



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – November 14, 2007 – 8:59 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 (left 5:26 p.m.)
Gary Price, II
John Sorey, III (left 6:05 p.m.)
Penny Taylor
William Willkomm, III

Also Present:

Chet Hunt, Interim City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Vicki Smith, Technical Writing Specialist
Stephen Weeks, Technology Services Director
Robin Singer, Planning Director
David Lykins, Community Services Director
Victor Morales, Chief of PESD
Denise Perez, Human Resources Director
Bob Middleton, Utilities Director
Ann Marie Ricardi, Finance Director
Michael Bauer, Natural Resources Manager
Lori Parsons, Risk Manager
Dan Mercer, Public Works Director
Adam Benigni, Planner II
John Passidomo
Danny Nelson
Andy Woodcock
Charles Thomas
Vincent Previti
Scott Congress
KP Pezeshkan
Al Nicholson
Jackie Sloan

Gene Scott
Dorothy Hirsch
Everett Thayer
Linda Penniman
Anita Yehuda
David Yehuda
Doug Finlay
Maria Furetta
Sue Smith
Joe Biasella
Carl Suarez
Teresa Heitmann
Lou Vlasho
Willie Anthony
Henry Kennedy
John Allen
Tom Trettis
Frances Albergo
Pam Gerlach
William Buol
John Schoolmeester

Media:

Jenna Buzzacco, Naples Daily News
Other interested citizens and visitors

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

Pastor Gene Scott, Celebration Community Church.

ANNOUNCEMENTITEM 3

Mayor Barnett proclaimed November 17, 2007 as Unchained Day in the City of Naples; encouraging residents to patronize locally owned and operated businesses.

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

MOTION by Nocera to ***SET THE AGENDA***; reversing order of consideration of ***Item 12*** and ***Item 13***; removing from the Consent Agenda for separate discussion ***Item 7-c*** (sculptures of Fifth Avenue South), ***Item 7-i*** (sewer system evaluation) and ***Item 7-j*** (Basin III drainage improvements); and adding ***Item 15*** (memorandums of understanding (MOU's) with Fraternal Order of Police/FOP) to be considered following Consent Agenda, ***Item 16*** (use agreement with Naples Rowing Association), ***Item 17*** (City Manager's contract ratification), and ***Item 18*** (discussion of mitigation issues regarding Naples Sailing and Yacht Club). This motion was seconded by Price and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....ITEM 5

(9:09 a.m.) **Anita Yehuda, 480 Fifth Street South**, expressed concern regarding the intensity of activity and the types of development allowed on Fifth Avenue South, that focus should instead be devoted to restoring the area to what she characterized as a first class main street destination. City Attorney Pritt also received clarification from Ms. Yehuda that her comments were not directed to Items 8 or 9 (proposed redevelopment at Fourth Street and Fourth Avenue South.) **Everett Thayer, 1690 Avion Place**, noted a recent letter to the editor of the *Naples Daily News* regarding the possible lengthening of runways at the Naples Municipal Airport and cited the impact of such an action upon Avion Park and the remainder of the City. City Attorney Robert Pritt explained that due to the existence of an airport zoning overlay district, any action of this type must be approved by City Council and be consistent with zoning. Council Member Taylor said that she had been asked to respond to a telephone poll regarding this issue recently and that Mr. Thayer's concerns should be heeded. Miss Taylor also indicated that the polling had included a request to rate the effectiveness of City Council. **Sue Smith, 11th Avenue South**, said she believed that an evening meeting should be scheduled for discussion of the increase in utility rates (Item 13) as well as for salary increases for City Council and Mayor (Item 14) so as to allow public input. **Linda Penniman, 611 Portside Drive**, voiced opposition to the use of Planned Developments (PD's) in such instances as that day's Item 9, explaining that increased density and decrease of greenspace in the City must be halted. She also expressed environmental concerns with runoff from such projects and the City's lack of review of PD's with regard to this issue.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 7-a

October 15, 2007 Workshop and October 17, 2007 Regular Meeting, as submitted.

SPECIAL EVENTS ITEM 7-b

- 1) Skate Competition – City of Naples – Edge Skate Park – Fleischmann Park – 12/01/07.
- 2) Christmas Walk and Tree Lighting – Downtown Naples Association – Sugden Plaza and Fifth Avenue South / Park Street – 12/05/07.
- 3) Tuba Christmas – Downtown Naples Association – Sugden Plaza – 12/12/07.

- 4) Evenings on Fifth – Downtown Naples Association – Fifth Avenue South Shopping District – 01/10/08, 02/14/08, 03/13/08, 04/10/08, 05/08/08, 06/12/08, 07/10/08, 08/14/08, 09/11/08, 10/09/08, 11/13/08, and 12/11/08.
- 5) Annual Fleet Review and Commissioning Ceremony – Naples Yacht Club, Inc. – Naples Yacht Club – 01/19/08.
- 6) Dr. Martin Luther King, Jr. Parade and Festival – NAACP of Collier County – Broad Avenue South, Third Street South and Fifth Avenue South – 01/21/08.
- 7) Boat Show – Marine Industries Association of Collier County – 100 Goodlette Frank Road (formerly Grand Central Station) – 01/24/08, 01/25/08, 01/26/08 and 01/27/08.
- 8) St. Patrick’s Day and St. Patrick’s Day Celebration 2008 – McCabe’s Irish Pub and Grill – Sugden Plaza – 03/15/08 and 03/17/08.
- 9) 2008 Naples AIDS Walk – Island Coast AIDS Network (ICAN) – Third Street South – 04/05/08.

RESOLUTION 07-11839.....ITEM 7-d
A RESOLUTION DECLARING SUPPORT FOR THE INCREASE IN FUNDING TO THE FLORIDA FOREVER PROGRAM; SUPPORTING THE STATE OF FLORIDA LEGISLATURE FOR THE CREATION AND FUNDING OF A SUCCESSOR PROGRAM; AUTHORIZING THE MAYOR TO SUBMIT LETTERS SUPPORTING THE PROGRAM TO THE SOUTHWEST FLORIDA LEGISLATIVE DELEGATION; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11840.....ITEM 7-e
A RESOLUTION ACCEPTING THE DONATION OF ONE SCULPTURE, TITLED “GULF GULLS”, BY CYNTHIA MCKEAN, AND FUNDING IN THE AMOUNT OF \$2,000 FOR SCULPTURE MAINTENANCE PROVIDED BY THE DONOR; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11841ITEM 7-f
A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO SUBMIT A 2008 FLORIDA SEA TURTLE GRANT APPLICATION TO FUND A BEACH LIGHT MODIFICATION AND TO STRENGTHEN CODE ENFORCEMENT REGARDING SEA TURTLE NESTING; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11842ITEM 7-g(1)
A RESOLUTION APPROVING A FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF NAPLES AND TLC LAWN MAINTENANCE TO PROVIDE CITYWIDE LAWN MAINTENANCE AT ADDITIONAL SITES; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11843.....ITEM 7-g(2)
A RESOLUTION APPROVING A FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF NAPLES AND A PERSONAL TOUCH LAWN SERVICE, INC., TO PROVIDE CITYWIDE LAWN MAINTENANCE AT ADDITIONAL SITES; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11844 ITEM 7-h
A RESOLUTION APPROVING A CONTINUING CONTRACT FOR PROFESSIONAL SERVICES WITH TKW CONSULTING ENGINEERS, INC., TO PROVIDE PROFESSIONAL STRUCTURAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE CONTINUING CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11845..... ITEM 7-k
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NAPLES AND INSITUFORM TECHNOLOGIES, INC., TO PROVIDE ADDITIONAL LINER REPAIRS TO THE SANITARY SEWER SYSTEM; AUTHORIZING THE INTERIM CITY MANAGER TO APPROVE A FIRST AMENDMENT TO THE AGREEMENT; APPROVING A BUDGET AMENDMENT TO FUND THIS PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 07-11846 ITEM 7-l
A RESOLUTION AUTHORIZING THE COMMUNITY REDEVELOPMENT AGENCY (CRA) EXECUTIVE DIRECTOR TO SUBMIT A FEDERAL FISCAL YEAR 2007 COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION TO COLLIER COUNTY TO FUND PUBLIC FACILITY IMPROVEMENTS IN THE RIVER PARK COMMUNITY; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Nocera to APPROVE CONSENT AGENDA except Item 7-c, 7-i, and 7-j; 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

RESOLUTION 07-11847.....ITEM 7-c
A RESOLUTION ACCEPTING A PROPOSAL FROM THE DOWNTOWN NAPLES ASSOCIATION FOR THE TRANSFER OF OWNERSHIP AND MANAGEMENT TO THE CITY OF THE IMAGES OF OUR ENVIRONMENT/NAPLES MAIN STREET ART IN PUBLIC PLACES PROGRAM AND ACCOMPANYING FUNDS OF \$9,120.19; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:31 a.m.). Council Member Price stated that staff had provided the information he requested and proffered the motion reflected below.

Public Comment: (9:31 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 07-11847 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 07-11848..... ITEM 7-i
A RESOLUTION APPROVING A TWELFTH AMENDMENT TO THE CONTINUING CONTRACT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF NAPLES AND TETRA TECH, INC. - HARTMAN AND ASSOCIATES, INC., TO PROVIDE A SEWER SYSTEM EVALUATION SURVEY ON THE WASTEWATER COLLECTIONS SYSTEM; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE TWELFTH AMENDMENT TO THE CONTINUING CONTRACT FOR PROFESSIONAL SERVICES; APPROVING A BUDGET AMENDMENT TO FUND THIS PROJECT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert

Pritt (9:32 a.m.). In response to Council Member Price, Public Works Director Dan Mercer clarified that only tasks actually accomplished in monitoring of rainfall would be billed by the consultant and that calculations would be included in the report detailing issues before the City in this regard. Danny Nelson, representing TetraTech, Inc., added that the aforementioned item involves collecting data not only from the City's monitoring stations, but also from NOAA (National Oceanic and Atmospheric Administration) and local airports. Mr. Price stated that his concern had been that the City would be invoiced for data which had in fact been provided by City staff. Mr. Mercer stressed that the data collecting was necessary to enable the consultant to render its report regarding proper repair of areas where intrusion into the sewer system lines has occurred. Council Member Sorey indicated that it had been his understanding that a methodology for constant monitoring of the lines was also to be forthcoming from the consultant, and Mr. Mercer said that recommendations for pump stations had been included in the scope of work as well.

Public Comment: (9:37 a.m.) None.

MOTION by Sorey to ***APPROVE RESOLUTION 07-11848*** 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 07-11849..... ITEM 7-j
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND QUALITY ENTERPRISES USA, INC., TO PROVIDE BASIN III DRAINAGE IMPROVEMENTS; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:37 a.m.). Council Member Taylor indicated that her concern had been with Quality Enterprises' apparent lack of response to the City's stop work order regarding past rock crushing activities on Naples Municipal Airport property. Planning Director Robin Singer gave a brief history of the aforementioned activities by Quality Enterprises, explaining that they did cease activity once the stop work order was issued and that presently they are operating on airport property on an active construction site. Ms. Singer further explained that they had been under the assumption that with their agreement with the Naples Airport Authority (NAA), their activities had been approved and with clarification of the misunderstanding, they ceased unapproved actions. Council Member Sorey supported staff's recommendation of Quality Enterprises and moved approval. Council Member Willkomm then voiced support of Miss Taylor's questioning in this matter, noting that he believes it is Council's responsibility to raise issues such as this; Council Member Price agreed, saying that he had had similar concerns. City Attorney Pritt then read into the record Section 2-664(a)(2) from the Code of Ordinances regarding bidding and suggested continuing this item if Council so desired thereby allowing the firm to appear and offer a response to Council's concerns. Public Works Director Dan Mercer however stressed that this firm had provided similar stormwater services to the City in the past and had demonstrated responsibility and completed that work in a timely manner; residents had been pleased with restoration of work sites and therefore staff recommended approval of the firm.

Public Comment: (9:49 a.m.) None.

MOTION by Sorey to ***APPROVE RESOLUTION 07-11849*** as submitted; seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 07-11850 (Added Item – see Item 4 above)ITEM 15-a
A RESOLUTION RATIFYING A MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF NAPLES AND THE FRATERNAL ORDER OF POLICE, COLLIER
COUNTY LODGE 38, AMENDING ARTICLE 12; HOURS OF WORK, OVERTIME,
AND COMPENSATORY TIME; AND PROVIDING AN EFFECTIVE DATE. Title read
by City Attorney Robert Pritt (9:49 a.m.). Human Resources Director Denise Perez explained
that this item is in regard to an understanding reached with the Fraternal Order of Police (FOP)
on work schedules. Currently officers work 8.25 hours per day in a 7 day work cycle; the
agreement amends this schedule to reflect 12 hours per day in a 14 day work cycle, she said, and
pointed out that this agreement would have no budgetary impact. Victor Morales, Chief of
Police and Emergency Services (PESD), confirmed that the officers support the 12-hour shift
schedule and urged approval.

Public Comment: (9:51 a.m.) None.

MOTION by Taylor to APPROVE RESOLUTION 07-11850 as submitted;
seconded by MacIlvaine and unanimously carried, all members present and
voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes,
Willkomm-yes, Barnett-yes).

RESOLUTION 07-11851 (Added Item – see Item 4 above) ITEM 15-b
A RESOLUTION RATIFYING A MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF NAPLES AND THE FRATERNAL ORDER OF POLICE,
SUPERVISOR’S BARGAINING UNIT AMENDING ARTICLE 13; HOURS OF WORK,
OVERTIME, AND COMPENSATORY TIME; AND PROVIDING AN EFFECTIVE
DATE. Title read by City Attorney Robert Pritt (9:51 a.m.).

Public Comment: (9:52 a.m.) None.

MOTION by MacIlvaine to APPROVE RESOLUTION 07-11851 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).

Mayor Barnett announced that Council would recess for lunch at 12:00 p.m.

RESOLUTION 07-11852.....ITEM 10
A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION
07-RIS15 AND LIVE ENTERTAINMENT PETITION 07-LE8 FOR TRILOGY
LOCATED AT 720 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN;
AND PROVIDING AN EXPIRATION DATE AND AN EFFECTIVE DATE. Title read by
City Attorney Robert Pritt (9:52 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 Nocera/no contact; Price and Sorey/visited the site and spoke with the petitioner;
Taylor/familiar with the site but no contact; Barnett and MacIlvaine/dined at the establishment
but no other contact. Planner Adam Benigni, noting that the petitioner had been informed on
numerous occasions of the date for this hearing, nevertheless indicated that the petitioner was not
present. Council Member Sorey said that the petitioner had indicated to him that he believed it
was not necessary to be present. In response to Council Member MacIlvaine, Mr. Benigni said
that the current petition requests the same hours as that of the previous establishment (Zoe’s)
occupying the site and that staff recommended approval.

Public Comment: (9:54 a.m.) None.

MOTION by Willkomm to APPROVE RESOLUTION 07-11852 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 07-11853.....ITEM 8
A RESOLUTION SETTING THE PUBLIC HEARINGS REGARDING THE REZONING OF PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH STREET SOUTH FOR A PROPOSED 22 UNIT RESIDENTIAL BUILDING WITH A 158 SPACE PARKING GARAGE AS PART OF A REGULAR CITY COUNCIL MEETING BEFORE 5:00 P.M.; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:55 a.m.) who then explained that this item is to allow Council to waive the requirement for a public hearing after 5:00 p.m. Council Member Price proffered a motion for approval.

Public Comment: (9:57 a.m.) **Anita Yehuda, 480 Fifth Street South**, said that she did not agree with the waiver, stating her position that many residents oppose the project and should have an opportunity to attend an evening hearing. Council Member Price indicated that while he had received comments from residents opposing the project, no one had voiced interest in an evening meeting, but Ms. Yehuda said that perhaps they had not been aware of the possibility of an evening meeting. **William Buol, 384 Fourth Avenue South**, and **Frances Albergo, 376 Fourth Avenue South**, waived comment.

MOTION by Price to APPROVE RESOLUTION 07-11853 as submitted; seconded by Sorey and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-no, Barnett-yes).

Council Member Taylor stated that evening meetings may not be agreeable to most business owners due to increased activity at that time.

It is noted for the record that titles to Items 9-a and 9-b were read by City Attorney Pritt and the ordinances were considered concurrently.

ORDINANCE (First Reading) (Continued to 12/19/07 – see motion below)ITEM 9-a
AN ORDINANCE DETERMINING SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 07-CPASS1 IN ORDER TO AMEND THE CITY'S FUTURE LAND USE MAP FROM A FUTURE LAND USE MAP DESIGNATION OF MEDIUM DENSITY RESIDENTIAL TO DOWNTOWN MIXED USE FOR PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

ORDINANCE (First Reading) (Continued to 12/19/07 – see motion below)ITEM 9-b
AN ORDINANCE GRANTING REZONE PETITION 07-R4, REZONING A 45,000 SQUARE FOOT PARKING LOT LOCATED AT THE SOUTHEAST CORNER OF 4TH AVENUE SOUTH AND 4TH STREET SOUTH FROM R3-12 MULTIPLE FAMILY RESIDENTIAL TO PD PLANNED DEVELOPMENT TO ALLOW THE DEVELOPMENT OF A 22 UNIT RESIDENTIAL BUILDING WITH A 158 SPACE PARKING GARAGE, MORE FULLY DESCRIBED HEREIN; APPROVING THE PLANNED DEVELOPMENT DOCUMENT FOR FOURTH AND FOURTH MULTI-FAMILY RESIDENTIAL BUILDING AND STRUCTURED PARKING FACILITY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN

EFFECTIVE DATE. Titles read by City Attorney Robert Pritt (9:59 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony and who had not already been sworn; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/familiar with the site and spoke with the petitioner's agent and neighbors; Price/visited the site, spoke with the petitioner's agent, reviewed the October 10 Planning Advisory Board (PAB) meeting and received correspondence; Nocera/visited the site, spoke with the petitioner's agent and various residents; Barnett and Taylor/visited the site, spoke with the petitioner's agent and reviewed correspondence; MacIlvaine/visited the site and spoke with Kensington Gardens residents; and Sorey/visited the site, reviewed the aforementioned PAB meeting and correspondence and had telephone conversations with interested residents. Planning Director Robin Singer presented the petitions, noting the petitioner's desire to construct a 22-unit structure with two levels of parking which would provide 258 spaces. In response to Council Member Price, Ms. Singer explained that the land use designation is necessary due to the desired density, and City Attorney Pritt also noted that FEMA (Federal Emergency Management Agency) considers the proposed building residential, but the City still remains in control of its zoning unless an inconsistency exists. Ms. Singer pointed out that the first level of the building must be at least at grade per review of the FEMA floodplain coordinator and therefore residential. Council Member Sorey questioned whether the first level could be built below grade if it is however deemed mixed use. Ms. Singer indicated that this could not be done; however, she pointed out that the key issue will revolve around whether the Charter amendment with reference to building height applies to this structure. She also stated that the alley was deemed by planning consultant Andres Duany to be the line of demarcation with regard to mixed-use designations.

Attorney John Passidomo, agent for the petitioner, gave an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office) in which he reviewed the history of the "G" designation of the 1.03-acre site. (It is noted for the record that "G" is a designation in the Andres Duany Fifth Avenue Plan and not a zoning category in the City's Land Development Code.) He then cited staff's assertion that the development is more compatible with the surrounding residential properties than a garage like the one located at Fourth Avenue and Eighth Street South. He pointed out that in 2006 the petitioner had received staff, PAB and City Council approval to rezone the property for a parking structure enclosed by 18 residential units, with 321 parking spaces on four levels. However, prior to the second reading of the rezone, he said, the petitioner had learned that there was no longer a desire for a maximum parking structure at the west end of Fifth Avenue South since there were alternatives to address redevelopment objectives. In January, his client suspended the aforementioned petition and performed a parking needs analysis for the entire street and he explained that a proposal was made to Council that included a structure with the first floor built to the street, the second and third floors residential, and onsite parking provided at the rear of the building. This would have included 32,764 additional square feet of commercial, 128 residential units and 251 parking spaces. The original proposal by the petitioner had been for 321 parking spaces of which 181 would have been for public use. The study had indicated that there were other ways in which the 251 parking spaces could be disbursed throughout the district, such as the proposed City-owned garage at Sixth Avenue and Eighth Street South as well as another to be located off Park Street. This parking needs analysis also indicated that merely 50 to 60 spaces were indeed needed, not the above referenced 181, and that revitalization of the west end of Fifth Avenue

South would be stimulated by creating this parking capacity at the subject site and by providing nighttime and special event parking.

Recess: 10:34 a.m. to 10:45 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 9-a and 9-b continued.

Attorney Passidomo continued his presentation by saying that the proposal under consideration contains various guiding principles, namely, to create a uniform landscape and streetscape, and architectural design along Fourth Street and Fourth Avenue South in the Fifth Avenue South Special Overlay District. It would also fulfill the City's objectives as stated in the Comprehensive Plan and Land Development Code of the downtown mixed-use district by encouraging redevelopment and improving aesthetics and physical appearances, and providing for viability. He then compared current renderings of the structure with the aforementioned January proposal, noting that staff had stated that properties not on a frontage line may either abide by the setbacks prescribed in the underlying zoning (R3-12) or the frontage line requirements of the overlay district; no deviations from the Code exist except along the alley due to the 50 foot setback from the center of the alley requirement.

Attorney Passidomo explained that due to the FEMA designation as a residential structure, no deviation was being requested per the Code of Ordinances, the current proposed height being 42 feet plus 5 feet of embellishments. Noting that the previously proposed height had been 42 feet with 7 feet of embellishments, he further asserted that with the increased setbacks, this height would be perceived from the street as less overpowering. Council Member MacIlvaine however stated that the roof, with embellishments, must adhere to the 42-foot maximum allowable height, but Ms. Singer pointed out that the FEMA interpretation agreed with staff's determination that this is a residential structure since residential is the primary internal use. She stressed that the requested density, not building height, is the impetus for the land use amendment; otherwise, the building would be allowable.

During further discussion, Attorney Passidomo took the position that the structure could be considered commercial only if an on-site charge was made at the time parking occurred, as is the case with metered spaces, and that a contract to sell or lease the spaces would be for use by the City, not the public. Ms. Singer also stated that only in the case of uses other than residential in combination with parking could the building in question be considered commercial. Council Member MacIlvaine however reiterated his prior position with regard to applicability of the Charter height limitation.

Recess: 11:58 a.m. to 1:31 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Items 9-a and 9-b continued.

Planning Director Singer noted that staff had provided interpretations of the Charter height limitation for this discussion (copies of which are contained in the file for this meeting in the City Clerk's Office).

Public Comment: (1:32 p.m.) **Pam Gerlach, Naples,** expressed concern for the lack of landscaping and increased vehicular and pedestrian traffic along Fourth Street. She said that she believed that an increase in density, not parking, would be realized with construction of this project and that as a nearby resident, she feared that the height of the building would block morning sunlight. She also said she concurred with Council Member MacIlvaine that the height

is too great. **Carl Suarez, 478 Rudder Road**, also agreed with Mr. MacIlvaine that the height would be in violation of the Charter, that this PD should not be approved. **Dorothy Hirsch, 626 Regatta Road**, agreed with Mr. MacIlvaine and said that PD's do not benefit the public and urged denial. **William Buol, 384 Fourth Avenue South**, urged denial of this item. **Maria Furetta, 445 Fifth Avenue South**, stated that as an owner of a Fifth Avenue South restaurant, parking is needed and urged approval. **Anita Yehuda, 480 Fifth Street South**, provided renderings which depicted an alternate, smaller garage structure with larger setbacks per the Fifth Avenue South Regulating Plan, moving the structure an additional 7.5 feet away from the Kensington Gardens property. (It is noted for the record that a copy of this material is contained in the file for this meeting in the City Clerk's Office.) She also questioned the petitioner's argument that the site is within an urban redevelopment area. In response to Council Member Price, she said that one story of parking and the two stories of residential use, moved the additional 7.5 feet away from her home at Kensington Gardens, would indeed improve the design from her point of view. **Frances Albergo, 376 Fourth Avenue South, representing Raintree Club**, stressed that the height, increased density and the additional amount of activity that would accompany the structure is unacceptable and agreed with Mr. MacIlvaine with regard to height. **John Schoolmeester, 2126 Tama Circle**, did not respond when called to speak. **Vincent Previti, 451 Fourth Avenue South**, stated that most of the residents at the nearby Lantana Condominiums do not approve of this project, that its construction would disrupt the neighborhood. **Doug Finlay, 3430 Gulf Shore Boulevard North**, cautioned that the continued use of PD's will have unintended consequences and that while he agrees that additional parking is needed, he also agrees with Council Member MacIlvaine's interpretation of the Charter with regard to height. **Scott Congress, 601 Fifth Avenue South**, as a merchant on Fifth Avenue South, said that he supported the project. **Lou Vlasho, 700 Fifth Avenue South**, also a merchant on Fifth, urged approval of the project which he deemed an acceptable compromise.

With regard the Charter building height requirement, City Attorney Pritt clarified that immediately following its adoption in February 2000, interpretations by Council were forthcoming beginning in March of that year with Resolution 00-8794 clarifying that it does not apply to residential PD's which do not include commercial uses or other uses as listed therein. (It is noted for the record that the interpretive documents mentioned during this discussion are contained in the file for this meeting in the City Clerk's Office.) Following review of additional interpretations (Resolution 00-8796 and 00-8806), and a brief discussion of the Renaissance Village PD (formerly Grand Central Station Shopping Center at Goodlette-Frank Road and US 41), Mr. Pritt pointed out that while the structure is residential, it is to be constructed on a parcel designated for parking lot use. In response to Council Member Taylor, he concurred that Council had in the past interpreted that in a PD, the Charter building height limitation does not apply to a residential structure; Council Member Price added that the structure could however contain no commercial use, the question in this instance being whether the parking garage aspect is in fact a commercial use. Council Member Willkomm agreed with Mr. Price.

Attorney Passidomo cited how the above referenced Renaissance Village plan contained residential buildings which have parking to support adjacent commercial uses noting that this had not been deemed to be in violation of the Charter. He clarified that the prevailing, underlying R3-12 zoning designates only non-commercial parking lots (those with no meters or on-site parking fee collection) as a conditional use; therefore the proposal under consideration is

a non-commercial parking garage. Planning Director Singer agreed but stated that she would also desire to further review the file for the Renaissance Village approval. Mr. Price recalled his review of the Renaissance Village project while a member of the PAB, attributing the increase in building height as being allowed to achieve a greater amount of greenspace, not to accommodate commercial use; Council Member MacIlvaine agreed. Mr. Passidomo clarified that this example was merely voiced to offer a rational basis for the consideration of the structure under discussion as a residential building, that merely inclusion of parking does not constitute a commercial use for the reasons previously stated. Furthermore, he said, if the structure were to be entirely devoted to parking and no meters or on-site fee collection were involved, it would still not be considered a commercial use. In response to Council, City Attorney Pritt stated that according to testimony from staff and the petitioner, the parking under discussion is not a commercial use although the Council is to render a decision whether or not it concurs with this interpretation.

Charles Thomas, Director of Development for the petitioner, explained that ownership and use are two disparate entities. From a zoning perspective, he pointed out that commercial parking is defined as parking for which a fee is charged for a length of time and becomes commercial due to the fact that the intended use is generation of revenue from individual users. Mr. Thomas also clarified that the two-story parking proposed for Renaissance Village had been situated between a mixed-use structure and a purely residential structure and that the Charter height limitation had been applied to the mixed-use structure but not to the residential.

In response to Council Member Price, Mr. Thomas stated that the existing parking lot is a permitted use and largely serves commercial activities, referencing the above noted parking needs analysis. He also said that the majority of the parking spaces generated for use by the City would be to stimulate redevelopment of residential units, not commercial space. In addition, he asserted that, due to dimensional limitations, there is no economic incentive to demolish existing buildings and construct parking unless residential can be placed above. Mr. Passidomo stressed again that due to the R3-12 zoning, only a non-commercial parking structure can be placed upon the site, non-commercial parking being defined as that for which no fee is charged and revenue realized by utilization.

Attorney Passidomo further clarified that the only deviation requested in the PD is the setback at the alleyway and the increase in density to 22 residential units instead of the allowable 12; a parking structure cannot be built without this change. He then reviewed the compromises made by the petitioner and explained that the additional setback noted by Ms. Yehuda above could be accommodated if Council so desired, although parking spaces would be lost. Council Member Price expressed the desire to compare the petition to a facility that would be financially feasible but would require no increase in density. Mr. Passidomo responded that economic neutrality with the January proposal had been the goal of this proposal, along with the City's objectives for redevelopment, additional parking spaces, and as much sensitivity as possible to the surrounding neighborhood while still achieving these goals.

Vice Mayor Nocera reminded Council that the Fifth Avenue South area merchants had been promised a parking garage on the west end of the thoroughfare to allow additional redevelopment and moved approval; no second was however forthcoming.

Planning Director Singer noted that the second level of the structure would necessitate a 10-foot setback from Fourth Street South if the PD were not approved and if the decision is made that compliance with the 42-foot height limitation is desired, mechanical equipment could not be placed on the roof. With regard to applying a frontage line along the two roadways involved, she said that within the Fifth Avenue South Special Overlay District standards the height limitations would apply and that with the “G” designation on the Master Plan of the privately owned site, staff had been unable to perform a financial analysis to determine whether 22 units would reflect economic feasibility. Furthermore, she said, staff believed that the petitioner had attempted to minimize the volume of the structure and its impact to the surrounding area, that with the 41 space increase for parking for redevelopment, staff had recommended approval.

Council Member MacIlvaine however maintained his contention that the parking contained in this petition is commercial and that he could not support the residential designation of the structure nor approval of this item, cautioning that the Charter height limitation must be adhered to. Council Member Sorey moved to continue the item, stating that he agreed with Mr. MacIlvaine and desired additional information with regard to commercial parking and asked that the petitioner review the height request for a possible alternative design. Additional discussion ensued with regard to the definition of whether the parking would be considered commercial and Mr. Passidomo indicated that a continuance would be acceptable; Council Member Price seconded Mr. Sorey’s motion shown above.

Council requested that staff provide the conditional use document regarding this site and communicate with FEMA with regard to the latitude of an underground level. Mr. Thomas was also asked to review the design with the hope of constructing the building at a 42-foot height. City Attorney Pritt however cautioned Council that a determination with regard to the height would nevertheless still be required..

MOTION by Sorey to CONTINUE ITEMS 9-a AND 9-b to December 19, 2007;
seconded by Price and carried 5-2 (Taylor – yes, Nocera – yes, MacIlvaine-no,
Price-yes, Sorey-yes, Willkomm-no, Barnett-yes).

Recess: 3:25 p.m. to 3:39 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened except Council Member Taylor who returned at 3:42 p.m.

RESOLUTION 07-11854.....ITEM 11
A RESOLUTION RANKING THE TOP THREE FIRMS IN ORDER OF PREFERENCE TO PROVIDE CONSTRUCTION SERVICES FOR A NEW PARKING GARAGE ON 8TH STREET SOUTH AND 6TH AVENUE SOUTH; AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO NEGOTIATIONS WITH THE TOP-RANKED FIRM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:40 p.m.). In response to Council Member Willkomm, Construction Management Director Ron Wallace confirmed that a guaranteed maximum price would be forthcoming from the firm; he also explained that Kraft Construction had been selected based upon qualifications. He also read into the record the definition of a construction manager, that all issues would be reviewed and compared to industry standards, as well as the percentage of mark-up allowed. Mr. Wallace indicated that the current economic situation in the construction industry is actually favorable for the City which would realize lower costs. In response to Council Member Willkomm, Mr.

Wallace explained that the drilling equipment present on the site is to obtain soil borings to enable finalization of the foundation design.

Public Comment: (3:43 p.m.) **K.P. Pezeshkan, 6411 Sandalwood Lane**, waived comment.

MOTION by MacIlvaine to APPROVE RESOLUTION 07-11854 as submitted; seconded by Sorey and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

In response to City Attorney Pritt, Mr. Wallace explained that the above item was merely a ranking of the firms, that the final contract would come before Council in one or two months.

ORDINANCE (Continued to 12/05/07 at 9:30 a.m.; see motion below)ITEM 13 AN ORDINANCE PERTAINING TO UTILITY RATES; AMENDING SUBSECTIONS (f) AND (g) OF SECTION 30-33, WATER SERVICE RATES, OF THE CODE OF ORDINANCES, CITY OF NAPLES; AMENDING CHAPTER 30, PUBLIC WORKS, OF APPENDIX “A” OF THE CODE OF ORDINANCES, CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:43 p.m.) Council Member MacIlvaine proffered a motion for approval and Council Member Sorey seconded.

Public Comment: (3:44 p.m.) **Al Nicholson, 2580 Wild Pines Lane**, indicated that he was representing 200 Collier County condominium residents whose water is supplied by the City. He questioned the equitability and fairness of the proposed rate increase. Referencing documentation which he presented to Council (a copy of which is contained in the file for this meeting in the City Clerk’s Office), he stated that he believed that his group is misrepresented, that they should be charged as other single family dwellings due to their low consumption rate. Council then referenced staff’s response to prior concerns voiced by Mr. Nicholson contained in the November 8 memorandum by Finance Director Ann Marie Ricardi (Attachment 1) which indicates that these users are actually benefiting from the single meter utilized on the site. During further discussion, Ms. Ricardi pointed out that if these residents wished to be metered individually, their monthly costs would rise due to the meter charge. Consultant Andy Woodcock, TetraTech, Inc., explained that with regard to the reclaimed water project, only those using the water will be charged and confirmed Ms. Ricardi’s opinion that, due to the 3-inch meter serving the site under discussion, a savings is actually being realized by these users. **John Allen, 100 Kingstown Drive**, expressed concern especially with the structuring of the first block, that the threshold is too low for homes such as his serviced by a 1.5-inch meter, with seven family members. He stressed that he does conserve water and that he should not be penalized by the categories to be used, and predicted that his cost would move to the second block the 17th day of the month. Council Member Sorey noted that irrigation use represents consumption of 70% on average of potable water in Mr. Allen’s neighborhood. Mr. Allen explained that he had a separate meter for irrigation; therefore this aforementioned percentage would not apply to his billing concerns. Mr. Allen also asked that the consultant review the average use in his area and Mr. Woodcock explained that the final revenue needed must be realized by the new rates for the 17,000 users. Mr. Allen requested additional information as to what is actually used by residents, not averages. **Tom Trettis, Naples**, explained that users outside of the city limits pay higher rates due to the cost of the infrastructure, but he urged that Council reconsider these rates due to his belief that the reclaimed water system appeared to be implicated with the item under discussion. He suggested additional town meetings and additional information disseminated prior to any decision being rendered. **Jackie Sloan, 239**

Broad Avenue South, agreed with the prior speaker regarding this item and then questioned the placement of the backflow meter used in conjunction with underground wells on her property, that unfortunately it had been damaged by vehicles running into it. Public Works Director Dan Mercer stated that placement of a backflow device is actually a field judgment but usually occurs near the potable water meter, also depending on safety concerns. **Willie Anthony, 559 14th Street North**, expressed concern that the notice provided to residents indicated 11:30 a.m. for that day's hearing and questioned the reason for stating this particular time. Mayor Barnett apologized for any inconvenience this may have caused, and Mr. Anthony continued by saying that confusion nevertheless exists also with regard to information provided on the proposed rate charges. He suggested a comparison between the current and proposed rates and the reasoning behind the increases be provided to allow the public to understand and then provide input. Mayor Barnett said that at least two workshop discussions had however been held regarding this item. In response to Mr. Anthony, Council Member Taylor agreed with the importance of communication and asked that staff review the reasons rates are to increase.

Mr. Mercer said that revised rates were necessary due to the following: increases in costs for treatment chemicals, electricity, labor, and fuel. The second element, he said, is the need to encourage water conservation via tiered rates. Mr. Woodcock agreed with reference to capital costs and other inflation issues but also pointed out that with the reclaimed water system coming online, a reduction in the use of potable water will be realized and the revenue levels for the aforementioned costs must be maintained. Mayor Barnett suggested incremental increases over the next few years, but Mr. Mercer stressed that the City's proposed rates will still be less than other communities in the state, especially in Collier County.

In response to Council, Finance Director Ricardi confirmed that the rate structure could be revised as long as the final outcome of revenue realized remained constant so as to support bonding requirements. City Attorney Pritt recommended conferring with the City's bond counsel with regard to Ms. Ricardi's assertion that the proposed rates could be rearranged, and Mr. Woodcock agreed, adding that so long as the ordinance under discussion were approved, the creditor would be satisfied and the rate structure could be revisited if Council so desired.

Council Member Price said that, in his opinion, the rate structure must be fair and equitable and that Council should make an informed, unhurried decision. City Attorney Pritt questioned the possibility of continuing this item to December 5 to allow staff the opportunity to provide additional information as discussed above; Ms. Ricardi indicated that this would present no problem with regard to the bonding issues so long as the revenue generated remained neutral. City Attorney Pritt explained that due to a recent Supreme Court ruling, so long as any changes to the ordinance did not alter its intent, amendments could be made at that time with regard to the rate structure.

Mr. Mercer pointed out that although Council could amend the rate structure, in his opinion, only the first tier users would be affected, stressing that the structure had been designed to encourage these users who were conserving water already. He added that with the higher quantity users, the final billing would reflect practically the same total as the currently proposed structure due to the volume that is anticipated to be used. Council Member Taylor suggested that this ordinance be approved as submitted and then amended at a later date following receipt of the additional information from staff and Consultant Woodcock. Council Member Price disagreed; stating that he

believes that staff had completed everything asked of it but that confusion and concerns persist; Council Member Willkomm agreed. Ms. Ricardi indicated that she had included an extra two weeks in her schedule for a related bond defeasance action and that a continuance until December 5 would be acceptable.

Council Member MacIlvaine said that he could not support any action which would penalize the conservative water users, that he believed the ordinance should be approved as submitted.

MOTION by MacIlvaine to APPROVE THIS ORDINANCE as submitted; seconded by Sorey and failed 3-4, all members present and voting (Price-no, Sorey-no, Nocera-no, Willkomm-no, Taylor-yes, MacIlvaine-yes, Barnett-yes).

In response to Council Member Willkomm, City Attorney Pritt indicated that a motion to reconsider this ordinance would then be necessary to allow Council to continue it until December 5 due to the failure of the above motion. Council Member Sorey proffered the motions reflected below.

MOTION by Sorey to RECONSIDER THIS ORDINANCE 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).

Council requested that various scenarios be provided by staff with regard to altering the rate structure and that actual numbers of varying size meters the City services also be provided. Mayor Barnett suggested that a time certain be set to enable the public to attend.

MOTION by Sorey to CONTINUE THIS ORDINANCE to December 5, 2007 at 9:30 a.m.; 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).

Recess: 4:57 p.m. to 5:02 p.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 5:04 p.m.

RESOLUTION 07-11855.....ITEM 12
A RESOLUTION OF THE CITY OF NAPLES, FLORIDA PROVIDING FOR THE USE OF NOT TO EXCEED \$6,100,000 OF LEGALLY AVAILABLE REVENUES WHICH DERIVE FROM THE CITY OF NAPLES, FLORIDA WATER AND SEWER UTILITY, TOGETHER WITH OTHER LEGALLY AVAILABLE MONIES TO PURCHASE CERTAIN FEDERAL SECURITIES TO BE DEPOSITED IN AN ESCROW ACCOUNT FOR THE PURPOSE OF LEGALLY DEFEASING AND PAYING THE DEBT SERVICE ON THE CITY'S WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2002; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF AN ESCROW DEPOSIT AGREEMENT AND APPOINTING THE ESCROW HOLDER THEREUNDER; AUTHORIZING PUBLICATION OF A NOTICE OF DEFEASANCE; AUTHORIZING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (5:03 p.m.) who explained that staff had confirmed with the bond counsel that the above action taken regarding Item 13 would not affect the current item under consideration. Finance Director Ann Marie Ricardi added that Duane Draper, aforementioned bond counsel, had indicated that while closure on the previous schedule would not be possible, he requested that this item be approved to ensure Council's intent; City Attorney Pritt agreed.

Public Comment: (5:05 p.m.) None.

MOTION by Sorey to APPROVE RESOLUTION 07-11855 as submitted; seconded by Taylor and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-no, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

In response to Council Member Willkomm, Council Member Price explained his negative vote as being due to the amount of debt being incurred by the City and his ongoing concern with the type of stewardship that Council is performing.

**ORDINANCE (First Reading).....ITEM 14
AN ORDINANCE AMENDING SUBSECTION (1) OF SECTION 2.5 OF THE CHARTER OF THE CITY OF NAPLES RELATING TO THE SALARIES OF THE MAYOR AND CITY COUNCIL MEMBERS TO PROVIDE FOR AN INCREASE IN THE SALARY OF THE MAYOR FROM \$23,500 TO \$30,000 PER YEAR, AND THE SALARY OF EACH COUNCIL MEMBER FROM \$16,500 TO \$23,500 PER YEAR; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.**

Title read by City Attorney Robert Pritt (5:05 p.m.).

Public Comment: (5:06 p.m.) **Doug Finlay, 3430 Gulf Shore Boulevard North**, stated he supported this item, that he had been a member of the committee recommending the increase and urged approval. He added that it was his hope that this increase would perhaps enable the diversity in the City to be reflected in the membership of Council. **Joe Biasella, Naples**, said that he also supports the increases in salaries due to the amount of time required of Council Members and agreed with the prior speaker's comments regarding diversity.

MOTION by MacIlvaine to APPROVE THIS ORDINANCE on First Reading; seconded by Willkomm and carried 4-3 (Taylor-no, MacIlvaine-yes, Willkomm-yes, Sorey-yes, Price-no, Nocera-no, Barnett-yes).

**RESOLUTION 07-11856 (Added Item-see Item 4 above)ITEM 16
A RESOLUTION ADOPTING AN AMENDED USE AGREEMENT BETWEEN THE CITY OF NAPLES AND THE ROWING ASSOCIATION OF NAPLES, INC. ("RAN"); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:13 p.m.).

Public Comment: (5:14 p.m.) None.

MOTION by Barnett to APPROVE RESOLUTION 07-11856 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).

In response to Mayor Barnett, Interim City Manager Chet Hunt indicated that staff would work closely with the Rowing Association with regard to the above item.

**(Added Item – see Item 4 above)ITEM 17
DISCUSSION OF RATIFICATION OF CONTRACT WITH CITY MANAGER.** (5:14

p.m.) City Attorney Robert Pritt indicated that it had been his understanding that a question existed as to what action Council had taken at its prior consideration of this item and that he suggested that the agreement be ratified with the inclusion of amendments. Council Member Price said that upon review of motions made at that time (November 7 regular meeting) it was his understanding that the final motion proffered by Council Member MacIlvaine had been to offer a 33% benefit package to City Manager Designate William Moss, that he believed the contract had not been ratified and therefore questioned its execution. Council Member

MacIlvaine moved to ratify the contract at that time and Council Member Sorey seconded the motion.

Public Comment: (5:16 p.m.) **Henry Kennedy, Naples**, said that he could not support such a raise in salary for the position of City Manager, that with budgetary challenges facing the City this should be reviewed closely. In response to Mayor Barnett, Human Resources Director Denise Perez explained that the percentage of overall benefit increase to that of former City Manager Robert Lee amounts to 14.6% and the base salary increase amounts to 14.5%.

MOTION by MacIlvaine to RATIFY CITY MANAGER CONTRACT; seconded by Sorey and carried 4-3, all members present and voting (Willkomm-no, MacIlvaine-yes, Price-no, Sorey-yes, Nocera-yes, Taylor-no, Barnett-yes).

Mayor Barnett noted for the record that Item 18 would be discussion only, followed by Public Comment and Correspondence and Communications, and finally Council would enter into its executive session (Item 6) prior to adjournment.

(Added Item – see Item 4 above)ITEM 18 DISCUSSION OF MITIGATION PROPOSED BY NAPLES SAILING AND YACHT CLUB IN CONJUNCTION WITH DOCK EXPANSION AND PENDING APPLICATION FOR DREDGING IN GORDON RIVER. (5:22 p.m.) Noting the November 12, *Naples Daily News* article (Attachment 2) regarding the above referenced mitigation, Council Member Price explained that he had been unaware of any such discussion by Council. Council Member Taylor stated that in response to her request, the City Clerk's Office could find no mention of said mitigation in past Council meeting minutes.

Natural Resources Manager Michael Bauer pointed out that when application for an environmental resource permit is made, the Department of Environmental Protection (DEP), due to possible impact to the environment, requires mitigation. He further explained that an intergovernmental agreement had been entered into between the City and the DEP regarding this item which had indicated that the City would accept the funds as cited in the article. Dr. Bauer added that this type of mitigation occurs with most environmental resource permits and that the above referenced agreement had been a prior Consent Agenda item and that he would provide the agreement to Council as soon as possible. In response to Council Member Willkomm, Dr. Bauer confirmed that he had been contacted by the DEP regarding the proposed funding and that he had responded to the DEP that it could indeed be used to begin construction of a filter marsh in the City.

It is noted for the record the Council Member MacIlvaine left at 5:26 p.m. and did not return.

Public Comment: (5:26 p.m.) **Henry Kennedy, Naples**, expressed displeasure with the Consent Agenda process, stating that Council does not receive the information necessary to ascertain whether separate discussion is warranted. He stressed that his comments do not reflect on Dr. Bauer, but nevertheless asserted that this item is an example of what can transpire without Council's knowledge or awareness of all facets involved. Furthermore, he suggested that the City rethink this offer of funding due to the impending litigation involving Gordon River dredging permits. Dr. Bauer pointed out that at that time this issue has become moot due to the denial of the Club's permit and Council Member Taylor suggested that Council take formal action on this at a future meeting.

PUBLIC COMMENT.....

(5:31 p.m.) **Joe Biasella, Naples**, reminded Council of a past consensus regarding obtaining a copy of the Draft Recommended Consolidated Intent document regarding the City Dock and Crayton Cove mooring field for its review; Mayor Barnett indicated that this would be provided at the December 3 workshop for discussion.

CORRESPONDENCE AND COMMUNICATIONS.....

(5:33 p.m.) Council Member Willkomm expressed appreciation to staff for the report on the police response to a complaint regarding Paddy Murphy's on Fifth Avenue South and requested the status of the replacement/reimbursement from the developer of date palms removed on Fifth Avenue South. Mr. Willkomm, noting the memorandum from Natural Resources Manager Michael Bauer regarding further impending water restrictions, stressed the need for monitoring and enforcement of the current restrictions. Council Member Sorey explained that a serious drought situation exists and based upon various weather forecasting models, the next four to five months are expected to be warmer and dryer than normal. Mr. Sorey predicted that by early next year, no irrigation with potable water will be allowed. He also said that he supported Mr. Willkomm's position regarding enforcement; otherwise, salt water intrusion may occur into the Golden Gate well fields and thereby destroy that aquifer. Additionally, Mr. Willkomm suggested review by staff of options for this type of enforcement and Mr. Sorey urged that the penalties and possible future restrictions be posted on the City's website.

In response to numerous speakers' comments, Mr. Willkomm also suggested that a log of previous Council discussions regarding items be provided on the agenda for each item; Council concurred. City Clerk Tara Norman indicated that this listing could indeed be provided and Interim City Manager Chet Hunt clarified that what was desired would be a tracking of prior public discussion of items.

Consensus to include log of previous Council discussions on meeting agendas for each item thereby allowing the tracking of said discussions.

Council Member Price asked whether previous Council direction involving use of the original design for beach parking stickers would be followed and consensus was restated to do so. Mr. Hunt indicated that he requested clarification as to specifics of the design such as colors.

Consensus to utilize the original design for City beach parking stickers.

During a brief discussion of the proposed Keewaydin Island annexation and referencing the November 13 memorandum from Planning Director Robin Singer (Attachment 3), Council Members Price and Taylor indicated that they had not been contacted as yet regarding the formation of a study committee on the issues.

Vice Mayor Nocera noted the grand opening of the Cambier Park bocce courts scheduled for November 16.

In response to Mayor Barnett, Mr. Hunt explained that due to the apparent need for storage of surface water, he suggested that the City become a provider for alternative irrigation water derived from the Golden Gate Canal. Council Member Sorey pointed out that he believed Collier County had already begun researching the possibility of utilizing this same source and Big Cypress Basin Board (BCBB) also has a project to divert a portion of this water to Henderson Creek.

Consensus for staff to research use of the Golden Gate Canal water by the City.

Council Member Taylor noted additional concerns with regard to the investigation by the New York Attorney General into the operation of Fannie Mae and Freddie Mac Security Backed Mortgages (SBM's). She also noted the trend towards cooperative purchasing for motor fuels and Vice Mayor Nocera said that he believed that the City was currently doing so with Collier County and Naples Municipal Airport.

EXECUTIVE SESSION (Attachment 4).....ITEM 6
(5:49 p.m.) City Attorney Robert Pritt explained that under Section 768.28(16)(c), Florida Statutes) and under the City's Risk Management Program, evaluation of a claim and offers of compromise allow a closed session to be conducted. Pursuant to Attorney General Opinion (AGO) 2000-20 (a copy of which is contained in the file for this meeting in the City Clerk's Office), minutes of such a meeting or proceeding would be exempt from the Public Records Law until termination of all litigation and settlement of all claims arising out of the same incident; therefore, this item will become available to the public at such time (Attachment 4).

Executive Session: 5:52 p.m. to 6:05 p.m. It is noted for the record that the same Council Members were present when the regular meeting reconvened except Council Member Sorey who left at 6:05 p.m.

City Attorney Pritt stated that the matter before Council concerned the recommended settlement offer regarding a claim by Mary Finn in the amount of \$60,000.

MOTION by Taylor to APPROVE Risk Management's recommendation to settle claim in the amount of \$60,000; seconded by Barnett and carried 5-0 (MacIlvaine-absent, Nocera-yes, Price-yes, Sorey-absent, Taylor-yes, Willkomm-yes, Barnett-yes).

ADJOURN.....
6:07 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 12/19/07

TO: Chet Hunt, Interim City Manager
FROM: Ann Marie S. Ricardi, Finance Director
DATE: November 8, 2007
SUBJECT: Questions about the Utility Rate Ordinance – Item 13

There were several questions presented at the November 7 council meeting regarding the utility rate ordinance that required answers.

From Mrs. Smith, she asked 1) The source of the reserves in the Utility Fund, and 2) Did any of the money go to the General Fund.

1. The budget for the Water Sewer fund is separate, clearly identified in the budget and in the annual financial report, as well as our books. In general, any source of reserves in the Water Sewer fund would be due to revenues greater than expenditures, or cash inflow greater than cash outflow. There is no one individual item causing this. Because a business activity with over \$30 million in expenditures cannot be explained in a few sentences, I have attached the relevant pages from the 2006 Annual Financial Report. The accounting staff and I welcome questions about this information.
2. The General Fund has two basic charges to the Utility Fund. First is the Administrative fee, which is an allocation of costs such as utility billing, human resources, and accounts payable. Second is a Payment in lieu of Taxes (AKA PILOT) which is a 6% fee that is charged all Enterprise funds, including the Water Sewer Utility.

A representative from Wild Pines, Alan Nicholson, expressed concern about why the Wild Pines apartments are not separated into individual meters and charged in that manner. The property representative, Alan Nicholson expressed an unfairness to the apartment residents, and that these residents prefer to be charged like a single family home. However, if the residents had to pay the bi-monthly base charge for each meter as single family residential units do, the apartment complex would find their rates to increase significantly. The complex has been benefiting by having just one meter.

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Below is a brief comparison, one if there were 100 apartments, another if there were 200 apartments.

Wild Pines Bi-monthly bill comparison

		One 4 Inch Meter		100 5/8 Inch Meters	
Base Rate		118.91	\$ 118.91	11.75	\$ 1,175.00
Average Gallons used					
Tier 1	150	1.22	\$ 183.00	1223	\$ 1,492.06
Tier 2	150	1.45	\$ 217.50		
Tier 3	923	1.83	\$1,689.09		
			\$2,208.50		\$ 2,667.06
		One 4 Inch Meter		200 5/8 Inch Meters	
Base Rate		118.91	\$ 118.91	11.75	\$ 2,350.00
Average Gallons used					
Tier 1	150	1.22	\$ 183.00	1223	\$ 1,492.06
Tier 2	150	1.45	\$ 217.50		
Tier 3	923	1.83	\$1,689.09		
			\$2,208.50		\$ 3,842.06

These types of customers were considered by the rate consultant during their design of the rate structure, to avoid inequities.

Two other questions were asked; one was by a Port Royal resident about the impact of the water rates. His question was addressed individually by the Utility Director and the consultant. The other question was about the water quality, which was addressed at the meeting.

Thank you.

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CITY OF NAPLES, FLORIDA

Proprietary Funds

Statement of Revenues, Expenses and Changes in Fund Net Assets

Year ended September 30, 2006

	Business-type activities – Enterprise Funds		
	Water and Sewer Fund	Solid Waste Fund	Stormwater Fund
Operating revenues:			
Charges for services:			
Water revenues	\$ 13,086,983	—	—
Sewer revenues	9,649,455	—	—
Other	—	6,175,311	1,500,320
Total operating revenues	22,736,438	6,175,311	1,500,320
Operating expenses:			
Personal services	4,880,503	1,339,403	189,274
Supplies and services	3,242,567	3,114,261	215,905
Materials	1,699,448	—	—
Utilities	2,466,055	14,695	22,064
Depreciation and amortization	4,851,607	246,979	624,068
General administration	1,832,720	303,500	125,000
Other	126,221	108,073	15,694
Total operating expenses	19,099,121	5,126,911	1,192,005
Operating income (loss)	3,637,317	1,048,400	308,315
Nonoperating revenues (expenses):			
Operating grants	—	—	—
Interest income	811,107	160,245	101,251
Interest expense	(1,184,316)	—	(97,955)
Gain (loss) on sale of capital assets	12,386	23,339	—
Total nonoperating revenues (expenses)	(360,823)	183,584	3,296
Income (loss) before contributions and transfers	3,276,494	1,231,984	311,611
Capital contributions	2,094,998	—	7,298
Transfers out (payment in lieu of taxes)	(1,268,000)	(340,000)	—
Change in net assets	4,103,492	891,984	318,909
Net assets – beginning of year	60,027,714	6,113,385	3,541,874
Net assets – end of year	\$ 64,131,206	7,005,369	3,860,783

See accompanying notes to financial statements.

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CITY OF NAPLES, FLORIDA

Statement of Cash Flows

Proprietary Funds

Year ended September 30, 2006

	Water and Sewer Fund	Solid Waste Fund
Cash flows from operating activities:		
Cash received from customers	\$ 22,059,770	5,945,152
Cash payments to suppliers	(7,404,609)	(3,174,381)
Cash payments to employees	(4,833,593)	(1,303,583)
Cash payments for interfund services	(1,832,720)	(303,500)
Net cash provided by (used in) operating activities	7,988,848	1,163,688
Cash flows from noncapital financing activities:		
Transfers out	(1,268,000)	(340,000)
Loans/advances and repayments from (to) other funds	22,335	—
Operating grants	—	—
Net cash provided by (used in) noncapital financing activities	(1,245,665)	(340,000)
Cash flows from capital and related financing activities:		
Principal paid on long-term debt	(3,748,646)	—
Interest paid on long-term debt	(1,167,345)	—
Capital contributions	1,294,998	—
Proceeds from construction loan	1,310,000	—
Proceeds from sale of capital assets	15,406	23,339
Acquisition and construction of capital assets	(4,501,962)	(244,567)
Net cash used in capital and related financing activities	(6,797,549)	(221,228)
Cash flows from investing activities:		
Interest and investment earnings	852,386	170,101
Net cash provided by investing activities	852,386	170,101
Net increase (decrease) in cash and cash equivalents	798,020	772,561
Cash and cash equivalents – beginning of year	16,812,086	3,018,073
Cash and cash equivalents – end of year	\$ 17,610,106	3,790,634

Club seeks hearing over state's denial of dock expansion permit

By ERIC STAATS

Monday, November 12, 2007

The Naples Sailing and Yacht Club is fighting back against the state's rejection of the club's plans to expand its docks into Naples Bay.

The club has filed a petition asking the state Department of Environmental Protection to forward the dispute over a permit and submerged land lease for the 20-slip expansion to an administrative law judge for a hearing.

The DEP denied the permit and lease in October, citing concerns about the expansion interfering with navigation on the bay, worsening water quality in the bay and whether the project is in the public interest.

In its petition, the club's attorneys argue that DEP reviewers misread state regulations, overstated the club's impacts and overlooked its proposed mitigation.

The petition, filed Nov. 7, is the second administrative challenge from the club. In October, the club challenged the DEP's decision to grant the city of Naples a permit that Naples Bay Resort and the owner of land south of the Gordon River bridge would use to dredge a deeper channel to new marinas. That channel would run through the spot where the club wants to build its new docks.

Attorneys are scheduled to meet Friday in Naples to try to work out a settlement of the channel alignment question — removing one of the obstacles the DEP cites in denying the expansion permit.

"It seems to me we ought to be able to agree on the channel," yacht club attorney Bob Diffenderfer said.

Settling the dispute over the channel, though, could move the yacht club a step closer to more litigation — this time from Oyster Bay neighbors who have vowed to stop the expansion.

The city of Naples is tangled up in both disputes as the applicant for the dredging permit. The Naples City Council is set Dec. 5 to talk about how to proceed.

In its Nov. 7 petition, the yacht club hints that more litigation is possible on grounds that the DEP, in conjunction with the city, is violating the club's property rights.

"We're looking at all our options," Diffenderfer said.

The petition says that DEP's denial of the expansion permit "lacks any rational basis" given that the DEP has approved what the petition calls more environmentally damaging projects by issuing permits for the city's dredging and for a marina basin, proposed by London of Naples Inc., south of the Gordon River bridge.

As mitigation, the club is proposing to pay \$45,000 to help the city build a stormwater treatment system at the city's utilities site along the Gordon River, more than \$110,000 over six years to create a program to curtail fertilizer runoff from Port Royal and to back a city educational program about environmentally friendly ways to use fertilizer. DEP officials could not be reached for comment Monday.

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TO: Chet Hunt, Interim City Manager
FROM: Robin Singer, Planning Director
DATE: November 13, 2007
SUBJECT: Keewaydin Annexation

In order for the City to annex a property, we must obtain the consent of the owners of 50% of the property in the area to be annexed and we can only annex areas that are contiguous to the City. The State of Florida owns approximately 85% of the unincorporated portion of Keewaydin and State owned properties lie between the current City boundaries and the privately owned parcels near the southern end of the island. In order to proceed any further with annexation, the State must consent.

When the City Council authorized staff to prepare and send a letter to the State regarding annexation, staff also prepared and mailed a letter and questionnaire to all property owners in the unincorporated area of the island to determine if there was support for annexation. The questionnaire asked the property owners if they were interested in annexing their property to the City, if they needed more information before they made a decision or if they were not interested in annexing to the City. Of the 9 written responses, 1 indicated that they were interested in annexing, 8 indicated that they needed more information or more time before making a decision and no respondents indicated that they were not interested. Concerns expressed on the questionnaire and over the phone included changes to their taxes, changes to the development potential of parcels either through zoning or the expansion of utilities, potential for building a bridge from Naples (presumably seen as a negative), and the City's position on public use of the island.

I received a phone call from a representative of the Department of Environmental Protection (DEP) who also received a copy of the letter and questionnaire. They indicated that they were in the process of trying to contact the members of City Council individually to discuss the formation of a study committee on Keewaydin issues. Through participation on this committee, the City would be informed of what DEP feels is necessary to properly protect and manage the island. It was my understanding that the State would not be giving its consent until this committee had met. The meetings would be scheduled in the beginning of 2008.

I do not know if the DEP has made contact with each Council Member or if their committee meetings have been scheduled. The Planning Department has not received any written responses from DEP regarding the letter that was sent from the Mayor's Office. If no other office or the City Council has been contacted, I will attempt to get a written response from DEP to confirm what I was told on the phone. We can also follow up with other property owners to update them on the process so they are not left wondering.

Exempt from public disclosure under Section 768.28(15), Florida Statutes until termination of all litigation and settlement of all claims arising out of the same incident per Attorney General Opinion (AGO 2000-20).