiving site.”(applicable to all three columns); and “**Dawn indicates daybreak and Dusk indicates nightfall.”*

Page 16: Section 4 (Sec. 56-41 “(a) Mechanical equipment installed with new construction or with additions or alterations exceeding under 50% of the assessed...any required yard. New generators may be installed adjacent to existing single family homes permitted and constructed prior to the effective date of this ordinance provided that the new equipment does not encroach more than 36 inches into any required side yard. All new and replaced...”

Page 17: Sec. 56-41 “(d) Automatic cycling of generators shall take place between 9:00 a.m. and 4:00 p.m., Monday through Thursday.”

Page 19: Section 10. “This ordinance shall take effect ~~60~~ 30 days after adoption.”

Amended as follows (Item 21):

Section 1. That the following steps shall be followed when a petition is submitted to the City for annexation of property:

- 1. The Applicant shall meet with City staff regarding statutory compliance;*
- ~~2. 3.~~ The City Council shall consider whether the proposed annexation ~~will benefit the City and shall consent to consider annexation~~ should be considered;*
- ~~3. 2.~~ The County shall be notified that the City has been asked to consider an annexation petition;*
- 4. The Applicant shall prepare and submit a petition with all necessary consent forms and fee;*
- 5. The City shall notify the County that a petition has been submitted;*
- 6. The City Clerk's Office shall verify the consent forms;*
- 7. Staff shall prepare an Urban Services Report to include a financial feasibility formula, an analysis of the effects of the proposed annexation on existing level of service to the City and adjacent areas, ~~and~~ whether the City will provide utility services within the proposed annexed area and provide Council with recommendations;*
- 8. The Planning Advisory Board shall review the petition and report;*
- 9. The City Council shall discuss the petition, report and the Planning Advisory Board's recommendation at a workshop;*
- 10. The Urban Services Report shall be forwarded to the County; and*
- 11. The City Council shall consider an annexation ordinance and any required referendums are scheduled.*

Annexation Petition

Exhibit "B"

Legal Description of Property Involved

- 1) All of East Naples Industrial Park, according to the plat thereof recorded in Plat Book 10, Pages 114 and 115, of the Public Records of Collier County, Florida.
- 2) All of East Naples Industrial Park, Replat No. 1, according to the plat thereof recorded in Plat Book 17, Pages 38 and 39, of the Public Records of Collier County, Florida.
- 3) The Northerly 200 feet of the Southerly 510 feet of the Easterly 250 feet of the Northeast $\frac{1}{4}$ of Section 35, Township 49 South, Range 25 East, Collier County, Florida, less and excepting the Easterly 50 feet thereof.

(Source: Annexation Petition 06-AX1)

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05/18/06