



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – October 17, 2007 – 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 (arrived 9:05 a.m.)
John Sorey, III
Penny Taylor
William Willkomm, III

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Vicki Smith, Technical Writing Specialist
Stephen Weeks, Technology Services Director
Robin Singer, Planning Director
Ann Marie Ricardi, Finance Director
Michael Klein, Waterfront Operations Manager
David Lykins, Community Services Director
Robert Middleton, Utilities Director
Dan Mercer, Public Works Director
George Archibald, Traffic Engineer
Russell Adams, CRA Executive Director
Victor Morales, Chief of PESD
David Skelton
Richard Yovanovich
Charles Thomas

Sue Smith
Judith Chirgwin
Lynne Hixon-Holley
Virginia Clement
Dale Walters
Dorothy Hirsch
Jim Boula
Henry Kennedy
Jennifer Hecker
Tary Kettle
Truly Nolan
Jane Parks
Erika Hinson

Media:

Jenna Buzzacco, Naples Daily News

Other interested citizens and visitors

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

Pastor David Skelton, Vineyards Community Church

ANNOUNCEMENTSITEM 3

Distinguished Budget Presentation Award was presented to Finance Director Ann Marie Ricardi by Mayor Barnett.

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

MOTION by Taylor to ***SET THE AGENDA*** continuing ***Item 10*** (Police Pension ordinance); removing ***Item 7-d*** (school bus transport for recreation programs) from the Consent Agenda for separate discussion; and adding ***Item 15*** (dredging permit issue involving Antaramian Development Group (Basil Street Partners) and Naples Sailing and Yacht Club), ***Item 16*** (offer by Barron Collier Companies to sell to the City the property at Ninth Street South and Sixth Avenue adjacent to the City's parking garage site on Eight Avenue South), and ***Item 17*** (waiver of conflict in legal representation by Roetzel & Andress). This motion was seconded by Willkomm and carried 6-0 (MacIlvaine-yes, Nocera-yes, Price-absent, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

It is noted for the record that Council Member Price arrived at 9:05 a.m.

PUBLIC COMMENT.....ITEM 5

(9:05 a.m.) **Dorothy Hirsch, 626 Regatta Road**, submitted sample ordinances with reference to requirements for certification of lawn maintenance providers relative to application of fertilizer and asked that the City move forward with adoption of such a measure. Mayor Barnett said he believed that this effort was now underway.

RESOLUTION 07-11797.....ITEM 7-c

A RESOLUTION APPROVING A TRANSPORTATION CONTRACT BETWEEN THE DISTRICT SCHOOL BOARD OF COLLIER COUNTY AND THE CITY OF NAPLES FOR THE USE OF COUNTY SCHOOL BUSES TO TRANSPORT SCHOOL-AGED CHILDREN ON FIELD TRIPS DURING THE 2007/2008 SCHOOL YEAR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title was not read by City Attorney Robert Pritt (9:07 a.m.). Council Member Sorey pointed out that just 37% of the young people in this program are residents of the City; therefore the City is subsidizing Collier County in this regard because, he said, the County has refused to pay its fair share. Although he said he would support this particular resolution, further consideration must be given in future budgeting with reference to taking a stronger position with Collier County on recreational programs.

Public Comment: (9:08 a.m.) None.

MOTION by Sorey to ***APPROVE RESOLUTION 07-11797*** 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).

CONSENT AGENDA

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

September 17, 2007 Workshop and September 19, 2007 Regular meeting, as submitted.

SPECIAL EVENTS.....ITEM 7-b

- 1) Homecoming Day Parade – Naples High School – Fifth Avenue South – 11/08/07.
- 2) Private Holiday Party – 1500 Murex Drive – 12/07/07.
- 3) Christmas Eve Service – Celebration Community Church – Lowdermilk Park South Gazebo – 12/24/07.
- 4) Christmas Concert – Barron Collier High School – Cambier Park Bandshell – 12/07/07.
- 5) Festa Italiana – FESTA Productions – Italian American Club – 100 Goodlette-Frank Road – 01/18/08, 01/19/08 and 01/20/08.

6) Halloween Costume Party – Downtown Naples Association – Fifth Avenue South Shopping District and Sugden Plaza – 10/03/07.

7) “Blu Goes Pink” Fundraiser for Susan G. Komen for the Cure SW Florida – Blu Sushi Restaurant – 1170 Third Street South – 10/26/07.

8) (Amended Event) Farmers Market – Third Street South Association – Third Street South Shopping District – removal of the 10/20/07 commencement date – originally approved by City Council 08/15/07.

9) Veteran’s Day Ceremony – Veteran’s Council of Collier County – Cambier Park – 11/11/07.

RESOLUTION 07-11798..... ITEM 7-d
A RESOLUTION APPROVING A 2007 URBAN AND COMMUNITY FORESTRY GRANT MEMORANDUM OF AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11799..... ITEM 7-e
A RESOLUTION AUTHORIZING THE RENEWAL OF FLOOD INSURANCE COVERAGE FOR CITY-OWNED PROPERTIES BY AMERICAN BANKERS INSURANCE COMPANY, THROUGH BROKER OF RECORD, PUBLIC RISK INSURANCE AGENCY; AUTHORIZING THE CITY MANAGER TO ISSUE A BLANKET PURCHASE ORDER FOR PAYMENT OF PREMIUMS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11800..... ITEM 7-f
A RESOLUTION APPROVING A CONTINUING CONTRACT FOR PROFESSIONAL SERVICES WITH AGNOLI, BARBER & BRUNDAGE, INC., TO PROVIDE PROFESSIONAL LAND SURVEYING AND ASSOCIATED SERVICES ON AN AS-NEED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11801..... ITEM 7-g
A RESOLUTION APPROVING A CONTINUING CONTRACT FOR PROFESSIONAL SERVICES WITH JOHNSON ENGINEERING, INC., TO PROVIDE PROFESSIONAL LAND SURVEYING AND ASSOCIATED SERVICES ON AN AS-NEED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11802..... ITEM 7-h
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR ZIZI’S RESTAURANT AT BELLASERA HOTEL LOCATED AT 221 NINTH STREET SOUTH, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11803..... ITEM 7-i
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR THE CAFE, LOCATED AT 821 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11804..... ITEM 7-j
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR BICE RISTORANTE LOCATED AT 300 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11805..... ITEM 7-k
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR BAMBUSA BAR AND GRILL LOCATED AT 600 GOODLETTE ROAD NORTH, SUITE #112, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11806..... ITEM 7-l
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR TOMMY BAHAMA CAFE EMPORIUM LOCATED AT 1220 THIRD STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

***MOTION** by Taylor to **APPROVE CONSENT AGENDA** except Item 7-c; 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).*

(Added Item – see Item 4 above) ITEM 15
DISCUSSION OF PETITION FOR HEARING REGARDING NAPLES SAILING AND YACHT CLUB DREDGING PROJECT IN GORDON RIVER. City Attorney Robert Pritt indicated that this item was a follow-up to the discussion at that week’s workshop regarding the filing of a petition for formal administrative hearing by Naples Sailing & Yacht Club. Since then, he said, he had conferred with the various legal counsels representing the Club as well as the Antaramian interests and the Florida Department of Environmental Protection (DEP) and had learned that the matter had however not yet been set for hearing, therefore, any deadlines which must be met by the City are not currently of concern. He referred to his memorandum of October 16 (a copy of which is contained in the file for this meeting in the City Clerk’s Office) and indicated that there was no need at that juncture for the Council to make a decision in the matter unless a hearing were to be scheduled. In response to Council Member Taylor, Mr. Pritt explained that the City would be an intervener as a matter of right, which would require the City to make a filing no later than 20 days prior to any hearing.

Attorney Richard Yovanovich appeared on behalf of the Naples Sailing & Yacht Club. Council Member Price noted that the Council’s most recent action was to indicate to the DEP its willingness to consider a routing of the proposed channel sufficiently to the south so as not to intersect the area where the Club had proposed construction of additional boat docks. However, he said, it was not clear from the petition filed by the Club that this message had been clearly conveyed. (It is noted for the record that a copy of the aforementioned document is contained in the file for this meeting in the City Clerk’s Office.) Mr. Yovanovich explained that one of the findings of fact, stated in conjunction with the DEP’s notification of intent to issue a permit to the City, involved the absence of riparian rights on the part of the Club; therefore, the Club is mounting a challenge since it is believed that disputed riparian rights would lead to a denial of its dredging application. The Club, he said, would then file a civil lawsuit for a determination of riparian rights. However, he added, his client is not aware of the City’s position on relocating

the channel. Council Member Price pointed out that despite the City-approved PD (Planned Development) for the Club's dock expansion, determination of riparian rights is within the purview of the DEP; however, he urged that it be made clear to the DEP that the City would not act in a manner that would adversely affect an already approved PD.

Council Member MacIlvaine suggested that the record of the aforementioned Council action be reviewed and submitted by the Club to the DEP, pointing out that the Council sought not to interfere with the Club's riparian rights. Council Member Sorey said that he believed it to however have been preferable if the City had in fact modified its dredging permit application to clearly state the southern routing of the channel (See Attachment #1). However, the assumption had been that the two permits would in some manner be merged, he said, but since this had not occurred, the City should prepare a document further stating its position on the channel routing.

Charles Thomas, representing the Antaramian Development Group (Basil Street Partners), said that he concurred with the comments above but the problem which had arisen involved the DEP making a determination on the Club's riparian rights based on the location of the existing channel. While this relates to the City permit application (containing proposed dredging for Antaramian and another upland property owner), it is an issue that should be addressed by the Club prior to action by the DEP on the City permit. He further asserted that the Antaramian Development Group's counsel had conveyed to both the Club's legal counsel and to the DEP the City's willingness that the channel be relocated to accommodate the Club's proposed docks. However, due to the manner in which the DEP drafted its notice of intent to issue a permit to the City, the Club finds it necessary to mount a challenge because of the assertions with reference to its riparian rights. In conclusion, Mr. Thomas assured the Council that the Antaramian interests would not in any way interfere in the Naples Sailing & Yacht Club's pursuit of permitting. Nevertheless, he pointed out, the Antaramian interests had since January been seeking permission to dredge the channel for their benefit and that of the public.

In light of the above, Council Member Sorey urged that a means be found to allow the Antaramian interests to proceed, noting that should the Club file litigation, a further delay would result. He suggested therefore that the City's permit be amended to indicate the southern extension of the canal, which would circumvent the area where the Club proposed to construct additional boat docks. Mr. Sorey further asserted that the Council's actions with regard to the dredging had resulted in the worst possible outcome. Mayor Barnett, however, recommended that the discussion refocus on the nature of the item that had been added to the agenda; namely, discussion of the City filing with reference to the Sailing & Yacht Club's petition for hearing. The invitation to the Naples Sailing & Yacht Club to appear at that meeting had related only to its response with reference to this matter, he added, not whether there would be consideration of altering the City's permit application.

Council Member Price indicated that he had served on the Planning Advisory Board (PAB) when the Yacht Club dock petition had been considered and recalled that it was understood that, over and above the City's zoning approval, the petitioner must address permitting with the DEP, including riparian rights issues. Therefore, he said he believed that the City's permit application impinged upon the riparian rights issue between the Club and DEP and that by concurring with a more southern routing of the channel, the City had already done all it could do to honor its

approval of the Club's rezone petition. Therefore, he said he disagreed with Council Member Sorey's assertion that the City's actions had created a problem for the Club. He characterized the City's efforts as extreme in attempting to accommodate the Club, stating that this should be clear, and that it has no relation to an issue with regard to the Club's riparian rights raised by the DEP.

Council Member Taylor expressed the view that the appropriate venue for discussion of this aspect of the matter was among the various attorneys involved and urged that the Council provide City Attorney Pritt direction that everything possible be done not to delay the project as proposed by the Antaramian Development Group; Mr. Pritt should then report back to the Council, she said. City Attorney Pritt stated that it is not uncommon that this type of matter would result in litigation, although in most cases settlement is reached, making discussions of this type the norm so as to avoid protracted negotiations. Should discussions be authorized by the Council, Mr. Pritt said that he would attempt to meet further with the various attorneys as well as DEP, although reiterating that currently no filings were required by the City. Mr. Pritt also noted that comments made by Attorney Yovanovich related to whether the DEP has jurisdiction to determine riparian rights or whether this is a matter for the courts. Attorney Yovanovich however pointed out that, based on the findings in the City's dredging permit application, the Club's permit would be denied even though it is the Club's position that DEP does not possess the authority to determine riparian rights. Therefore, he said, a civil lawsuit would be filed with the City and others as parties, which he characterized as a potential quagmire that would impose further delays on dredging of the channel. In addition, Mr. Yovanovich agreed with Council Member Sorey's position that the actions the City had taken not to harm the Club had in fact had the opposite effect due to what the Club asserts is an unauthorized finding by the DEP.

Council Member Taylor said that she did not however perceive that it would be cost effective for the City to become involved in the process at that time. However, Mr. Yovanovich indicated that the City would nevertheless be involved in the near future because it would be named in the civil lawsuit, over riparian rights, to be filed by the Club in a matter of weeks. Therefore, he predicted that involvement by the City's legal counsel at the outset would accrue to lower legal costs than if he were to become involved subsequently in the process. Mayor Barnett nevertheless concurred with Miss Taylor, stating that he was reluctant to incur legal costs when no suit was yet in existence. Mr. Yovanovich also predicted that the filing of a civil action would temporarily stay issuance of any dredging permit.

Council Member Taylor asked whether it would then be prudent for the City to withdraw completely from the dredging permit application so that the Antaramian interests could proceed on their own. Mr. Pritt said that this could be done. She said that she had questioned the former Natural Resources Manager years before as to the reason the City had joined in the permit application and urged that this matter be further explored. Council Member Sorey agreed and reiterated his prior concern that the City's actions to remove itself from the Club's permit application had placed the Naples Sailing & Yacht Club in a position to defend its riparian rights. Mr. Yovanovich assured the Council that the determination to file a lawsuit was not adversarial against the City but could be considered a type of action to quiet title for determination of rights to which the City is an unavoidable party. Vice Mayor Nocera, however, reminded Council that the southern line had been favored by the City (see Attachment #1).

In further discussion, Antaramian representative Charles Thomas pointed out that the initial permit application had been to dredge the existing channel which extended south of the existing Naples Sailing & Yacht Club docks; however, that alignment had been introduced into the DEP's notice of intent to issue the City's dredging permit and could be seen therefore to limit the Club's riparian rights to the existing channel, despite the City's assertion that it would be willing to accommodate a channel relocation for the Yacht Club's new proposed boat slips.

City Attorney Pritt urged Council to continue the discussion of this matter to the November 7 regular meeting so that further information could be gathered and that a vote reflecting the wishes of a majority of Council could be ascertained. Council Member Taylor therefore moved for continuance, seconded by Council Member MacIlvaine. A vote on this motion followed brief further discussion and public comment.

Vice Mayor Nocera then asked the Antaramian and Yacht Club representatives to delineate the action each was seeking from the City. Mr. Thomas responded that City Attorney Pritt should be authorized to merely remain involved in the process. Attorney Yovanovich supported the continuation of discussions among the parties and also recommended that City Attorney Pritt be involved therein; in addition, he recommended that the City, via the City Attorney, make it clear to the DEP that the southern alignment is supported.

Public Comment: (9:41 a.m.) **Sue Smith, 11th Avenue South**, said that she deemed it appropriate to question the reasoning behind the Council's vote to initially join the dredging permit application to DEP. Council Member MacIlvaine indicated that this reasoning is fully related in the record. She suggested that there had been a belief that the application would be expedited if the City's name were on the permit. In contrast to this premise, she referred to the park project planned for the Pulling site wherein the City was said to be unable to go forward because it could not obtain the necessary permits. She therefore criticized the City for its involvement in a dredging project that was for the benefit of private entities. **Henry Kennedy, Naples**, reported a contact from Ronald Palmer (individual whose property is in close proximity of the site for the proposed Naples Sailing & Yacht Club boat docks) who he said had indicated an intention to file an objection to permit issuance if the aforementioned southern route were discussed. He further asserted that no blame for the controversy should be placed on the Antaramian interests, characterizing it as a waterfront dispute over riparian rights, the southern route being asserted to infringe on the riparian rights of property owners to the east. He recommended that the City endorse neither route as this would be unfair to one party or the other.

MOTION by Taylor to CONTINUE THIS ITEM to November 7, 2007 regular meeting; 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 07-11807.....ITEM 8
AN ORDINANCE REGARDING STORMWATER; AMENDING SECTION 16-51, DEFINITIONS, FOR THE PURPOSE OF ADDING DEFINITIONS FOR SPECIFIC DRAINAGE TERMS; AMENDING SECTION 16-114, SUBMISSION OF SIDEWALK, STREET AND PROJECT SITE DRAINAGE AND DRIVEWAY PLANS, FOR THE PURPOSES OF REQUIRING PERIMETER WALLS; ADDING SECTION 16-115, STORMWATER CONSTRUCTION STANDARDS, FOR THE PURPOSE OF**

ESTABLISHING STORMWATER CONSTRUCTION STANDARDS; CODE OF ORDINANCES OF THE CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER PROVISION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:48 a.m.) who indicated that revisions made at first reading of this ordinance had been highlighted on the draft provided to Council. Council Member Sorey moved for approval of this ordinance on second reading, seconded by Council Member MacIlvaine; however, public comment was heard before final action.

Public Comment: (9:49 a.m.) **Dorothy Hirsch, 626 Regatta Road,** expressed appreciation to Mayor Barnett for his kind comments on her efforts to achieve passage of this ordinance. She also conveyed appreciation to those who had supported her in this effort, listing various citizens by name as well as recognizing The Conservancy of Southwest Florida for technical support. She urged passage. **Jennifer Hecker, The Conservancy of Southwest Florida,** also expressed appreciation to the City and stressed the importance of the ordinance, which she noted, reflects best stormwater management practices (BMP's) and is reasonable for single-family application. Ms. Hecker also noted that such legislation serves to protect the environment and quality of life for citizens and will defer the necessity of costly retrofits of infrastructure in the near future. She urged adoption.

MOTION by Sorey to ADOPT ORDINANCE 07-11907 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).

In response to Council Member Sorey, City Traffic Engineer George Archibald clarified that the ordinance before Council in fact includes multi-family and commercial, although various aspects of implementation would be addressed in a handbook, which would be drafted and provided to Council for future review.

RESOLUTION 07-11808.....ITEM 9
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR STONEY'S STEAKHOUSE AT 403 BAYFRONT PLACE, UNIT #301, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:53 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, Nocera, Barnett/no contact; Price/receipt of emails and conversation with the petitioner; and Taylor, MacIlvaine and Sorey/familiar with the site but no contact. Planning Director Robin Singer noted that this petition was for renewal of the live entertainment permit in question with the same conditions applicable to prior approvals. However, a noise complaint in March had been resolved, she said; Police & Emergency Services (PESD) is nevertheless recommending approval, she added, as well as the remainder of staff. Council Member Price moved approval, seconded by Council Member Willkomm; however, additional discussion and public comment occurred prior to final action. Council Member Taylor asked that Chief Victor Morales comment on the aforementioned noise complaint so that the public is aware of the details.

Public Comment: (9:54 a.m.) **Tary Kettle, 451 Bayfront Place, #5304,** urged that the petition be approved, citing the importance of entertainment to the viability of the various restaurant businesses in the community.

Chief Morales reported that Ralph Anthony, Community Policing Officer, had investigated a situation wherein he had heard noise emitting from this particular business; a warning was issued and compliance achieved. He also stated that this had been the only problem recorded at this site, which is the reason for PESD's recommendation of renewal.

MOTION by Price to APPROVE RESOLUTION 07-11808 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)(Continued – see Item 4 above).....ITEM 10
AN ORDINANCE PERTAINING TO THE POLICE OFFICERS' PENSION AND
RETIREMENT SYSTEM; AMENDING SECTION 29-271, DEFINITIONS;
SUBSECTION (2) OF SECTION 29-273, MAINTENANCE OF FUND; SECTION 29-311,
CONTRIBUTIONS; AND SUBSECTION (2) OF SECTION 29-312, REQUIREMENTS
FOR RETIREMENT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER
PROVISION AND AN EFFECTIVE DATE. Title not read.**

**ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE RELATING TO SIGNS; AMENDING THE DEFINITION OF "SIGN"
IN SECTION 50-32 OF THE CODE OF ORDINANCES, CITY OF NAPLES; AMENDING
SECTION 50-37 OF SAID CODE TO AMEND THE PROVISIONS FOR PROHIBITED
VEHICLES WITH SIGNS AND TO ADD A PROHIBITION AGAINST CERTAIN
VESSELS WITH SIGNS; PROVIDING FOR REPEAL OF SECTION 50-41 OF SAID
CODE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN
EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:56 a.m.) who noted the revisions
which had been included in the document since last considered by the Council. He said that the
majority were, however, merely language improvements for consistency purposes. In addition,
he said that he had included the phrase "for more than 24 hours" in both the vessel and vehicle
subsections pertaining to storage in or on public parking lots so as to differentiate from simple
parking. With regard to the time after which a vehicle must be moved, Mr. Pritt recommended
language that establishes a presumption, albeit rebuttable, that a violation has occurred when a
vehicle with signage appeared to be parked or stored in the same location for more than 6
consecutive hours or more than 12 total hours in any 24 hour period.**

Council Member Sorey said that while he supports a sign ordinance, he believed that the text had not yet achieved the goal of dealing with what he characterized as flagrant violators, particularly in light of the possibility that citizens could inadvertently violate the aforementioned provision and then have to mount a defense, regardless of whether the provision was rebutted. He cited as an example a construction company vehicle which might be parked on a site for an eight-hour workday. Mr. Pritt said that because it is a presumption, the Code Enforcement Officer is allowed to inquire for extenuating circumstances, such as some type of business necessity which would not constitute a primary purpose of using the vehicle for advertising. Mr. Pritt further pointed out that sign regulation cannot be based on content but, rather, on the basis of reasonable time, place and manner of use, which is the purpose of the aforementioned presumption. Mr. Sorey expressed the belief that the size of the sign should be a major consideration since service vehicles would of necessity contain local licensure information. He suggested that signs under a certain dimension be exempt. City Attorney Pritt said that while such a provision would most likely pass constitutional tests, it may not address the underlying problem.

Council Member Sorey and Vice Mayor Nocera each expressed concern that the provisions, as currently drafted, would place an extensive burden of interpretation upon Code Enforcement personnel. Mr. Sorey further said that he could not support the ordinance in its present form although he concurred with prohibiting large signs that were placed on vehicles and vessels for the purpose of advertising. Council Member MacIlvaine and Mayor Barnett each said that they believed there should be some provision relative to the size of the sign displayed. Council Member Taylor said that her concern was instead with difficulties that could arise when enforcement of the precise letter of the law is demanded without recognition by complainants of the latitude allowed Code Enforcement Officers. City Attorney Pritt, however, pointed out that a strict ordinance is nevertheless needed in order to address the use of vehicles as advertising, stating that he had written a similar ordinance which had been litigated and upheld.

Council Member Price took issue with the strictness of the proposed ordinance, citing a prohibition of indoor displays positioned so as to be viewed from outside which he characterized as regulation out of control; he therefore recommended that the City return to dealing with the specific concerns that prompted the proposed legislation. Council Member MacIlvaine reiterated his point that smaller signs should be permitted because they would not be readily visible for advertising purposes.

Public Comment: (10:13 a.m.) **Judith Chirgwin, Naples**, cited an incident in her neighborhood where a construction trailer with company advertising had remained for an extended period of time; she said it was obvious to her that promotion was one of the purposes. She also mentioned advertising on trailers being towed behind vehicles, but expressed the hope that the vintage vehicles placed at various locations by Truly Nolan Pest Control would not be precluded from parking in the community due to their historical nature. In conclusion, Ms. Chirgwin pointed out that recreational vehicles (RV's) also frequently display advertising. **Truly Nolan, 1099 Nelson's Walk**, stated that the classic cars which he parks around the community are privately owned and do not mention any product or service. This issue was resolved with Collier County as long as no company name or other advertising was not displayed, provided there was permission from the property owner and the vehicle was legally parked. He further noted that state law requires that service vehicles be marked with identifying signage. **Henry Kennedy, Naples**, noted that a neighbor advertises a real estate company on a personal vehicle and asked whether this would be prohibited under the ordinance. In addition, he indicated that the ordinance would preclude charter boats with signage from being docked overnight at the Tin City waterfront shopping area. This also includes for-sale signs on vessels, he added, and characterized the ordinance as proposed as overreaching the purpose intended.

City Attorney Pritt said that the genesis of the proposed ordinance had been complaints and difficulties with current enforcement provisions; while the current draft may be too strict, he urged that the Council provide guidance which might also include no further action. Council Member MacIlvaine recommended that the larger the sign the shorter duration allowed for parking of the vehicle on which it appeared. City Manager Robert Lee recommended that an ordinance at least address those large-box trucks which are parked in front of businesses for extended periods of time and are intended as additional signage. Council Member Sorey concurred with Mr. MacIlvaine that it is the magnitude of the sign that is the concern and asked that this be addressed in the ordinance.

MOTION by Taylor to **CONTINUE THIS ORDINANCE** for redrafting pursuant to Council discussion; 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).

Recess: 10:31 a.m. to 10:38 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Price who returned at 10:39 a.m. and Council Members Taylor and Willkomm who returned at 10:40 a.m. It is also noted that Items 12-a and 12-b were read and considered concurrently.

RESOLUTION 07-11809.....ITEM 12-a
A RESOLUTION APPOINTING ONE MEMBER TO THE CARVER FINANCE BOARD OF DIRECTORS FOR A THREE-YEAR TERM COMMENCING OCTOBER 20, 2007, AND EXPIRING OCTOBER 19, 2010; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION 07-11810..... ITEM 12-b
A RESOLUTION APPOINTING ONE MEMBER TO THE CARVER FINANCE BOARD OF DIRECTORS FOR A THREE-YEAR TERM COMMENCING OCTOBER 17, 2007, AND EXPIRING OCTOBER 16, 2010; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:38 a.m.).

Public Comment: (10:38 a.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 07-11809** nominating Lodge McKee to the Carver Finance Board of Directors. This motion carried 4-0 (MacIlvaine-yes, Nocera-yes, Price-absent, Sorey-yes, Taylor-absent, Willkomm-absent, Barnett-yes).

MOTION by Price to **APPROVE RESOLUTION 07-11810** nominating Warren Adkins to the Carver Finance Board of Directors. This motion was unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Mayor Barnett expressed his appreciation to the reappointed members for their steadfast service; City Clerk Tara Norman noted that one vacancy remains on the Carver Finance Board of Directors although the current appointments will allow a quorum to be achieved.

RESOLUTION 07-11811.....ITEM 13
A RESOLUTION REESTABLISHING THE NAPLES BLUE RIBBON COMMITTEE; APPOINTING 7 MEMBERS TO THE COMMITTEE FOR THE PURPOSE OF STUDYING AND MAKING RECOMMENDATIONS TO THE COUNCIL ON THE LEVEL OF EMPLOYMENT COMPENSATION AND BENEFITS FOR THE MAYOR AND COUNCIL MEMBERS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:39 a.m.) who pointed out that the resolution both re-establishes the committee, which is provided for by Charter, as well as appointing members. Various Council Members indicated the individuals they wished to appoint. These names are reflected in the resolution.

Public Comment: 10:43 a.m.) None.

MOTION by Willkomm to **APPROVE RESOLUTION 07-11811 and Members Linda Penniman, Thomas Rourke, Doug Finlay, William Kroeschell, James Rideout, David Rice, and Morris Kent; amended to reflect Council Member Willkomm's selection.** This motion was seconded by Nocera and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-no, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

Council Member Price clarified that, in the spirit of cooperation, he had placed a representative on the committee although he was not in favor of the process at that time. Council Member Taylor said that she, too, did not support this committee going forward. Mayor Barnett clarified that the committee would meet that week; City Manager Robert Lee indicated that the meeting had already been posted for Thursday with an additional meeting scheduled for Friday should it be necessary.

RESOLUTION 07-11812.....ITEM 14
A RESOLUTION APPOINTING AN INTERIM CITY MANAGER; AUTHORIZING THE INTERIM CITY MANAGER TO EXERCISE ALL DUTIES AND OBLIGATIONS OF A CITY MANAGER UNDER THE CHARTER OF THE CITY OF NAPLES, FLORIDA AND AS OTHERWISE AUTHORIZED BY LAW; AND PROVIDING AN EFFECTIVE DATE.
Title read by City Attorney Robert Pritt (10:45 a.m.).

Public Comment: (10:45 a.m.) None.

MOTION by Barnett to APPROVE RESOLUTION 07-11812 nominating Chet Hunt as Interim City Manager. This motion was seconded by MacIlvaine and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-no, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

At the request of Mayor Barnett, Council Member Price agreed to alter his vote to the affirmative; therefore, the matter was brought up for reconsideration per Resolution 98-8218.

MOTION by Willkomm to RECONSIDER RESOLUTION 07-11812; seconded by Barnett and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

MOTION by Barnett to APPROVE RESOLUTION 07-11812 nominating Chet Hunt as Interim City Manager; 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).

(Added Item).....ITEM 16
DISCUSSION OF OFFER BY COLLIER DEVELOPMENT TO SELL TO THE CITY THE SITE ON NINTH STREET SOUTH AND SIXTH AVENUE ADJACENT TO PUBLIC PARKING LOT TO THE WEST OF THE SITE ON EIGHTH STREET SOUTH WHERE A PARKING GARAGE IS TO BE LOCATED. (10:46 a.m.) Council Member Taylor requested the presence of staff to address financing issues. Mayor Barnett first sought consensus as to whether the City should consider purchasing the property, owned by the Barron Collier Companies, on the eastern side of the block bounded by Sixth Avenue South, Eighth Street, Fifth Avenue South and Ninth Street. The following 4-3 consensus was reached to consider this purchase: Willkomm-no, Price-no, Nocera-yes, Taylor-yes, MacIlvaine-no, Sorey-yes, and Barnett-yes. Mayor Barnett however clarified that final action would occur only after Council review of the matter.

CRA Executive Director Russell Adams then reviewed the financial information presented in his memorandum of October 12 (Attachment #2) relative to options for supplemental funds for construction of a parking garage on the City's lot at Sixth Avenue South and Eighth Street. The various cash elements in this list totaled \$3,485,483, which would lower the amount necessary for bonding. In response to Council Member MacIlvaine, Mr. Adams indicated that costs attendant to reallocating these funds, such as lost interest, etc., had not yet been calculated; he

also confirmed that the proposal would then result in a \$5 million bond issue as opposed to an \$8.5 million issue as projected. With regard to the item showing delay of capital spending in the amount of \$430,000 (Attachment 2, Page 3), Mr. Adams reviewed individual items, which were either eliminated or reduced. Mr. Adams also clarified for Mr. MacIlvaine that, while not all of the parking spaces listed had actually been sold, it was assumed that all revenue would be received within the time frame projected for bonding.

Council Member MacIlvaine expressed concern with the proposal to delay inter-fund payments, which he said he did not believe to be prudent because of the potential that the period of delay could be extended beyond one year. He also noted reservations with regard to reducing the fund balance from \$3,172,713 to \$872,713. Finance Director Ann Marie Ricardi pointed out however that the list of items under review were merely suggestions that the staff had formulated in response to Council's request for all possible options for parking garage financing; however, a final presentation in this regard would be made on November 5, she added, since she was still in the process of conferring with bond counsel. However, Ms. Ricardi estimated that the delay in inter-fund payments would not have a significant impact since the repayment schedule had been established by the City itself and that there was both flexibility and discretion in this regard.

Ms. Ricardi then clarified for Council Member Taylor that, while the aforementioned fund balance had been derived from TIF (Tax Increment Financing) revenues, these monies could in fact be utilized to make a down payment on the parking garage. Council Member Price, however, pointed out that a bond could not be repaid from that source. In further response to Miss Taylor, City Attorney Pritt explained that the Florida Supreme Court had recently asserted that an entity could not do indirectly what cannot be done directly; however, the use of TIF funds for a down payment did not appear to be prohibited under this doctrine. He confirmed, however, that no determination had been made by the court as to the locale where a bond referendum must be held when TIF funds are involved. He further explained that when the initial Supreme Court decision was rendered in the subject Escambia County case, Florida was immediately subjected to a bond watch, which resulted in a rewriting of the decision, but only to the extent of certain primary issues such as previously issued bonds. This was followed by a rehearing on the case in chief, the result of which could remain unknown for several months.

City Manager Robert Lee suggested that the staff, on November 5th, report to the Council more fully on both the potential purchase of the Barron Collier Companies property and to provide a more detailed financial analysis. He recommended that the Collier interests be advised of that day's discussion and informed that a decision would be forthcoming thereafter. Council Member MacIlvaine expressed doubts, however, that the City would be able to locate a source for over \$2 million to purchase the Collier property when it was currently seeking means to finance a parking garage.

Mr. MacIlvaine further asserted that the offer by the Collier interests to sell their Ninth Street South property to the City was a disguised property exchange for the City's lot on Eighth Avenue South. Vice Mayor Nocera disagreed, and ascertained from staff that TIF funds could be used to purchase the Collier site. Council Member Sorey pointed out that the City's appraiser had indicated that the City's site on Eighth was worth \$200,000 more than the Collier site on Ninth. Since the question had been raised regarding windfall profits, there had been discussion

of the City purchasing the property on Ninth, and shifting the location of the garage to Ninth and either converting the Eighth Street South parcel into green space utilizing the current balance in the green space fund to achieve a kind of extension to Cambier Park, or to acquire an asset to eventually sell at market value. Mr. Sorey also pointed out parenthetically that he did not believe that the Collier interests would be further interested in participating in a future bidding process for the Eighth Street site. However, in the interim, there would also be parking availability while the garage is under construction on the site acquired from the Colliers. Mr. MacIlvaine nevertheless took the position that purchasing land for \$2.3 million was too costly for use as a park which would be immediately across the street from another park and reminded Council that one of the factors in its decision not to engage in a property exchange with Barron Collier Companies had been the walking distance from Cambier Park to a parking garage on Ninth Street. To engage in real estate speculation, he added, is not appropriate stewardship on behalf of taxpayers.

Council Member Price said that he was opposed to purchasing the Collier property on Ninth Street, noting that a decision on the location of the City's parking garage had been made and pointing out that various other locations should be sought for green space, particularly within the redevelopment area. He stressed that neither acquisition for park purposes or to later resell were, in his belief, appropriate expenditures. Council Member Willkomm said that he strongly agreed with this position and also said that the proposal for acquisition of the Collier site not be considered further.

Vice Mayor Nocera however took an opposing position, stressing that an opportunity to purchase difficult-to-find green space would be lost. He, too, favored use of the site on Eighth Street South to extend the green space of Cambier Park; if not, the acquisition of the property would also allow future expansion of a parking garage if needed. Council Member Taylor said that she favored further information gathering on the Collier site because of the commercial or residential redevelopment potential of the site on Eighth Street South, which, as opposed to a parking garage, would enhance activity on that particular thoroughfare. She also pointed out that the significant financial challenges were in the recent year presented to state and local government in Florida due to property tax reform as well as the recent Florida Supreme Court ruling on the use of TIF funds for bonding. This will not cease for the foreseeable future, she said, necessitating the maximization of assets to preserve the wealth of the City. She urged continued conversations with Collier interests.

Public Comment: (11:22 a.m.) **Sue Smith, 11th Avenue South**, said that she was stunned that the matter of the Collier property had been brought up again after the public believed that the location of the parking garage had been settled. It had also not been listed on the agenda promulgated prior to the meeting, she added. Noting the fiscal issues mentioned by Council Member Taylor, Mrs. Smith said she had been critical of the City's fiscal stewardship on various other instances such as the issues relating to damage to the public park at the entrance to Royal Harbor (Sandpiper Street and US 41). She also pointed out that all City taxpayers contribute to TIF funds and that general tax rates would be different if those funds were not diverted to a redevelopment account. In addition, she pointed out that the site on Eighth Street South and Sixth Avenue belongs to the citizens of the City and the City Council should not consider engaging in any real estate transaction that involved that property. She also pointed out that the need for parking during garage construction had already been provided for via an agreement to

use the former Grand Central Station shopping center site at Goodlette-Frank and US 41, coupled with the use of trolleys to shuttle patrons to Fifth Avenue South. However, should the City acquire the Collier property, the entire site should contain deed restrictions that preclude uses other than public parking, asserting that placing a parking garage on Ninth Street would not be convenient for shoppers because it is too distant. **Judith Chirgwin, Naples**, stated that the public had not been informed of the current discussion by City Council, pointing out that the Council had received correspondence on the matter the prior Friday. Mayor Barnett disagreed with Ms. Chirgwin in that the Council had at its last workshop (October 15) provided him with direction to correspond with the Barron Collier Companies inquiring relative to the site on Ninth Street North. Nevertheless, she pointed out that an item had not been included in the published agenda for that day's meeting; various Council Members clarified that the item had been added at the aforementioned workshop. She recommended that a City representative approach the Collier interests for donation of their property, citing tax advantages. Like the prior speaker, Ms. Chirgwin said that the public had believed that the issue regarding location of the parking garage had been decided, predicting that if the matter is raised a sufficient number of times, an opposite conclusion could eventually be reached. She also warned that it was inappropriate for the City to expend large sums in light of a looming crisis in the global economy as well as financial difficulties which are beginning to appear locally. If property were to be purchased, Ms. Chirgwin suggested that the City approach the Antaramian interests regarding the former Grand Central Station shopping center site. **Jane Parks, 567 Devils Lane**, said that while she favored acquiring the Collier property, she did not favor constructing either commercial or residential units on Eighth Street South. When asked by Vice Mayor Nocera, Mrs. Parks said she did not have any recommendations as to a usage by the City of the Collier property. **Lynn Hixon-Holley, 590 14th Avenue South**, said she believed that the Eighth Street South property should continue to be designated as the site for the City's parking garage, the CRA's approval being unanimous and City Council's vote being 5-2; the public had also been given an opportunity for input on the subject. She also reminded the Council of members' prior statements in favor of the Eighth Street location, noting a statement by Council Member Taylor regarding the need for close proximity to Cambier Park to accommodate older residents. Ms. Hixon-Holley further pointed out that although she had previously made statements in favor of acquiring the Collier property, it had been for the purpose of additional parking only rather than redevelopment. In conclusion, she urged that the Council be cautious with City funds, particularly in relation to real estate transactions. **Virginia Clement, 1020 13th Street North**, concurred with prior public speakers and expressed the view that the current discussion is a thinly veiled attempt to accomplish what had previously been attempted; namely, to relocate the parking garage.

Council Member Sorey pointed out that the Community Redevelopment Agency Advisory Board (CRAAB) and Fifth Avenue South Action Committee (FASAC) had each voted to support a property exchange between the City and Barron Collier Companies. He also said that in the Council deliberations, 16 public speakers had supported the exchange and four had not; in addition, he said, the City's visioning process had indicated that 63% of those surveyed had supported mixed use. Commending Council Member Taylor for her position, he said that it was Council's responsibility to make the best decision possible; otherwise, Council had been criticized for not acquiring other sites when available, such as a site on Naples Bay that is now to become a mixed-use facility. Unless a decision is made on acquisition of the Collier site, the opportunity will no longer be available, he said, although he also said he supported utilization of

the entire site for parking if that is appropriate. Council Member MacIlvaine took issue with the use of the aforementioned example of acquiring waterfront property as a comparison to acquisition of a one-story commercial structure. He urged careful stewardship of City funds, particularly in light of that day's discussion of the City's attempt to locate \$5-million for construction of the garage. To purchase the Collier site would, he said, be a misuse of the taxpayers' funds. He urged Council not to do so.

Mayor Barnett said that while he had favored a property exchange with Barron Collier Companies, the proposal had been defeated. Rather than delaying a decision, he said, the controversial nature of the matter had convinced him that the City must proceed with a parking garage on Eighth Street to provide parking for commercial interests on Fifth Avenue South. Therefore, he said that he would oppose further action on the Collier site, making the Council's consensus 4-3. A formal action was then taken as noted below.

MOTION by Barnett to NOT SCHEDULE FURTHER DISCUSSION ON NOVEMBER 11, 2007 WORKSHOP. *This motion was seconded by Price and carried 4-3, all members present and voting (MacIlvaine-yes, Taylor-no, Price-yes, Sorey-no, Nocera-no, Willkomm-yes, Barnett-yes).*

EXECUTIVE SESSION.....ITEM 6
(11:49 a.m.) Mayor Barnett advised that Council would enter into an executive session regarding Collier County, Marine Industries Association of Collier County, Inc., and Captain Eric Alexander v. Florida Fish and Wildlife Conservation Commission, the City of Naples, and Citizens to Preserve Naples Bay, Inc., Case No's. 2D07-1744, 2D07-1777 and 2D07-1796, and DOAH Case No's. 05-2034, 05-2035, 05-2036 and 05-2037. (It is noted for the record that a brief recess was taken prior to the executive session.)

Recess: 11:51 a.m. to 11:58 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

(11:58 a.m.) Mayor Barnett announced that Council would now enter into the above noted executive session.

Executive session: 11:59 a.m. to 12:06 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened. No action was taken regarding this item.

(Added Item – see Item 4 above)ITEM 17
DISCUSSION / ACTION REGARDING CONFLICT IN LEGAL REPRESENTATION BY ROETZEL & ANDRESS IN RELATION TO APPLICATION FOR SUBMERGED LAND LEASES IN CONJUNCTION WITH CRAYTON COVE ANCHORAGE / MOORING FIELD AND CITY DOCK. (12:06 p.m.) Referencing his memorandum dated October 16, 2007 (a copy of which is contained in the file for this meeting in the City Clerk's Office), City Attorney Robert Pritt explained that members of his firm no longer represent the owners of the Fleischmann Dock, which would have been the source of any conflicts. Therefore, he requested that Council waive conflict in legal representation thereby allowing his firm, Roetzel & Andress, to assist with the submerged land lease and mooring fields issues; Council agreed.

Public Comment: (12:08 p.m.) None.

MOTION by Barnett to WAIVE CONFLICT; *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).*

Council Member Sorey noted that Natural Resources Manager Michael Bauer had requested that Council consider his recommendations from that week's workshop regarding gopher tortoises and Council Member Price moved that this be added as Item 18 (see below); Council agreed.

MOTION by Price to ADD AGENDA ITEM 18 (see below); 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).

**(Added Item).....ITEM 18
ACTION REGARDING RECOMMENDATION BY NATURAL RESOURCES
MANAGER TO INTRODUCE GOPHER TORTOISES TO NAPLES PRESERVE SITE,
PURSUANT TO OCTOBER 12, 2007 RECOMMENDATION (Memorandum in meeting
file). (12:08 p.m.)** City Attorney Robert Pritt explained that the item under consideration involved approving recommendations within the October 12 memorandum from Natural Resources Manager Michael Bauer to introduce gopher tortoises to the Naples Preserve along with the fence as described therein. (It is noted for record that this document is contained in the file for this meeting in the City Clerk's Office and was also discussed at the City Council workshop of October 15, 2007.)

Public Comment: 12:10 p.m.) None.

***MOTION by Price to APPROVE RECOMMENDATION OF NATURAL
RESOURCES MANAGER 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).***

PUBLIC COMMENT.....
(12:11 p.m.) None.

CORRESPONDENCE AND COMMUNICATIONS.....

City Manager Robert Lee informed Council that the Port Royal Property Owners Association had notified the City of its intent to not connect to the City's reuse water system until such time that the chloride levels are within acceptable parameters. (It is noted for the record that a copy of the aforementioned notification letter is contained in the file for this meeting in the City Clerk's Office.) Council Member Taylor stated that she had been informed by John Allen, association president, that either a chloride level comparable to the City's potable water supply had been requested or a level that approximates that of Collier County's (160mg/l) be provided as opposed to the staff recommendation of under 400mg/l. Public Works Director Dan Mercer, referencing his memo of October 16 (a copy of which is contained in the file for this meeting in the City Clerk's Office), stressed that his research indicates that a level under 400mg/l would not harm citrus trees or other Florida landscaping. With continued effort, he said, the level will not only meet the 400mg/l, but will become even lower. Council Member Sorey suggested that while a maximum level of 400mg/l is acceptable, a target level, such as the 250mg/l for drinking water, be established.

Public Comment: (12:21 p.m.) **Dale Walters, 2500 Crayton Road, Moorings Golf Course superintendent**, said that the problem of chloride content should have been recognized and addressed several years before. Recent samples of the City's reuse water, as well as those tested two years before, show that chloride levels were unchanged he stated, and also noted that the hardness of the water creates a soap scum on the plants.

Council Member Willkomm expressed concern that the infiltration of salt water into the City's sewer lines would not be addressed if potable water were utilized to dilute the reuse water and

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achieve acceptable chloride levels. He therefore suggested that, if this form of dilution were to become necessary, bi-weekly reports on the quantity of potable water used and the accompanying quality of the reuse, be provided to Council as well as identification of other steps being taken to correct the situation. In response to Council Member Price, Mr. Mercer indicated that the data provided at that week's workshop had been obtained from the University of Florida. Council Member Taylor however, said that salt water intrusion into sewer lines would be an ongoing maintenance issue due to the environment of the community, and Mr. Mercer agreed, also listing construction and excavation, and illegal taps such as those for water softeners and heat exchange units as possible sources for damage to the lines. He concluded that the more spent on the system, the better the quality of water realized, and in response to Mr. Willkomm's concern above, clarified that the reuse water will not be mixed with potable water but with water from A-wells (16 original City raw water wells).

Mayor Barnett and Council thanked City Manager Lee for his years of service since he would be leaving his position that week.

ADJOURN.....
12:41 p.m.

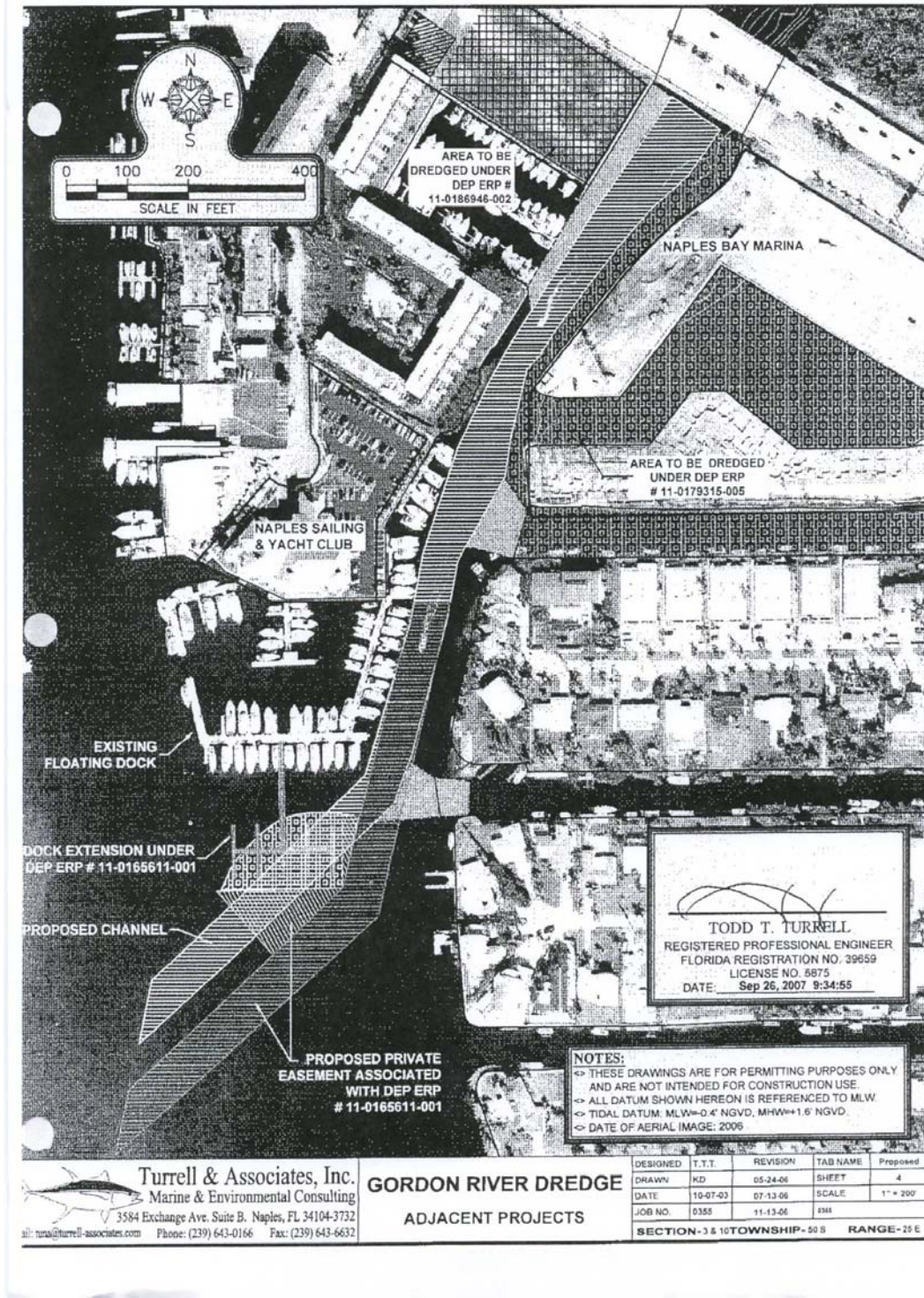
Bill Barnett, Mayor

Minutes prepared by:

Tara A. Norman, City Clerk

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 11/14/07





Memo *Community Redevelopment Agency*

TO: Honorable Mayor and Members of City Council
 FROM: Russ Adams CRA Executive Director
 DATE: October 12, 2007
 SUBJECT: Garage Financing Update

I have developed options looking at various levels of selling parking spaces (50 to 250) coupled with selected capital spending delays. The attached spreadsheet has a **preliminary** list of capital project delays and other actions to free-up cash to reduce the bond amount needed for the parking garage:

• Delay of capital spending	\$430,000
• Sales of parking spaces in which we have not yet received payment (555 5th Ave. South and D-Downtown)	345,810
• Operating expenses related to reduced capital expenditures	50,000
• Delay of Inter-fund debt repayment for one year	359,673
• Reducing fund balance \$3.2 million to \$873,000	<u>2,300,000</u>
Total Budgeted Cash Used to Reduce Bond Amount Required	\$3,485,483

Deducting this amount from the estimated capital cost of the garage leaves a balance of about \$5 million for bond financing. However, garage space pre-sales could be used to significantly reduce the bond requirement further.

For example, for every 100 spaces sold at \$25,000/space (garage cost of \$8.5 million ÷ 340 spaces = \$25,000), we would generate revenue of \$2.5 million.

On this basis, the entire \$8.5 million bond could be replaced by selling 200 spaces at \$25,000/space and using the spending delays shown above. Of course it remains to be seen how quickly pre-sales would be realized.

Another way of establishing a sales price is to compare what it would cost a Downtown developer in capital and economic costs (economic cost is the value given up for space used for parking rather than some commercial use). For example, if it would cost a developer \$40,000 in capital, future maintenance and economic costs to provide parking spaces on-site, the City might offer parking spaces at \$35,000 per space to entice sales.

We have commissioned Carroll & Carroll appraisers to determine just what the value of the parking spaces should be. We expect to receive their report this week. However, determining how long it will take to sell any number of spaces remains a challenge and a risk.

One way of managing this risk would be short-term borrowing, not to exceed 12 months according to state statute, as a way of buying time to see how much revenue could be generated through pre-sales. Ann Marie Ricardi does not favor this approach, but as a minimum, we may be able to delay financing some months to test pre-sales levels or prepare for a referendum.

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A more complete status of funding options will be provided for your November 5th workshop.

Strand Case Update

Also attached is an article summarizing the results of the State Supreme Court's October 9th rehearing of the Strand Case in which it ruled that TIF funds could not be used to repay bonds without being approved through a referendum.

The court held to its position in the re-hearing. However, if the requirement for the referendum is limited to the City of Naples or the CRA District, a referendum could be a viable option. Bob Pritt is researching this question.

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GARAGE FINANCING DISCUSSION 10/8/07				
	Budget	Remaining Budget	Used to Reduce Bond	
CAPITAL				\$8,500,000
CIP Savings (Non-Bonded)				
08C02 Spring Lake	150,000	150,000	0	
08C05 On Street Parking With Repaving	200,000	0	200,000	
04C16 12th Street Improvements	250,000	250,000	0	
08C06 Pedestrian Underpass at us 41	50,000	20,000	30,000	
08C07 Central Ave Improvements	150,000	0	150,000	
08C09 Pathway improvement	100,000	50,000	50,000	
08C10 Four Corners	<u>175,000</u>	<u>175,000</u>	<u>0</u>	
	1,075,000	645,000	430,000	430,000
Previous Sales to be Credited to CRA When Paid				
12 Spaces @ \$22,306 for 555 5th Ave			267,672	
27 Spaces @ \$2,894			<u>78,138</u>	
			345,810	345,810
Operating Expenses Related to Capital Spending				
Capital Project Engineer Fee	408,550	358,550	50,000	50,000
Delay Inter-Fund Payments for One Year				
General Fund	124,218		124,218	
Capital Projects	147,572		147,572	
Streets	73,335		73,335	
Stormwater	<u>14,548</u>		<u>14,548</u>	
	359,673		359,673	359,673
Projected Fund Balance for End of FY 2007-2008	3,172,713	872,713	2,300,000	2,300,000
Total Cash Used to Reduce Bond Amount				<u>3,485,483</u>
Balance to Be Financed Before Selling Pkg. Spaces				\$5,014,517
Parking Space Sales				
50 at \$25,000/Space				\$1,250,000
100 at \$25,000/Space				\$2,500,000
200 at \$25,000/Space				\$5,000,000
50 at \$35,000/Space				\$1,750,000
100 at \$35,000/Space				\$3,500,000
150 at \$35,000/Space				\$5,250,000