

SANIBEL CITY COUNCIL MEETING
August 01, 2006

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

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

Councilman Brown explained that Councilman Jennings was absent due to having cardiac surgery this morning.

Councilman Rothman made a motion, seconded by Councilman Brown, to excuse Councilman Jennings.

The motion carried by consensus.

Members present: Mayor Johnston, Vice Mayor Denham, Councilman Brown and Councilman Rothman. Councilman Jennings absent due to having surgery.

PRESENTATION

Employee of the Quarter, 3rd Quarter, FY 2005-2006

Mayor Johnston announced that Julie Guernsey was Employee of the Quarter.

Public Comments:

Caroline Hoisington spoke to red tide and scientist friends having a red tide model. She further spoke to a warning system set up off the coast of Europe for modeling about 5 different algae, and the possibility of using the model off the coast of Florida.

Hazel Schuller spoke to invasive vegetation and green scum covering the Shall Harbor Canal.

Caroline Hoisington spoke a second time to her conversation of the cause of red tide and was told red tides were caused in up-wellings due to nutrients in the water.

Council Comments.

Councilman Brown read an e-mail written by Chuck Ketteman.

Discussion ensued regarding welcoming any comments by residents, inappropriate that the City Manager was not doing her job, not knowing the purpose of the e-mail, the City Manager follow-up with a letter of explanation of the budget process, no need to respond to every e-mail, and Councilman Brown may want to respond to e-mail.

Ms. Zimomra stated that City Council did serve without compensation at approximately 40 hours per week.

Mr. Cuyler stated that the last 5-Year Budget Committee was defunct.

Councilman Rothman stated he would be pushing for funding for the Shared Use Paths.

Council asked that there be a time certain on the August 15, 2006 Council agenda to discuss budget items.

Vice Mayor Denham spoke to thoughts and prayers going to Councilman Jennings and his family.

Mayor Johnston spoke to a staff update at the September 09, 2006 Budget Hearing.

Councilman Brown mentioned reading an article in the News Press regarding a possible shuttle coming to Sanibel.

Mayor Johnston spoke to the new TRIP program being a state program and no serious conversations at an MPO meeting. She spoke to her understanding of the Lee/Collier County Joint meeting discussing larger issues.

Discussion ensued regarding the proposed trolley system for Sanibel and DOT mentioning sending a trolley to Sanibel, discussion of the weigh station, Ms. Zimomra stated that Mr. Duffy, Planning Director was reviewing the situation at the staff level, and she further spoke to areas being identified that would require the weigh station on environmentally sensitive land, which would require a referendum.

Ms. Zimomra noted that Mr. Duffy had completed several alternatives for the redevelopment plan and would be on the August 15, 2006 meeting.

Mike Valiquette mentioned that Florida DEP was lowering their standard for water treatment and EAP rule had changes.

Planning Commission Report (Mike Valiquette)

Mike Valiquette gave the following report of the July 25, 2006 Planning Commission Meeting:

- Continued the Sanibel Sea School conditional use application for the August 08, 2006 Planning Commission meeting.

Second Reading and Public Reading

ORDINANCE 06-009 AMENDING THE SANIBEL CODE, PART II LAND DEVELOPMENT CODE, CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, TO ADD A NEW SECTION 126-1029 BONUS OUTDOOR SEATS FOR DINING, TO ESTABLISH PROCEDURES AND STANDARDS FOR PROVIDING BONUS OUTDOOR DINING AT RESTAURANTS; PROVIDING FOR CONFLICT AND SEVERANCE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Ordinance 06-009. She explained that this legislation had a long history and was on Council's goals.

Mr. Duffy, Planning Director spoke to the following:

- Planning Commission resolution and held 2 public hearings
- Planning Commission and Planning Department had significant review
- Will not result in adverse impacts to the Sanibel Plan, the environment, commercial districts, public safety, traffic and circulation of on-site parking
- Planning Commission noted that the regulations be significant to the islands local economy and local businesses
- Would further Council's local business initiative
- Proposal would amend the LDC by creating Section 126-1029 "Bonus outdoor seats for dining
- New section would do the following:
 - Define bonus outdoor seating for dining
 - Provide a purpose statement
 - Include application procedures
 - Include short-form procedure, which would allow existing commercial zoning district that had adequate on-site parking pursuant to the Code

- Apply for an increase or bonus outdoor seating that would be equal to 15% of the approved in-door seating or 16 seats whichever was greater
- If an establishment does not have the appropriate number of on-site parking or required outdoor seating above the 15% or 16 seats would be a long-form application
- Planning Commission would hear the long-form applicant
- 15 standards established by the new regulations dealing with location, design and operation of the proposed outdoor dining

Mr. Duffy spoke to the land use survey done by planning staff as part of the redevelopment plan. He explained that there was a fairly thorough analysis of existing restaurant uses, number of seats, location, potential and eligibility of outdoor seating. He further explained that there were discussions on the topic with different restaurants and held 2 public hearings, and the Planning Commission requesting approval of the ordinance.

Discussion ensued regarding the short-form application, current restaurant had parking, but would not have enough for outdoor dining how would that situation be handled, Mr. Duffy spoke to the review and structure that the number of seats 15% or total approved of 16 bonus seats, number of parking space, require for every 3 seats a parking space, would review shared parking, determined the number of seats that could be generated would not cause problems, existing parking problems with Island Cow and SCA, the need to review parking standards, outdoor parking attached to the occupational licenses and stipulate on an annual basis to review the performance of bonus seats, staff aware of in-season parking problems, parking standards deal with land use, could put pressure on the Police Department due to limited parking, nothing noted in the ordinance of the annual renewal of occupational licenses, Mr. Cuyler called Council's attention to page 2 and the procedures for the short-form and conditional use up to a year could be reviewed and revoked, ordinance speaks to the City Manager reviewing the occupational license renewal for performance, could continue to August 15, 2006 Council meeting, possible to request for more than 15% or 16 seats, no cap for requesting outdoor seating, to exceed the percentage would require a long-form application, the need to cap the number of seats, nothing relating to trash, Mr. Duffy noted that there were standards for outdoor trash and noted that there was a standard for trash, something stronger relating to trash, could not have outdoor dining beyond setbacks, businesses and residences that would be affected by increased outdoor seating, Mr. Duffy stated there clearly has to be adequate parking jointly for businesses, and he stated the restaurants serve as an anchor tenant with a customer base.

Public Comment:

Hazel Schuller spoke against the ordinance.

Mr. Duffy spoke to the adoption of an ordinance in 1998 allowing outdoor dining and a provision for parking standards.

Discussion ensued regarding

Karen Storijohan spoke to smoking in the outdoor area and non-smokers would be going through that smoke to getting inside the restaurant.

Mr. Duffy stated that outdoor smoking was allowed through state law.

Mr. Cuyler stated Council could possibly curtail smoking in the outdoor dining area.

Daniel Dix spoke to business owners excited about the ordinance. He also spoke to his having enough parking during season, and one-third of business was bicyclist.

Mike Valiquette spoke to the ordinance coming from the public and those that spoke during the public hearing were in favor of outdoor dining.

Andrew Reding spoke to the history of banning smoke inside restaurants and a citizen initiated referendum, was there a legal way to be able to grant something that was revocable,.

Mr. Cuyler stated the answer was yes and could grant, but the question becomes in trying to promote a purpose, which would be outdoor dining for the enhancement of seasonal activities. He further stated that the questions was if it was on a temporary basis and there was an investment and would engage in what Council was partially trying to promote. He gave Doc Ford as an example of the conditional use permit that if business hours changed then that would trigger another review.

Claudia Burns spoke to the few places offering outdoor dining were the busiest and the more restaurants offering outdoor dining the better parking may be.

Discussion ensued regarding more regulations on the cap in seating, the way trash was handled and how the occupational licenses would come into play with outdoor dining, past discussion on indoor/outdoor dining, could Sanibel pass a law regulating in-door/out-door dining, and Mr. Cuyler stated that Council probably could have a local regulation and would review.

Vice Mayor Denham made a motion, seconded by Councilman Brown, to continue the public hearing until August 15, 2006 at 9:15 a. m., and incorporate the above mentioned amendments to Ordinance 06-009.

The motion carried unanimously. Councilman Jennings was excused.

ORDINANCE 06-010 CALLING FOR AN ELECTION TO SUBMIT TO THE SANIBEL ELECTORATE AN AMENDMENT TO THE SANIBEL CHARTER; PROPOSING AN AMENDMENT TO ARTICLE III, "LEGISLATIVE", TO ADD A NEW SECTION 3.18 TO THE SANIBEL CITY CHARTER (AS CODIFIED) ENTITLED "THE SANIBEL VISION STATEMENT"; PROVIDING FOR THE CONDUCT OF THE ELECTION BY THE LEE COUNTY SUPERVISOR OF ELECTIONS; PROVIDING BALLOT LANGUAGE; PROVIDING FOR NOTICE OF ELECTION AND CANVASSING OF RESULTS; PROVIDING FOR ELECTION AND EFFECTIVE DATE OF AMENDMENTS UPON REFERENDUM APPROVAL; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Ordinance 06-010.

Discussion ensued regarding the need to incorporate the Sanibel Vision Statement in the Code of ordinances,

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Ordinance 06-010.

Public Comment:

Hazel Schuler spoke to a section in the Sanibel Plan called Administration having 12 standards and number (l) explains the process of making an amendment to the Sanibel Plan, and the need to include the Sanibel Plan in to the City Charter.

Andrew Reding spoke to not putting ordinary legislation in the City Charter, but those that shape all other legislation. He further stated that the whole vision statement speaks to the hierarchy of values.

Discussion ensued regarding the importance of placing the Vision Statement in to the City Charter.

Claudia Burns spoke to agreeing with the referendum.

The motion carried unanimously. Councilman Jennings was excused.

ORDINANCE 06-011 AMENDING THE SANIBEL CODE, PART II, SUBPART A, GENERAL ORDINANCES, CHAPTER 10 ANIMALS, ARTICLE 1, BY AMENDING SECTION 10-1 DEFINITIONS, TO INCLUDE A DEFINITION FOR “EXOTIC ANIMAL”; ADDING A NEW SECTION 10-10 ENTITLED “EXOTIC ANIMAL; RELEASE PROHIBITED”; PROVIDING FOR THE PROHIBITION OF THE INTENTIONAL OR UNINTENTIONAL RELEASE OF ANY EXOTIC ANIMAL, SPECIFICALLY INCLUDING ANY MAMMAL, BIRD, FISH AND/OR REPTILE, WITHIN THE BOUNDARY OF THE CITY OF SANIBEL, FLORIDA; PROVIDING THAT NOTHING IN THIS ORDINANCE SHOULD BE CONSTRUED TO PERTAIN TO MIGRATORY BIRDS OR FISH THAT MAY TEMPORARILY INHABIT THE ISLAND OR ITS WATERS AS THEY PASS THROUGH SANIBEL ON THEIR WAY TO AND/OR FROM OTHER JURISDICTIONS; PROVIDING FOR PENALTY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title Ordinance 06-011.

Mr. Cuyler passed out an addition to the ordinance speaking to the animal life form and a list of animals that could not be released in to the wild. He stated the ordinance would prohibit the intentional or unintentional of the release of exotic animals. He further stated that attached would be a user friendly list, not a comprehensible list of animals that someone might release in to the environment. He explained the bolded language were the proposed 2 changes as follows:

- Life form and kingdom animalia, which were technical terms
- List of animals

Discussion ensued regarding to the threat of exotic animals to indigenous animals on Sanibel Island, and make certain that everyone knows the threat of exotic animals on the island.

Councilman Rothman made a motion, seconded by Councilman Brown, to adopt Ordinance 06-011 with the amendments.

The motion carried unanimously. Councilman Jennings excused

CONSENT AGENDA:

Mr. Cuyler brought to Council’s attention that item (h) included the correction of a conclusion date from June 30, 2006 to June 30, 2007.

Mayor Johnston asked that the minutes be amended on page 11 adding “at this time” after Mayor Johnston stated that the representatives could not help.”

Council pulled Consent Agenda items (b), (d), and (i).

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

- a. **Approval of minutes: July 18, 2006 Regular Meeting**
- f. **Approval of Frequency Reconfiguration Agreement between the City of Sanibel and Nextel South Corp. relating to certain 800 MHZ frequencies and authorizing City Manager to execute Agreement**

- h. **Acceptance of a grant award of \$10,598 from the Department of State, Division of Historical Resources, Historic Museum Grant Program for General Program Support to be applied toward the expense of the Historical Museum Administrative Assistant.**

The motion carried unanimously. Councilman Jennings was excused.

Ms. Zimomra read the titles of the following Resolutions.

- c. **RESOLUTION 06-110 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-079 AND PROVIDING AN EFFECTIVE DATE** (to appropriate the \$3,000 contribution from Billy Kirkland for shared use path maintenance)

- e. **RESOLUTION 06-115 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-078 AND PROVIDING AN EFFECTIVE DATE** (to increase the FY06 ball field maintenance appropriation from the Lee County School Board by \$6,813 and to decrease the appropriation from Lee County by \$3,652 to reflect obligations based on Sanibel's actual, as opposed to budgeted, expenses and to increase ball field maintenance expense by \$3,161 to reflect the increase in expense)

- g. **RESOLUTION 06-112 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-077 AND PROVIDING AN EFFECTIVE DATE** (This project replaces and upgrades the City Police Department's Dispatch and Records management hardware and software systems. Total project cost is \$370,000 of which Lee County is paying 60% from 9-1-1 surcharge monies. City's share is approximately \$140,500. to roll-forward from FY 2005 fund balance the appropriation for the following w phased projects: 1) City's share of (County contributing 65% of project cost_ Positron Power RMS 4 licenses @ \$38,660 each, 5 licenses for mobile dispatch workstations @ \$39,671 each and 2 power radio positions @ \$62,166 each, all of which interface with the new 911 system and 2) \$19,999 for the purchase of an integrated license plate photo system)

- b. **RESOLUTION 06-109 NOMINATING MS. PAMELA SMITH FOR THE FLORIDA LEAGUE OF CITIES "FLORIDA CITIES EXCELLENCE" AWARD AS CITY CLERK OF THE YEAR; AND PROVIDING AN EFFECTIVE DATE**

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-110, 06-115, and 06-113.

The motion carried unanimously. Councilman Jennings excused.

- d. **RESOLUTION 06-111 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-080 AND PROVIDING AN EFFECTIVE DATE** (in the General Fund: to appropriate \$20,901 in revenue from the proceeds of the auction and \$11,262 from insurance proceeds to add \$2,923 back to the Reserves for Contingencies and use \$10,100 in the Finance Department for unforeseen overtime needs, \$4,000 for the costs of holding the auction, \$11,500 additional audit fees for single audit requirement of grants and \$3,600 for office supplies and printer replacement. Also to move \$7,100 from the Legal Department to the Legislative Department for Water Quality

advertisements. In the Historical Committee: to appropriate \$29,755 from the Dinner Dance fundraiser for Overtime, Other Current Charges and Promotional Activities)

Ms. Zimomra read the title of Resolution 06-111.

Discussion ensued regarding overtime.

Ms. Lynch spoke to the overtime and losing a staff member in the sewer department and expanded receivable duties to catch up on the back log.

Councilman Rothman made a motion, seconded by Mayor Johnston, to adopt Resolution 06-111.

The motion carried unanimously.

i. **RESOLUTION 06-113 REQUESTING AND URGING THE LEE COUNTY COMMISSION TO CLOSELY MONITOR THE CAUSEWAY CONSTRUCTION IN LIGHT OF THE PREVIOUS FAILURE OF A CONCRETE PILING; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 06-113.

Councilman Brown made a motion, seconded by Councilman Rothman, to adopt Resolution 06-113.

The motion carried unanimously. Councilman Jennings was excused.

Council recessed at 11:04 .a m.

Council reconvened at 11:16 a. m.

OLD BUSINESS

Water Quality Issues

Staff Reports

Dr. Loflin reported the following:

- Continue to see multiple algae
- New threat to seagrass beds and never seen in Florida
- Laboratory were having staff wear dry suits to eliminate infections
- 3 toxic algae's in the Caloosahatchee River

Discussion ensued regarding allowing Councilman Brown, the City Manager, the City Attorney and Dr. Loflin meet with Dr. Hartner, Lee County Health Department, Dr. Loflin could contact Dr. South to make him aware of the new algae, was there a mandate that Lee County Health Department look at the issue, Dr. Loflin stated that it was the discretion of the Health Department of what focus and there was limited staff, Ms. Zimomra stated that most health department had specific mandates and typically under funded, may need to hire another person to review medical conditions, should there be an alert process about the issue, the latest algae outbreak the last 3 weeks, putting out an alert that there were environmental dangers, Ms. Zimomra stated Dr. Loflin could write a report and send to all officials including DEP officials

Public Comment:

Mike Valiquette gave a report on Councilman Jennings. He spoke to working with Lee County Health Department and the need of documented proof of people being treated with respiratory problems associated with the water.

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to direct Councilman Brown, the City Manager, the City Attorney and Dr. Loflin to meet wit the Lee County Health Department representatives.

The motion carried by consensus. Councilman Jennings was excused.

Dr. Loflin continued his report as follows:

- Red tide in area and highest counts north Captiva
- Lake Okeechobee 12.29 feet
- WCA's used for agriculture and for the slow feed of the agriculture water to the Everglades with no capacity for lake water

Discussion ensued regarding Ding Darling concerned of the mining residues coming down the Peace River, numerous problems with phosphate industry, biggest problem was the interruption of the flow of water where when digging the land was capped with a layer of clay sediment that does not result in the natural overland flow of water, which creates clay settling ponds instead of sheet flow as was historically done, DEP and ACOE continuing to permits mines at Horse Creek and continues to make things worse.

Meeting Reports

July 27, 2006 Extension Service meeting at FCGU

Dr. Loflin gave the following report of the water release meeting:

- Sanibel concerns were conveyed
- Latest version of water release schedule did not favor estuaries
- Current schedule August 07 ACOE would release chosen schedule and a water management plan for Lake Okeechobee
- Do not have Environmental Impact Statement – released around August 07 and public comment would last for 45 days
- Implement schedule January, 2007

Dr. Loflin spoke to the Extension Service meeting as follows:

- Holly Downing attended
- True Green industry rep raised concern having multiple regulations and go to legislature to pre-empt local government regulations
- True Green spokesman not wanting a ban to use of fertilizer
- Never the intent to ban fertilizer on the island

Discussion ensued regarding if an ordinance was adopted by a municipality regulating fertilizer could it be grandfathered in by the legislator, Mr. Cuyler stated that it could, but the legislature could say that they pre-empted the area or an ordinance would be inconsistent with what might be passed statewide, Sanibel draft could be a model, by October the Vegetation Committee would have recommendations, important to get the Southwest Florida League of Cities, Regional Planning Council and the Florida League of Cities involved, Caloosahatchee Basin Committee trying to work toward all southwest Florida involvement, should keep track of the legislature timetable,

Mr. Cuyler stated there could be grandfathered but not necessarily, would not hurt for the City move forward, possible other entities to agree to a fertilizer ordinance, Vegetation Committee to have a recommendation to Council by October, have members of the Southwest Florida League of Cities, Florida League of Cities, Regional Planning Council to agree with an ordinance, and the need to keep tract with the legislative timetable.

Councilman Rothman spoke to the attendance of the fertilizer meeting as follows:

- 2 County Commissioners (Commissioners Hall and Judah)
- Many attendees from the Landscaping Industry
- Steve Brown, Lee County Extension Agency in charge of meeting

- Eliminate those situation where fertilizers would be needed
- Could abuse use of fertilizer
- Commissioner Judah answer was discontinuing water releases from Lake Okeechobee

Discussion ensued regarding Commissioner Hall stated Lee County was asked if the Commission would not pass fertilizer legislation until the Stat could review,

Mike Valiquette stated that the Lee County Board of Realtors ready to mount a massive campaign. He spoke to builders not wanting to have a problem with water pollution.

Councilman Rothman reported the following from the fertilizer meeting at FGCU:

- Not well attended
- No new information regarding red tide
- Eliminate nutrients being released into the water
- No scientific evidence that leeching of nutrients in to the water caused by released nutrients
- Dr. Brandt reported that the algae blooms was getting stronger and stronger

Dr. Loflin spoke to extraordinary growth and new development, Sanibel partially paid along with Bonita Springs for a report on red drift algae authored by Dr. Larry Brandt, and an update next Council meeting on the connection of run-off and red tide.

Discussion ensued regarding the Mote Marine Conference, only invited people that shared their point review, dealing with pure science or politics, science should be multiple theories, and source of funding for scientist.

Mike Valiquette spoke a second time to PURRE tracking funding, major funding received and pulled if in opposition of the ACOR/SFWM, tracking funding to see if there were candidates that did not accept funding from the sugar industry, and not enough funding for red tide. He spoke to the e-mail he sent and called Council's attention of Plan 6 that occurred in 1993. He also spoke to using the slogan "The Only Fix is Plan 6". He spoke to monies funding the SFWMD.

Discussion ensued regarding the legislative calendar, short-term goal to stop water releases, focus on the water release schedule, opportunity to have influence would be during the 45 day public comment, legal action needed if it could be effective by early November, and ACOE goal was to take care of the estuary and Lake Okeechobee.

Status report on research being conducted by Sanibel Captiva Conservation Foundation (SCCF) funded by the City of Sanibel regarding seagrass and algae blooms

Dr. Loflin stated there was a 2-part study and the algae in the refuge died back, but put large amounts of nutrients in the water, report at the August 15 Council meeting that had been funded to date.

Discussion ensued regarding sending a letter about funding of wildlife refuges, the City should go on record of funding of refuge.

Correspondence

Letters to the elected officials, Army Corps of Engineers and the South Florida Water Management District

Mr. Cuyler spoke to the latest response to the Federal EPA regarding transferring dirty water. He further spoke to a letter sent to SFWMD and ACOE.

Discussion ensued regarding Tammy Hall's contributions, pursuing the referendum, letter included 3 items, feasibility study, pull letters, Ms. Zimomra called Council's attention to C-43 meeting, and Beveridge & Diamond prepare a letter regarding C-43.

Report regarding discussion with other governmental entities toward litigation

Mr. Cuyler explained the following:

- On-going process and had more calls scheduled
- Nothing concrete from attorneys
- Would discuss findings with Councilmembers
- East Coast attorneys discussion cause of action with City attorneys
- Referendum for litigation
- City Clerk spoke to Supervisor of Election regarding the referendum would be December 05
- Conversation regarding state requirements of holding ballot machine and clearing them and processing Sanibel ballot, the earliest date would be December, 19
- Question becomes do you want the mail ballot out on December, 19 and are not forwarded
- Resolution would come back to Council to amend the election date

Discussion ensued regarding a survey and questions of taking legal actions to residents, and less expensive, lack of momentum with attorney that Mr. Cuyler was talking with regarding litigation, Dr. Loflin stated there was a possibility of water releases with a tropical storm, Council focus on the short-term, Everglades Restoration Project a long-term solution, decision made sometime this fall regarding release schedule, Dr. Loflin stated the opportunity to have in-put was for 45 days short of legal action, writing of letters, contacting people, and a letter from Governor Bush to Woodley of the ACOE.

Council recessed at 12:40 p.m.

Council reconvened at 1:33 p.m.

Discussion ensued regarding Council's frustration, the need to see results, Lake Okeechobee level fairly steady due to little or no rain, asked Mr. Cuyler if there was legal action to be taken by early November, Mr. Cuyler answered that the legal premise was that the ACOE had not made a decision and going through their analysis of public comment and due to that there were no opportunities to take legal action because a decision had not been made, current release schedule allowed to harm the estuary, any avenue to litigate if the new water release schedule would continue harm of the estuary, Mr. Cuyler stated that there was a litigation basis, but no entry point at this time, and could litigate once the new schedule was in place, put in place the groundwork to help further litigation, if necessary, Mr. Cuyler stated the second part of the equation; 1) if there was no injunction granted then there would be a lengthy litigation time period; 2) potential litigation if ACOE failed to look at comments, go through process, and hurried through the process and could enjoin them from going forward with the new regulation study, and the issue would be not if a regulation study could be imposed, but whether the continuation of the current plan rather than going through with a new plan, Mr. Cuyler further stated that a public agency can not be made to do what Council wants them to do, dike integrity issue no new issue, place dike integrity and estuary survival on equal footing, there needs to be a letter from Governor Bush to Woodley, Mr. Cuyler stated that the options were; 1) force the ACOE to stay with the current schedule, which was not a good solution); 2) accept the new solution, which does not appear to be a good solution; 2) immediately or over a period of time of litigation force the ACOE to restudy the issue, Mr. Cuyler stated would advise and upon knowing the situation attempt to seek an injunction in federal court, time frame for an injunction could be early spring, survey of citizens, Missosukee Indian suit took 5 years and had gone back for further review, Dr. Loflin stated that both endangered species, species of special concern and threatened species that were impact and most species were mobile, Mr. Cuyler stated that if an injunction were granted it would be not to go with the new regulations, but force more study and stay with the current regulations, an injunction would not stop the water, ACOE had 4 objectives, ACOE not satisfied all the objectives, Mr. Cuyler stated that would be part of the objections and comments, Dr. Loflin stated that the ACOE had the power to manage Lake Okeechobee correctly, and the new schedule gives the ACOE of carte blanche, try to get

business leaders from southwest Florida to write letters and comments to the ACOE, and the issue would affect property values.

Public Comment:

Discussion ensued regarding getting ready for litigation, review problems with endangered to threatened species, encourage letter writing, and continue with referendum on December 19, 2006.

Councilman Brown made a motion to direct the City Attorney and outside Counsel draw-up a lawsuit and find any problems with endangered species.

The motion died for the lack of a second.

Erick Lindblad spoke to receiving an e-mail from the east coast that the Martin County Commission had back down in sending a letter of approval of the new regulation schedule.

Paul Reynolds spoke to a previous comment from the City Attorney where there may be circumstances where Lee County could be drawn in to a lawsuit.

Mr. Cuyler stated the question would be if that's the way the City wanted to accomplish allies by forcing them into a lawsuit. He further stated he was referring to i.e. the Seirra Club began a lawsuit and the City concerned that it might not be in it's best interest or forced to go in to litigation to protect the City's interest.

Mayor Johnston stated the following were on the table:

- The survey
- The referendum
- The medical evidence
- Discuss documentation by outside Counsel

Discussion ensued regarding endangered and threatened species, Dr. Loflin stated that manatee had critical habitat at the mouth of the Caloosahatchee River with 30% of seagrass beds affected, manatee aren't mobile in the winter time and there was a cold snap they must come to the estuary to feed because there was no food in the upper river to eat and then venerable to feed, Mr. Cuyler stated that the criteria not only be affected, but a take of the habitat be affected and will continue to look at that criteria, SFWMD stated there was current government land to use for water storage, taking to long for a water referendum, citizen survey may be useful, possible medical issues, Mr. Cuyler stated that due to litigation was not imminent and a briefing by outside Counsel and then come in to session for discussion, Mr. Cuyler stated the next focus of litigation would be the new schedule, several different algae's and toxins that were produced, the need to be more aggressive, Mr. Cuyler stated that if there were 3 votes for litigation outside Counsel would meet with Council in closed session, Council not accomplishing anything that last 2 meetings, Mr. Cuyler stated that if litigation were imminent then Council could meet in closed session, Mayor Johnston recounted 3 motions; 1) a motion pertaining to a referendum or survey; 2) a motion pertaining to medical issues; 3) a motion pertaining to further contact with outside Counsel, briefings and possible litigation, Mr. Cuyler stated that if Council was not going forward with a referendum, then the correct motion would be to direct the City Attorney to prepare a resolution and bring back at the next Council meeting repealing the prior motion.

Vice Mayor Denham made a motion to direct the City Attorney to bring back a resolution repealing the water quality referendum on December 19.

Discussion ensued regarding educational mailers going out in early December, and Mr. Cuyler explained the mail ballot election process.

Vice Mayor Denham withdrew his motion.

Councilman Brown made a motion to table water discussion for 2 weeks.

The motion died for the lack of a second.

Upcoming Meetings

Water Resource Advisory Commission (WRAC) Issues Workshop Thursday, August 10, 2006 to present the C-43 West Storage Reservoir Project Preliminary Design

None.

Other

None.

Council decided to discuss the following:

Recreation Center

Monthly Progress Report

Ms. Zimomra stated that Council would be receiving monthly reports. She stated that SFWMD issued the permit and demolition had begun. She explained that there was an additional Resolution for a budget amendment to pay insurance fees and the City would be paying the building permit fees.

Report from Henry Woodroffe, Woodroffe Architects and Peter R. Brown construction manager

Mr. Woodroffe stated that work was going forward.

Discussion ensued regarding asked what would be happening in the month of August, the demolition would continue and fill would be implemented, construction would begin the middle of September, and the commitment from the masonry contractor was on schedule.

Ms. Zimomra stated that the demolition would be used for fill in other places.

RESOLUTION NO. 06-116 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2006-081 AND PROVIDING AN EFFECTIVE DATE

(to appropriate the \$84,489 from the recreation Center Reserves to Other Current Charges for Building Permit and Impact Fees)
Vice Mayor Denham made a motion, seconded by Councilman Rothman, to adopt Resolution 06-116.

The motion carried unanimously. Councilman Jennings was excused.

Utilities Department

Sanibel Sewer Annual Budget Review

Ms. Zimomra stated this was the time and place of the annual review of the operating and capital expenses of the sewer budget. She also spoke to a resolution establishing the rates at the next Council meeting.

Discussion ensued regarding the total budget included Donax and Wulfert, any increase must be adopted by the final budget adoption, Ms. Zimomra stated there was 3 options; 1) 10-year option; 2) 20-year option; 3) if Council had a modification of the sewer budget, if Council had questions for staff a memo answering questions would be sent to all Councilmembers, Ms. Zimomra stated that if it was a rate increase of 3% a notice must be sent to residents, and staff would need direction to send out the notices.

Direction to staff regarding pay-back schedule

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to prepare a resolution regarding the pay-back schedule at the August 15, 2006 City Council meeting for a 10-year repayment term.

The motion carried unanimously. Councilman Jennings was excused.

Next steps and Notice for sewer rate adjustment

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to call a hearing to establish a rate increase on August 15, 2006 City Council meeting and send out notices.

The motion carried by consensus. Councilman Jennings was excused.

Discussion ensued regarding

Council recessed at 3:19 p. m.

Council reconvened at 3:33 P. M.

Shared Use Path

Staff report on proposed improvements to Shared Use Path on Periwinkle Way from Roadside City Park to Community Church

Council asked staff to prepare alternatives for the proposed Shared Use Path

Mr. Cuyler stated that it would be necessary to have a referendum due to the March, 2005 charter amendment. He explained that the referendum must be a mail ballot.

Discussion ensued regarding a survey needed, mail ballot necessary, reviewing the left-turn in to Dixie Beach and needed, 5-foot right-of-way, Mr. Cuyler stated that if there was a conclusion that it was a way to for there was a resolution on the books and the need of a resolution to repeal.

Vice mayor Denham made a motion, seconded by Councilman Rothman, to give authority to staff to proceed with the option discussed, staff to prepare funding alternatives and a resolution repealing the eminent domain resolution.

The motion carried unanimously.

Mayor Johnston spoke to receiving a list of names from Representative Trudi Williams and asked Council if they would like to submit other names and Council decided on the following names:

- Support Erick Lindblad Environmentalist
- Dr. Loflin - Biologist
- Mike Valiquette – Developer
- Councilman Steve Brown - Political

Dr. Loflin spoke to the list coming up from the Lee County Commissioners meeting today and the list being altered.

COMMITTEE BOARDS AND COMMISSION LSITEN

Semi-annual status report regarding the Sanibel Police Pension Plan by Burgess Chambers.

Ms. Zimomra reminded Council that they had requested to hear a semi-annual report of the Police Pension.

Mr. Chambers gave the following report:

- Had a good quarter
- Plan up 8.6%

- Other plans between 4.5 and 6/5% increase
- Board astute adopting a more diverse investment program (real estate, small cap value, international equities and scaling back of the exposure to bonds that represent about 30% of the program.

Discussion ensued regarding any changes going forward, Mr. Chambers states that if interest rates do begin to finally impact at the yield curve, bonds reach more normal returns around 6.5% the coupon would continued to be at 6.5% in the portfolio, he would favor a general allocation of bonds, everything remains the same as of the end of June, bill was not adopted to change the international allocation, 5-year annualized the domestic performance, Mr. Chambers explained that there was diversification issue over the past 5 years, 5 year number at the average and 50th was average and the probe of the equity was not as nearly as diversified.

Council thanked Mr. Chambers.

RESOLUTION 06-114 APPOINTING MEMBERS TO THE SANIBEL AUDIT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Resolution 06-114.

Audit Committee ballots were passed to Council.

Mr. Cuyler stated the following candidates with 4 votes were selected:

2 Armstrong
2 Bralove
4 Ketteman
4 Uhler

Mr. Cuyler passed out another round of ballots.

Discussion ensued regarding Council interviews with Mr. Armstrong and Mr. Bralove.

Mr. Cuyler read the votes:

4 Armstrong
0 Bralove

Mr. Armstrong was appointed to the last seat of the Audit Committee.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-114 and include Mr. Ketteman, Mr. Armstrong and Mr. Uhler as members of the Audit Committee.

The motion carried unanimously. Councilman Jennings was excused.

CITY MANAGER'S REPORT

Informational items:

Quarterly Financial Report

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

City Manager nominated to serve on the School Advisory Council (SAC) as a community member for 2006-2007 school year

Ms. Zimomra called Council's attention to the e-mail received from Barbara Van Harten, Principal of the Sanibel School regarding her nomination to serve as a member of the School Advisory Council.

Councilman Brown made a motion, seconded by Councilman Rothman, to approve Ms. Zimomra's participation as a member of the Sanibel Advisory Council.

The motion carried unanimously. Councilman Jennings was excused.

Discussion ensued regarding the quarterly financial report the last page of the budget original and amended and the next column was actual and original amended for 12 months and the actual was for 10 months for 81% of the year, Ms. Zimomra stated that there was some items that were straight line and easy to calculate and others were more complex with a seasonal fluctuation.

Community Housing Resources (CHR) Quarterly Financial Statement

Ms. Zimomra called Council's attention to the Quarterly Financial Statement in the agenda packet.

Mike Cuscaden, CHR Board Chairman explained the following:

- Better explanation this year over last year's budget

Ms. Zimomra asked Council to review the letter to Governor Bush regarding the City's list of names.

CITY ATTORNEY'S REPORT

Mr. Cuyler spoke to the following:

- Attorney General opinion regarding a City of Margate question prohibits a municipality from prohibiting smoking in a City park

Mayor Johnston spoke to the Florida League of Cities Conference scheduled for Jacksonville and could Mr. Cuyler speak to voting by Councilmembers.

Mr. Cuyler spoke to the following:

- Councilman Brown would vote on any southwest board items
- Mayor Johnston vote on League issues

PUBLIC COMMENT

None.

COUNCILMEMBERS' REPORT

Vice Mayor Denham brought up his involvement of the Nerita Street project. He further spoke to a similar situation regarding Island Inn Road. He asked that Council allow staff to perform a traffic study during season on Nerita Street.

Discussion ensued regarding traffic using Cardium and Junoia before Island Inn Road was closed, spoke to the gentleman wanting Nerita closed and asked that he speak to other residents.

Discussion regarding public participation.

No discussion.

There being no further business the meeting was adjourned at 4:41 p. m.

Respectfully submitted by,

Pamela Smith, CMC
City Clerk