

**SANIBEL CITY COUNCIL REGULAR MEETING
MARCH 6, 2007**

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

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

Swearing in of Councilmember Kevin Ruane

Ms. Zimomra administered the oath of office to Kevin Ruane.

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

Councilman Ruane spoke to his excitement being appointed to City Council.

Council recessed at 9:10 a. m.

Council reconvened at 9:16 a. m.

Mayor Johnston spoke to the addition of the Forever Green quasi-judicial hearing at 10:15 a. m.

Mr. Cuyler spoke to adding the appeal request for Forever Green, and Resolution 07-036 that would transmit the EAR to the Department of Community Affairs.

Councilman Brown made a motion, seconded by Councilman Jennings to add the Forever Green appeal at 10:15 a. m., and Resolution 07-036.

Public Comments

Victor Greto, Shell Point request a trial period of individuals be able to use segways on the Shared Use Paths.

Mr. Cuyler spoke to the finalization of segway tours on the March 20, 2007 agenda and Council could have a separate item after the segway tours item to discuss segway use on Shared Use Paths by individuals.

Discussion ensued regarding Mr. Greto submission of material to the City Manager for the agenda packet inclusion.

Marty Harity, resident thanked Councilman Brown for his years of service.

Judy Minchie, resident spoke to the Lee County traffic report and the need to bold new information. She further spoke to moving the water quality discussion earlier on the agenda.

Mr. Zimomra spoke to the Lee County weekly traffic advisory regarding the Causeway and the City traffic advisory being separate items.

Mayor Johnston noted that there were time specific items and a resident could call administration to see where the Council might be on the agenda.

Dick Walsh, resident spoke to all that Councilman Brown had done for the island and thanked him for everything.

Council Comments

Mayor Johnston welcomed Councilman Ruane and thanked Councilman Brown for his role on Council.

Vice Mayor Denham thanked Councilman Brown for his input and his role on Council.

Councilman Jennings spoke to Councilman Brown on Council, and wished him the best in the future. He also congratulated Councilman Ruane. He spoke to Lee County Days in Tallahassee and the League of Cities Legislative Days. He announced that the Kiwanis would be holding entertainment at Schien Hall March 10 and the tickets were \$10.

Councilman Ruane thanked Councilman Brown for his hard work and thanked Council for his recent appointment.

Mayor Johnston spoke to a request from Florida Gulf Coast University that the new president should be one with environmental experience and concerns, and those attributes would be considered first and foremost. She further spoke to election today and that there were two charter amendments on the ballot.

Council agreed to send a letter to FGCU in support of environmental attributes for the new president.

Councilman Brown spoke to his pleasure working with past Councils, and thanked the staff for their hard work.

Mr. Cuyler spoke to it being an honor to have worked with Councilman Brown.

Ms. Zimomra spoke to her decision to accept the City Manager's position was partly due to the City Council and Councilman Brown had made his mark on the City.

Planning Commission Report

Patty Sprankle gave the following report on the February 27, 2007 Planning Commission meeting as follows.

- Denial of a variance for the development of a condominium unit on West Gulf Drive
- Approval of a seawall construction on Lighthouse Way
- Possibility of a joint Council/Planning Commission meeting

Ms. Zimomra noted that staff request that Ordinance 07-004 be pulled due to inaccurate information received by the actuarial.

First Reading of an ordinance and scheduling of public hearing.

ORDINANCE 07-004 AMENDING THE PENSION PLAN FOR THE CITY'S POLICE OFFICERS, PROVIDING FOR THE CREATION OF A COST OF LIVING ADJUSTMENT FOR CERTAIN RETIREES, BENEFICIARIES AND SURVIVOR ANNUITANTS WHO ARE RETIRED AND RECEIVING BENEFITS AS OF OCTOBER 16, 2006 AND FOR FUTURE DISABILITY BENEFIT RECIPIENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEALER; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING FOR AN EFFECTIVE DATE

This Transmittal Hearing and first reading/Public Hearing of the proposed ordinance amending the *Sanibel Plan*. (this hearing being the 5th Public Hearing on the EAR-based Comprehensive Plan Amendment. **There will be a second reading and Adoption Public Hearing** of the proposed ordinance amending the *Sanibel Plan*, following receipt of the Objections, Recommendations and Comments Report from the State Land Planning Agency

ORDINANCE 07-005 EXTENSIVELY AMENDING AND RESTATING THE SANIBEL PLAN TO IMPLEMENT THE RECOMMENDATIONS OF THE 2004/2005 EVALUATION AND APPRAISAL REPORT OF THE SANIBEL PLAN, TO ADDRESS CONSISTENCY WITH CHANGES IN STATE STATUTES AND ADMINISTRATIVE CODE, TO ADDRESS CONSISTENCY WITH CHANGES IN THE STATE COMPREHENSIVE PLAN, THE SOUTHWEST FLORIDA REGIONAL STRATEGIC POLICY PLAN AND THE PLANS OF STATE AND REGIONAL AGENCIES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Ordinance 07-005. She spoke to City Council holding 5 public hearings including today's and the Planning Commission holding 11 public hearings. She further spoke to some areas Council had further comments.

Page 7 – additional laws should be added

Page 48 – narrative on water should be included throughout the document as well as a sentence including the Caloosahatchee Rives and the estuaries

Council agreed.

Karen Storjohann spoke to page 10 having 50% of land mass was held for conservation land, on page 53 had two-thirds of land in Sanibel held for conservation land and it should be consistent.

Page 51 – Policy 7.1 Undertake a study to evaluate the carrying capacity of the beach for use by wildlife and the need to give more weight to strengthen.

Ms. Zimomra spoke to budgetary issues and the reason that was lowered on the project list.

Page 71 – 3rd paragraph 2nd sentence mitigation activities should always be on-site and delete the language “it should be done on the island and as near to the lost habitat as practical.”

Discussion ensued regarding sometimes it not possible to mitigate wetlands on site.

Mr. Pfalzer stated that based on Council briefings and discussions with the City Manager it was felt that there were 3 areas in the draft document that were not adequately addressed as follows:

- All options to avoid damage to wetlands shall be considered options such as reduction intensity and mass of the proposed development, the configuration of the proposed development and the re-location of proposed structures mitigation activities impacts for unavoidable losses of wetlands mitigation “shall” be onsite whenever possible. Habitat preservation can not be done on site it shall b e done on island and should be as near to the lost habitat as practicable.

Discussion ensued regarding an example of unavoidable loss to wetlands, Mr. Pfalzer stated that some type of road improvement adjoining wetlands and the right-of-way was already in existence and not able to be moved. He further stated that in order to make to proper improvements the wetlands may be affected without opportunity to relocate the project and mitigate wetlands some where else, referring to a safety issue, health and safety of residents, wetlands provide a natural filter for lakes and streams, why should wetlands ever be given up, after unavoidable damage to wetlands include, “necessitated for health and safety,” and eliminate “wherever possible.”

Council agreed.

Page 77 – Policy 5.4

Discussion ensued regarding comments made by Hazel Schuller such as permitted uses map no longer exist, commercial recreation beach use exemption was inserted by staff and EAR based summary without planning commission knowledge, and issue was the concern was not to be lack in commercial use of natural resources on beaches.

Mr. Pfalzer spoke to Policy 5.4 Conservation element and the change was for clarification. He also stated that in 1995 the same policy was reviewed and it was recommended it be retained in the Sanibel Plan, and the only staff recommendation was to clarify the language of uses that were incidental to recreation. He explained that the original 1976 Sanibel Plan contained the same language.

Discussion ensued regarding commercial use approval outside the resort district would be approval of a conditional use, adequate measures by staff for enforcement of beach accessory furniture on the beach, no desire to expand commercial uses, and Mr. Cuyler spoke to his agreement of the discussion.

Hazel Schuller, resident spoke to page 77 – Policy 5.4 and this being a new exemption and she requested that Policy 5.4 be deleted.

Steve Maxwell, resident spoke to page 93 and grammatical errors.

Jodi Brown spoke to page 94 Policy 1.3 recommended deleting “public access” and add “visual access”.

Council agreed to add “visual access” before historic resources.

Claudia Burns spoke to seeing beach accessory equipment being put out on the beach with none in use and did she understand she should call code enforcement. She asked if she saw beach furniture being put out without someone to use the furniture was that a violation.

Mr. Cuyler stated that if a resident thought there was a violation, code enforcement should be contacted and they would evaluate if there was a violation. Mr. Cuyler answered putting out beach furniture equipment may or may not have been a violation.

Karen Storjohann spoke to page 71 and changing “shoulds” to “shalls” and grammatical errors on page 100 in item 1.2.

Council agreed.

Judy Minchie spoke to development and/or new development on page 47 and page 50 and could there be new development in other areas of the island.

Mr. Pfalzer stated that Policy 5.2 means vacant land being developed or existing property being torn down and new structures being built would have to accommodate beach accesses, and beach easements could not be eliminated.

Ms. Minchie asked if there were any areas in the gulf beach and bay beach zones where no new development and or redevelopment could be done, and Mr. Pfalzer answered yes. He further stated the goals had been modified to accommodate the new buildback policy.

Page 116 – be careful not to enhance 2-lanes off

Discussion ensued regarding not including any language that would encourage 6-laning of Periwinkle Way, careful not to encourage 2-lanes off, and eliminating the sentence of 2-lanes off.

Council agreed to eliminate the sentence at the bottom of page 116.

Page 117 – the need for funding to improve Causeway/Lindgren and Periwinkle Way intersection and suggesting the funding should come from Causeway and/or weigh station revenues.

Discussion ensued regarding deleting the words “should also facilitate” in the last sentence, eliminate the last sentence.

Council agreed.

Discussion ensued regarding the need to keep Sanibel a sanctuary island, and traffic patterns would change after the completion of the Causeway bridges.

Page 113 – Should cross reference Council’s Transit Policy.

Council agreed.

Page 114 – include language that Sanibel would decide value pricing

Council agreed.

Discussion ensued regarding the preserve Sanibel, transportation system used for resident in case of a hurricane, referenced on page 117, and Lee County should open shelters earlier for special needs.

Karen Storjohann spoke to page 112 2nd paragraph eliminate “and” before Casa Ybel.

Steve Maxwell spoke to page 108 recommended “shall” in place of “should” as it applies to water issues. He further spoke to page 112 and no mention of private roadways. He also spoke to page 144 2nd paragraph should be re-written. He also spoke to page 146 recommended spelling errors be changed.

Council agreed to the recommendations.

Discussion ensued regarding page 144 and ask Dr. Loflin about freshwater lens.

Herb Rubin spoke to the difference in “shall” and “will”.

Page 158 number (19) change the word “when” to “so that it does not.”

Page 167 – reviewing medical needs and stronger wording for item 1. The following wording was suggested; “better identify the helipads on island

Discussion ensued regarding a medical crisis on the island, should there be medical care on island, the amount of time it takes to get to the hospital, increasing health care, and the need to provide health care.

Council agreed.

Page 172 – 3rd paragraph incorrect information – need to re-write

Council agreed.

Page 174 – MPO Lee County Department of Transportation and Florida Department of Transportation were included as a group rather than 2 separate entities, and add relevant health departments from the state and county regarding health issues.

Council agreed.

Page 176/177 should water quality be on both pages

Mr. Pfalzer stated that this was the section Council requested headings be included with the narrative. He also explained that one was an achievement and the other was a remaining challenge.

Council asked the water quality issues be distinguished.

Discussion ensued regarding the red drift algae being a health issue and causing an economic problem.

Page 178 – make references to red drift algae – add degradation of the water due to red drift algae.

Council agreed.

Page 200 – 2nd paragraph under “Other Considerations” should be made consistent with previous discussion.

Council agreed.

Herb Rubin spoke to a planned assisted facility by the church that did not come to fruition and Council review of the Town Center and bringing people to the island that may need help.

Discussion ensued regarding a health facility for life saving efforts and improve the quality of life.

Dick Walsh, resident spoke to living on a barrier island and premature to add health facilities in the EAR.

Hazel Schuller spoke to page 153 to page 158 – housing imbalanced for tourist, page 156 – recreational use congested caused by resorts, page 156 – jewel of Sanibel and have a scientific study, page 157 – zoning need prohibited for beach uses, page 157 item /6, page 158 need to delete item 18 and 19.

Karen Storjohann spoke to page 178 and page 180 delete the word now page 179 middle paragraph and inconsistency in the use of commas.

Mr. Pfalzer stated the Natural Resources Department assessment on beach carrying capacity was documented in the EAR adopted in 2004 as follows; “in the process of carefully reviewing current levels of human uses on Sanibel beaches for the EAR the City’s Department of Natural Resources estimates that 10 to 15% of the island’s 12.65 miles of beach have so much activity on them during daylight hours asked to exclude virtually all usages by shorebirds (a description of the geographical areas) the remaining 85 to 90% of Sanibel beaches are presently fully capable of sustaining both human and wildlife activities simultaneously and this is far and away better than any other Southwest Florida beach located adjacent to populated areas. In fact, Sanibel has more Snowy Plovers nesting on our beaches than ever even on undeveloped Cayo Costa Island.”

Discussion ensued regarding the statement being from the Natural Resources Department statement in the EAR and Council’s agreement.

Page 235/236 the need to mention formula retail

Discussion ensued regarding the need to make the language consistent with Council’s ordinance adopted.

Council agreed.

Steve Maxwell spoke to page 219 the move the number in the correct columns as it relates to denominations of value information and check percentages. He further spoke to the need for the total residential dwelling units as it speaks to build-out.

Discussion ensued regarding the chart, and Mr. Pfalzer spoke to the Planning Director bringing a work program that was an update of the land use analysis.

Karen Storjohann spoke to page 225 – 2nd paragraph, 3rd line “minimal negative impact” should be removed.

Council agreed.

Hazel Schuller spoke to page 235 top paragraph last sentence, “Perhaps a motel or restaurant complex should be allowed if the number of units exceed the number allowed by the development intensity map.” She spoke to an in balance of resort housing out numbering residential housing.

Discussion ensued regarding previous discussion of losing all hotel/motel rooms to condominiums.

Mr. Pfalzer spoke to the origin of the above-mentioned discussion being on the 2004 EAR report. He further stated that the one statement that had not been inserted was as follows, “motel/hotel and resort complexes can build back the existing number of units if the building is substantially damaged by a natural disaster.”

Steve Maxwell spoke to the need to have the maps in MacKenzie Hall and made his official notice of filing comments, objections and submitting a list of interested parties.

RESOLUTION 07-036 OF THE CITY OF SANIBEL, LEE COUNTY, FLORIDA, AUTHORIZING AND DIRECTING TRANSMITTAL TO THE STATE OF FLORIDA LAND PLANNING AGENCY A PROPOSED AMENDMENT TO THE SANIBEL PLAN, TO WIT:

AN ORDINANCE EXTENSIVELY AMENDING AND RESTATING THE SANIBEL PLAN TO IMPLEMENT THE RECOMMENDATIONS OF THE 2004/2005 EVALUATION AND APPRAISAL REPORT OF THE SANIBEL PLAN, TO ADDRESS CONSISTENCY WITH CHANGES IN STATE STATUTES AND ADMINISTRATIVE CODE, TO ADDRESS CONSISTENCY WITH CHANGES IN THE STATE COMPREHENSIVE PLAN, THE SOUTHWEST FLORIDA REGIONAL STRATEGIC POLICY PLAN AND THE PLANS OF STATE AND REGIONAL AGENCIES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

ALONG WITH COPIES OF SUPPORTING DOCUMENTS NEEDED FOR REVIEW, AS REQUIRED BY STATE STATUTE; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Resolution 07-036.

Mr. Cuyler explained that it was the first public hearing of the ordinance. He stated that Resolution 07-036 when adopted would transmit the report to the Department of Community Affairs and when the report comes back there would be a second reading public hearing and adoption.

Vice Mayor Denham made a motion, seconded Councilman Ruane, to adopt Resolution 07-036 with the above-mentioned amendments.

The motion carried unanimously.

Mr. Pfalzer spoke to the ability to give the public a sign-up sheet for each public hearing.

SECOND READING AND PUBLIC HEARING

ORDINANCE 07-002 CALLING AN ELECTION TO SUBMIT TO THE SANIBEL ELECTORATE AN AMENDMENT TO THE SANIBEL CHARTER; PROPOSING AN AMENDMENT TO ARTICLE III, "LEGISLATIVE", SECTION 3.07(c) ENTITLED "FILLING OF VACANCIES" FOR CITY COUNCIL MEMBERS; PROVIDING THAT A SPECIAL ELECTION SHALL BE SCHEDULED WITHIN 120 TO 150 DAYS AFTER A VACANCY, RATHER THAN WITHIN THE CURRENTLY REQUIRED 60 TO 90 DAYS, IN ORDER TO PROVIDE SUFFICIENT NOTICE TO THE SUPERVISOR OF ELECTIONS TO ALLOW THE SUPERVISOR TO SCHEDULE, PREPARE FOR AND HOLD SUCH SPECIAL ELECTION; PRESCRIBING THE FORM OF THE BALLOT AND GENERALLY SETTING FORTH THE PROCEDURES FOR SAID ELECTION; PROVIDING AN EFFECTIVE DATE FOR THE ORDINANCE; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING FOR AN EFFECTIVE DATE OF THE PROPOSED AMENDMENT UPON VOTER APPROVAL

Ms. Zimomra read the title of Ordinance 07-002.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Ordinance 07-002.

Mr. Cuyler explained the ordinance if adopted would go to the electorate for a change to the supervisors contract to hold an election. He further stated that when reviewing the charter in the event of a Council vacancy to Charter provides that the election shall take place within 60 to 90 days. He continued to explain that the contract with the Lee County Supervisor of Elections currently states an election would be held within 120 days, therefore the amendment would put a Special Election time frame in line with the contract with the Supervisor of Elections.

Larry Schoop spoke to the need to amend the entire section due to deficiencies.

Mr. Cuyler explained he tried to address the entire section, but was afraid the electorate would think the entire Charter was being re-written.

Discussion ensued regarding the limitation of an appointee's time on Council.

Mr. Cuyler answered yes and explained that the time frame was until the Special Election.

The motion carried unanimously.

Council recessed at 11:38 a. m.

Council reconvened at 11:47 a. m.

ORDINANCE 07-003 REGULATING THE USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS WITHIN THE CITY OF SANIBEL; PROVIDING FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR TIMING OF FERTILIZER APPLICATION, CONTENT AND APPLICATION RATE, IMPERVIOUS SURFACES AND BUFFER ZONES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SOIL TESTS INFORMATION; PROVIDING FOR LICENSING OF COMMERCIAL AND INSTITUTIONAL FERTILIZER

APPLICATORS; PROVIDING CERTAIN NOTICES RELATING TO SALE OF FERTILIZER; PROVIDING A PROCESS FOR ADMINISTRATIVE RELIEF; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, INCLUDING A 180 DAY IMPLEMENTATION PERIOD

Ms. Zimomra read the title of Ordinance 07-003. She spoke to the following:

- 180-day implementation period
- Engaged the Community Affairs consultant to work with the public education component
- Would bring back to Council a separate education plan for implementation
- Very high on Council's goals

Dr. Loflin spoke to the following:

- Abundant evidence the water around Sanibel were nutrifying and resulting algae blooms
- Severe discharge of high volume nutrient laden freshwater releases from Lake Okeechobee
- Situation that calls for closer review of what would go in to the water
- Does not include a ban on fertilizer
- Working with landscapers on island
- Working with persons from the fertilizer industry
- Work to make certain fertilizers would be available that fit the new criteria
- Situation of a freshwater lens that sit on top of the denser freshwater
- Surrounded by tidal water
- All input of nutrients in the basin, Kissimmee Chain of Lakes and Lake Okeechobee receive the most direct effect
- Reducing the excess amount that was sometime put out
- Extensive soil testing on Sanibel
- Trying to address the excess fertilizer

Discussion ensued regarding Lower West Coast Committee considering a resolution to be presented to the Regional Planning Council, 1st whereas before the word "quality" add "water", 2nd line after the word "lakes" add "wetlands" and add "and other algae, 8th whereas add "s" after the word "lawn", 13th whereas after the word "sources" add "to leach into ground water", and Dr. Loflin explained the problems with all types of algae due to overfeeding.

Council agreed.

Public Comment:

Erica Santella, technical advisor of Trugreen spoke to the whereas clauses were not technically true especially the last 2 whereas clauses and not supportive of the Florida University research.

Dr. Loflin asked if she meant that the amount of fertilizer had no impact for creating pollution.

Ms. Santella answered the problem of taking bits and pieces and try to make very specific comments ties the hands of professionals.

Discussion ensued regarding the Sanibel River being impaired due to high nutrients.

Sonia Smith, CASI requested on page 3 under definition of landscape plants add "palms."

Council agreed.

Erica Santell spoke a second time regarding the bottom of page 3 – definition of Specialized Turf Manager – should include the green industries and pest control operators.

Dr. Loflin explained the reason for separating out the various applicators on page 3 was to be inclusive of all applicators. He further explained that golf courses and ball fields were exempted from the ordinance.

Section 4 – Definition of the rainy season July 1 to October 1st

Discussion ensued regarding the correct rainy season.

Dr. Loflin spoke to the rainy season changes every year.

Section 5 (B) – 1st item last sentence add “native or man-made landscape.”

Section 5 (E) - Florida DEP recommends that no fertilizer should be within 25 feet rather than 15 feet within a lake, canal or designated wetlands

Section 5 (F) – spreader deflector shields are required when “fertilizing”, rather than “broadcasting.”

Dr. Loflin spoke to there being minor changes to section 5 and the changes were as follows:

- Section 5 (B) (2) Fertilizer applied to turf or landscape plants within the City of Sanibel must contain no more than 20% total nitrogen with at least 70% of the total nitrogen as slow release nitrogen per guaranteed analysis label

Discussion ensued regarding adding a cap for the total nitrogen which wasn't present originally, the total nitrogen could not exceed more than 20% of the fertilizer product, reduced the slow release nitrogen from 75% to 70%, total amount of nitrogen could not be any more than 20%, the first number on a fertilizer bag was the amount of nitrogen and could be no higher than 20, and in addition staff wants to encourage slow release nitrogen.

Ms. Downing read the amendment as follows:

- Fertilizer applied to turf or landscape plants within the City of Sanibel must contain no more than 20% total nitrogen with at least 70% of the total nitrogen as slow release nitrogen per guaranteed analysis label

Mr. Cuyler stated that staff wanted to make certain the guaranteed analysis did not have a generic meaning and label, and terms were identified in F. S. 576.

Dr. Loflin explained the reason the adjustment was downward was because there was a product currently being used on the island.

Public Comment

Erica Santella spoke to items a through c – manual certification last paragraph page 4

Page 5 buffer zone industry agreement was 3 feet for professionals and encouraged 10 feet.

Dr. Loflin spoke to the pesticide pre-emption and the ordinance was not worded in any way to regulate pesticides.

Discussion ensued regarding the pollution of waterways were not due to fertilizer releases only, if industry standards worked the problems would not be as bad, and if agency standards had been adequate then there would be no need for the ordinance.

Steve Maxwell spoke to Section 5 (F) should be clearer for individual homeowner, issues of classification of large plant specimen in large pots, clarify hand spreading, and future section dealing with enforcement.

Ms. Downing spoke to mode of application intent was to talk about those using rotary and broadcast spreaders with a deflector shield.

Mr. Cuyler stated that one could control the distribution if equipment if the applicator spread was 15 feet and would need an additional apparatus to keep the fertilizer from going in the water.

Discussion ensued regarding to eliminate the further exposure of nitrogen, Mr. Cuyler stated the clarification would be the prohibition of applying in the water and application by use of broadcast spreaders, Item (F) Mechanical Applications

Council agreed.

Doug Dietrich spoke to the need for clarification of shrubs, trees and grass within 15 feet of canals and the need to address.

Mr. Cuyler stated if may not be a clarification, but a hard choice for Council to decide that fertilizer would not be applied within a certain feet of a waterway.

Tony Salerno spoke to dmp's not working, but were fairly new and the need for all communities to adopt the same regulations throughout the state.

Steve Sumner spoke to his agreement with the ordinance and using slow release fertilizer.

Richard Johnson spoke to order fertilizer from the company as requested and make an effort to train employees.

Phyllis Gresham spoke to a 2006 news article, and an earth friendly fertilizer list.

David Ackley spoke to tissue test, abundance of phosphorus and nitrogen causes problems and there are companies that custom blend fertilizer.

Ray Labretto spoke to the difficulty of using machinery, and that a yard man could apply fertilizer if the property owner buys their own fertilizer.

Section 6 – (4) change 15 to 25 feet; item 6 add the following, “provided that they are not within 25 feet of a water body or wetlands” after the reclaimed water usage.

Ms. Downy spoke to becoming aware of a new document for golf courses and would change Section (6) (B) where it speaks to the management of golf courses and read as follows:

“For all golf courses the provisions of the Florida Department of Environmental Protection document Best Management Practices for the enhancement of environmental quality on Florida golf courses, January , 2007 as updated shall be followed.”

Discussion ensued regarding the need for a footnote.

Public Comment

Matthew Dempsey, CEO Pest Control Association spoke to a certified manual for green industry professional. He urged Council to revise the section to reflect the trained/certification under the Best Management Practices and no reason to exclude the evidence of certification as defined in the statute.

Dr. Loflin spoke to no over site and setting up a Sanibel training program as applied to the ordinance and anyone having a Sanibel Vegetation Competency card would be required to take the educational portion of the ordinance.

Section 7/8

Erica Santella spoke to commercial labs that do sole testing, one being the University of Florida - Section 6 (B) no athletic fields management best management practices and the green industry services all 3 types, turf, golf courses, sports fields, residential/commercial and the complete gambit.

Ms. Zimomra stated that the only play fields on the island were maintained by the island and staff was looking for a fertilizer free method of maintaining those fields.

Steve Brown, Lee County Extension Service and Section 7, list his phone number and would appreciate the number be deleted and use the general office number 461-7500. He further spoke to the need for a difference in the ordinance for professionals and landscapers and have an enforcement opportunity. He also spoke to how to enforce and times when nitrogen would be needed, fertilizers could be blended professionally for a particular use. He also asked if there would be education for the County's ordinance?

Dr. Loflin answered that Sanibel would have a training program, where fertilizer would be sold the store would be required to have a sign, there would be press releases, and make the resident aware of the fertilizer that would be applied.

Sonja Smith spoke to Section 6 (a) (1) – during planting and after planting and page 7 last sentence an incomplete sentence.

Ms. Downing stated that there should be no (D) because the intent for only a (C).

Council agreed to strike (D) on page 8

Phyllis Gresham spoke to a very competent person in Dee Serage at SCCF and a great native plant nursery. She spoke to native plants not needing fertilizer.

Steve Brown, Lee County Extension Service spoke to no proof that native plants need less water or fertilizer.

Matthew Demspey spoke to the Florida Green certification and should be complied with. He also stated that he would like recognition that the science predicated the green certification.

Steve Maxwell spoke to Section 8 and was it implied the industry would pay to provide fertilizer on Sanibel, the need to take more information from the State of Florida.

Hael Schuller spoke to page 8 add an (D) educational program and community-wide instruction could include a master plant program.

Erica Santella spoke to page 7 and should be cautious to maintain records.

Section 10, 11,12, 13 and 14

Steve Maxwell spoke to enforcement and the difficulty of enforcement. The need to have a plan that would be user friendly.

Ms. Zimomra spoke to Council dealt with a similar problem with raccoon feeding and the recommendation of raising the fine to \$500. She explained that a letter was sent to every business that had a dumpster, and there was verbal notification. She also explained that recently the first case went court and the City prevailed. She stated the intent was not to enforce unless there was a blatant violation and could code enforcement to enforce and use as an educational opportunity.

Mr. Cuyler spoke to spills being prosecuted every day due to negligence and manager indicated would be to set up a system of education and try to filter the penalties in with the appropriate circumstances and education.

Tony Celarno spoke to the homeowner using more than was necessary thinking more would be better.

Richard Johnson spoke to a drain in a lawn and should they be restricted. He also spoke to the major part of plant maintenance was to properly plant vegetation in the correct place.

Ms. Zimomra stated that the City does have an extensive vegetation ordinance.

Rae Ann Wessel, SCCF spoke to the higher Sanibel standards, concern about uniform standards and the need for such, concerned on buffers, state standard 25 foot set-back, ditches should not be fertilized because they were water collectors, bmp (best management practices) once landscaping gets to 30% impervious cover bmp do not apply.

Ms. Downing spoke to Section 9 the same changes as in 5 (b)

Vice Mayor Denham made a motion, seconded by Councilman Brown, to adopt Ordinance 07-003 with amendments.

Dr. Loflin spoke to the need to get a handle on water quality surrounding the island.

Discussion ensued regarding Councilman Jennings speaking before the Everglades Oversight Committee on February 23, 2007 at Florida Gulf Coast University on addressing problems in our own background. Louise Johnson thanked Council and staff for the work done on the ordinance.

The motion carried unanimously.

Council recessed at 1:30 p.m.

Council reconvened at 2:38 p.m.

Council decided to discuss the Forever Green appeal.

Mr. Cuyler spoke to the following:

- An appeal filed before the adoption of the commercial zoning regulations
- Hear appeal as if the regulations were not adopted
- Section 3 – Council may authorize approval
- Appeal on 2 points not allowed in the Zoning-in-Progress; 1) a unit to be increased over 2,000 square feet in size; 2) formula retail
- Staff could not issue a permit and decision could be appealed to the City Council
- Section 3, “City Council may authorize such approval as it deems necessary or appropriate upon finding of such approval is not contrary to the long-term goals of this resolution, and is not advantageous to the health, safety and welfare of the general public.”

Ex parte communications:

Vice Mayor Denham Spoke to Steve Hartsell and clients

Mayor Johnston None

Councilman Jennings Spoke to different citizens on the island

Councilman Ruane None

Councilman Brown

Met with Steve Hartsell and clients

Oath was prescribed to the following:

Steve Hartsell, Joe Cimato, John Cimato, and Ken Pfalzer.

All accepted the oath and answered yes.

Mr. Steve Hartsell, Attorney spoke to the following:

- Continued to provide that opportunity to go on the website to review Liz Claiborne company – Sigrid Olsen
- Grant appeal according to option #3 memo from Duffy
- Hard to get tenants in the shops
- Upscale fine women’s apparel and need both retail spaces, which would require taking down a wall to make one retail business
- Ellen Fischer and Liz Claiborne found the competitiveness of both women’s apparel shop in the same area was beneficial
- Applied to combine the shops for retail approval they were denied under the zoning-in-progress
- Standards could approval if not contrary to the long-term goals of resolution and/or
- Granting the appeal would further the goals of the resolution
- Beneficial to residents due to the business being an upscale women’s apparel store
- Helps the resident and provides the kind of shopping needed
- Products and styles were unique
- Retaining the local character of Sanibel and district – Forever Green shops not box retail
- Do not want to discourage local business – would fill the business to encourage business
- Allowing to fill vacant space with high quality women’s apparel store and would have the synergy to provide necessary product
- Grant the appeal to combine the 2 shops and allow Liz Claiborne

Discussion ensued regarding not the first time retail store was in Periwinkle Place, wanted to protect the businesses needed on Sanibel, previous like business in the same location, business would be resident serving due to the high scale apparel, should tenants leave what would happen to the space, Mr. Pfalzer answered that the regulations recently adopted would allow a unit that exceeded 2,000 square feet and was a retail use to be occupied by another retail use, a unit occupied by a formula retail store could only be replaced by another retail store and would have to go through the conditional use process for any new formula retail store, and location and upscale nature would fit the island.

Councilman Brown made a motion, seconded by Councilman Jennings, to approve the appeal and findings were not contrary to the long-term goals the resolution and not disadvantageous to the health, safety and welfare of the general public.

The motion carried unanimously.

Council decided to hear the following presentation.

Ms. Zimomra spoke to water quality issues were Council’s number one issue and Council had received Dr. La Pointe previous studies.

PRESENTATION(S)

Presentation by Dr. Brian LaPointe regarding water quality and algae

Dr. La Pointe gave a presentation regarding water quality and red drift algae.

- Results from prior red drift algae blooms
- Worked with John Ryder at Woods Hall to recycle sewage through marine aqua culture systems; 1) phytoplankton; 2) oyster and shell fish; and 3) seaweed tanks that stripped the nitrogen from the algae
- John Ryder 1st scientist to study red drift algae
- Nutrient pollution priority coastal pollutant
- Nutrient pollution supporting proliferation of harmful algal blooms
- Red drift Algae strips the oxygen from water
- Combined discharges of the Peace and Caloosahatchee River form a buoyant plumb of freshwater over the coastal ocean
- Study from photos up to 1986 showed some red drift algae
- August, 2004 1st red drift algae bloom
- Objectives of the study in 2004 was to measure the nutrient concentrations along the gradient from the Caloosahatchee and Peace Rivers out in to the coastal ocean
- Collect seaweeds, look at the carbon, nitrogen and phosphorous content
- Measure the nitrogen isotopes
- Study involved the watershed nutrients
- Permitted loads 44 million gallons per day from 5 outfalls
- 2000 to 2004 20 million gallons per day of treated waste water injected in to the lower Caloosahatchee estuary
- Class 1 injection wells increasing around the area
- More red drift algae closer to shore due to land base nutrients and light
- Several graphs showing the sources of nitrogen
- Ammonium levels high
- Phosphorus levels high in Peace River
- Ratio between nitrogen and phosphorus – nitrogen limitation due to high background of phosphorus
- In order to control blooms nitrogen would need to be controlled
- Most phosphorus is readily available for algae blooms
- Graphs show nitrogen pretty high in nitrogen
- Values shown for nitrogen and phosphorus and explained that values above 3 show increased sewage or waste water
- Values above 3 so not necessarily show human waste, but could be animal waste
- Beach algae (Captiva, Sanibel, Ft. Myers Beach, Bonita Beach) monitored and show land base nitrogen
- Plants need high light intensity, high nutrients to grow
- No correlation of freshwater releases and the red drift algae blooms (in the past)
- Current red drift algae blooms could be a correlation of the freshwater releases
- Red drift algae grow on soft bottoms in the coastal zone
- Interesting role of sediments in the nutrient cycle
- Measure red tide bloom from 6 to 9 in the waste water range
- 2006 flow cut back, water clears and macro algae as never seen before
- Red drift algae bloom following the pulse releases
- Working on a conceptual model of how the physical environmental, chemical environment and the biology of the different algae work together
- Tampa Bay controlled nitrogen by removing nitrogen from the sewage treatment plant had positive results

Discussion ensued regarding sewage treatment outfalls helping to increase the red drift algae blooms, getting rid of septic tanks on Captiva, population of the watershed had increased with development, primarily wastewater nitrogen was seen, getting rid of septic tanks one of the only ways to decrease nitrogen, Key West had similar problem and reconfigured for a solution, nitrogen removal necessary, the need for collecting sewage and treat, red drift algae due to increased nitrification, wastewater dominant source of nitrogen and red drift algae, and cycle of pulse releases contributing to red drift algae.

Public Comment

Barbara Cooley spoke to earlier releases there were no red drift algae blooms. She asked if Dr. La Pointe thought Lake Okeechobee bottom churned to release the nutrients that lay on the bottom may have been a factor in the red drift algae bloom?

Dr. La Pointe answered yes. He stated the re-suspension of decades on organic matter on Lake Okeechobee was a factor. He further spoke to a sediment removal project to try to save Lake Okeechobee.

Judy Minchie asked if beach re-nourishment would contribute to red drift algae. She also asked what was the benefit of leaving the red drift algae on the beach to be carried back out in the water.

Dr. La Pointe answered that the quality of sand would need to be looked at and could be nutrient organic matter. He answered that the removal of the red drift algae from the beach and all other entities have removed to break the cycle and think that it would need to be removed.

Discussion ensued regarding the continuation of red drift algae growing, nutrients make plant growth increase and increase production, and red drift algae native invasive plants because they can fragment and continue to grow.

Council thanked Dr. La Pointe for his presentation.

CONSENT AGENDA

Mayor Johnston pulled item (f).

Ms. Zimomra read the following resolution titles.

b. **RESOLUTION 07-025 AMENDING SANIBEL RESOLUTION 06-117 WHICH SETS FORTH THE CITY'S CURRENT SEWER SYSTEM RATES, FEES AND CHARGES; AMENDING THE SEWER SYSTEM FEE STRUCTURE TO ALLOW FOR COMMERCIAL CREDITS UNDER CERTAIN SPECIFIED CIRCUMSTANCES; AND PROVIDING AN EFFECTIVE DATE**

c. **RESOLUTION 07-029 APPROVING BUDGET/AMENDMENT/TRANSFER NO. 2007-052 AND PROVIDING AN EFFECTIVE DATE** (to establish the Community Park Improvement Capital Project Fund in the amount \$449,751. Sources of funds are from the appropriation of \$102,751 of City collected Community Park Impact fees, the \$200,000 FRDAP Grant and \$147,000 transfer from the funds already budgeted in the Capital Acquisition Capital Project fund. The new funds budgeted by this amendment are the \$102,751 impact fee funds collected in previous fiscal years, but which are not budgeted until an authorized project is identified for their use. The use of the \$449,751 is for the improvements to the Community Park on Periwinkle Way)

d. **RESOLUTION 07-030 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-050 AND PROVIDING AN EFFECTIVE DATE** (the annual workers' compensation audit of the City's Insurance claims to premium for FY 2006, resulted in an additional premium of \$220,715. The City's adopted budget planned for this annual adjustment in workers' compensation premium; however the amount budgeted is \$108,215 less than the additional premium charged. The additional premium is a result of overtime costs associated with responding to Hurricane Wilma in October 2005. This budget amendment appropriates \$108,215 from the affected funds' beginning fund balance or other available revenues to meet this obligation. There are no new funds appropriated by this budget amendment)

e. **RESOLUTION 07-031 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-051 AND PROVIDING AN EFFECTIVE DATE** (to roll-forward \$353 fund balance in the SW Florida Community Foundation Grant Fund and appropriate \$1,000 of estimated royalties and \$8,000 actual contributions received during FY 2007 for expenditure of \$9,353 for grants and aids. This fund was not included in the originally adopted budget due to the uncertainty of donation receipts; therefore, this budget amendment increases the City budget by \$9,353)

g. **RESOLUTION 07-033 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-053 AND PROVIDING AN EFFECTIVE DATE** (to allocate funds from the following funds' Reserves for Compensation Adjustment to the respective departmental salary and FICA line items pursuant to union negotiations and performance evaluations of current personnel. General Fund (\$257,416), Weigh Station Fund (\$899), Ball Park Maintenance Fund (\$3,173), Sewer Fund (\$29,497) and Beach Parking Fund (\$3,764). There is no affect on the overall City budget by this amendment)

Councilman Brown made a motion, seconded by Councilman Ruane, to adopt Resolutions 07-025, 07-029, 07-30, 07-031 and 07-033.

The motion carried unanimously.

a. **Approval of Minutes – January 22, 2007 Special Meeting, and February 06, 2007 Regular Meeting**

h. **Acceptance of an Amendment to the Frequency Reconfiguration Agreement between Nextel and the City of Sanibel and authorize the City Manager to execute same**

i. **Approval of a draft RFP for professional services to update the City of Sanibel's 1985 Economic Analysis**

Vice Mayor Denham made a motion, seconded by Councilman Jennings, to approve Consent Agenda items (a), (h) and (i).

The motion carried unanimously.

f. **RESOLUTION 07-032 AUTHORIZING THE CITY MANAGER TO WRITE-OFF CERTAIN CHECKS RETURNED FOR NON-SUFFICIENT FUNDS FROM JANUARY 1995 TO JANUARY, 2006 TOTALING \$1,733.65, DETERMINED TO BE UNCOLLECTIBLE; AND PROVIDING AN EFFECTIVE DATE**

Mayor Johnston asked what procedure was in place to not allow these people to do business with the City again.

Ms. Zimomra stated that there was a procedure and those checks for the after-school program were for families that had moved and they would not be allowed to use the facilities. She further stated that the Finance Department makes every effort to collect bad debts and this was \$1,733.65 over 10 years.

Ms. Zimomra read the title of Resolution 07-032.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 07-032.

The motion carried unanimously.

OLD BUSINESS

Recreation Issues

Status Report on Recreation Center Construction Project (3840 Sanibel-Captiva Road)

Staff Status Report

Presentation by Construction Manager Peter Brown and Architect Henry Woodroffe

The project was on time and within budget.

Council asked if the critical items noted in the report for February completed.

Mr. Woodroffe answered yes.

Draft program for the “Topping Out Ceremony” March 08, 2007 at 9:00 a. m

Ms. Zimomra passed out to Council the revised program. She stated that Councilman Brown had requested not to be on the program and if other Council members had questions please see the City Manager.

Attendance at the Everglades Oversight Committee meeting Friday, February 23rd at Florida Gulf Coast University (FGCU)

Councilman Jennings gave the following report.

- 20 residents attended
- Spoke briefly to the committee

Mayor Johnston spoke to Resolution 07-023 and the amendments recommended by Rae Ann Wessel, SCCF as follows:

- Establishment of the Caloosahatchee River estuary research and water quality habitat monitoring program
- Directive to the SFWMD for review and strengthening the environmental resource water quality and water quantity criteria
- Directive to DEP to expedite development and adoption of the TMDL's for water quality standards in the river and the estuary
- An annual progress report that tracks the progress and the results
- The establishment of a surface water inflow limits salinity envelop for the Caloosahatchee River
- Creation of a 2-phase estuary construction project program that would provide for short-term stop gap projects in this phase
- Development of specific goals and objectives for the Caloosahatchee estuary protection plan

Dr. Loflin requested that Rae Ann Wessel explain item 5.

Rea Ann Wessel spoke to establishing flow limits to the upper estuary seagrass that was currently dead.

Dr. Loflin requested deleting number 5.

Discussion ensued regarding the freshwater grass, Dr. Loflin stated that the freshwater grass had been artificially created and should not be a driving force for Sanibel, and Dr. Loflin agreed with the other amendments.

Vice Mayor Denham made a motion, seconded by Councilman Ruane to direct staff to amend Resolution 07-023.

The motion carried unanimously.

Mayor Johnston spoke to a piece of legislation called “The Everglades and Estuary” and Council could send comments. She further spoke to a memo and request that staff refine the ways citizenry deal with which bureaucratic administration on various water quality issues when dealing with different governmental entities.

Water Quality Issues

Beach Status

Current Beach conditions and follow-up

Ms. Zimomra gave the following report:

- Least algae deposits this week
- Last week large number of scallops on the beach
- 2 Councilmembers participated in a helicopter over view
- Purchase of an under water dive
- Distributed to Council 4 draft RFQ's and need input from Council
- Red Drift Algae Task Force meeting
- Most recent task force meeting concern that the oncoming female turtles coming to nest have the strength to pass the algae and impact of hatchlings going through the red drift algae
- Long term solution was stopping the source of the nutrients
- Concern of threatened species if water harvesting were put in place
- Scheduled trip to Hawaii

Discussion ensued regarding staff putting together a timeline.

Report from Natural Resources Department

Staff Reports

Dr. Loflin and Mr. James Evans spoke to the recent dive trip:

- Showed algae growing on the soft bottom
- Algae attached to anything possible
- Small amount of algae floating
- Flight taken by Greg Rawl – looked like there was a reddish bloom from the backwash of boats coming to shore and turned out to be the sediment from the bottom
- Do not have much red drift algae near shore, but further off island

Discussion ensued regarding algae growing in the winter, need more information. Dr. Loflin spoke to the algae growing on the backs of scallops and those washed up on the beach, diving within 2 to 3 miles, and believe that the algae is growing within ½ mile of shore.

Dr. Loflin spoke to Dr. La Pointe suggesting removal of the algae would be best, but it had not been determined. He further spoke to the need for partnership and funding.

Meeting Reports

Mayor Johnston spoke to a meeting of LOPA, water releases from Lake Okeechobee and a meeting with DEP in Tallahassee.

Mr. Cuyler spoke to working with Beveridge and Diamond. He further stated that DEP had requested to talk with the City and if Council would authorize the Mayor to meeting with DEP then Beveridge and Diamond would make the appointment.

Vice Mayor Denham made a motion, seconded by Councilman Ruane, to allow Mayor Johnston to meet with DEP.

The motion carried unanimously.

CITY MANAGER

Informational Items

Request by Lee County to Tourist Development Council to develop a fishing pier from the remaining Causeway structure contiguous to Sanibel

Ms. Zimomra noted that there seemed to be some confusion from Lee County whether a fishing Pier would be from the Sanibel side or Lee County side. She stated that staff drafted a letter for Council to begin discussion on the proposed pier.

Discussion ensued regarding more emphasis on the Weigh Station in the letter.

Vice Mayor Denham made a motion, seconded by Councilman Ruane, to direct staff to prepare a letter with the inclusion of Council amendments.

The motion carried unanimously.

Temporary City Council Liaison for Vegetation Committee Meeting, Thursday, March 08, at 1:30 p.m., and CHR Meeting Monday, March 12, 2007 at 7:00 p.m.

Ms. Zimomra stated that there were 2 meetings that former Councilman Rothman would attend as liaison.

Councilman Ruane agreed to be the liaison.

Mayor Johnston spoke to former Councilman Rothman being the alternate of the MPO and there being a joint meeting with Collier County (March 16) 0900 due to Mayor Johnston not being able to attend.

Vice Mayor Denham agreed to be the alternate.

Legislative Alert from the Florida League of Cities regarding Action Plan on Property Tax Reform

Information in the agenda packet.

Flat Screen Theft Press Release

Information in the agenda packet.

Recommendation to adopt a resolution expressing Appreciation and Support to J. N. "Ding Darling" Wildlife Refuge for siting a temporary concrete batch processing facility

Information in the agenda packet.

CITY ATTORNEY'S REPORT

No report.

COUNCILMEMBERS' REPORT

Mayor Johnston mentioned that there was an open seat on the Citizen Advisory Committee to MPO and if any Council member had a recommendation pass it along to the City Clerk.

Councilman Jennings spoke to Lee County Days and the League of Cities.

Councilman Brown thanked everyone for their help while on Council.

PUBLIC COMMENT

None.

There being no further business the meeting was adjourned at 4:49 p.m.

Respectfully submitted by,

Pamela Smith, CMC
City Clerk