

**SANIBEL CITY COUNCIL REGULAR MEETING  
JANUARY 16, 2007**

Mayor Johnston called the meeting to order at 9:00 a. m.

Members present: Mayor Johnston, Vice Mayor Denham, Councilman Brown, Councilman Jennings and Councilman Rothman.

Councilman Rothman gave the Invocation and led the Pledge of Allegiance.

Public Comments:

Henry Glissman spoke against pay for Council.

Hazel Schuller spoke to Sanibel maps, and no permitted use map and/or resort housing map.

Karen Storijohann asked if there would be a discussion of Periwinkle Way plantings.

Herb Rubin spoke to preserving the island.

Ed Seiber spoke to the Invocation and incidents on the Shared Use Paths.

Ms. Zimomra spoke to the Council receiving the Shared Use Master Plan in the Spring.

Council Comments

Vice Mayor Denham thanked Mayor Johnston for leading the charge in her persistence in the SFWMD delivering land for water storage. He also thanked the citizens for attending public meetings, their e-mails and letters, as well as PURRE to the ACOE and SFWMD.

Councilman Brown also thanked Mayor Johnston. He also spoke to the red drift algae being a problem on the beach. He further spoke to his interest in staff completing their red drift study, the large number of iguanas on the island.

Councilman Rothman thanked Mayor Johnston, e-mails he receives and a letter he received in the mail from a Planning Commissioner and accusations that he was spreading rumors.

Councilman Jennings spoke to his running for City Council.

Mayor Johnston spoke to the agreement with the SFWMD and ACOE for land to store water.

Councilman Brown spoke to the procedure of any e-mails Council received at home should be turned in to the City Clerk. He further spoke to not trusting the SFWMD and the ACOE.

Planning Commission Report

Dr. Phillip Marks gave the following report of the January 9<sup>th</sup> Planning Commission meeting.

- Concerned the organization of the upcoming year
- January 23 election of Chairman and Vice Chairman
- Proposed March joint City Council/Planning Commission meeting
- Planning Department work program
- Review residential land use and analysis
- Discussed the transportation planner

**SECOND READING AND PUBLIC HEARING**

**ORDINANCE 06-022 AMENDING THE SANIBEL CODE, PART II, SUBPART B LAND DEVELOPMENT CODE: BY AMENDING CHAPTER 126 ZONING, ARTICLE VI DISTRICTS GENERALLY, SECTION 126-241 ZONING DISTRICTS, TO ADD A NEIGHBORHOOD COMMERCIAL DISTRICT TO THE COMMERCIAL ZONING MAP AND READOPT THE AMENDED MAP; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE VIII COMMERCIAL DISTRICTS, TO AMEND DIVISION 1 GENERALLY, TO ADD A NEW SECTION 126-470 PURPOSE OF COMMERCIAL ZONING DISTRICTS; AND TO AMEND DIVISION 2 GC GENERAL COMMERCIAL DISTRICT, TO ADD A NEW SECTION 126-490 PURPOSE OF THE DISTRICT; AND TO AMEND THE LIST OF PERMITTED USES IN SECTION 126-491; AND TO AMEND THE LIST OF CONDITIONAL USES IN SECTION 126-492; AND TO AMEND THE REQUIRED CONDITIONS FOR DEVELOPMENT IN THE DISTRICT IN SECTION 126-494; AND TO AMEND DIVISION 3 TCG TOWN CENTER GENERAL COMMERCIAL DISTRICT, TO ADD A NEW SECTION 126-510 PURPOSE OF THE DISTRICT; AND TO AMEND THE LIST OF PERMITTED USES IN SECTION 126-511; AND TO AMEND THE LIST OF CONDITIONAL USES IN SECTION 126-512, AND TO AMEND THE REQUIRED CONDITIONS FOR DEVELOPMENT IN THE DISTRICT IN SECTION 126-514; AND TO AMEND DIVISION 4 TCL TOWN CENTER LIMITED COMMERCIAL DISTRICT, TO ADD A NEW SECTION 126-530 PURPOSE OF THE DISTRICT; AND TO AMEND THE LIST OF PERMITTED USES IN SECTION 126-531; AND TO AMEND THE LIST OF CONDITIONAL USES IN SECTION 126-532; AND TO AMEND THE REQUIRED CONDITIONS FOR DEVELOPMENT IN THE DISTRICT IN SECTION 126-534; AND TO ADD A NEW DIVISION 5 NC NEIGHBORHOOD COMMERCIAL DISTRICT, TO ADD A NEW SECTION 126-540 PURPOSE OF THE DISTRICT; AND TO ADD A NEW SECTION 126-541 PERMITTED USES; AND TO ADD A NEW SECTION 126-542 CONDITIONAL USES; AND TO ADD A NEW SECTION 126-543 ACCESSORY USES; AND TO ADD A NEW SECTION 126-544 REQUIRED CONDITIONS; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1024 MAXIMUM SIZE FOR A RETAIL COMMERCIAL BUILDING; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1025 MAXIMUM STREET FRONTAGE FOR A COMMERCIAL UNIT; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1026 MAXIMUM SIZE FOR A RETAIL COMMERCIAL UNIT; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1027 ARCHITECTURAL STANDARDS TO ESTABLISH ARCHITECTURAL STANDARDS FOR COMMERCIAL LAND USES; AND BY AMENDING**

**CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1028 SITE PLANNING STANDARDS TO ESTABLISH SITE PLANNING STANDARDS FOR COMMERCIAL LAND USES; BY AMENDING CHAPTER 126 ZONING, ARTICLE XV OFF-STREET PARKING AND LOADING, DIVISION 2 OFF-STREET PARKING, SUBDIVISION III NONRESIDENTIAL USES, SECTION 126-1361 REQUIRED PARKING SPACES, TO EXEMPT THE DIVISION AND REESTABLISHMENT OF COMMERCIAL UNITS THAT HAD PREVIOUSLY BEEN COMBINED FROM COMPLYING WITH THE REQUIREMENTS OF THIS SECTION; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE IV CONDITIONAL USES, TO ADD A NEW SECTION 126-102 FORMULA RETAIL STORES IN THE NEIGHBORHOOD COMMERCIAL DISTRICT THAT ESTABLISHES CONDITIONAL USE STANDARDS FOR FORMULA RETAIL STORES; AND TO ADD A NEW SECTION 126-103 RESIDENTIAL DEVELOPMENTS IN THE NEIGHBORHOOD COMMERCIAL DISTRICT OR MIXED-USE COMMERCIAL AND RESIDENTIAL DEVELOPMENTS IN THE NEIGHBORHOOD COMMERCIAL DISTRICT THAT HAVE A TOTAL FLOOR AREA FOR THE RESIDENTIAL USES THAT EXCEEDS THE TOTAL FLOOR AREA FOR COMMERCIAL USES; AND TO ADD A NEW SECTION 126-104 VARIETY OR DEPARTMENT STORES AND COMMERCIAL RETAIL STORES WITH MORE THAN 2000SF OF COMMERCIAL FLOOR AREA THAT ESTABLISHES CONDITIONAL USE STANDARDS FOR THIS USE; AND BY AMENDING CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 RULES OF CONSTRUCTION AND DEFINITIONS, TO ADD A DEFINITION FOR DELICATESSEN STORE, FOOD MARKET, FORMULA RETAIL STORE, GROCERY STORE AND MIXED-USE COMMERCIAL AND RESIDENTIAL DEVELOPMENT; AND BY AMENDING CHAPTER 78 GENERAL PROVISIONS, SECTION 78-9 ACTIVITIES CONSTITUTING DEVELOPMENT, TO AMEND THE DESCRIPTION OF ACTIVITIES THAT INVOLVE DEVELOPMENT; AND BY AMENDING CHAPTER 82 ADMINISTRATION, ARTICLE IV DEVELOPMENT PERMITS, DIVISION 2 PROCEDURE, SUBDIVISION II SHORT FORM, SECTION 82-401 APPLICATION, TO MAKE SHORT FORM APPLICATIONS AVAILABLE FOR COMMERCIAL BUILDINGS NOT EXCEEDING 2000SF OR FLOOR AREA AND ADDITIONS, NOT EXCEEDING 2000SF OF FLOOR AREA, TO COMMERCIAL BUILDINGS; AND PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.**

Ms. Zimomra read the title of Ordinance 06-022.

Council spoke to the following:

- Protecting the island unique characteristics
- Premise of the Vision Statement
- Code of Ordinance speaking to land use and the Sanibel Plan
- Page 6 2<sup>nd</sup> line Section 126-470 insert after the words “Sanibel Plan” (from page 4 of the Sanibel Plan) “with respect that Sanibel remain a small town community whose members choose to and etc.”

- Page 6 4<sup>th</sup> line from the bottom after “serving commercial uses and” (Page 5 of the Sanibel Plan) add “shall be developed as a community only to the extent to which it retains and embraces the quality of sanctuary island Sanibel will serve as an attraction only to the extent to which it is desired qualities as a sanctuary and the community.”
- Page 6 8<sup>th</sup> line from the bottom delete “the needs of both residents and seasonal populations,” add after the word “activities” “primarily focusing on the needs of islander residents.”

Discussion ensued regarding changing the wording “to serve islander needs,” and Council agreed.

- Page 8 Section A indicates it did not permit mixed uses or combine residential and commercial uses

Ms. Pfalzer spoke to the following:

- The first listed uses would be the primary uses
- Actual combined residential/commercial use would fall under a conditional use

Discussion ensued regarding conditional uses.

- Page 11 delete “Formula retail uses are permitted as a primary intended use in this Commercial District provided that the retail activity of such use is listed above as a primary intended use”

Discussion ensued regarding the need to balance formula retail, control formula retail, 14% formula retail space, limit formula retail to 14% of the whole, grandfather existing formula retail within the 14%, 23 formula retail sites on the island presently, keep the character of Sanibel, put a series of controls for formula retail, would not allow formula retail as a primary intended use, and formula retail began with losing the stores at Casa Ybel.

- Page 11 add to protect the balance of mix of businesses on the island to protect the uniqueness of the island

Mr. Cuyler spoke to the following:

- Council could change the recommended document from the Planning Commission and Planning staff
- Procedural issue in advertising giving the public a general idea of discussion
- Significantly change the ordinance then it would necessary to re-advertise and continue the public hearing
- Distinguish the Planning Commission input and Council’s input and separate procedural issue
- Receive direction from Council regarding changes

Public Comment:

Larry Schoop spoke to formula retail.

Louise Johnson spoke to the procedure of the public hearing and grandfathering the current amount of formula retail.

Council agreed to grandfather all current 14% (76,000 square footage) of formula retail.

Hazel Schuller asked about hotels. Council stated that hotels would be discussed.

Rose Van Lear spoke to changes on the island, destruction from Hurricane Charley, and the height of houses on Sanibel. She also spoke to alligators on the island.

Steve Hartsell, Attorney representing Joe Siamato and Forever Green spoke to a section on page 12 and page 29 in the general commercial district that Formula Retail uses would be included as a primary intended use and in the Town Center limited and other district Formula Retail would not an intended use, but as a conditional use. He urged Council to keep page 11 – Formula Retail Uses are permitted as a primary intended uses are permitted as a primary intended use in this Commercial District. He also spoke to the significant impact of the proposed ordinance to Forever Green; owner applied and was denied a permit for a proposed consolidation of 2 stores for a formula retail store. He further spoke to the proposed limitations on large box retail businesses.

Discussion ensued regarding nothing in the code addressing formula retail.

Beverly Grady, Attorney representing RLR owner of several commercial centers on Sanibel spoke to the current draft would allow formula retail in the General Commercial District, as well as the Town Center Limited District and Town Center General would also permit formula retail. She further spoke to the need for Council to articulate any limitations and continue to permit formula retail in the Town Center and Town Center General Districts.

Peter Pappas spoke to not changing Sanibel.

Trudy Prevatte spoke to not changing Sanibel and keep small businesses and limit formula retail.

Discussion ensued regarding the interim regulations from 2000, keep family businesses and island charm, staff recommendation in the commercial district for formula retail, formula retail being a permitted use, Mr. Duffy stated the draft ordinance that initiated the public hearing with the Planning Commission in May, 2006 regarding the General Commercial District, the Town Center Limited District and the Town Center General District the staff recommendation was to treat formula retail as a conditional use, but in the Neighborhood Commercial District staff recommended to treat formula retail as a prohibited use.

Discussion ensued regarding the effect of primary intended use and a conditional use, Mr. Duffy stated if it was a permitted use and the use meets all the dimensional related requirements and involves a change of use it would require a short-form application and administrative review, but if it were a conditional use that would require a public hearing and Planning Commission review, and meet any additional conditions, and limit the cap of formula retail.

Councilman Brown made a motion, seconded by Councilman Jennings, that formula retail would not be a permitted use in the commercial district, but current businesses would be grandfathered.

Vice Mayor Denham amended previous motion as follows, seconded by Councilman Brown, to allow formula retail at the current level of 76,000 square feet or 23 stores as a cap island wide, recognize and support current formula retail and prohibit any further formula retail, and if a business closes a new formula retail business application would require a conditional use permit.

Discussion ensued regarding compromise to preserve Sanibel and allow businesses to do what they want to do, not limit by district, but prohibit by district, the need to re-advertise.

Mr. Cuyler stated the vote was to give direction to staff regarding formula retail staying at 76,000 square feet, the need to re-advertise the ordinance with amendments and continuing the hearing.

The motion carried unanimously.

Council continued discussion as follows:

- Page 12 item 4 – staff recommendation keeping the 2,000 square foot cap whatever the size of the business

Discussion ensued regarding whether there was a larger building provision not allowing any more than 2,000 square foot per business. Mr. Duffy stated the language on Page 12 under item 4 was written to allow a formula retail use as well as an independent retailer, subject to a conditional use hearing, if the business center was 15,000 square feet, and allowing for another business between 2,000 and 4,000 square feet in the first paragraph, and the second paragraph would allow a formula retailer or independent retailer with 30,000 square feet would possibly have 2 4,000 square foot commercial establishments. He also spoke to a number of independent and formula retailers in some of the units that do exceed the 2,000 square feet, and completed a list that showed most businesses were less than 2,000 square feet, and allowing a business to grow by increasing square footage, allows the same provision to apply to formula retail and independent retail. Mr. Duffy explained if there was a business center between 15,000 and 30,000 square feet there could be a retailer of no more than 4,000 square feet; if the use was grandfathered it would be allowed, and could possibly expand the business to 4,000 square feet. He further explained that for a 30,000 square feet business center, possible to have at least 2 units that could be between 2,000 and 4,000, which came from public input, with a cap of 4,000 square feet; it could limit formula retail to 2,000 square feet and allow independent businesses to grow to 4,000 square feet. Mr. Duffy spoke to the possibility of a cap and allow smaller businesses the ability to expand. Mr. Cuyler stated the nature of formula retail was concerning Council and that findings Council could be made to establish a square footage limitation for formula retail, and he would work with staff to incorporate Council's comments in the next version as well as staff recommendation, and the need to keep the uniqueness of Sanibel.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to direct staff to investigate and rewrite the wording in the 2 paragraphs on the bottom of Page 12 and provide flexibility for independent businesses.

The motion carried unanimously.

- Page 13 reflect the previous vote
- Page 14 include that dumpsters on the ground have added site invasion

Mayor Johnston made a motion, seconded by Vice Mayor Denham, that where 2 districts meet direct staff to come back with language that any ground equipment would comply with current codes.

The motion carried unanimously.

Discussion ensued regarding dumpster placement and items grandfathered in. Mr. Duffy spoke to the opportunity to include new standards.

Public Comment:

Beverly Grady spoke to the side set back for larger parcels and requested to keep the current side set-back.

Mr. Duffy spoke to sending a response to the issue brought up by Beverly Grady.

Council recessed at 11:08 a. m.

Council reconvened at 11:20 a. m.

Steve Hartsell, Attorney representing CNC Investments spoke to a pending application for consolidation of 2 units into 1 unit being denied, filed an appeal of the denial was put on hold pending the proposed ordinance, an apparel store needing business fronts, and request that Council acknowledge the application as an existing grandfathered formula retail space. He further stated the 2 spaces had been empty for 2 years.

Mr. Cuyler spoke to the need for the final document before discussion was held regarding the pending appeal.

Discussion ensued regarding a former formula retail space, and Mr. Cuyler asked that there be no discussion due to the pending appeal.

- Page 20 Below Market Rate Housing and workforce housing a permitted use

Ms. Duffy clarified that they were permitted as a conditional use.

Council asked for any comments on the Town Center General and Town Center Limited Districts.

Public Comment:

Jerry Stern spoke to the purpose of the Town Center General Commercial District to provide for commercial and mixed use development, and the preferred location for retail and mixed use development why under the other uses it could be used for single-family dwellings, i.e. no commercial or mixed use district that seemed in conflict with the purpose of the district.

Mr. Duffy spoke to the purpose statement derived from previous sections of the Land Development Code and language stems from the Goals and Policies from the Sanibel Plan. He further spoke that in the Town Center Limited District residential did remain as a permitted use, but could have residential and commercial as separate buildings, or a mixed use project. He also stated there were no restrictions and in the Town Center General District there were both uses for many years and treats the district different from the General Commercial District in terms of range of use and types of uses and allows for mixed use. He explained that both individual uses and combined uses of Palm Ridge Road.

Mr. Stern stated that it would allow for single-family dwellings with no mixed use or commercial use in a district that was specifically designed for commercial and mixed use district. He also spoke to the Town Center Limited Commercial District provides for commercial and mixed use development, and one of the uses permitted was single-family homes alone. He stated that single-family homes could be built even though the zone was not for single-family homes.

Discussion ensued regarding replacement of commercial dwellings with single-family dwellings, Mr. Duffy spoke to retaining the small island neighborhood commercial centers currently, commercial development allowed to change commercial uses to single-family uses and vice versa, there was also a provision that enables mixed use to exist and formula to deduct footage for that provision, tax consequence from changing commercial to residential and Mr. Cuyler stated that would not be a problem.

- Page 22 under purpose – one of the purposes was to provide opportunities to limit vehicles trips that were consistent to the Sanibel Plan and a person could walk or bike to get something without getting in the car

Council did not object to add a sentence as mentioned-above.

Discussion ensued regarding what bonus dwelling units mean. Mr. Duffy explained that if one wanted to development a mixed use property 1,000 square feet of commercial use would be deducted for each dwelling unit. He explained the proposal was to retain neighborhood and island serving retail use and encourage the mixed use that already exists. He further spoke to the current density map permitted by the underlying density map would allow the residential unit as well as the commercial unit.

Mr. Cuyler spoke to the reason for the bonus was that one could have the full square footage allowed in that commercial district and then still add residential units without reducing the commercial units no to exceed the current density map.

Council directed Mr. Duffy to add a definition of a bonus dwelling unit, why not allow in the other commercial districts not subtracting commercial footage for residential. Mr. Duffy spoke to the ability to work in other district

Council directed staff to review the bonus use in all districts and add to the ordinance.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to accept staff recommendation that formula retail stores not be permitted in the neighborhood Commercial District.

The motion carried unanimously.

Mr. Cuyler stated that Council may want to take public comment before voting.

- Page 23 uses 1 thru 4

Mr. Duffy clarified alternative 1 came from the Zoning-In-Progress where that was a specific range of uses on an interim basis to potential not permit the outlining commercial districts. He further stated that in Alternative 2 based on the Planning Commission recommendations would continue to include those uses above 1 through 5 as part of the range of uses in the Commercial District. He added that since the language was proposed that was 1 small business regarding the ability to begin a gift or novelty store about 300 square feet and under the Zoning-In-Progress that would not be permitted. He stated that the Planning Commission believed that it could be primary intended or permitted uses in the new neighborhood district. Mr. Duffy stated direction was needed to decide that the uses should be permitted in the Neighborhood Commercial District as was permitted currently.

Council agreed with staff recommendation of alternative 2 and permitting the items below.

- Apparel and apparel accessories stores (retail)
- Children's and infant's wear stores (retail)
- Gift, novelty and souvenir shops, including shell shops (retail)
- Jewelry stores (retail)

Council agreed to allow the continued permitting of the above mentioned items as uses.

Discussion ensued regarding the outlying neighborhood districts would serve the needs of the local community, may not be the kinds of stores the neighborhood would need, the above-mentioned businesses do not serve the neighborhood, permit the businesses currently there. Mr. Duffy spoke to a number of each use on the east and west end that were successful for many years and the possibility would be there for these businesses to blend in with those basic neighborhood services. He further stated that there had been several requests from retailers to create gift/novelty stores as part of the smaller centers. Should there be neighborhood districts, Sanibel Bayous real estate office and the need for a convenient store and increased traffic. Mr. Duffy spoke to the parcel at the corner of Wulfert Road and San-Cap Road served as small real estate office and the true neighborhood center was to the west. He also spoke to the other center at Rabbit Road and to the east on Ferry Road. He stated that with the proposed ordinance the Sanibel Bayous office would convert from General Commercial use to Neighborhood Commercial. He spoke to the question for the single parcel was should it remain a commercial use or convert to a residential property, and it would be one of the neighborhood zones and permitted as a conditional use it could be converted to residential and subject to all dimensional standards. Mr. Duffy spoke to the basic principle or policy of the Sanibel Plan to avoid commercial sprawl with defined clusters whether they were neighborhood serving or the 3 mentioned above along Periwinkle Way.

Council asked staff to reconsider in light of the concerns with alternative proposals pertaining to the Sanibel Bayous parcel. Mr. Cuyler stated that would kick in a potential Burt Harris claim. Discussion ensued that if the zoning stays as it is and residential was a conditional use permit it would not kick in Burt Harris. Mr. Cuyler stated the issue of Burt Harris would arise because it would depend on if there was a diminution of the property value and under the proposed regulations there would be a potential advantage without reducing the commercial area as well as adding the bonus units on top. He further stated that before it could have been a mixed use project, but it would have reduced the commercial use. Mr. Cuyler explained that Mr. Thompson would lose the ability as a permitted use to tear down the commercial unit and build a residential unit without the conditional use process. He further explained that yes this would kick in the process, but it would depend on the appraisal numbers should they indicate property value was lost due to Council action.

Council recessed at 11:57 a. m.

Council reconvened at 1:21 p. m.

Council continued the discussion on Ordinance 06-022.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to accept Alternative 1 Section 126-541 as written.

- Apparel and apparel accessories stores (retail)
- Children's and infant's wear stores (retail)
- Gift, novelty and souvenir shops, including shell shops (retail)
- Jewelry stores (retail)

Discussion ensued to grandfather the current permitted uses.

The motion carried

Mr. Duffy explained the differences in Alternative 1 and Alternative 2 page 23 and 24 as follows:

- Alternative 2 deals with the issue of bonus dwelling units
- Needs to be re-written to introduce mixed use and define in greater detail
- Introduce bonus residential units and when they would be permitted
- Intention if pursuing the outline neighborhood district was to find a change to the regulation that would encourage mixed use, but not exceeding the residential density
- Have an incentive for mixed use

Discussion ensued regarding bonus units being a new concept. Mr. Duffy spoke to changing the regulation to provide mixed use without losing density, with every bonus residential unit 1,000 square feet of commercial use would be lost.

Mr. Cuyler spoke to retaining the commercial at the west end in the neighborhood district and provide an incentive to the owner to encourage mixed use of commercial/residential without losing density and the Bert Harris Act gives the property owner the ability to sue due to diminished property value.

Discussion ensued regarding this being a staff recommendation to provide an incentive, alternative 1 permits single-family dwellings and Planning Commission wanted that to be a conditional use, Mr. Duffy stated that one of the issues with Alternative 1 was it was too vague and did not provide a mixed use definition. He further stated that Alternative 2 under Section 1 provide a definition for mixed use and under Section 2 was vague and alternative 2 address the issue of bonus dwelling units and other uses could be included.

Council agreed to allow Mr. Duffy re-write.

- Page 24 bottom and Page 25 Conditional Use

Mr. Duffy stated Alternative 1 on page 24 was part of the May ordinance that neighborhood district formula retail would not be permitted and alternative 2, which came from Planning Commission discussions treated formula retail stores as a conditional use.

Discussion ensued regarding Council agreeing to choose Alternative 1

- Page 26 Alternative 2 a

Discussion ensued regarding Alternative 1 was staff's initial recommendation, by creating a new district height, set back and related dimensional standards needed to be introduced, Alternative 2 clearer and added the additional items, as well as adding Council's previous discussion, does Alternative 1 a on page 26

replace Alternative 2 a, or does Alternative 1 a replace Alternative 2 a,b,c, and d. Mr. Duffy stated it was only replacing Alternative 2 a, and Council agreed on Alternative 2 a.

- Page 27 (h) Item (1) why reduce the square footage and Item (3) why restrict the size of a dwelling unit. Council directed staff to review (h) 1&3 – define bonus units
- Page 28 bottom of the page before Section 17 – the need to review and should building material stores and grocery stores be exempted, Section 126-1024 no maximum size commercial building, need to set the maximum size building and exempt grocery stores

Discussion ensued regarding maximum building size on a lot was determined by floor area ratio and no need to cap, separating 2 commercial buildings by a 20-foot area and not separating the commercial buildings, but providing an area as not to have a large commercial uses. Mr. Duffy stated that staff created the separation between 2 building masses, enter and exit within a closed space and the larger site applying the floor ratio would not allow the larger buildings. He further stated the intent was for no monolithic buildings, would apply when reviewing the site plan, revisit on how to separate building masses, ensure enough separation of buildings, the need to define better, buildings material store included because there might be an exterior storage area, and larger volume and cap depending on the size, deleting (3) top of page 28 and direct staff to review Item (3), why were building material stores, furniture and home furnishing stores included. Mr. Duffy explained that the building material stores, home furnishing store and furniture stores were included because of the interior and exterior storage for displayed goods. Council liked the monolithic concept, but not the definition.

- Page 28 top of page – no bonus unit should be no larger than 1,250 square feet

Discussion ensued regarding the above-mentioned, Council directed staff to review the bonus unit issue, and other restrictions would limit the size. Council decided to leave the language at the bottom of page 28.

- Page 29 – no current maximum road frontage

Mr. Duffy spoke to alternative 1 being consistent with the current zoning-in-progress, and Council agreed to keep Alternative 1.

- Page 30 Architectural Standards – Council agreed with Alternative 2 as long as there were minor modifications of not more than 25%
- Page 30 bottom – Item c issue to have the roof line center higher and make more visually pleasing

Mr. Duffy stated that b and d 1 would try to step back of the building mass. He explained that this was the first time of including more specific design standards, and discussion with the Planning Commission to give adequate direction to communities. Discussion ensued regarding directing staff to further illustrate to provide adequate direction to the owner, and reference models and/or examples.

- Page 31 – delete “if any” in the 3<sup>rd</sup> line, include the design should take into account windows, public walkways or anything that would violate in adjacent zoning areas
- Page 31 the need to reference lighting and signage trespassing as a cross reference

Council agreed to both items as mentioned above and choose Alternative 2.

Discussion ensued regarding to revisit landscaping due to comments from businesses, landscaping buffer between businesses,

- Page 32 – landscape buffers in the commercial district

Ms. Zimomra spoke to landscaping buffers and the Periwinkle Way plantings.

Discussion ensued regarding a problem with locating parking behind businesses, disruptive to abutting property, the need for better landscaping, may increase crime, issue as redevelopment occur, and Council directed staff to review parking, vegetation buffers and keeping those buffers trimmed.

Mr. Duffy spoke to cases where there was a preexisting parking lot and a center with multiple store front and owners wanting to subdivide to smaller retail units and would ensure there would not be a penalty and allow the same amount of parking spaces as with the exiting business.

- Page 33 mistake in Section 22 3<sup>rd</sup> line from the top and delete “in the neighborhood commercial district.” Section 126-102 original set of conditions as part of the original ordinance to met for formula retail

Council agreed to direct staff to review everything on formula retail

- Page 36/37 – Mr. Pfalzer stated that mixed use was a permitted use, but if the residential floor exceeds the commercial floor that would be a conditional use including the standards. He explained that the mixed use was the predominant use in residential rather than commercial. He further explained that commercial would be encouraged and the accepting mixed use to avoid the reduction of property values

Council directed staff to further review Alternative 2 on page 37

- Page 40 alternative 2 – Council agreed

Public Comment:

Jerry Stern, Attorney representing Mr. Larry Thompson spoke to the parcel at the corner of Wulfert and San-Cap Road being a parcel that would go into the neighborhood commercial district as an example that the parcel could not be purely residential property, but part of a mixed use.

Mr. Duffy stated that under the draft ordinance recommended by the Planning Commission a single conversion from a commercial to a single-family dwelling would be a conditional use.

Mr. Cuyler stated that under the proposed regulations there could be a conditional use of purely residential.

Mr. Stern stated that on pages 12 and 13 there were no conditional uses listed for single-family dwellings. He further stated that on page 23 Primary Intended Uses were allowed, but residential was not a primary intended use.

Discussion ensued regarding allowing staff to clarify the point of permitted uses and conditional uses.

Mr. Cuyler explained that legally a conditional use application could be filed and go through the standard long form.

Mr. Stern spoke to Mr. Thompson objecting to the creation of the neighborhood commercial district limitations.

Hazel Schuller spoke to page 41 and the accessory beach equipment for resort housing uses and short-form applications.

Mr. Duffy stated this language was in the current code and should have only listed the part that dealt with the commercial district.

Larry Thompson spoke to not wanting the option to keep that option for residential use on his property where a commercial use was currently.

Councilman Jennings made a motion, seconded by Councilman Rothman, to continue the public hearing until February 20, 2007 at 9:30 a. m.

Council recessed at 2:37 p. m.

Council reconvened at 2:45 p. m.

**ORDINANCE 06-021 ESTABLISHING AND CONFIRMING THE RIGHTS OF PRIVATE PROPERTY OWNERS TO RETAIN AUSTRALIAN PINES THAT CURRENTLY EXIST ON THEIR PRIVATE PROPERTY; PROVIDING FOR DEFINITIONS; PROVIDING FOR INTENT; PROVIDING FOR THE ESTABLISHMENT OF THE RIGHTS OF PRIVATE PROPERTY OWNERS TO RETAIN AUSTRALIAN PINES THAT CURRENTLY EXIST ON THEIR PRIVATE PROPERTY; PROVIDING A FINDING THAT AUSTRALIAN PINES OR OTHER TREES THAT COULD DAMAGE OR DESTROY CRITICAL PUBLIC OR QUASI-PUBLIC INFRASTRUCTURE ARE A DANGER TO HEALTH, SAFETY AND WELFARE; PROVIDING FOR REMOVAL OR “TOPPING” OF AUSTRALIAN PINES AND OTHER TREES DETERMINED TO BE A DANGER TO CRITICAL PUBLIC OR QUASI-PUBLIC INFRASTRUCTURE; PROVIDING A PROCEDURE FOR DETERMINATION THAT AN AUSTRALIAN PINE OR OTHER TREE IS A DANGER TO CRITICAL PUBLIC OR QUASI-PUBLIC INFRASTRUCTURE; PROVIDING PROCEDURES FOR REMOVAL OR “TOPPING” OF SUCH TREES; PROVIDING FOR APPEAL; PROVIDING THAT CERTAIN EXISTING ORDINANCES RELATING TO AUSTRALIAN PINES ON PRIVATE PROPERTY REMAIN UNAFFECTED; PROVIDING THAT ORDINANCE RIGHTS GRANTED DO NOT AFFECT PRIOR CONDITIONS OF SUBDIVISION APPROVALS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title Ordinance 06-021.

- Page 3 – infrastructure owned by utility companies

Mr. Cuyler spoke to the ordinance defining all species of pines.

Discussion ensued regarding LCEC trimming 10 feet on either side of electrical wires, and only trim within the right-of-way.

Mr. Cuyler stated that Councilman Rothman made the motion to include the utilities, but it was Council final decision. He further stated that it would be easier for staff to handle if the infrastructure mentioned in the ordinance was City infrastructure. He explained that a system could be set up if a company request removal of a tree if the tree would destroy infrastructure.

Discussion ensued regarding not paying twice for tree trimming, expense to keep the large trees by damage to infrastructure or removing due to possible damage, as proposed the utility company could remove a tree on private land 120 feet from a utility, there was a direct motion to include above and below ground utilities 120 feet from City infrastructure.

Councilman Brown made a motion, seconded by Vice Mayor Denham delete paragraphs (b), (c) and (d) on page 3.

Discussion ensued regarding not delaying admission to the island, and need the ability with exceptional provisions to remove trees, telephone LCEC where trimming needs to be done, on Casa Ybel 2 or 3 pines leaning toward the power lines, and a lift station and fire hydrant in danger of damage.

#### Public Comment

Louise Johnson spoke to her agreement of deleting paragraphs (b), (c) and (d) on page 3.

Harry Vanderfeld spoke to the damage by felled Australian pines during Hurricane Charley.

Claudia Burns spoke to the Vegetation Committee statement was it would cost at least \$1,500 to remove a pine.

Paul Andrews spoke to problems felled pines underground.

The motion carried 4 to 1 with Councilman Rothman voting in opposition.

- Page 5 – changing the number of days given to property owners to remove a tree as directed by staff

Councilman Jennings made a motion, seconded by Councilman Brown, to change the time frame from 30 days to 60 days for property owners to remove trees as directed by the City.

Debbie McCulkin spoke to LCEC removing pines and the problems with the burning of trees after Hurricane Charley.

The motion carried unanimously.

Ms. Zimomra explained that due to the restrictions on the Causeway hurricane debris had to be burned on island and the ashe was carried off island. She further explained there was an air curtain operating on J. N. Ding Darling and if there was a problem code enforcement should be contacted.

Discussion ensued regarding trying to do the best for most residents, the code takes away property rights for a good reason and the protection of the island and its residents.

- Page 6 last 2 lines – the distance and Mr. Cuyler spoke to making an objective standard for the consideration of the removal and/or topping of a tree was it's distance from City infrastructure and the City Manager could review and make a determination.
- Page 10 – Mr. Cuyler spoke to the \$200 was the estimated cost for staff time
- Page 11 – Mr. Cuyler stated that in the last major subdivision there was a large stand of Australian pines and as a part of the plat approval it was decided to remove the pines and the property belonged to a developer.

Discussion ensued regarding the need for a policy in dealing with Australian pines, could send for a referendum, alternative plan, and the need to put Australian pines on the invasive plant list.

Councilman Brown made a motion, seconded by Councilman Rothman, table discussion until Feb 06, 2007 at 9:30 a. m., and give input to Mr. Cuyler and Dr. Loflin.

#### Public Comment

Herb Rubin spoke to the 60 days period for removal of pines.

Claudia Burns spoke to saving Australian pines.

Mr. Cuyler spoke to

Discussion ensued regarding Australian pines counted as a non-native, could not plant an Australian pines, 25% landscaping could include within the City's 25%, but can not be planted as a new tree.

Louise Johnson spoke to in favor of the ordinance.

Barbara Cooley spoke to the Gulf Pine eagle nest was on SCCF property, and when the Australian pine was removed the eagles would find the next tallest tree to nest. She spoke to Gulf Shores property owners allowing pines to grow on the beach.

John Veenschoten spoke to getting rid of the Australian pines.

David Berger spoke to the need to review the ordinance on pines.

Claudia Burns spoke a second time of the \$1,500 figure for removal of an Australian pine from the vegetation Committee.

The motion carried 4 to 1 with Vice Mayor Denham voting in opposition

#### **CONSENT AGENDA:**

- a. Approval of Minutes – September 09, 2006 First Budget Hearing, September 19, 2006 Regular Meeting, September 19, 2006 2<sup>nd</sup> Budget Hearing, October 03, 2006 Regular Hearing, October 17, 2006 Regular Hearing, November 07, 2006 Regular Meeting, November 20, 2006 Special Meeting, November 21, Regular Meeting, and December 19, 2006 Regular Meeting

Councilman Brown made a motion, seconded by Councilman Rothman, to adopt the minutes.

The motion carried unanimously.

Ms. Zimomra read the titles of the following resolutions:

- b. **RESOLUTION 07-005 AMENDING THE FINANCIAL AID SCHOLARSHIP POLICY AND PROCEDURES FOR THE RECREATION DEPARTMENT'S SUMMER PROGRAM SESSIONS, AFTER-SCHOOL PROGRAMS DURING THE SCHOOL YEAR AND OTHER CITY SPONSORED PROGRAMS; AND PROVIDING AN EFFECTIVE DATE**

- c. **RESOLUTION 07-006 APPROVING BUDGET AMENDMENT /TRANSFER NO. 2007-046 AND PROVIDING AN EFFECTIVE DATE** (Roll forward the previously allocated funds to supplement FY 2007 funds to update the Planning, Building, Finance, Payroll and Utility Billing software applications. These software updates will improve system efficiency by decreasing the need to hand key data, satisfy audit recommendations and integrate software document management. No new funds are being allocated in this request)

- d. **RESOLUTION 07-008 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-044 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$62,000 of Building-related revenues which were still

budgeted in the General Fund after the separation of the Building Department from the General Fund to a separate Special Revenue Fund. The net effect of this budget amendment is zero and allocates no new funds)

- e. **RESOLUTION 07-010 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-045 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$50,000 grant from the West Coast Inland Navigational District (WCIND) and Lee County for the Sanibel Police Marine Law Enforcement project to be conducted during Fiscal Year 2006/07 per the attached agreement for WCIND subgrant funding and allocates no new funds)
- f. **RESOLUTION 07-012 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-047 AND PROVIDING AN EFFECTIVE DATE** (to roll-forward FY 07 \$100,000 of money budgeted but unspent in FY06 for the SEMP emergency operations van. Funding for the van came from a \$50,000 grant from the Florida Department of Community Affairs and \$50,000 from the City of Sanibel and allocating no new funds)
- g. **RESOLUTION 07-013 AUTHORIZING THE PURCHASE OF A CARGO VAN FOR THE SANIBEL EMERGENCY MANAGEMENT PROGRAM FOR AN EMERGENCY COMMUNICATIONS VAN AS PART OF A GRANT OBTAINED THROUGH THE DEPARTMENT OF COMMUNITY AFFAIRS AT A PRICE OBTAINED THROUGH THE CITY'S BID PROCEDURE; AND PROVIDING AN EFFECTIVE DATE**
- h. **RESOLUTION 07-011 ADOPTING A COST ALLOCATION PLAN, (ALSO KNOWN AS AN INDIRECT COST PLAN) FOR THE FISCAL YEAR 2005-06; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CERTIFICATE OF COST ALLOCATION PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF OMB CIRCULAR A-87 AND FULL COST PLAN; AUTHORIZING THE DISTRIBUTION OF THE CENTRAL SERVICE OVERHEAD COSTS TO QUALIFYING GRANTS AND ENTERPRISE FUNDS; ESTABLISHING THAT REGULAR UPDATES TO THE COST ALLOCATION PLAN BE MADE; AND ESTABLISHING AN EFFECTIVE DATE**

Councilman Brown made a motion, seconded by Councilman Rothman, to adopt Resolutions 07-005, 07-006, 0-008, 07-010, 07-012, 07-013, and 07-011.

The motion carried unanimously.

Mayor Johnston spoke to the following:

- Supplemental material received by Council regarding the Wednesday, January 10, 2007 from SFWMD
- City of Fort Myers and Lee County sending resolutions to the SFWMD and ACOE on the water storage matter
- Item 1 through 6 from the cover memo be included in the resolution

Vice Mayor Denham made a motion, seconded by Councilman Brown, to direct the City Attorney to prepare a resolution regarding the first steps for new water storage.

Mayor Johnston explained:

- SFWMD asked the ACOE to include a water distribution south when the water level reaches the biological ceiling
- SFWMD identified at least 200,000 acreage feet of water storage by July
- A list of qualifiers for the remainder of acreage feet of water storage
- Thank them and lean on the SFWMD for the remaining 250,000 acreage feet of water storage
- Include a transmittal letter

The motion carried unanimously.

Council thanked Mayor Johnston for her continued work.

Discussion ensued regarding the 200,000 acreage feet of water storage was land that was either owned or leased that would have conveyance and containment, list of land and include STA volume that could be added, model project going on (S-12A, S-12B, S12C and S-12D) four openings under the Tamiami Trail and working with the park service and Micosukee Indian, cleaning out by hand, 40 culverts under the Tamiami Trail, Senator Saunders working on providing money for the Tamiami Trail, environmental community speaks to the need for 1.2 million acreage feet for water storage, resolution would speak to 16% of acreage for water storage, agree on a lower level for Lake Okeechobee, and considering the biologists cap in the new Lake Okeechobee Regulation schedule.

## **OLD BUSINESS**

### **Planning Department Update**

#### **Discussion of draft scope of services for Value Pricing Study for Sanibel Causeway tolls**

Mr. Duffy spoke to the following:

- Draft scope of the Lee County Value Pricing Study for the Sanibel Bridge and Causeway for alternative tolls to reduce congestion
- Lee County received \$200,000 and matching funds from Florida Department of Transportation and the total project would be \$249, 914
- Lee County developed the draft scope of work with 7 tasks
- Take place January to June, 2007
- Request comments for Sanibel staff
- Comments make sure there would be Council oversight with staff and community involvement

Discussion ensued regarding comments should be submitted with a letter signed by Council, choices must be measured by the Sanibel Comprehensive Land Use Plan, Council should deal with the workshops, bottom of the second page should designate City staff (City Manager and/or Planning Director), as well as on page 3 in task 6, meeting between Lee County, the City Manager and Planning Director, make clear that City Council must approve the final plan, speak to the lose of income to the City, page 1 of comments after number 4 refers to revenue neutral, should include going back to the previous funds received by the City from tolls, include revenue neutral to the amount of income the City received prior to the entering in to this new agreement, entering the study with good faith, both the City Council and Lee County have to agree to implement the plan, Sanibel had 1 vote on the MPO, should the City contribute \$25,000 (25%) of the study, contract had not been signed or gone to the Lee County Board of Commissioners, only local money was the \$25,000 Lee County matching share, City could split the cost by funding \$12,500 for the study, direct the Planning Director to inquire about Sanibel having a financial stake, incorporate Council comments, primary concern was to help reduce p. m. congestion off island and not increase congestion, get to Lee County by the end of the week, should the City Manager discuss with the County Manager, only need a phone call, any concern under number 13 listing other interested entities and would be other interested parties, could be talking bout Florida Transportation, and Mr. Duffy spoke to the language being extremely broad.

Public Comment:

Bernie Lubetkin spoke to the need for revenue neutral.

### Planning Department project priority list

Mr. Duffy spoke to the inclusion of the Planning Department work program and submit to Council on a quarterly basis.

Ms. Zimomra stated the project priority list was developed with Council goals in mind. She spoke to consensus by Council for projects.

Discussion ensued regarding outsourcing some of the work to experts, the need to review and bump the business initiative until March, how to limit the number of people on Sanibel, significant increase in boat traffic on the east end, and Council agreed the Beach Carrying Capacity in February and the Business Initiative in March, Mr. Duffy spoke to reviewing the ordinance of historic preservation in March, the need for a timeline on the weigh station, included on page 4 under the transportation program, Mr. Duffy spoke to coming to Council with the range of alternatives in February on the weigh station in February, weigh station must be removed from the Causeway and discuss later, 2 charter amendments on the March 6 election, Lee County may not allow the use of the weigh station.

Council recessed at 5:00 p. m.

Council reconvened at 5:09 p. m.

Council decided to discuss the following:

### Weigh Station update

Ms. Zimomra spoke to the following:

- Council authorized the issuance of an RFP to find contractual assistance to augment the staff in looking for options for the Sanibel Causeway Weigh Station
- Not received any correspondence from Lee County
- Discussion indicate from staff to staff that Lee County did not plan to allow the weigh station to remain on the Causeway
- Rationale was the island would be put in the Parks and Recreation for more active recreation
- Receive a response to the RFP and that was Vanasse Daylor
- Staff proposal to work with consultants for a short list of alternative
- Come back to Council for feasibility and list of alternatives in 4 weeks

Discussion ensued regarding that Lee County Commissioner very unpredictable, the need for a timeline for decision making, the need for a weigh station on the island, difficult choices for locations, Ms. Zimomra stated Council may want to authorize the Mayor to work with staff and the County, department head to department head level discussions regarding there being no weigh station on the island, Ms. Zimomra spoke to a short list of alternatives, need alternatives and continue discussions, Mr. Duffy stated the weigh station uses mechanisms embedded in the road and look at alternatives for off-island involving new technology and back to Council February 20.

### First quarter report and 2006 comparison for permit application and Code Enforcement activity report

The report was in the Council packet.

### Preliminary scope of work for the residential land use inventory

Council decided to discuss at the February 6, 2007 Council meeting.

## Water Quality Issues

### Staff Reports

#### Beach Status

#### Current Beach conditions

Mr. James Evans, Environmental Biologist gave the following report:

- A lot of algae on the beaches
- Least amount at Lighthouse Beach and Bowmans' Beach
- Thin layer of scattered algae of about 10 to 15 feet
- West Gulf and Blind Pass Beached the worse
- 10 to 15 feet swath with piles at West Gulf beaches 6 to 12 inches deep
- Algae 2-feet deep at Blind Pass
- Small dead scallops at Tarpon Bay Beach and SCCF staff sent to lab and found breva toxin indicative of Florida red toxin
- January 10 Lighthouse Beach showing 1,000 shells per liter for red tide

#### Report from Natural Resources Department

Mr. James Evans gave the following report:

- Completed draft language for the fertilizer ordinance and given to the City Attorney
- Project Development Team for the Lake Okeechobee Regulation Schedule must be to the ACOE by January 18, 2007

#### Meeting Reports

Report on the SFWMD Wednesday, January 10 Workshop and Thursday, January 11

#### Governing Board meeting

Mr. James Evans gave the following report:

- January 18 Caloosahatchee St Lucie Rivers Corridor Advisory Committee last meeting and finalizing recommendation to legislature on the Lake Okeechobee Protection Act
- January 24 Lake Okeechobee Water Resources Advisory Committee meeting in Ft. Myers
- January 30 Police Advisory Committee meeting at the Regional Planning Council building on water quality designated uses classification refinement process
- January 30 public workshop 5:00 to 7:30 p. m. cover TMDL and nutrient criteria

Ms. Zimomra stated the bacteria testing results was sent to Council by e-mail today, and ask the City Manager to recap the pilot program. Ms. Zimomra stated that the pilot program was completed as follows:

- Contractor used for hurricane recovery within their scope
- Several days notification
- No charge to begin work, but if on stand by must be paid
- Criteria for utilize similar to red tide
- Staff brought a list of criteria and utilize an objective criteria
- Council, at that time directed staff to be on stand by and chose not to adopt the criteria
- Closest facility that would take the algae was Port Charlotte
- Pilot program paid for by TDC
- Recommendation to go before TDC for funding

Discussion ensued regarding a letter from Audubon, smell from the drying algae, wait until the results of the bacteria, warrant a Special Meeting, Lee County Board of Health would receive the results, and Council decided to hold a Special Meeting Monday, 22.

#### Discussion of segway safety

Councilman Brown spoke to his understanding that the segway issue would come back to Council, but instead it went to the Planning Commission. He further spoke to the need to discuss the health, safety and welfare, the number of vehicles on the Shared Use Paths and the different uses of the Shared Use path. He spoke to asking for accident report, legislation on Sanibel pertaining to the Shared Use Paths and a report of other community use regarding segways.

Discussion ensued regarding the Planning Commission extending the continue use for 18 months and continuation of the tours, Council would decide any safety issues, should not allow segways, the need for research on segways, Shared Use Paths not wide enough for segways, deal with accidents that have already occurred, Mr. Cuyler spoke to the Planning Commission could not make their decision based on the safety of the machine and the general safety, but the safety of the operation and the tour and training. He further spoke to an accident not being reported and the Planning Commission set up the reporting mechanism by reporting to the City manager's office instead of the Police Department, out of 15 cities only 1 city did not permit segways, and would Ding Darling allow segway.

Dr. David Berger spoke against the use of segways on Shared Use Paths.

Peter Pappas spoke to against segways.

Dr. John Harries spoke against segways.

Allan Silberman spoke to against segways on the Shared Use Paths.

Tom Sharbauw spoke to the Shared Use Path not able to handle another use.

David Bath spoke to novice riding segways.

John Carney spoke to the Shared Use Path users.

Rusty Furst spoke in favor of segways.

James Horry spoke in favor of segways.

Diane Horton, Ft. Myers resident spoke to her daughter being injured in the segway accident.

Sara Kramer, tour guide for segways spoke in favor of segways.

Dorothy Crido spoke to the continuation of the tours and allowing Mr. Kirkland to sell segways.

Victor Crido spoke in favor of segways.

Billy Kirkland spoke to his segway tours.

Ric Base, Sanibel Captiva Chamber of Commerce Executive Director spoke to restriction of business.

A citizen spoke to communities using the segways.

Bart Smith spoke to the need to separate the control usage and allowing them to be used in the public and he was not in favor.

Wayne Ponader spoke against segways.

Dr. Phillip Marks spoke to the Planning Commission hearing and the development of an accident form.

Councilman Jennings made a motion to continue to research data for the remainder of the time the Planning Commission granted the conditional use permit timeframe given to Mr. Kirkland.

The motion died for the lack of a second.

Discussion ensued regarding zero tolerance of accidents, send back to the Planning Commission, Mr. Cuyler stated that he explained to the Planning Commission the general safety issue and operation of segways was for City Council to decide, and if there were accidents while on tour that could be heard as evidence. He further stated that it was the finding of the Planning Commission to allow another 18-month trail of segway tours, directed the Planning Director to create a form to report segway accidents. And the City Council could at any time adopt further ordinances regarding segways, discontinue the segway tours and look at the Shared Use Path Master Plan and possibility to increase the scope of the plan.

Councilman Brown made a motion, seconded by Councilman Rothman, to discontinue the segway tours through further legislation, reevaluate the Shared Use Master Plan regarding carrying capacity and a bring back an ordinance for Council's consideration on February 06, 2007.

Mr. Cuyler stated Council could not deal with the tour operation, Planning Commission granted another 18-month conditional use permit and Council could have an amended ordinance to deal with segway safety.

The motion carried 4 to 1 with Councilman Jennings voting in opposition.

Councilman Brown made a motion to reevaluate the Shared Use Master Plan carrying capacity, invoke an emergency denial of any further segway tours or rides until an ordinance is adopted by Council.

The motion died for the lack of a second.

Mr. Cuyler explained that Mr. Kirkland had a legal right to provide segway tours as allowed by the Planning Commission and Council could have an emergency ordinance at the next Council meeting declaring an emergency by a 4/5's vote of Council, and Council could have an ordinance at a Special meeting.

Discussion ensued regarding having an emergency ordinance at the Special Meeting.

**RESOLUTION 07-014 EXPRESSING THE APPRECIATION OF THE CITIAENS OF SANIBEL FOR THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT RECENT RESOLUTION REQUESTING THE U. S. ARMY CORPS OF ENGINEERS TO TAKE IN CONSIDERATION AVAILABILITY OF INCEASE WATER STORAGE CAPACITY OF THE WATER SHED BASIN AND THE ARMY CORPS OF ENGINEERS EVALUATION AND DEVELOPMENT OF THE MODIFIED LAKE OKEECHOBEE WATER CONTROL PLAN; ENCOURAGING THE DISTRICT TO CONTINUE IT'S EFFORTS TO WORK CLOSELY WITH THE ARMY CORPS OF ENGINEERS TO PROTECT THE CALOOSAHATCHEE AND ST. LUCIE RIVERS AND ESTUARIES FROM THE DEVASTATION CAUSED BY EXCESS NUTRIENT LADEN FRESHWATER RELEASES FROM LAKE OKEECHOBEE**

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to adopt Resolution 07-014.

The motion carried unanimously.

Council recessed at 7:30 p. m.

Council reconvened at 7:436p. m.

Council decided to discuss the following:

Recreation Issues

Discussion of Recreation Center Fee Parameters

Discussion ensued regarding how system abuse would be covered, there would be a possible automatic card reader, Ms. Zimomra stated that Council authorized staff to bid a combination security ID system and would come back to Council in a few weeks.

Vice Denham made a motion, seconded by Councilman Rothman, to approve the fees parameters.

The motion carried unanimously.

**RESOLUTION 07-003 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-042; AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$56,206 from the project contingency reserve to increase the height of the perimeter security fencing around the new recreation facility by two feet (from six feet to eight feet) pursuant to the recommendation of the Sanibel Police Chief)

Mr. Ball asked Council to delay discussion until February 20, 2007.

Ms. Zimomra stated that staff was working on a January tour for the Recreation Center and the formal tour in March. She asked Council to contact the City Clerk.

### **Status report regarding the Skate Park, 3840 Sanibel-Captiva Road**

Ms. Zimomra noted the report was in the agenda packet.

Status report for the Police Department boat dock and **RESOLUTION 07-007 DETERMINING AND IDENTIFYING THE POLICE DEPARTMENT BOAT DOCK TO BE CONSTRUCTED ADJACENT TO THE CITY BOAT DOCK AS A "CITY EXEMPTED" PROJECT; INITIATING DEVELOPMENT NECESSARY TO CONSTRUCT SUCH BOAT DOCK; AND PROVIDING AN EFFECTIVE DATE**

She spoke to resident recommendation to look at the boat ramp and a consultant had performed a feasibility study. She further stated that if Council approved the City-exempted project staff would proceed with a DEP permit, if permissible, talk to the Fire District regarding their interest in sharing expense, prepare the final specifications, and bring back to Council. Ms. Zimomra read the title of Resolution 07-007.

Vice Mayor Denham made a motion, seconded by Councilman Brown, to adopt Resolution 07-007.

Discussion ensued regarding the time frame, any problems during a storm, Chief Tomlinson stated the timeframe would remain the same as in the previous report, would there be a tendency for problems with difficult weather, and Chief Tomlinson stated that a built in wave attenuators.

The motion carried unanimously.

### **Public Hearing regarding Evaluation Appraisal Report (EAR) plan amendments Article, Part 3.2 Protection of Natural, Environment, Economic and Scenic Resources**

Vice Mayor Denham made a motion, seconded by to advertise to hold the hearing

Councilman Brown made a motion, seconded by Councilman Rothman, to continue the EAR public hearing at 10:15 a. m. after the public hearing for Ordinance 06-021.

Claudia Burns spoke to having discussion before the Australian pine ordinance public hearing.

Vice Mayor Denham amended his motion to hold the EAR public hearing at 9:30 a. m., and the second reading and public hear on Ordinance 06-021 at 10:15 a. m.

The motion carried unanimously.

**COMMITTEES BOARDS COMMISSION  
RESOLUTION 07-009 REPEALING RESOLUTION 06-190 WHICH  
ESTABLISHED THE WATER QUALITY MEDICAL ADVISORY  
COMMITTEE; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 07-009.

Councilman Rothman made a motion, seconded by Councilman Brown, to adopt Resolution 07-009.

Discussion ensued regarding sunshine violations, and should discussion the issue of repealing this committee at the February 6, 2007 meeting.

The motion carried unanimously.

**NEW BUSINESS**

**Request for direction regarding staff recommendations for re-use water charges for Beachview, Dunes, and Sanctuary Golf Courses**

Council requested that this issue would be carried forward to the February 6, 2007 City Council meeting.

These items were for informational purposes only.

**CITY MANAGER**

Informational Items

Quarterly Financial Report

End of Calendar Year Report on City Hall Activities Level

Florida League of Cities Legislative Days Tallahassee – March 28, 2007

Joint meeting of City Council and Planning Commission

City of Miami Gardens Police Officer Hiring Incentives

Causeway Vehicular Counts – October and November, 2006

Follow-up Report in response to City Council's request for summary of City expenditures related to B. I. G. Arts, Inc.

2007 Planning Award presentation February, 2007

Household Hazardous Day, January 27, 2007

**CITY ATTORNEY'S REPORT**

None.

**COUNCILMEMBERS' REPORT**

Report on the Inauguration

Report to be given at the January 06, 2007 Council meeting.

Request to direct staff to prepare a resolution congratulating Lt. Governor Kottkamp

Councilman Jennings gave the following report:

Councilman Jennings requested that Council allow a resolution of congratulations for Lieutenant Governor Jeff Kottkamp be on the February 6, 2007 Council meeting.

Discussion ensued regarding preparing a resolution for all constitutional officers, a resolution for each one and Council decided to direct staff to prepare one resolution congratulating all newly elected constitutional officers.

Attendance to the National League of Cities, March 10 through 14, 2007 **Washington D. C.**  
Councilman Brown made a motion, seconded by Councilman Jennings, to allow the Mayor to attend the above-mentioned conference.

The motion carried unanimously.

**PUBLIC COMMENT**

David Berger spoke to discussing the segway issue and the need to have an emergency ordinance to shorten the period for consideration and operation.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to address segway termination as an emergency measure at the January 22, 2007 Special Meeting.

The motion carried unanimously.

Mr. Cuyler asked if Council wanted an ordinance for the Special meeting and Council answered yes.

There being no further business the meeting was adjourned at 7:55 p. m.

Respectfully submitted by,

Pamela Smith, CMC  
City Clerk