



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – Wednesday, May 17, 2006 – 9:00 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL ITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor

Council Members:

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

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Vicki Smith, Technical Writing Specialist
Jessica Rosenberg, Deputy City Clerk
Victor Morales, Assistant to the City Manager
Dan Mercer, Public Works Director
Stephen Weeks, Technology Services Director
Robin Singer, Community Development Director
Stephen Olmsted, Planning Administrator
Tony McIlwain, Planner
Michael Bauer, Natural Resources Manager
Patricia Rambosk, Legal Coordinator

Robert James
Everett Thayer
Michael Bozzo
John Tobin
Sue Smith
Henry Kennedy
Bob Krasowski
Virginia Corkran
Regina Noch
Bernie Portnoy
Scott Phillips
John Passidomo
Don Kino
Mike Assaad

Joyce Stack
Trista Youngquist
Brett Moore
Paige Reddick
Flavio Galasso
Elaine Galasso

Media:

Aisling Swift, Naples Daily News

Other interested citizens and visitors

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

Reverend Robert James, Naples Community Hospital

ANNOUNCEMENTS ITEM 3

National Salvation Army Week Proclamation

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

MOTION by ***Nocera*** to ***SET THE AGENDA*** removing ***Item 6-b(5)*** from the ***Consent Agenda*** for separate discussion; removing ***Item 18*** (executive session for discussion of domestic security issues) from the agenda pending additional information; adding an interview with Moorings Bay Citizen’s Advisory Committee candidate Michael Bozzo (before public comment); ***renumbering Item 19 (FEMA)*** as ***Item 18***; adding ***Item 19*** (discussion regarding mechanical equipment height in residential setbacks) and adding ***Item 20*** (discussion of Naples Airport Authority). ***This motion was seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).***

(9:06 a.m.) Michael Bozzo, candidate for the Moorings Bay Citizen’s Advisory Committee, was interviewed briefly.

Public Comment.....ITEM 5

(9:10 a.m.) **Everett Thayer, 1690 Avion Place**, stated that he had recently spoken with the Naples Airport Authority (NAA) engineer regarding future development of a road on the airport property and the relocation of general aviation to the opposite side of the property, nearer the Avion Park subdivision. He also said that improvements to North Road had not been completed and pointed out significant rock truck traffic on North Road recently. Mr. Thayer also expressed concern that Avion Park residents had not been kept up to date on development activities by NAA, despite what he characterized as an ongoing agreement to do so. City Manager Robert Lee stated that a joint meeting of the NAA and City Council is scheduled for the Workshop of June 5 and that one of the items to be discussed is the conceptual plans for the airport property, and Mayor Barnett invited Mr. Thayer to attend. Discussion followed in regard to the desirability of Council being kept abreast of various developments at the airport. Additionally, mention was made regarding possible impact fees to the NAA for construction truck usage of North Road, especially the possibility of the commercial airport operations being relocated in closer proximity to the residential area of Avion Park. Planning Administrator Stephen Olmsted said that while staff had received a plan from NAA, any major changes such as those stated by Mr. Thayer, must come before City Council in public hearing. Council Member Sorey stated that the NAA frequently discusses the possibilities of changes and cautioned that all facts should be ascertained. **John Tobin, 574 Broad Avenue South**, provided various pieces of correspondence between NAA and a group of concerned citizens regarding night flights. (It is noted for the record that this material is contained in the file for this meeting in the City Clerk’s Office.) He said that NAA had not been responsive where this issue is concerned. Vice Mayor Nocera expressed interest in obtaining the number of airport noise complaints. **Sue Smith, 11th Avenue South**, stated that, like the prior speaker, she lives in the flight path of nighttime flights. She requested information regarding the source of monies diverted into the City’s general fund and also asked for a copy of the response to Council Member Price’s request regarding the financial report. In conclusion, Mrs. Smith thanked Mr. Thayer for his comments concerning the lack of information provided to the public and said that this lack of information may also pertain to City Council. **Bob Krasowski, 1086 Michigan Avenue**, expressed what he described as his continuing concern regarding the time extension to June 1 for completion of the beach renourishment project as well as his displeasure at the possibility of an additional extension of the project to June 15. He said that this is the peak turtle nesting season.

CONSENT AGENDA

APPROVAL OF MINUTES**ITEM 6-a**
April 17, 2006, Workshop and April 19, 2006, Regular Meeting, as submitted.

SPECIAL EVENTS **ITEM 6-b**

- 1) Outdoor Family Movie Night – Cambier Park – 05/20, 06/24, and 07/22/06.
- 2) 4th of July Fireworks – Naples Pier – 07/04/06.
- 3) 8th Grade End of Year Party – Corkscrew Middle School – Lowdermilk Park, North Gazebo – 06-01-06.
- 4) Boat Show – Marine Industries of Collier County – Bayfront – 06/18/06.
- 5) Removed from Consent Agenda for separate discussion (See Page 4).

RESOLUTION 06-11219.....**ITEM 6-c**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND VILA AND SON LANDSCAPE CORPORATION FOR THE CITYWIDE TREE PLANTING SERVICES FOR TREE LOSSES SUSTAINED AS A RESULT OF HURRICANE CHARLEY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11220..... **ITEM 6-d**

A RESOLUTION APPROVING A FIRST AMENDMENT TO 2005 TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES, REIMBURSING THE CITY FOR ADDITIONAL COSTS RELATING TO PASS MAINTENANCE DREDGING OF DOCTOR’S PASS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11221.....**ITEM 6-e**

A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR NAPLES YACHT CLUB, INC., LOCATED AT 700 14TH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11222..... **ITEM 6-f**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND CPA ASSOCIATES, PLC, TO PROVIDE PROFESSIONAL AUDITING SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11223.....**ITEM 6-g**

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES AND COLLIER COUNTY REGARDING IMPACT FEES; REPEALING AND SUPERSEDING A NUMBER OF SEPARATE IMPACT FEE ORDINANCES; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read

RESOLUTION 06-11224.....**ITEM 6-h(1)**

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NAPLES AND T.F.R. ENTERPRISES, INC. TO PROVIDE ADDITIONAL DISASTER GENERATED REMOVAL AND DISPOSAL OF DEBRIS CREATED BY HURRICANE WILMA AND REQUESTING AN EXTENSION OF A COMPLETION DATE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 06-11225.....ITEM 6-h(2)
A RESOLUTION APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NAPLES AND BECK DISASTER RECOVERY, INC. FOR ADDITIONAL FEMA ACCEPTED MONITORING FOR DISASTER GENERATED DEBRIS MANAGEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

MOTION by Nocera to APPROVE CONSENT AGENDA except item 6-b(5); 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).

END CONSENT AGENDA

.....ITEM 6-b(5)
SPECIAL EVENT - Collector Car Auction – Fifth Avenue South Association – Fifth Avenue South – 02/03 and 02/07/07.

Council Member Taylor noted that staff had recommended denial and the calendar of events had been implemented in deference to the residents in the Fifth Avenue South area by controlling the impact of street activities. While various Council Members acknowledged the desirability of such an event, it was deemed that the established schedule should not be amended for the current year. Council Members however expressed the hope that the petitioner would reapply at a later date.

MOTION by Taylor to DENY ITEM 6-b(5); seconded by Price and carried 5-2, all members present and voting (Taylor-yes, MacIlvaine-yes, Willkomm-no, Sorey-yes, Price-yes, Nocera-no, Barnett-yes).

RESOLUTION 06-11226.....ITEM 8
A RESOLUTION DETERMINING VARIANCE PETITION 06-V3 FROM SECTION 102-148 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH ESTABLISHED THE MAXIMUM BUILDING HEIGHT OF 30’ FOR STRUCTURES IN THE R1-15 ZONING DISTRICT IN ORDER TO PERMIT THE CONSTRUCTION OF A RESIDENCE AT A HEIGHT OF 33’9”, AT 3090 AND 3100 GORDON DRIVE, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (9:45 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: Price, Nocera, and Sorey/visited site and spoke with Attorney John Passidomo; Willkomm/spoke with Attorney John Passidomo; Taylor/familiar with site but no contact; and MacIlvaine and Barnett/no contact.

Planning Administrator Stephen Olmsted stated that the subject property is zoned as R1-15 with a maximum allowable height of 30-feet and the petitioner is asking a variance to 33 feet, 9 inches, which would be allowed if the property were zoned R1-E. If this variance is granted, the petitioner intends to build the home to all R1-E requirements due to the large size of the subject property, Mr. Olmsted added. Mr. Olmsted also pointed out that similar height variance approvals had been granted in this residential area. This petition was recommended for approval by the Planning Advisory Board with the following conditions: 1) construction substantially in compliance with the site plan submitted; 2) construction in compliance with R1-E Residence District standards for minimum lot area, lot width and yards; and 3) application of all

supplemental standards contained in the Comprehensive Development Code. Mr. Olmsted further indicated that staff had recommended approval, especially in light of the fact that the petitioner is willing to abide by all R1-E Residence District standards.

Attorney John Passidomo, agent for the petitioner, gave a brief presentation, reviewing the zoning history in the area and reiterating Mr. Olmsted's comments above. He stressed the fact that two similar variances had been granted, that the lot is extremely large, having been a combination of two lots, and the willingness of the petitioner to adhere to the R1-E standards; he therefore asked approval.

A brief discussion followed regarding the zoning districts in the area in question and also the actual manner in which the height measurement was calculated. Community Development Director Robin Singer explained that the Code of Ordinances allows the measurement to be taken from either the Federal Emergency Management Agency (FEMA) minimum grade or the Department of Environmental Protection (DEP) standard which is 18 inches below grade. She stated that in this case the measurement is actually 18 inches above DEP. Don Kino, Vice President of Smith Architectural Group, stated that the project had recently received DEP permit approval. Council Member Sorey expressed approval in the house being scaled to the size of the property instead of multiple residences being built.

MOTION by Sorey to APPROVE RESOLUTION 06-11226 as submitted, with conditions set forth in the resolution; seconded by MacIlvaine and carried 6-1, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-no, Willkomm-yes, Barnett-yes).

Council Member Taylor explained her dissenting vote as attributable to her belief that this variance does not meet the criteria for approval contained in the Code of Ordinances.

**RESOLUTION 06-11227.....ITEM 9
A RESOLUTION DETERMINING VARIANCE PETITION 06-V4 FROM SECTION 110-45(a)(2) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES SWIMMING POOLS TO BE AT LEAST 15' FROM THE REAR PROPERTY LINE, IN ORDER TO PERMIT THE CONSTRUCTION OF A POOL TO ENCROACH 5 FEET 2 INCHES INTO THE REQUIRED REAR YARD, AT 850 7TH STREET SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:19 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: Barnett and Sorey/site visit; Price/met with petitioners at site; Nocera/site visit and met with petitioners; Taylor/familiar with site; and MacIlvaine and Willkomm/no contact.

Stephen Olmsted, Planning Administrator, explained that this petition is to allow a pool to encroach five feet, two inches into the required rear setback and that the Planning Advisory board (PAB) had voted 4-2 for denial. Staff also recommends denial as the variance criteria had not been met in this instance, he said. Petitioners Flavio and Elaine Galasso described what they deem a unique situation in that an adjacent property owner has an unusually shaped lot, originally designed to acquire enough square footage to meet building requirements. They also noted that this same property owner has no objection to the Galasso's using this five-foot, four-

inch, strip as additional area for their setback and, furthermore, no surrounding property owners objected to the pool proposal. Vice Mayor Nocera said that a site visit would reveal that this is a unique situation and that he had observed a neighboring pool on this same lot line as requested in this instance. Council Member Sorey asked the petitioners whether when purchasing the property they were aware of the implications of the rear yard setback in reference to installing a pool. The Glassos indicated that they were not. Mr. Sorey indicated that, while his sympathy is with the petitioners, there is insufficient area to accommodate a pool.

MOTION by Sorey to DENY THIS PETITION (RESOLUTION 06-11227) as recommended by staff; seconded by MacIlvaine and carried 4-3, all members present and voting (MacIlvaine-yes, Taylor-yes, Price-yes, Sorey-yes, Nocera-no, Willkomm-no, Barnett-no).

Recess: 10:30 a.m. to 10:42 a.m. It is noted for the record that all Council Members were present when the meeting reconvened.

RESOLUTION 06-11228.....ITEM 12
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR YABBA ISLAND GRILL, LOCATED AT 711 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:42 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: Taylor and MacIlvaine/familiar with site; Sorey/familiar with site and spoke with Jim Rideoutte; and Willkomm, Price, Nocera and Barnett/no contact.

Planning Administrator Stephen Olmsted explained that while this item would normally be included in the Consent Agenda, one complaint had been received, the applicable report having been provided in the Council packet. He said that the staff recommends approval of the renewal.

Joyce Stack, who indicated that she was present on behalf of the petitioner’s agent, Skip Quillen, who was unable to attend due to a medical emergency. Council Member MacIlvaine expressed concern with regard to allowing live entertainment to take place on the sidewalk, evoking what he characterized as a carnival atmosphere. He said that entertainment being allowed outside the establishment is unnecessary. City Attorney Pritt clarified that one of the recommended conditions of approval is that the speakers and entertainer must face the establishment rather than the street. A brief discussion followed regarding the various conditions of the renewal.

MOTION by Sorey to APPROVE RESOLUTION 06-11228 as submitted; seconded by Nocera and carried 5-2, all members present and voting (Sorey-yes, Price-yes, Willkomm-yes, Nocera-yes, MacIlvaine-no, Taylor-no, Barnett-yes).

RESOLUTION 06-11229.....ITEM 13
A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR THE BAYFRONT INN, (FORMERLY KNOWN AS THE COMFORT INN & MARINA) LOCATED AT 1221 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:51 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm, Nocera, Barnett, Taylor, and MacIlvaine/no contact; Price/familiar with site but no contact; and

Sorey/familiar with site and visited site. Stephen Olmsted, Planning Administrator, explained that complaints had been received regarding this establishment and had been provided as part of the meeting packet. (It is noted for the record that this materials is contained in the file for this meeting in the City Clerk’s Office.) He said that staff recommends approval. In response to Council Member Price relative to placement of speakers, Trista Youngquist, agent for the petitioner, stated that the speakers are not fixed, that entertainers provide their own equipment and that the speakers are placed so as to face the bar area.

MOTION by Taylor to APPROVE RESOLUTION 06-11229 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 06-11230.....ITEM 14

A RESOLUTION GRANTING A COASTAL CONSTRUCTION SETBACK LINE VARIANCE TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND DECK, A SWIMMING POOL, LANDSCAPING, AND EXTERIOR LIGHTING WEST OF THE COASTAL CONSTRUCTION SETBACK LINE AT 1962 GULF SHORE BOULEVARD SOUTH; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (10:55 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, Price, Nocera, Barnett, and MacIlvaine/no contact; Sorey/visited the site; and Taylor/conversation with Mrs. Regina Noch prior to this meeting convening. Dr. Michael Bauer, Natural Resources Manager, gave a brief presentation, stating that approval was recommended.

Public Comment: (10:57 a.m.) **Regina Noch, 1978 Gulf Shore Boulevard South**, stated that her residence is directly south of the proposed building site and that she strongly objects to the project because it will negatively affect her home, especially with regard to privacy. A privacy hedge has already been removed between the two properties and the proposed spa, due to elevation requirements, will be constructed outside her second story bedroom window. She concluded by asking denial of this variance.

Brett Moore, agent for the petitioner, said that he had not been involved in the demolition process and therefore could not address many of the issues raised by Mrs. Noch. He said that he had however invited her input on the future landscaping of the site with reference to replacement of the aforementioned privacy hedge. Mr. Moore further explained that the new construction would actually be landward of the prior structure, but because in 1989 the coastal construction setback line had been moved farther landward, this variance was necessary. In further discussion of the layout, City Manager Robert Lee stated that a fence was being required on the property to replace a wall that had been removed along with the hedge.

Planner Tony McIlwain recited the applicable variance requirements and clarified that as long as the elevated pool and spa are within the building envelope, the elevation is permitted. Council Member Taylor then questioned the public health issue raised by Natural Resources Manager in his April 26 memorandum (a copy of which is contained in the file for this meeting in the City Clerk’s Office). This memorandum was with regard to the recreation area containing a pool and spa near the bedroom of the neighboring residence; and Miss Taylor said that she would be unable to support this variance since she believed that the public health issue in fact does apply,

due to the elevation. Mr. Moore pointed out that this elevation is in fact permitted and that it is recommended for recreational areas such as this to be incorporated within the framework of the residence, which it is in this project. Council Member Sorey identified this petition as another example of the impact of the new FEMA (Federal Emergency Management Agency) elevation requirements and that further staff discussions should take place with the developers of this project to restrict the impact to Mrs. Noch's property.

Public Comment: (11:20 a.m.) **Henry Kennedy, Pelican Avenue**, stated that information was missing such as complete measurements for elevation of the pool and spa. Mr. Kennedy said that he feels this to be a flaw in the variance petition system which must be corrected.

Council Members Taylor and Price then each voiced the opinion that the project as proposed, given the elevation of the spa in such close proximity to the bedroom window of the neighboring residence, presents an adverse affect to public health; Mr. Price indicated that he too, would therefore not support the variance. Discussion continued concerning applicable codes in which Council decided that the coastal construction setback process and pool elevations should be reviewed at a future time.

MOTION by Sorey to ***APPROVE RESOLUTION 06-11230*** as submitted; seconded by MacIlvaine and carried 5-2, all member present and voting (Price-no, Sorey-yes, Nocera-yes, Willkomm-yes, Taylor-no, MacIlvaine-yes, Barnett-yes). It was also the consensus to review coastal construction setback process and pool elevations.

ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE AMENDING SECTION 2-119 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF AMENDING THE CITY'S TRAVEL POLICY RELATING TO MEAL ALLOWANCES; AND PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title was read by City Attorney Robert Pritt (11:51 a.m.). City Manager Robert Lee stated that this action enables the City to remain consistent with the State as to reimbursement policies.

Public Comment: None (11:51 a.m.).

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

RESOLUTION 06-11231.....ITEM 17-a
A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY SERVICES ADVISORY BOARD FOR A THREE-YEAR TERM COMMENCING MAY 17, 2006, AND EXPIRING MAY 16, 2009; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:51 a.m.).

Public Comment: None (11:51 a.m.).

MOTION by Taylor ***NOMINATING*** Art Ritas to the Community Services Advisory Board; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11232..... ITEM 17-b
A RESOLUTION APPOINTING ONE MEMBER TO THE MOORINGS BAY CITIZENS ADVISORY COMMITTEE FOR THE MOORINGS BAY SYSTEM SPECIAL TAXING DISTRICT FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING APRIL 2, 2008; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:52 a.m.).

Public Comment: None (11:52 a.m.).

MOTION by MacIlvaine NOMINATING Michael Bozzo to the Moorings Bay Citizens Advisory Committee; unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11235..... ITEM 18
A RESOLUTION APPROVING A SUPPLEMENTAL AMENDMENT NO. 2 TO INTERLOCAL AGREEMENT BETWEEN THE CITY OF NAPLES, FLORIDA AND THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA TO PROVIDE ADDITIONAL FUNDING FOR SERVICES REQUESTED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; AUTHORIZING THE MAYOR TO EXECUTE THE SUPPLEMENTAL AMENDMENT NO. 2 TO THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:53 a.m.). In response to Council Member MacIlvaine, City Manager Robert Lee stated that the total amount of funding is not to exceed \$16,000, with the initial amount being \$4,000, divided evenly between the City of Naples and Collier County. Council Member Sorey thanked City Manager Lee for his effort toward resolving this matter.

Public Comment: None (11:54 a.m.).

MOTION by Sorey to APPROVE RESOLUTION 06-11235 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).

Recess: 11:55 a.m. to 1:29 p.m. It is noted for the record that all Council Members were present when the meeting reconvened except Council Member Taylor who arrived at 1:34 p.m.

RESOLUTION 06-11233..... ITEM 10
A RESOLUTION AUTHORIZING TRANSMITTAL OF THE CITY OF NAPLES COMPREHENSIVE PLAN EVALUATION AND APPRAISAL REPORT TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND ALL REVIEWING AGENCIES AS REQUIRED BY STATE STATUTE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:29 p.m.). Planning Administrator Stephen Olmsted stated that staff had completed the draft of the Evaluation and Appraisal Report (EAR) and ask Council to authorize transmittal to the Florida Department of Community Affairs (DCA) for review. He added that the 2005 Level of Service (LOS) Report draft had been included with the EAR and City Manager Robert Lee thanked Council Member Sorey for his input, especially regarding several grammatical errors noted and also ensuring consistency with other documents. Discussion followed regarding the calculation of population projections and which of the newly annexed areas are included in the LOS Report (see Item 11).

Public Comment: None (1:43 p.m.).

MOTION by Sorey to APPROVE RESOLUTION 06-11233 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).

ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE ADOPTING THE 2005 LEVEL OF SERVICE REPORT; DIRECTING STAFF TO TRANSMIT SAID REPORT TO THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (1:44 p.m.). Planning Administrator Stephen Olmsted stated that the Level of Service (LOS) Report was actually being appended to the EAR (Evaluation and Appraisal Report) (see Item 10), with the intent of enriching the information available. At this time there was further discussion regarding the impact of population growth, and Council Members Sorey and Price indicated the need to revisit the five-year plan and anticipate needed changes, especially where sidewalks and bicycle pathways are concerned. Mr. Sorey requested a workshop to include a review of the LOS following Council’s summer recess with the possibility of including the information in the visioning process.

Public Comment: (1:53 p.m.) **Sue Smith, 11th Avenue South**, referenced the increase in the population utilizing City resources during the winter tourist season and her feeling that a vision is needed of the requirements to maintain the quality of life in Naples. In conclusion, she asked for public participation in the aforementioned visioning process. **Henry Kennedy, Pelican Avenue**, began by asking Council to consider girls’ softball when planning for future growth in parks, emphasizing that the existing field demands continual maintenance.

City Attorney Pritt confirmed Council’s understanding that no changes are necessary for the required submittal, but that Council was merely discussing intentions as to future use.

MOTION by Price to APPROVE THIS ORDINANCE on First Reading 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).

ORDINANCE (First Reading).....ITEM 7
AN ORDINANCE GRANTING REZONE PETITION 06-R2 FOR PROPERTY LOCATED AT 300, 340 AND 350 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN, IN ORDER TO PERMIT REZONING FROM C1-A COMMERCIAL CORE, R3-12 MULTI-FAMILY AND PD PLANNED DEVELOPMENT TO PD FOR THE ENTIRE PARCEL OF APPROXIMATELY 1.84 ACRES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:02 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm and Sorey/visited site and spoke with petitioner and agent; Price/visited site and spoke with agent; Nocera and Barnett/site visit but no contact; Taylor/familiar with site and spoke with petitioner; and MacIlvaine/familiar with site and spoke with petitioner and agent.

Planning Administrator Stephen Olmsted stated that it was the recommendation of the Planning Advisory Board (PAB) and staff that this rezone petition be approved. Questions regarding

parking availability would be answered prior to the second reading of the ordinance, he said, assuring Council that he does not foresee any difficulty with this issue. Council Member Price clarified that his inquiry had been with reference to verification of the number of parking spaces reserved for residents.

Attorney John Passidomo, agent for the petitioner, gave a brief introduction, describing the project as ten multifamily units in a two story condominium above one story of parking on what is now an open, asphalt parking lot. He stated that the intent is to unify a site comprised of “R3-12” Residential and “PD” Planned Development zoning. Paige Reddick, petitioner, then gave an electronic presentation (a printed copy is contained in the file for this meeting in the City Clerk’s Office), giving the details of the proposed site plan, which included confirmation of the parking spaces that are to be included. She clarified that the parking will be much the same as presently configured, but of the total 128 spaces, 22 would be reserved for residents. A brief discussion followed regarding density, and Mr. Olmsted noted that this type of density is the norm in the Fifth Avenue South area. Mr. Passidomo noted that the bank drive-thru facility is existing and therefore merely a reduction from three lanes to two. Council Member Sorey stated that he feels this project to be very innovative and a better alternative than the current asphalt parking lot.

MOTION by Sorey to APPROVE THIS ORDINANCE on First Reading 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).

It is noted for the record that the order of the matters under Item 16 were considered in reverse order.

ORDINANCE (First Reading)..... ITEM 16-b
AN ORDINANCE PERTAINING TO THE CODE OF ORDINANCES, CITY OF NAPLES; RECODIFYNG, RE-ADOPTING AND REENACTING SAID CODE FOR THE CITY OF NAPLES, FLORIDA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (2:35 p.m.) who explained the process by which the recodification would be approved. He said that the ordinance would contain as an attachment word proofs of approximately 900 pages, as well as Exhibit A, thereto, which is comprised of those ordinances adopted and acceptable for codification since September 7, 2005. At second reading, any additional ordinances subsequently enacted would be added for a final product. Mr. Pritt also noted that the recodification process been ongoing since 2003 and that the entire code was included in the proofs, regardless of whether changes were to occur. However, City Attorney Pritt said that he also realizes that Council might need additional time to review the proposed code changes, although expressing the hope that the recodification would be ready for the printer before the summer recess so that second reading could occur after Council returns in August. A brief discussion followed and Council decided to convene a Special Meeting on Monday, June 5, 2006, at 1:30 p.m., in order to review the recodified code.

Public Comment: (2:52 p.m.) Henry Kennedy, Pelican Avenue, stressed the seriousness of the recodification process and that it should not be taken lightly. He urged that sufficient time be devoted to it and to clarify for the public such revised items as the one dealing with honorariums

(ethics code). Discussion then occurred in which City Manager Robert Lee gave the example of the update in travel allowances, explaining that this had been enacted for consistency with State mandates. Mr. Kennedy continued by saying that he feels the new code allows honoraria and that all expenses can be paid in this regard and that memberships as well can be given. City Attorney Pritt explained that some changes had been necessitated by conflicts with State law, stressing that all revisions are open to discussion. Council Member Taylor asked Mr. Pritt whether the memo dated September 28, 2005, is an accurate guide to substantive changes to the code; he replied that he would also provide an executive summary of the recodification in an effort to answer specific questions. Miss Taylor requested that he summarize any changes that alter the meaning of an ordinance or change powers from one entity to another. Mr. Kennedy explained that his major concern resides with the ethics aspect of the new code, and Mayor Barnett reminded him that conducting this type of review is the reason for scheduling the aforementioned special session. Miss Taylor said that she, too, is interested in the changes to the ethics ordinance and asked City Attorney Pritt to clarify them. Mr. Pritt also reminded Council Members that the decision rests with them to either adopt the new, less stringent codes or retain more stringent provisions. **Bernie Portnoy, 350 Third Avenue South**, stated that he was particularly interested in the parking portion of the proposed code and that he feels there is a conflict in Section 36.93, pages 386-387, concerning parking on rights-of-way and the exceptions contained therein. **Sue Smith, 11th Avenue South**, agreed with Mr. Portnoy's comments regarding the rights-of-way matter and urged City Attorney Pritt to follow through with the executive summary mentioned above.

MOTION by Sorey to CONTINUE ITEM 16-b until June 5, 2006, Special Meeting at 1:30 p.m.; seconded by Taylor and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Price-yes, Sorey-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 06-11234.....ITEM 16-a
A RESOLUTION SETTING THE PUBLIC HEARINGS REGARDING THE TEXT AMENDMENT TO RECODIFY, RE-ADOPT AND REENACT THE CODE OF ORDINANCES, CITY OF NAPLES, AS PART OF REGULAR CITY COUNCIL MEETINGS BEFORE 5:00 P.M.; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:18 p.m.) Mr. Pritt who advised Council that reference to a Special Meeting should be included in the wording of this resolution.

Public Comment: (3:21 p.m.) None.

MOTION by MacIlvaine to APPROVE RESOLUTION 06-11234 as amended to include Special Meetings; 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).

.....ITEM 19
DISCUSSION OF SECTION 110-54 REGARDING EQUIPMENT HEIGHT IN SETBACKS. (3:23 p.m.) City Manager Robert Lee referred to City Attorney Robert Pritt's legal memorandum regarding the waiver of enforcement (a copy is contained in the file for this meeting in the City Clerk's Office) pursuant to the discussion at the May 15 Workshop Meeting. City Attorney Pritt clarified that Council may not simply waive an ordinance but must repeal or amend what had been previously enacted unless a waiver provision is contained therein. There is, however, some discretion as to policy with regard to the level of enforcement, which is

administrative, he added. He expressed the hope that some practical way of dealing with the issue of placement of electrical generators would be forthcoming.

Council Member Sorey stated that he also wished to address the issue of height with reference to swimming pool equipment that had historically been set at a 30-inch height maximum but not enforced. He further noted that the greater the pool size, the larger the complement of equipment required, although all pool heaters are greater in height than the 30-inch maximum. He therefore asked City Attorney what could be done in the way of relief to a builder's being unable to obtain a certificate of occupancy (CO) until the ordinance could be amended. Mr. Pritt explained that such land use decisions must undergo due process and that they are not meant to be changed quickly or in emergency situations. He stated that he would review the applicable Code of Ordinance provisions in greater detail and determine whether relief could be granted due to the existence of a conflict; noting that he is however, not unsympathetic but merely giving his legal opinion. Mr. Sorey asked if it were possible to change the 30-inch maximum to 48 under an emergency provision, but Mr. Pritt recommended instead that in individual situations, an emergency may exist that might be addressed by staff; however, he reiterated that further review was needed.

Public Comment: (3:33 p.m.) **Mike Assaad, 790 Harbor Drive**, stated that he is a contractor and inquired as to the possibility of temporary certificates of occupancy (TCO) until the necessary steps could be taken to correct the ordinance regarding maximum height requirements. Robin Singer, Community Development Director, explained that building inspectors are allowed to issue temporary TCO's if there are no life safety issues and if the contractor is currently pursuing relief in the form of a variance. City Attorney Pritt agreed that this would be an option. Mr. Sorey asked whether there is a time limitation with regard to TCO's in light of the fact that the changes would not come before Council prior to its summer recess.. Ms. Singer replied that the time limit varies with the circumstances, therefore adjustment could be made as needed. Mr. Assaad concluded by explaining that current pool equipment and air conditioners are taller than 30-inches making compliance impossible. Council Member Sorey asked Mr. Assaad the number of pools he had installed wherein the equipment had exceeded the maximum height of 30-inches. Mr. Assaad replied that all of the 30 to 40 pools he had installed in the City over the past eight years had contained equipment over 30 inches in height. Ms. Singer suggested that in light of the fact that the ordinance had not been enforced and that pools under construction are unable to meet height requirements, TCO's could be granted. She also said that staff intends to canvass the City to measure pool equipment height and subsequently make recommendations to Council. City Manager Lee indicated that those pools awaiting CO's would be issued TCO's, although those already having been issued a CO would be exempt.

DISCUSSION OF NAPLES AIRPORT AUTHORITY.....ITEM 20

Council Member Willkomm stated his concerns regarding the lease agreement between Naples Airport Authority (NAA) and the City of Naples and that it had been stated that there is no possibility for renegotiation. He read excerpts from the May 11 memorandum by City Attorney Robert Pritt and an April 13 letter from NAA attorney F. Joseph McMackin in this regard. He also cited an April 9 guest commentary in the Naples Daily News by Alan Parker, along with the response by NAA Chairman Ernest Linneman. (It is noted for the record that the aforementioned texts are contained in the file for this meeting in the City Clerk's Office.) Mr. Willkomm said that he feels that the NAA lease should reflect the fair market value of the property. Further

discussion ensued in which it was noted that a joint meeting with the NAA is to occur at the Council's June 5 Workshop, and that the concerns stated could be addressed at that time.

Public Comment: (4:07 p.m.) **Scott Phillips, 3060 Green Dolphin Lane**, said that the NAA should not be in the retail fuel business and that he feels a monopoly exists. **Henry Kennedy, Pelican Avenue**, said that he feels the airport offers an important service to Naples, but that a solution to the aforementioned problem could be found. He therefore urged Council not to delay in making changes in the lease agreement.

CORRESPONDENCE AND COMMUNICATIONS.....

(4:19 p.m.) Council Member Taylor asked whether former State Representative Mary Ellen Hawkins had yet accepted Council's invitation to speak regarding the use of lobbyists; City Manager Robert Lee said that Ms. Hawkins would appear at the June 12 Workshop. Council Member Sorey stated that he felt the beach renourishment project would be completed by the June 1 deadline. He also asked whether a response had been sent to Jeff Hadley regarding the Fort Wayne ordinance concerning rental properties. (It is noted for the record that a copy of this communication is contained in the file for this meeting in the City Clerk's Office.) City Attorney Robert Pritt indicated that a reply had been sent and offered to research options that may be in the Code of Ordinances regarding making owners responsible for illegal activities in their rental properties.

PUBLIC COMMENT.....

(4:22 p.m.) None.

ADJOURN.....

4:22 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 6/14/06