

**SANIBEL CITY COUNCIL MEETING
JANUARY 03, 2006**

A reception was held for Ms. Barbara Weiss, Police Department Administrative Assistant to the Chief of Police honoring the occasion of her retirement and 18 years of service to the citizens of Sanibel

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

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

PRESENTATION:

Proclamation honoring Barbara Weiss honoring the occasion of her retirement and 18 years serving the citizens of Sanibel

Mayor Johnston read and presented a proclamation to Barbara Weiss.

Chief Tomlinson thanked Ms. Weiss for her hard work.

Public Comments:

Hazel Schuller spoke to the upcoming timeshare ordinance.

Karen Stori Johan spoke to the City's website needing to be an instrumental tool regarding water releases from Lake Okeechobee.

Council Comments:

Councilman Brown spoke to the vote to proceed aggressively regarding the water releases. He also spoke to Councilman Rothman and Councilman Brown voting in opposition of the birding trail at Lighthouse Beach Park.

Mayor Johnston spoke to a future agenda item regarding the City's website.

SECOND READING AND PUBLIC HEARING

ORDINANCE RELATING TO THE BUILDING BACK OF NONCONFORMING STRUCTURES AND STRUCTURES DEVOTED TO NONCONFORMING USES THAT ARE SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER; AMENDING THE SANIBEL CODE, SUBPART B LAND DEVELOPMENT CODE AMENDING CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 RULES OF CONSTRUCTION AND DEFINITIONS, TO ADD DEFINITIONS FOR "BUILDBACK", "HABITABLE AREA" AND "NATURAL DISASTER"; AND AMENDING CHAPTER 82 ADMINISTRATION, ARTICLE IV DEVELOPMENT PERMITS, DIVISION 2 PROCEDURE, SUBDIVISION II SHORT FORM, SECTION 82-401 APPLICATION, TO CLARIFY THAT THE BUILDING BACK OF A BUILDING THAT HAS BEEN SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER MAY BE A SHORT FORM APPLICATION; AND AMENDING CHAPTER 126 ZONING, ARTICLE V NONCONFORMANCES, DIVISION 1 GENERALLY, SECTION 126-131 INTENT, TO CLARIFY THE INTENT OF THE LAND DEVELOPMENT CODE THAT PROPERTY OWNERS NOT SUFFER THE LOSS OF A DWELLING

UNIT OR A REDUCTION IN UNIT SIZE AS THE RESULT OF SUBSTANTIAL DAMAGE TO THE BUILDING DUE TO A NATURAL DISASTER AND THAT NONCONFORMING USES CAN BE REESTABLISHED IF THE BUILDING THEY OCCUPY IS BUILT BACK AFTER A NATURAL DISASTER; AND AMENDING CHAPTER 126 ZONING, ARTICLE V NONCONFORMANCES, DIVISION 2 USES, SECTION 126-151 GENERALLY AND SECTION 126-152 EXCEPTIONS AND PROHIBITIONS, TO PERMIT THE REESTABLISHMENT OF A NONCONFORMING USE OF A BUILDING THAT HAS BEEN BUILT BACK AND TO PROVIDE FOR TOLLING OF CERTAIN TIME PERIODS FOR THE REESTABLISHMENT OF THE NONCONFORMING USE; AND AMENDING CHAPTER 126 ZONING, ARTICLE V NONCONFORMANCES, DIVISION 3 STRUCTURES, SECTION 126-172 IMPROVEMENT, RECONSTRUCTION OR RELOCATION PROHIBITED; EXCEPTIONS, TO PERMIT THE BUILDING BACK OF A STRUCTURE SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER; AND AMENDING CHAPTER 126 ZONING, ARTICLE V NONCONFORMANCES, DIVISION 5 RECONSTRUCTION STANDARDS, BY RENAMING THE DIVISION STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER; AND AMENDING SECTION 126-211 STRUCTURES DEVOTED TO A NONCONFORMING USE, TO PERMIT NONCONFORMING USES TO BE REESTABLISHED IF THE BUILDING OCCUPIED BY THAT NONCONFORMING USE WAS SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER AND THAT BUILDING IS BUILT BACK; AND AMENDING SECTION 126-212 NONCONFORMING STRUCTURES, TO CLARIFY HOW THE NONCONFORMING STRUCTURE CAN BE BUILT BACK, INCLUDING UP TO ITS LAWFULLY EXISTING NUMBER OF DWELLING UNITS AND UP TO ITS LAWFULLY EXISTING FLOOR AREA; AND AMENDING SECTION 126-213 REESTABLISHMENT OF NONCONFORMING USE OR STRUCTURE, TO CLARIFY THAT RESIDENTIAL DENSITY AND DEVELOPMENT INTENSITY CANNOT BE INCREASED WHEN A SUBSTANTIALLY DAMAGED BUILDING IS BUILT BACK; AND AMENDING SECTION 126-215 RECONSTRUCTION OF STRUCTURES IN VIOLATION OF STANDARDS PROHIBITED, TO CLARIFY THE STANDARDS FOR BUILDING BACK A BUILDING THAT HAS BEEN SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER; AND AMENDING CHAPTER 126 ZONING, ARTICLE VII RESIDENTIAL DISTRICTS, DIVISION 2 A – GULF BEACH ZONE, SECTIONS 126-293 REQUIRED CONDITIONS, TO CLARIFY THAT A LAWFULLY EXISTING NONCONFORMING STRUCTURE THAT IS SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER MAY BE BUILT BACK IN ITS PRE-DISASTER FOOTPRINT OR, IN ACCORDANCE WITH SPECIFIC STANDARDS, BE REPLACED WITH STRUCTURES THAT REDUCE THE ENCROACHMENT INTO THE GULF BEACH ZONE, AND A LAWFULLY EXISTING NONCONFORMING USE OF A LAWFULLY EXISTING STRUCTURE

THAT IS SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER AND THAT IS BUILT BACK OR REPLACED MAY BE REESTABLISHED; AND AMENDING CHAPTER 126 ZONING, ARTICLE XIII ENVIRONMENTAL PERFORMANCE STANDARDS, DIVISION 2 GULF BEACH, GULF BEACH RIDGE AND BLIND PASS AREA ZONES, SECTION 126-675 VEGETATION – PROTECTION; PLANTING OF NATIVE SPECIES; USE OF SOD OR GRASS, TO REQUIRE THE RESTORATION OF THE DUNE AND THE DUNE VEGETATION IN THE GULF BEACH ZONE WHEN BUILDINGS, SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER, IN THESE ZONES ARE REBUILT OR REPLACED; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

Ms. Zimomra read the title of Ordinance 05-017.

Robert Duffy, Planning Director and Ken Pfalzer, Deputy Planning Director gave the following report:

- December 22 memo regarding the first reading discussion
- Section 126-293 clarifies required conditions – primary intended use in the Gulf Beach Zone
- Clarifies footprint in Gulf Beach Zone
- Section 126-675 enabled additional restoration of dune in Gulf Beach Zone
- Section 82-401 add new subsection 12 buildback within footprint would allow a short form – long form triggered if buildback landward
- Section 126-219
- Section 82-401 new section 12 clearly establishes when buildback through a short form development permit application
- Section 82-421 long form application

Discussion ensued regarding short-form and long-form application, planning department was given authority to issue short-form permits, long-form permits come before the Planning Commission and if necessary, Council, property owners would have the ability to buildback as provided by the Sanibel Plan, but if a structure needed to be moved landward the long-form application would be required, steps for long-form application would include additional information to property owners within 300 feet 2 weeks prior to initial hearing, conducted by Planning Commission with final action within 2 weeks, if same building was built back would not require a variance and the need the short-form, anything else (moving footprint) would require a variance application and long-form application, modification on interior of structure and nothing changed would not require a variance, possible that there were a few homes built within 10 feet of a body of water, page 11 Section 126-215 structures in violation of standards prohibited – the following 6 standards must be met:

- Federal flood regulations Chapter 94 of the LDC or the Florida Building Code
- Applicable building, health and safety codes
- State coastal construction control lines
- Other applicable federal, state and local regulations
- Delete – A height exceeding forty-five (45) feet above mean sea level
- Setbacks from open bodies of water, or the pre-disaster footprint, whichever is closer, but in no event, closer than ten (10) feet from an open body of water

Discussion continued regarding implementation date for residents, expectation of property values to increase with regard to condominiums on the water with the adoption of the buildback ordinance, and Ordinance 05-017 clarifying buildback language.

Public Comment:

Dick Walsh spoke to the 5 charter amendments passed by the electorate March, 2005. He asked if a long-form application were filed due to a request to footprint being moved could anyone object if it reduces the encroachment. Mr. Cuyler stated that an objection could be voiced in front of the Planning Commission, but Council wanted to encourage the moving of a building landward and not the loss of density for said building. Mr. Walsh spoke for the need of additional criteria. Mr. Cuyler stated that clarification could be made to retain density, to move the structure back and other matters would be discussed during the long-form process.

Discussion ensued regarding property rights of those that might be affected by a building moved landward during buildback.

Herb Rubin spoke to the short-form needed for elevation and the possible encroachment affecting adjacent property owners and the need for the long-form process.

Larry Schoop spoke to the definition of build back, the ordinance should cover the situation of a footprint being moved and the encroachment in the Gulf Beach Zone. He asked if there were any situations when moving the footprint would alleviate the setback violation.

Claudia Burns spoke to the adoption of the ordinance would not guarantee rebuilding in the same footprint, she asked if there were state, federal and City requirements to approve before a structure could be built back for non-conforming properties. Mr. Cuyler stated that if there were 2 entities that required approval there would be no re-building. She spoke to moving the footprint landward and there being no incentive to move the building landward by the property owners. Mr. Cuyler stated that previous discussion was to retain density. He also spoke to possibility of circumstances with granting a right that did not exist before due to erosion and a provision of relocation landward with same footprint and retaining density in Ordinance 05-017.

Discussion ensued regarding a building relocation landward should be redevelopment not buildback, could a building be moved to the left or right as well as being moved back, and Mr. Cuyler answered that would fall under the long-form application.

Louise Johnson spoke to the Sanibel Plan and leaving principal practices and philosophies. She spoke to it being dangerous to allow every unit to be rebuilt if destroyed if the unit was non-conforming.

Mr. Cuyler stated that if a building was seaward of the 1974 Coastal Construction Control Line (CCCL) current regulations a structure could be rebuilt, but a resort housing use could not be established. He further stated the Council determined as a policy to allow the resort housing use seaward of the 1974 CCCL and that would not be allowed today.

Mr. Pfalzer stated there were about 500 units in the Gulf Beach Zone that fall under the resort housing as an available use.

Mr. Cuyler stated that the intent of the forefathers may have been to do away with non-conformities, but at some point in the distance past City Councils (1980's) decided there would be buildback rights for property owners and residents of Sanibel.

Discussion ensued regarding Council discussion of the intent of Sanibel forefathers regarding buildback.

John Veenschoten, Planning Commission spoke to his agreement of Ordinance 05-017.

Mary Cutair spoke to her agreement of Ordinance 05-017.

Candy Harris, Sundial West spoke to her agreement of Ordinance 05-017.

Dave Schuldenfrei spoke to his agreement of Ordinance 05-017.

Karen Storijohan spoke to architectural standards, environmental designs, and the need for 95% vegetation standards not addressed in the ordinance.

Sonia Smith, CASI spoke to her agreement of Ordinance 05-017.

Robin Humphrey spoke to page 1 item 3 “Commercial Structures” any intent to reduce square footage due to anything over 1,500 needing a long-form application.

Mr. Pfalzer stated that the only change building back a non-conforming structure of a non-conforming use would be a short-form application permit.

Discussion ensued regarding movement of the beach landward and an conditions being affected, Mr. Pfalzer answered that the 6 items on page 12 as previously discussed would come in to play, City could be in a position to have no regulation if the beach was destroyed. He further stated a building could be rebuilt in the same footprint even if the building(s) were 10 feet from the water. He explained there could make a setback from the Gulf (mean high water line) in the Gulf Beach Zone, voluntary moving the footprint landward gets into redevelopment and no incentive to move the footprint landward, if a building were moved must the three-dimensional footprint be changed, Mr. Pfalzer answered that with the established criteria the footprint and three-dimensional outline would not be changed, Mr. Cuyler answered that required in Ordinance 05-017 the building was moved the footprint would have to be retained, new height limit as required by the new flood elevation, if building built back in same footprint inside would be smaller, if footprint was 10 feet from gulf would the state give guidance and would most likely be difficult to receive a state permit, it could take 4 to 6 weeks to complete a long-form application, and Mr. Pfalzer answered the estimate was only an estimate in accordance to the volume of applications.

Council recessed at 11:15 a. m.

Council reconvened at 11:30 a. m.

Mr. Cuyler stated that the following amendment could be made:

- With a four-story building being built back on footprint the property owner would need a provision 8 foot ceilings for height
- Nothing in ordinance that sets a maximum time limit to rebuild (3 years)
- Dune restoration ensures vegetation be planted
- Other than density the building shall be required to meet all

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Ordinance 05-017 with the above-mentioned amendments.

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to table further discussion until 2:00 p.m. .

Discussion ensued regarding the difference between buildback and redevelopment, addressing the possibility of water encroachment, provision in EAR regarding directing populations from high hazard areas.

CONSENT AGENDA:

Council pulled item s (a) and (e).

Ms Zimomra read the following Resolutions:

b. **RESOLUTION 06-001 APPROVING BUDGET**
 AMENDMENT/TRANSFER NO. 2006-023 AND PROVIDING AN

EFFECTIVE DATE (to appropriate \$440,000 grant from the Lee County Tourism Development (TDC) for Project #201656, Sanibel Facility/Beach Maintenance for Fiscal Year 2005-05. See attached Agreement for Tourist Development Tax Funding)

- c. **RESOLUTION 06-002 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-024 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$35,000 grant from the Lee County Tourist Development Council (TDC) for Project #201747, Sanibel Beach Erosion Monitoring for Fiscal Year 2005-06. See attached agreement for Tourist Development Tax Funding)
- d. **RESOLUTION 06-003 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-025 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$60,000 grant from the Lee County Tourist Development Council (TDC) for Project #201897, Dune Walkover Replacement for Fiscal Year 2005/06. See attached Agreement for Tourist Development Tax Funding)
- f. **RESOLUTION 06-005 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-027 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$90,000 grant from the Lee County Tourist Development Council (TDC) for Project #402062, Causeway Beach Park Shoreline Improvements including stabilization of Bay Shore Drive and Visitor Center restroom improvements for Fiscal Year 2005-06. See attached Agreement for Tourist Development Tax)
- g. **RESOLUTION 06-006 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-028 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$110,000 grant from the Lee County Tourist Development Council (TDC) for Project #402063, Family Restroom at Bowman's Beach Park for Fiscal Year 2005-06. See attached Agreement for Tourist Development Tax)
- h. **RESOLUTION 06-007 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-029 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$40,000 grant from the Lee County Tourist Development Council (TDC) for Project #402064, Turner Beach Restroom Improvements for Fiscal Year 2005-06. See attached Agreement for Tourist Development Tax)
- i. **RESOLUTION 06-008 APPROVING A BUDGET AMENDMENT/TRANSFER NO. 2006-030 AND PROVIDING AN EFFECTIVE DATE** (to appropriate a \$35,035 grant from the Lee County School Board for the School Resource Officer D.A.R.E. (Drug Awareness Resistance Education Program for the period August 11, 2005 to August 10, 2006)
- j. **RESOLUTION 06-009 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-031 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$2,500 grant from West Coast Inland Navigation District (WCIND) for the implementation of an Educational Brochure printing for fiscal year 2005-06)
- k. **RESOLUTION 06-010 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-032 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$20,000 grant from West Coast Inland Navigation

District under the Waterway Development Program (WCIND) to provide services, materials and equipment to provide for marine law enforcement for fiscal year 2005-06)

Councilman Jennings made a motion, seconded by Councilman Rothman, to adopt Resolutions 06-001, 06-002, 06-003, 06-005, 06-006, 06-007, 06-008, 06-009, and 06-010.

The motion carried unanimously.

a. **Acceptance of the ranking by the selection committee and authorize the City Manager to enter into contract negotiations with Sprinkle Consulting, Inc., for preparation of the Shared Use Path Master Plan update**

Ms. Zimomra stated that staff followed the state statute regarding the Requests for Qualifications (RFQ), ranking and selection of consultants. She further stated that the selection committee met and 2 residents attended the meeting.

Discussion ensued regarding Sanibel Bicycle Club participation, and Sanibel Bicycle Club pledging \$25,000 for the Shared Use Master Plan Re-study.

Councilman Rothman made a motion, seconded by Councilman Brown, to approve the recommendation.

The motion carried unanimously.

e. **RESOLUTION 06-004 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-026 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$20,000 grant from the Lee County Tourist Development Council (TDC) for Project #201898, Water Quality Monitoring Program for Fiscal Year 2005-06. See attached Agreement for Tourist Development Tax)

Ms. Zimomra read the title of Resolution 06-004.

Dr. Loflin, Natural Resources Director explained the 2 components of the program; 1) monitoring water where water was most impacted, monitoring would be done from the mouth of the Caloosahatchee River, San Carlos Bay, lower Pine Island Sound, and Matlacha Pass; and 2) the interior waters would be monitored such as the Sanibel River and Clam/Dinkins Bayou. He stated there was 3 years of baseline data and hoped to use funds from Tourism Development Center (TDC) and funds from the National (NPDES) Pollution and Discharge Elimination System, which was water monitoring for Environmental Protection Agency (EPA). He further explained that current sampling was showing the nutrients from water releases.

Discussion ensued regarding huge scum balls on the beach, any correlations of the freshwater releases water quality and/or scum balls, and Dr. Loflin stated there was no question how the freshwater releases were affecting the waters surrounding Sanibel, scum balls appearing within J. N. "Ding" Darling Wildlife Refuge, and photographs were needed as people see the change in Sanibel waters.

Councilman Brown made a motion, seconded by Councilman Jennings, to adopt Resolution 06-004.

The motion carried unanimously.

COMMITTEE, BOARDS COMMISSION
Report regarding the Annual Review of the Provisions of the Land Development Code (LDC)

John Veenschoten gave the following report:

- Adequate regulation of the use of land and water
- Adequate regulation of the subdivision of land

- Determination or whether the LDC ensures compatibility of adjacent land use
- Adequacy of provisions of open space
- Adequacy of provisions to ensure safe on-site traffic flow
- The adequacy of on-site parking

Recommended the following:

- Consider increase height for front yard fences
- Safety fencing for non-conforming swimming pools
- Allow the replacement of flat roofs on non-conforming structures with a roof that has some pitch

Mr. Pfalzer stated that fences were allowed on side and backyards with a setback of 20 feet. He further stated that the fence setback was regulated the same as the principal structure. He also stated the gate structure normally exceeded the height limitation. He explained that any pool the does not meet the standards addressed in the LDC was a non-conforming use.

RESOLUTION 06-011 APPOINTING MEMBERS TO THE SANIBEL PLANNING COMMISSION; AND PROVIDING AN EFFECTIVE DATE.

Mr. Cuyler passed the ballots to Council.

Ms. Zimomra read the title of Resolution 06-011.

Mr. Cuyler announced the appointments

Dr. Phillip Marks
John Veenschoten

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-011 and fill in the blanks with Dr. Phillip Marks and John Veenschoten.

The motion carried unanimously.

Council recessed at 12:20 p. m.

Council reconvened at 1:26 p. m.

OLD BUSINESS

Water Quality Issues

Report regarding various water strategies.

Dr. Loflin spoke to the destruction of sea grasses due to freshwater releases from Lake Okeechobee, green algae replacing previous sea grass beds, and real risk of losing all sea grass if freshwater releases continue to occur. He spoke to the timeline of sea grass rejuvenation and that there would be no time that freshwater releases would not affect sea grass.

Discussion ensued regarding scum balls the size of sea turtles on the beach, people looking for leadership, comments from South Florida Water Management District, resolutions from other governmental entities, the need for cessation of the water releases, any research that shows the cycle, Dr. Loflin answered that SFWMD had already decided how much freshwater releases would not affect sea grasses, the need to release more salt in the water and the only way the get the salinity back would be to stop the freshwater releases, how effective were the resolutions sent out by governmental entities, Ms. Zimomra stated that a resolution was an official way for a legislative body to show their position, losing sea grass beds would basically be a collapse of the estuary, water retained for users, but designs for filter areas to remove nutrients were also a problem, and nothing was availability to treat the salinity, solution to treat water due to the Clean Water Act, latest brochure from SFWMD including a map was passed to Council, Council

requested that a map be put in the conference room and update daily of water releases, tracking water monitoring program, Mr. Cuyler stated that photos were okay, but if it was for evidentiary photos the chain of command needed to be taken in consideration.

Public Comment:

Dick Walsh spoke to freshwater releases continuing sea grass beds would be permanently destroyed. He also spoke to the need to find a law firm and file an action seeking a temporary restraining order.

Barbara Cooley asked if state estuary policies had been violated and Dr. Loflin stated that the estuary waters were very poor and the language was very vague. She also spoke to the need of an emergency declaration, and her making a public records request that had gone unanswered. She explained that the SFWMD were adhering to policy, but created a Planned Temporary Deviation to get around the freshwater releases.

Mr. Cuyler spoke to the following:

- Making a public records request
- Look for attorney fees if City had to sue to get the documents noted in the Public Records Request

Stuart Langton spoke to water quality, Everglades Restoration Plan, and governors plan for Lake Okeechobee.

David Bath spoke to his agreement of the urgency, and a guest commentary in the News Press suggesting invoking the power of eminent domain.

Mike Valiquette spoke to the need of an injunction, importance of spending funds on publicity for educational purposes, and possibility of an informational forum.

Discussion ensued regarding a temporary injunction due to killing sea grasses, and Dr. Loflin stated that there was a very real danger that the sea grass beds would not recover.

Glenn Martin spoke to noticing the poor water and air quality on the island.

Dick Walsh spoke a second time to violations by the Corps of Engineers and SFWMD own rules and law.

Mike Valiquette spoke to the invitation from Moorehaven High School students for a boat tour on Lake Okeechobee to Council.

Council decided to resume discussion of Ordinance 05-017, which was amended to include the amendments suggested by Mr. Cuyler during the public hearing.

Councilman Jennings made a motion, seconded by Vice Mayor Denham, to remove Ordinance 05-017 from the table for discussion.

The motion carried by consensus.

ORDINANCE 05-017 RELATING TO THE BUILDING BACK OF NONCONFORMING STRUCTURES AND STRUCTURES DEVOTED TO NONCONFORMING USES THAT ARE SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER; AMENDING THE SANIBEL CODE, SUBPART B LAND DEVELOPMENT CODE AMENDING CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 RULES OF CONSTRUCTION AND DEFINITIONS, TO ADD DEFINITIONS FOR “BUILDBACK”, “HABITABLE AREA” AND “NATURAL

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Mr. Cuyler stated that Ordinance 05-017 included the amendments suggested from the morning discussion.

Mr. Duffy, Planning Director spoke to the following amendments:

- Addressed the definition of buildback
- Included the short and long-form applications
- Issue of pre-disaster height as part of buildback registration procedure
- Time limit to build back
- Beach screening provision

Mr. Ken Pfalzer explained the following changes:

- Page 4 Section 126-131 Rules of construction and definition add “For the purpose of applying buildback regulations, when the footprint of a substantially damaged nonconforming structure is moved, pursuant to Section 126-293, in a manner that reduces the pre-disaster building’s encroachment into the gulf beach zone, the reconstruction of that substantially damaged building is also considered buildback.”
- Page 5 item # (12) “Building back either a nonconforming structure or a nonconforming use of a nonconforming structure that has been destroyed or substantially damaged by a natural disaster within the 3-dimensional outline of the lawfully existing habitable area of the pre-disaster building and the footprint of the lawfully existing pre-disaster building.
- Page 10 (6) after the word “reconstruction” delete “or replacement”
- Page 6 item (9) after the word “(reconstruction)” delete “or replacement”
- Page 11 bottom of page, “Applications to buildback a non-conforming structure that was destroyed or substantially damaged by accidental fire or other natural and disastrous force must be filed within twenty-four (24) months of the date of the destruction or substantial damage to the building that is to be built back.”
- Page 14 2nd paragraph add “In the event that buildback registration has not been filed with the City prior to substantial damage to a building, the City Manager will use the best

- information available to determine the pre-disaster height of the substantially damaged structure including the pre-disaster ceiling height of the building. Without buildback registration or other evidence deemed to be competent by the City Manager, the determination of pre-disaster building height will assume ceiling heights of eight (8') feet.
- Page 14 2nd paragraph third line delete “to” after the word “height”
 - Page 15 2nd bullet after the word “zone” add “provided that the built back building, located in a moved footprint, complies with the requirements of this article and all other provisions of the Land Development Code, except that the lawfully existing number of dwelling units can be retained;

Mr. Cuyler stated that there were provisions in the code that allowed a variance from property setbacks.

Discussion ensued regarding:

Page 15 126-675 Vegetation – protection; planting of native species; use of sod or grass (f) sixth line after the word “vegetation” add wording to screen the base of the building and associated parking from public view at beach level beyond pre-disaster conditions where practicable.

Discussion ensued regarding:

- Page 16 (f) after the word “practicable” add wording to require vegetative screening be provided to buffer the base of the building and associated parking from public view at each level.

Dick Walsh spoke to the need to add to Page 5 the word “bombing.”

Council agreed.

- Page 5 2nd paragraph 4th line after “However” add the wording “bombing or”

Mr. Cuyler stated that Natural Beach Erosion was not in the definition of natural beach disasters.

Herb Rubin spoke to the major change in adopting this ordinance.

Mary Cutair spoke to her agreement with Ordinance 05-017.

Dick Walsh spoke to incorporating erosion not being a disaster.

- Page 5 2nd paragraph after the word “property” add “Beach erosion is not a natural disaster.”

Bernie Lubetkin spoke to natural disasters.

The motion carried unanimously.

Council recessed at 3:09 p. m.

Council reconvened at 3:22 p.m.

Discussion regarding potential funding sources for the potential lawsuit against Army Corps of Engineers and South Florida Water Management District (SFWMD)

Ms. Zimomra spoke to Council’s strategies regarding the water quality issue. She further spoke to meeting with each Councilmember and Merribeth Farnum, Farnum and Associates and Council’s different opinions. She also called Council’s attention to the Dr. Loflin’s December 24, 2005 memorandum regarding the

summary of the damage done by the water releases. She spoke to the need for clear direction and the need for a public affairs campaign rather than a public relations campaign.

Discussion ensued regarding which goal statement Council preferred:

- Stop fresh water releases from Lake Okeechobee into the Caloosahatchee River and develop a long-term plan to protect the estuaries surrounding Sanibel
- Stop fresh water releases from Lake Okeechobee into the Caloosahatchee River to allow time for the recovery of area sea grasses, which are the base of our marine life food chain, and control future releases so that sea grasses are not harmed in future years

Discussion ensued regarding the possibility of a third option being the cessation of freshwater releases from Lake Okeechobee, stopping excess freshwater releases from Lake Okeechobee, support the Everglades Restoration Project, and increase a higher wet season flow.

Public Comment:

Barbara Cooley spoke to getting the Plan Temporary Deviation thrown out– then get the decision tree changed – use of eminent domain to help restore the Everglades.

Discussion ensued regarding the need for an injunction, Mr. Cuyler stated that after a law firm was hired, an injunction could be filed within 2 weeks, the need for scientific evidence, being effective without affecting the lawsuit, authorize Mr. Cuyler to contact an attorney at his discretion in Tallahassee to act as an intermediary, Attorney General could be helpful or determine that the SFWMD was making a deterrent to the water quality surrounding Sanibel and it's waters.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to authorize the City Attorney to pursue F. S. Statute 373 and contact an attorney in Tallahassee to contact the Attorney General's office.

Mr. Cuyler stated that the attorney(s) could be before Council on January 17, 2006.

The motion carried unanimously.

Discussion ensued regarding other governmental entities calling the Attorney General, too, and the need for a legal strategy and short-term, long-term goal.

Mr. Cuyler stated that Council could interview attorneys or direct the City Attorney to perform the interviews and hire a law firm. He explained that the attorneys would advise Council as to any expert witnesses that would be needed, as well as the need for scientific evidence for a temporary restraining order. He further explained stated that if the short-term goal was to stop the water releases there may be the need to begin a suit to bring a resolution. He also explained the process. He advised Council that if and when Council decided to pursue litigation then Council could hold a shade session. He spoke to the cost differential between a Florida law firm and/or a Washington, D. C. firm.

Public Comment:

Karen Stori Johan spoke to St Lucie River residents getting a cessation of water releases and she suggested working with the Caloosahatchee River.

Chuck Duworken spoke to hiring a law firm, and suggested that the City Attorney make a recommendation.

Councilman Brown made a motion, seconded by Councilman Rothman, to go ahead with legal strategy, direct the City Attorney to hire a law firm to handle possible litigation and proceed with F. S. Statute 373 and bring any legal strategy back to Council in 2 weeks.

Barbara Cooley spoke to watching the SFWMD and temporary deviation plan.

Claudia Burns spoke to finding environmental experts and the January, 2006 newsletter from the MOTE Marine lab.

The motion carried unanimously.

Ms. Zimomra stated that if Council wanted to directed staff to create a draft cover letter and draft survey to be mailed to the electorate and bring back to Council in 2 weeks.

Discussion ensued regarding the draft letter and survey, the need for a motion authorizing the City Manager for the draft letter and survey, the need for a Special Meeting to discuss the survey.

RESOLUTION 06-012 AUTHORIZING AND SCHEDULING A BINDING REFERENDUM PERTAINING TO THE EXPENDITURE OF CITY FUNDS FOR LITIGATION RELATING TO LAKE OKEECHOBEE FRESHWATER RELEASES DEGRADING THE WATERS ADJACENT TO SANIBEL INCLUDING NEARBY BAYS AND ESTUARIES; CALLING FOR AND ORDERING A BINDING REFERENDUM TO BE HELD IN THE CITY OF SANIBEL TO DETERMINE WHETHER A MAJORITY OF ELECTORS PARTICIPATING IN SUCH REFERENDUM APPROVE THE USE OF CITY FUNDS TO INITIATE AND PURSUE LITIGATION WITH THE PURPOSE OF REDUCING, MINIMIZING AND ELIMINATING THE DEGRADED AND DEGRADING WATER QUALITY DIRECTLY RESULTING FROM FRESH WATER RELEASES FROM LAKE OKEECHOBEE AND THE CALOOSAHATCHEE RIVER; ESTABLISHING THE DATE OF THE ELECTION; REQUESTING THE LEE COUNTY SUPERVISOR OF ELECTIONS CONDUCT THE ELECTIONS IN ACCORDANCE WITH THE LAWS OF REGULATION AND CERTIFY THE RESULTS TO THE SANIBEL CITY COUNCIL; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Resolution 06-012.

Council decided not to schedule a referendum.

Discussion ensued regarding holding a special meeting to discuss the water survey.

Councilman Jennings made a motion, seconded by Councilman Rothman, to hold a Special Meeting Thursday, January 05, 2006 at 9:00 a. m. with the topic of Water Quality Issues and Approval of the Survey.

The motion carried unanimously.

Ms. Zimomra noted that Council had appointments scheduled with the lobbyist. She passed out a newspaper article regarding a bill for SFWMD board members being elected rather than appointed.

Discussion ensued regarding the possibility of elected SFWMD board members, looking at all affected water areas from Lake Okeechobee water releases, graph of the Audubon Christmas bird counts show a slow decline, Ms. Zimomra stated unless Council objected staff would continue to work with Merribeth Farnum, website dedicated for water issues, and water information should be sent to surrounding elected officials.

Mayor Johnston made motion, seconded by Councilman Rothman, to use \$40,000 for a water quality website and bring a budget transfer back to Council at the next meeting.

The motion carried unanimously.

Councilman Jennings made a motion to send to all governmental entities all critical information to keep them aware of the water issue.

Ms. Zimomra stated that staff would create a government leaders e-mail and send information by e-mail.

The motion carried unanimously.

Councilman Jennings asked if a letter could be sent to the City of Cape Coral thanking the staff for their support.

Discussion ensued regarding Sanibel sending their legislation to all governmental entities, and keep water quality efforts ongoing.

Councilman Jennings withdrew his motion.

Discussion concerning the mailing to residents regarding the upcoming Recreation Center referendum.

Ms. Zimomra called Council's attention to the Recreation Brochure. She stated that brochure "A" had information that the land was leased for 99 years.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to approve version "A" of the Recreation brochure.

The motion carried unanimously.

Discussion regarding a draft definition of Redevelopment – Reducing the Problem Down to Something Manageable

Council decided to wait until the next workshop to discuss.

Discussion regarding the logistics for the January 17, 2006 City Council meeting scheduled at 6:00 p.m.

Councilman Brown made a motion, seconded by Mayor Johnston, to have the January 17, 2006 Council meeting at 9:00 a. m.

The motion carried 3 to 2 with Vice Mayor Denham and Councilman Jennings voting in opposition.

NEW BUSINESS

Discussion regarding Council Advisory Committees and a request to direct staff to meet with each City Councilmember to develop an issues paper

Discussion ensued regarding leaving the committees as they are at this time.

RESOLUTION 06-013 EVIDENCING THE SUPPORT OF SANIBEL CITY COUNCIL FOR A PROPOSED AMENDMENT TO ARTICLE VII, SECTION IV OF THE STATE CONSTITUTION TO PROVIDE AN ADDITIONAL CIRCUMSTANCE FOR ASSESSING HOMESTEAD PROPERTY AT LESS THAN JUST VALUE THROUGH THE "PORTABILITY" SAVE OUR HOMES ASSESSMENTS LIMITATIONS; PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Resolution 06-013

Councilman Jennings made a motion, seconded by Councilman Brown, to adopt Resolution 06-013.

Discussion ensued regarding affecting the Sanibel tax base, encourages the sell of homes, and disagreement that this was on the agenda.

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

Discussion of potential User Fees for proposed recreation center

Councilman Rothman spoke to a decision needed to have or not user fees to off set the cost of the use of the facility.

Discussion ensued regarding staff bringing back to Council of current costs and potential cost of running the new facility.

Public Comment:

Armand Ball spoke to Council not trying to ascertain the potential costs for running the new recreation facility.

CITY MANAGER'S REPORT

Informational items:

Hurricane Wilma Recovery Update

Discussion ensued regarding Hurricane Wilma debris burning, pressure washing homes due to burning

Final Version of the Policy for Alcohol Sale and/or consumption on City Property

Ms. Zimomra called Council's attention to the final policy.

Proposed Calendar for Advisory Committees

Ms. Zimomra called Council's attention to the calendar in the agenda packet.

Upcoming Re-development Joint City Council/Planning Commission meetings

Thursday, January 12, 2006 at 1:00 p.m.

Tuesday, January 31, 2006 at 9:00 a. m.

Ms. Zimomra called Council's attention to the scheduled meetings.

Household Hazardous Waste Day, Saturday, January 28, 2006

Ms. Zimomra called Council's attention to the Press Release in the agenda packet.

Public Comment:

Claudia Burns spoke to the need for a copy of the final alcohol policy.

CITY ATTORNEY'S REPORT

Mr. Cuyler stated that he had an inquiry from Fort Myers Beach Attorney regarding a Sunshine and Final Disclosure Seminar jointly.

Discussion ensued regarding having a joint seminar and holding the seminar in Sanibel

PUBLIC COMMENT

None.

COUNCILMEMBERS' REPORT

Mayor Johnston's attendance to the 2006 Annual Congressional City Conference Washington, D. C. March 11-15, 2006

Mayor Johnston asked to attend.

Council agreed.

Report regarding the Transit Authority Summit

Mayor Johnston spoke to general consensus was to have a population-based authority.

Councilman Jennings spoke to the January 20, 2006 meeting of the Horizon Council at the Broadway Palm Theater.

There being no further business the meeting was adjourned at

Respectfully submitted by,

Pamela Smith, CMC
City Clerk