

**SANIBEL CITY COUNCIL REGULAR MEETING  
OCTOBER 17, 2006**

A Continental Breakfast was served and a Breast Cancer Program Commemorating Breast Cancer Month was given to employees and residents beginning at 8:30 a. m..

Mayor Johnston called the meeting to Order at 9:05 a. m..

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

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

**PRESENTATION(S)**

**Proclamation proclaiming October as Breast Cancer Awareness Month**

Councilman Brown read and presented a proclamation proclaiming October, 2006 as Breast Cancer Month to Bonnie Olson, Executive Director Susan B. Komen Cancer Foundation.

**Proclamation proclaiming October 23 to October 31, 2006 as Red Ribbon Week supporting the Coalition for a Drug Free Southwest Florida**

Mayor Johnston read and presented a proclamation proclaiming October 23<sup>rd</sup> through October 31<sup>st</sup> as Red Ribbon Week to Chief Tomlinson.

**Recognition of Employee of the 4<sup>th</sup> Quarter**

Mayor Johnston recognized Gordon Kraft as Employee of the 4<sup>th</sup> Quarter.

**Public Comments:**

Claudia Burns spoke to the upcoming discussion on Australian Pines. She requested that the discussion on Australian Pines be the first item on the November 21, 2006 agenda.

Council reminded the audience that the above-mentioned discussion was scheduled for a time certain at 10:00 a. m.

Barbara Cooley requested that the ballot question of water litigation be taken off the December 19<sup>th</sup> mail ballot.

Council decided for discussion during water quality.

Jodi Brown gave a historical tidbit.

**Council Comments.**

Councilman Jennings spoke to the Legislative Appointee Gary Aubuchon and a reception at the Bank of the Islands, November 02.

Vice Mayor Denham spoke to his concern of the formular retail issue in the Planning Department. He further spoke to Council's intent and recommended it come before Council in the near future.

Discussion ensued regarding the need for an agenda item, suggested the Planning Commission take one more review and then to Council, changes made since document sent to Council, would be on the October 24 Planning Commission agenda, Planning Commission should provided a detailed analysis, the need for a progress report, and add for discussion on the November 07, 2006 City Council meeting.

Mr. Cuyler stated that there could be a general discussion. He further stated that there would be a public hearing if Council decided to go forward with an ordinance.

Discussion ensued regarding the item at the Planning Commission level, and the need for the Planning Commission to conclude discussion and/or recommendations.

Councilman Brown made a motion, seconded by Councilman Rothman, to request the Planning Commission complete the discussion of formular retail and forward to City Council.

Mr. Cuyler stated that the only issue would be if the Planning Commission stated that they were not ready to present a recommendation to City Council. He also stated that in the spirit of working together a recommendation would come back to Council.

Ms. Zimomra stated that there were 5 Tuesdays in the month of October.

Jack Samler spoke to the upcoming discussion.

The motion carried unanimously.

### **Planning Commission Report**

Mike Bilheimer gave the following report of the Tuesday, October 10, 2006 Planning Commission Report.

- Completed review of the EAR based amendments to the Sanibel Plan
- Discussion of near island land in the EAR for Below Market Rate Housing and included in the EAR
- Discussion of
- Zoning of neighborhood
- City to consider of dwelling units in motel/hotel/inns
- Motion approved for mixed use of residential development a high priority

Mr. Cuyler requested that Council add 2 resolutions for sewer assessment agreements to the agenda.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to add Resolutions 06-155 and 06-156 before the Consent agenda.

The motion carried unanimously.

### **First Reading of an ordinance and scheduling of public hearing.**

**ORDINANCE 06-015 AMENDING CHAPTER 66, TRAFFIC, ARTICLE 11, PARKING, STOPPING AND STANDING, SIVISION 2, BEACH AREA PARKING RESTRICTIONS, SUBDIVISION 11, PERMITS, SECTION 66-85 – FEES; HOURS, OF THE CODIFIED ORDINANCES OFF THE CITY OF SANIBEL; ESTABLISHING PARKING GEES AND HOURS FOR THE ENTIRE LIGHTHOUSE PARK FACILITY, INCLUDING, BUT NOT LIMITED TO, LIGHTHOUSE GULFSIDE PARKING LOT AND LIGHTHOUSE FISHING PIER PARKING LOT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 06-015.

Council set the second reading and public hearing for Tuesday, November 07, 2006 at 9:15 a. m.

**SECOND READING AND PUBLIC HEARING  
ORDINANCE 06-013 AMENDING THE GENERAL EMPLOYEES'  
RETIREMENT PLAN PROVIDING FOR THE CREATION OF A COST OF  
LIVING ADJUSTMENT; PROVIDING FOR THE CREATION OF A DEFERRED  
RETIREMENT OPTION PROGRAM; PROVIDING FOR CODIFICATION;  
PROVIDING FOR REPEALER; PROVIDING FOR CONFLICT SEVERANCE;  
AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 06-013.

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

Discussion ensued regarding other jurisdiction having implemented a COLA in their pension plan, should be shared risk for the employer and employee, including a COLA of 2.7% for general employee pension plan, not linked to any return in the pension fund, COLA recommendation taking place outside of the union contract, and benefits provided over and above other municipalities.

Councilman Rothman made a motion to table and direct staff with alternatives for indexing the COLA and alternatives for the union contract to provide something the citizens obtain out of providing the benefits.

The motion died for the lack of a second.

Mr. Jim Isom, Director of Administrative Services spoke to the following:

- General Employees Pension Plan cover all employees other than sworn officers
- The union represents only a portion of general employees
- Non-union employees bargaining affect other employees

Discussion ensued regarding the union negotiation used to bargain items, union did not bring to management, Mr. Isom stated that 13.9% and based on the actuary and using assumption the actuary was able to fund the COLA and drop proposed now and in the future with the exception if returns were high the City's contribution would be less and if the return was lower the City's contribution would be higher, useful bargaining tool, Ms. Zimomra stated that if Council used as a bargaining tool, but a number of employees stated that benefits, the need to be competitive without giving weigh to union negotiations, retirement plan in place before union was created, in fairness to employees and citizens that the City remain competitive, a time when there would be a need to replace long-term employees, Ms. Lynch stated that there was difficulty in retention and recruitment and 5-year study that if actuarial assumption and brought to Council at a budget neutral process, the reason for the creation of the general employees union, City provides 7.5% to the general employee pension fund, obligation to citizens and employees, would affect all employees, how was the CPI identified, Ms. Lynch stated that the pension board requested that the consultant review all actuarial assumptions and the 2.7% COLA was developed from a list to follow budget neutral criteria, other governmental pension plans were reviewed and found to be a COLA of 3%, request to review the indexing of the COLA, the need to request a way to extend the union contract.

**Public Comment:**

Bruce Rogers requested consideration of a COLA for retiree pension plan. He requested to be provided as 1) have Foster and Foster to review the inclusion of retirees, 2) amending the ordinance to permit a retiree to make a contribution, and 3) request consideration to amend the ordinance to grant COLA in an ad hoc situation by Council.

Les Pendleton, Chair of General Employee Pension Board spoke to the recommendation being fair and also budget neutral. He also stated that the pension fund belonged to employees and ad hoc was not necessary.

Discussion ensued regarding Mr. Pendleton's background as deputy Director of the State of Massachusetts for employee pension plan.

Ms. Zimomra stated that the City Manager and City Attorney were not included in the General Pension Plan. She further stated that several years ago the pension plan was amended to allow general employees to contribute 5% of their salary and Police pension contribute 8% with at least 50% of Police Department employees in the general employee pension plan.

David Berger spoke against the COLA.

Peter Pappas spoke against the COLA.

Henry Glisson spoke against the COLA.

Discussion ensued regarding Councilman Jennings being in the Florida retirement system and having a 3% COLA every year in the Florida Retirement system, should vote on the ordinance today, and should bring back in 2 weeks.

The motion carried with Councilman Rothman and Vice Mayor Denham voting in opposition.

**ORDINANCE 06-014 AMENDING THE PENSION PLAN FOR THE CITY'S POLICE OFFICERS, PROVIDING FOR THE CREATION OF A COST OF LIVING ADJUSTMENT; PROVIDING FOR THE CREATION OF A DEFERRED RETIREMENT OPTION PROGRAM; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEALER; PROVIDING FOR CONFLICT SEVERANCE; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 06-014.

Councilman Jennings made a motion, seconded by Councilman Brown, to adopt Ordinance 06-014.

Discussion ensued regarding a competitive market for employees.

The motion carried with Councilman Rothman and Vice Mayor Denham voting in opposition.

Discussion ensued regarding the recommendations raised by Bruce Rogers to include current retirees, and Mr. Zimomra stated that it would cost approximately \$500 per plan to run the figures.

Council directed staff to ask the actuarial to review including current retirees in both pension plans and bring back to Council.

**RESOLUTION 06-155 APPROVING AN AGREEMENT WITH THE LEE COUNTY TAX COLLECTOR FOR THE COLLECTION OF THE CITY OF SANIBEL, SANIBEL SEWER SYSTEM PHASE 3A EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES; PROVIDING FOR REIMBURSEMENT TO THE TAX COLLECTOR FOR THE ADMINISTRATIVE COSTS ASSOCIATED WITH THE ASSESSMENT AND COLLECTION OF THE SANIBEL SEWER SYSTEM PHASE 3A EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 06-155.

Councilman Brown made a motion, seconded by Councilman Jennings, to adopt Resolution 06-155.

The motion carried unanimously

**RESOLUTION 06-156 APPROVING AN AGREEMENT WITH THE LEE COUNTY TAX COLLECTOR FOR THE COLLECTION OF THE CITY OF SANIBEL, SANIBEL SEWER SYSTEM PHASE 3b EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES; PROVIDING FOR REIMBURSEMENT TO THE TAX COLLECTOR FOR THE ADMINISTRATIVE COSTS ASSOCIATED WITH THE ASSESSMENT AND COLLECTION OF THE SANIBELSEWER SYSTEM PHASE 3B EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENTS; AUTHORIZING THE CIT MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE**

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-156.

The motion carried unanimously

Mr. Cuyler explained that when there was an assessment there was an alternative collection on the tax bill. He further stated that these resolutions would adopt the agreements between the tax collector and property appraiser.

**CONSENT AGENDA**

Consent Agenda items removed for discussion by Council were (a), (b), (c), (d), (e), (f), (h), (i), and (j).

**g. Request from Lee County Metropolitan Planning Organization (MPO) for funding FY 2006/2007 in the amount of \$813,288**

Councilman Jennings made a motion, seconded by Vice Mayor Denham, to approve the MPO contribution.

The motion carried unanimously.

**a. Award work to Sanibel River Vegetation Clearing to Canoe Adventures in the amount of \$70,000 as sole source vendor**

Councilman Rothman made a motion, seconded by Councilman Jennings, to approve the work to Canoe Adventures

The motion carried unanimously.

**b. Approve Change Order No. 6 to the Sanitary Sewer System Expansion Project Phase 3A, decreasing the contract amount by \$507,367.04, while increasing the contract time by 475 calendar days and authorize the City Manager to execute the change order**

Discussion ensued regarding the way this project would be completed and was being completed.

Councilman Rothman made a motion, seconded by Councilman Jennings, to approve change order no.6.

The motion carried unanimously.

**c. Approve Change Order No. 4 to the Phase 3B Sanitary Sewer System Expansion Project in the amount of \$166,287.50 and authorize the City Manager to execute the change order**

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to approve Change Order No. 4.

The motion carried unanimously.

- d. **Award contract to perform a Sanitary Sewer Evaluation Survey (SSES) to RJN Group, Inc. in the amount of \$166,408.08 and authorize the City Manager to execute the change order**

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to approve the contract.

The motion carried unanimously.

- e. **RESOLUTION 06-154 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-004 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$26,461 from available beginning fund balance to FY 06 revenue in excess of estimated amount, for the additional expense necessary to award the SSES contract to RJN Group in the amount of \$166,461 which exceeds the \$140,000 budgeted for this project)

Ms. Zimomra read the title of Resolution 06-154.

Discussion ensued regarding the budget amendment and the contract.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-154.

The motion carried unanimously.

- f. **RESOLUTION 06-153 DETERMINING THE REQUEST FOR A TRANSFER OF THE ENTERTAINMENT LICENSE FROM AT BY BLACKSTONE AT THE SUNDIAL BEACH & GOLF RESORT, 1451 MIDDLE GULF DRIVE; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 06-153.

Discussion ensued regarding the letter received from the Sundial mentioning the rules do not allow outside entertainment past 10:00 p.m., and citizen concerns.

Mr. Cuyler requested tabling until after lunch.

Council agreed.

Public Comment:

Kim Wheeler spoke to the request only a transfer and Danny Morgan performing and having a decimal reader.

- g. **Request from Lee County Metropolitan Planning Organization (MPO) for funding FY 2006/2007 in the amount of \$813.28**

Councilman Jennings made a motion, seconded by Vice Mayor Denham, to authorize the funding.

The motion carried unanimously.

- h. **Motion to confirm that City Attorney and City Manager are included in Transponder Reimbursement Policy 2005 and for subsequent years**

Ms. Zimomra stated that the City Manager and City Attorney had not previously been included in the City's policy. She therefore requested that Council authorize this inclusion, reimburse for the current transponder as well as being included in the Transponder Reimbursement Policy for subsequent years.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to approve the request to authorize the City Manager and City Attorney be reimbursed for their current transponder fees and be included in the Transponder Reimbursement Policy for subsequent years.

The motion carried unanimously.

**i. Approval of City co-sponsorship of Luminary, December 01, 2006**

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to authorize the co-sponsorship.

The motion carried unanimously.

**j. Request from B. I. G. Arts, 900 Dunlop Road to serve wine and/or beer on December 06, 2006 at the Rotary Club Christmas Party held at B. I. G. Arts, 900 Dunlop Road**

Councilman Brown made a motion, seconded by Vice Mayor Denham, to approve the service of beer and wine at the December 6<sup>th</sup> Christmas party.

Discussion ensued regarding B. I. G. Arts serving alcohol, the need to review the lease, and review lease at the November 21 Council meeting.

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

Council recessed at 11:45 p.m.

Council reconvened at 11:57 a. m.

Council decided to discuss the following:

**Review of the Periwinkle Way Road Improvements educational material to be mailed to the electorate regarding the December 19 mail ballot**

Ms. Zimomra explained that in the past whenever there was a City referendum Mr. Cuyler has noted that staff could send an educational mailing to the electorate. She stated that the ballots would be mailed out around December 5<sup>th</sup>. She also stated that Council was seeing the content today and would be brought back for Council's final approval.

Merribeth Farnum spoke to information provided from the Sanibel bicycle Club. Council had not received the material for review.

Discussion ensued regarding making reference to the tree planting, should mentioned that this improvement would enhance the beauty of Periwinkle Way, should include some type of vegetation on the mailing, safety and drainage benefits, making clear that this was part of the ongoing improvements of Periwinkle Way, attractive design when Gates Castle, Public Works Director made the presentation, Mr. Castle stated that due to the created location the possibility for any vegetation planting was limited and trying to create better sight distance, the advantage of the green coverage was to allow the nutrients to settle in the sod, concern that there was no qualification of safety, police department data, Ms. Farnum stated could included between the years 2001 and 2005 x number of accidents had happened, improve the storm water run-off, Mr. Castle stated there were 3 different outfalls; 1) middle section drains to Dixie Beach Boulevard; 2) east section part drains to the lake at Roadside City Park and part drains to Beachview and eventually to the river; and 3) Casa Ybel section goes down Casa Ybel to the river, any truth the run-off water would go to the Community Church, Mr. Castle stated that staff would create a swale between the roadway and the church property line, he further stated that there were already driveway culverts and would need to enhance, a preexisting problem in front of the church was already correct through previous Periwinkle Way improvements, and take inconsideration any drainage problems, should there be a place in the material to comment on drainage run-off, Mr. Castle stated that drainage enhancement prevents problems on private property and incorporate same in the mailing.

Ms. Farnum stated the reason Council was reviewing the diagram in 2 different formats was the length of the entire diagram; the option would be to divide in 2 sections or would be too small for viewing, Bike Club suggested take 1 section of the major intersection of Casa Ybel Road and Dixie Beach Boulevard

and make larger as well as taking a cross-section to better show the improvements, to many words, use bullets to indicate information, the format would be more reader friendly, there should be no comparison between each referendum, and would be separate mailings.

Ms. Farnum explained the following:

- General comment how they could vote without being in residence

Council decided to have a cover letter explaining there were 2 separate pieces of educational material and how they could vote without being in residence.

Ms. Farnum continued:

- Clarification of the funding
- Using 1 cross section
- Trying to balance each brochure

Council stated each brochure should look totally different.

Public Comment:

Patty Sousa spoke the importance of 2 separate brochures.

John Harries asked the process the brochure got to the Sanibel Bike Club.

Ms. Zimomra stated the brochure was put on the website with the agenda packet and was scanned in at 11:21 a. m.

Discussion ensued regarding the focus being safety, for 11 years Council had been dealing with the safety issue.

Karen Storijohann spoke to incorporating the eliminating delineators if the improvement were made.

Council decided to discuss the following:

**First draft of the educational material to be mailed to the electorate regarding the December 19 mail ballot for use of funds for water quality litigation**

Discussion ensued regarding the fact that Big Sugar would put together advertisements to combat the referendum, should there be a water referendum, Mr. Cuyler advised Council there was a resolution adopted calling for the referendum, but Council had the legal authority to repeal the referendum.

Public Comment:

Karen Storijohann spoke to things moving in the correct direction, and the need to have more information in order to vote on the water ballot question on December 19<sup>th</sup>.

Barbara Cooley spoke to the upcoming educational mailing Council would be mailing out for the water ballot question December 19, 2006 and the need not to drop the threat of potential litigation.

Discussion ensued regarding should Council use litigation.

Vice Mayor Denham made a motion, seconded by Councilman Brown, to repeal the previously adopted resolution calling for a referendum asking the electorate about water litigation.

Mr. Cuyler stated that if Council was in favor of repealing the resolution calling for the referendum.

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

Discussion ensued regarding if individuals would get an opportunity to speak to Council.

Mr. Cuyler advised that any decisions Council makes to litigation would be made in public even though there may be a private session to discuss litigation and decision would be made in public.

Council decided to discuss the following:

**Distribution of City Comments to the Army Corps of Engineers (ACOE) regarding the proposed Lake Okeechobee Water Release Schedule**

Mr. Cuyler stated the document was filed Monday, October 16<sup>th</sup>. He further stated the changes were as follows:

- Wanted to preserve City rights and point out everything deficient in the ACOE process
- Beginning of the letter lays out the items Council wanted right now
- Incorporated Dr. Loflin's comments, and Council comments

Discussion ensued regarding this letter showing that Council was positioning itself to sue, Mayor Johnston delivered in person to Colonel Grosskruger as well as electronically, all modeling focuses on median stream not the highest, Colonel Grosskruger tentatively scheduled to come November 20<sup>th</sup>, and Colonel Grosskruger could brief Council at a special meeting.

Discussion ensued regarding delivering the letter electronically and hand-delivering to Colonel Grosskruger by Mayor Johnston, Colonel Grosskruger gave an update of ACOE focus for 2007, Dr. Loflin included in technical briefings, Colonel Grosskruger to come to Sanibel on November 20<sup>th</sup>, ACOE not looking at cumulative effects on the Caloosahatchee River, and sending response to government officials.

Council recessed at 1:15 p. m.

Council reconvened at 2:06 p. m.

Council decided to discuss the following:

**Public Hearing**

**Consideration of a Certificate of Appropriateness to relocate Shore Haven, a single-family residence listed on the local register of Historic Sites and Structures, located at 1111 Bird Lane, to the City owned property adjoining the City's public boat ramp commonly referred to as Bayview Bay East pursuant to the Planning Commission's Relocation Plan and Site Evaluation Report**

Mr. Pfalzer spoke to the following:

- Property owner request to moved structure and replace with a new single-family residence
- On the Historical Registry
- Advised property owner of procedure to demolish
- 6-month time period to work out details while working with staff, Historical Preservation Committee and property owner for a relocation plan
- Need Certificate of Appropriateness issued by City Council to relocate the structure
- Consideration by Council of a relocation plan produced by the Planning Commission
- Application did not include any future modifications to the structure, and would need to go before the Planning Commission for a certificate of appropriateness

Discussion ensued regarding the certificate of appropriateness for relocation and modifications would go to the Planning Commission for a certificate of appropriateness.

Bob Duffy, Planning Director spoke to the following

- City Council conducting a public hearing for consideration to grant a certificate of appropriateness to relocate Shorehaven
- Currently located 1111 Bird Lane
- Relocation plan submitted proposes that the structure be relocated to the City boat ramp property (Bayview east) and would be consistent with the Sanibel Plan
- Consistent with Sections 98-112 and 98-131 of the code

Mr. Cuyler stated the following requirements of a quasi-judicial hearing:

- Council would make ex parte statements
- City Clerk must swear-in any participates wishing to testify

Jerry Stern stated that due to his conversation with Mayor Johnston he told Mr. Thompson to return at 3:00 p.m. He requested that Council wait until that time for further discussion.

Council decided to discuss the following:

**Discussion of Notification letter from WCGU Public Media outlining schedule of events for screening and public conversation of first earth edition of “Water Woes” on Lake Okeechobee Big Water, Big Trouble” program to be held at Sanibel Harbor Resort on October 29, 2006 from 2:00 to 4:00 p.m.**

Mayor Johnston spoke to the letter from WCGU announcing the first edition of Water Woes.”

**Status report on TMDL (Total Maximum Daily Load)**

James Evans, Environmental Biologist spoke to the following:

- Maximum amount of pollutants that could be discharged in to a water body without violating water quality standards
- Federal Clean Water Act of 1972 mandates that state identify each water body that do not currently meet water quality standards
- Developed to restore water bodies not meeting the standard
- Water shed approach used for the implementation of TMDL’s
- Approach divides the state in to 5 sub-groups by basin on a 5-year rotating cycle
- The Caloosahatchee River in Group 3 and in the implementation phase
- South basin missed the first rotation cycle and were on a different rotation
- Caloosahatchee River currently in phase 2, which was in the basin monitoring stage
- Monitoring basin through 2008
- June, 2009 a new verified list would be developed
- Caloosahatchee TMDL due to DEP by December 30, 2010 as EPA’s consent decree with Earth Justice
- 1989 several conservation groups together sued the federal government for not implementing the TMDL’s because of Florida’s failure to begin the TMDL process
- 13 water segments in the Caloosahatchee Estuary, all were impaired for at least I parameter
- Charlotte Harbor in a separate sub-basin in Group 2 monitoring phase begins this year and would develop a new impaired waters list by 2008
- EPA developing their on TMDL for the Caloosahatchee water shed by selecting critical areas in Florida to do a TMDL at the federal level to ensure requirements were meet as a result of the consent decree
- State required to implement a classification for water bodies
- Impaired in partially due to the water quality standard structure grouping water bodies in to one default category (Class III)
- Most surface water falling under default Class III
- Class III supports the designed use of recreation, propagation of maintenance of healthy well balanced populations of fish and wildlife

- Class I potable water supplies
- Class 2 shellfish propagation harvesting
- Class 3
- Class 4 agricultural water supplies
- Class 5 navigation, utility and industrial uses
- No water bodies in the State of Florida designated as Class 5
- New system DEP reviewing would break systems in 7 human uses rather than 5 categories
- Distinguishes between designated uses within Class 3 category
- This new classification would help the state obtain their TMDL
- Some Caloosahatchee segments might be taken off the list because they may meet a lower water quality standard if said tributaries or segments were classified at a lower level
- Concern during reclassification to make certain that the Caloosahatchee was not put in a category that was less protected (Class 5)
- By default all water bodies in Class 3 would remain as human use 3
- Requirement to hold a public meeting to re-classify
- Make certain that the new nutrient criteria the state was working on was no lowered
- Canal and agricultural subgroups recently met in West Palm Beach
- Caloosahatchee River would fall under canal C-43 because it is an altered water body
- Discussion on-going to exempt the Kissimee River and the Caloosahatchee River from the canal designation, which could be good

Discussion ensued regarding the subgroups were scientists work with the Department of Environmental Protect (DEPA), Rae Ann Wessel, SCCF attended the subgroup meeting, Missosukee lawsuit was part of the EPA waters transfer rule, Missosukee tribe and Friends of the Everglades sued the SFWMD and ACOE because they were transferring water through a pump station (S-9) from the C-11 basin in to water conservation area 3, Missosukee tribe claimed that the SFWMD and ACOE needed a NPDES permit, lawsuit referred to lower court and trigger the EPA to begin reviewing the NPDES regulations and amending the Clean Water Act, Mr. Cuyler stated the City made comments on the EPA rule not long ago and that was the basin to basin transfer, Nutrient Loading Analysis Meeting being held Thursday, November 19<sup>th</sup>, and Sanibel River considered an impaired river.

Council decided to continue the quasi-judicial hearing on Shorehaven.

**Public Hearing**

**Consideration of a Certificate of Appropriateness to relocate Shore Haven, a single-family residence listed on the local register of Historic Sites and Structures, located at 1111 Bird Lane, to the City owned property adjoining the City's public boat ramp commonly referred to as Bayview Bay East pursuant to the Planning Commission's Relocation Plan and Site Evaluation Report.**

Ex Parte Communications

Councilman Brown	No site visit	No communications
Vice Mayor Denham	No site visit	No communications
Mayor Johnston	No site visit	No communications
Councilman Jennings	Visited site years ago	Spoke with different citizens
Councilman Rothman	No site visit	Spoke with Scott Marcelias and Mike Cuscaden

Participates sworn in by the City Clerk

Mike Cuscaden  
Sam Bailey

Larry Thompson  
Jerry Stern  
Alex Werner  
Scott Marcelias  
Muriel Veenschoten  
John Veenschoten  
Robert Duffy

Mr. Cuyler stated that Councilman Jennings was the liaison to the Historical Preservation Committee, Councilman Rothman was the liaison to CHR Board of Directors and Vice Mayor Denham was the liaison to the Planning Commission without participation.

Bob Duffy, Planning Director spoke to the following:

- Previous overview of Planning Commission Resolution 06-08
- Exhibit 1 – site evaluation required by Section 98-131 to be transmitted to City Council
- Planning Commission considered 13 sites
- Site relocation report
- Attachment showing the actual survey of the proposed relocation site
- Attachment B site plan showing location at boat ramp
- Survey of existing property on Bird Lane
- Attached Council's resolution
- Local land mark dating back to 1992
- Planning Department – attachment 4 summarizes the relocation and renovations costs and funding sources
- Relocation plan and under Section 98-131 Council must decide to grant a certificate of appropriateness to enable the relocation and provide any conditions
- Site recommended by the Planning Commission was the City boat ramp site
- Location would be an acceptable distance from the bay and setback from the property line
- Property under utilized for parking
- Showed potential location in relation to the proposed restroom site on the western side of the property

Discussion ensued regarding why Council was hearing this, Mr. Cuyler stated that was a legislative framework for a historic structure deemed appropriate by a past Council, he stated it goes to the Planning Commission first, and through the process for relocation was where the recommendation was formed, ordinance changed if process comes to Council rather than the Planning Commission, boat ramp land not Environmentally Sensitive Land, Mr. Cuyler stated the reason there was a referendum for the Shared Use Path was due to a charter amendment approved by the electorate in 2005, Mr. Duffy stated that there was a small notch on the west side of the boat ramp property, reviewed abutting property owner and discussed and provided notice the Land Development Code sets out, tried to provide appropriate notice, notice filed, 3 buildings in Yachthaven Condominium, Planning Department attempted to follow the letter of the LDC consistently, the need to put discussion of an amendment to the historic preservation ordinance on a future agenda, the need for workforce housing, cost of the relocation, city should not pay for moving the structure, should use the bulk of the Harriet Spoth fund, Mr. Thompson receiving a tax credit for the donation of the structure, Mr. Thompson knew the building was on the historic registry when purchasing the structure, Mr. Stern stated his client was seeking pursuant to the ordinance a demolition permit, it was the Planning Commission and Historic Preservation Committee requesting relocation of the building, Mr. Stern spoke to the tax credit was a sales tax credit and the home was owned individually by Mr. Thompson,

Mr. Thompson spoke to the following:

- Willing to give a gift to the City
- Planning Commission and Historic Preservation Committee requesting the City being asked to pay for the re-location

- Purchasing the house and it being on the market for over 1 year
- He contacted City staff regarding the procedure to follow to either rebuild or remodel the house and decided to build a new home
- City having only 1 mechanism to rebuild was a demolition permit, which was the last thing the Thompson's wanted
- There was only 6 months to bring a plan to fruition and since it had been 6 months he could demolish the house
- Could use the house for workforce housing
- Other structures moved to the Historic Village did not require the donor to provide funding for the relocation
- Up to CPA to work out any tax benefits
- Do not understand what the problem was with approving a certificate of appropriateness

Discussion ensued regarding the house not being all original, the need of an appraisal of the house, Old Schoolhouse had an artificial floor over the original floor for protection, Mr. Thompson stated that the framework, front door and the staircase were original, Sears building already at the Historic Village, the home could be used for CHR, the option of enjoying the building as historic as the other historic buildings, would cost \$120,000 for relocation, Harriett Spoth fund donated to use for the historic village, the 2 back porches and dining room would be removed from the building for relocation and Mr. Thompson would be responsible for disposing of the parts of the building that would be removed from the original building, Council asked Mr. Cuyler of the timing issue as follows:

- There was a demolition relocation permit request to the Planning Commission
- The request was only for demolition the Planning Commission did not grant a demolition permit and the appeal process had passed
- The only option was a relocation plan within 6 months, which was done, but if the applicant disagrees with that decision the applicant could appeal and this was not an appeal
- The only other option was for the applicant to agree with the relocation plan submitted by the Planning Department and Planning Commission, which was in front of Council at this time
- Council had to decide to approve the certificate of appropriateness to relocate the building
- Council does not have to make a decision today and could continue for additional information

Councilman Rothman made a motion, seconded by Councilman Brown, to continue further discussion until November 07, 2006 and get answered to Council questions.

Public Comment:

Sam Bailey spoke to preserving Sanibel history and needs to stay on the bay.

John Veenschoten spoke to process of deciding if a structure was historic.

Discussion ensued regarding identifying historic buildings, Shorehaven must be made available to the public, and structure could be restored.

Mayor Johnston summarized Council question as follows:

- Whether the house would be used for workforce housing or a historic site
- Funding
- Agree to delay until November 7<sup>th</sup> to get answers
- Value of property
- Was there a place at the historic Village
- If building was left open how would that interact with the location

The motion carried unanimously.

Council recessed at 4:05 p.m.

Council reconvened at 4:12 p. m.

Council decided to continue discussion from the morning session as follows:

**RESOLUTION 06-153 DETERMINING THE REQUEST FOR A TRANSFER OF THE ENTERTAINMENT LICENSE FROM AT BY BLACKSTONE AT THE SUNDIAL BEACH & GOLF RESORT, 1451 MIDDLE GULF DRIVE; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra explained that Council requested clarification of the noise ordinance and read: “Between the hours of 10:00 p.m. and 7:00 a. m., and Noon of every Sunday, and on outdoor performances Shows and Fairs it reads between the hours of 9:00 a. m. to 10:00 p.m. Monday through Saturdays, Noon to 10:00 p. m. on Sundays.” She stated that in both places entertainment ends at 10:00 p. m.

Public Comment:

Kim Wheeler, Food and Beverage Manager spoke to requesting the transfer and understanding the outside entertainment must end at 10:00 p.m., but requested that the inside entertainment end at 12.00 a. m.

Ms. Zimomra stated that the inside entertainment could go until midnight, but if it were disruptive to neighbors it would be discontinued.

Vice Mayor Denham made a motion, seconded by Councilman Jennings, to approve the entertainment license for Sundial, and amend the resolution to accommodate the hours of entertainment operation.

The motion carried unanimously.

**OLD BUSINESS**

**Water Quality Issues**

**Staff Reports**

**Report from Natural Resources Department**

**Staff report of Kissimmee Basin**

Dr. Loflin gave the following report:

- Lake recession this winter (lowering the water)
- Lake Okeechobee at 13.07 feet and falling
- Lake Okeechobee recession to improve fishing and help aquatic vegetation
- Water would be released east and west
- Looking for direction as to priority on the water quality issues
- Kissimmee Chain of Lakes Long Term Management Plan (3,000 square miles) discharge handled and important to know that 2004/2005 70% of water sent to Caloosahatchee
- 58% of water from the northwest district
- Back pumping allowed during high water from the agricultural fields
- Kissimmee wetlands being restored
- SFWMD reviewing and plans to change the regulatory schedule in the Kissimmee Basin
- New development using Lake Okeechobee for drainage

Discussion ensued regarding amount of phosphorus in to Kissimmee Basin was approximately 5,000 tons each year, single-family lots exempted from the water retention rule, Carol Wehele spoke to land purchase in the basin, land acquisition completed for the Kissimmee Basin restoration, treatment facilities plan for the river, plans to prevent overflows for cattle ranches, and effort made to control the level of nutrient pollution in the Kissimmee basin.

**RFQ seeking an Independent Expert (contractor) to conduct a comprehensive Health Study to evaluate historical impacts of water quality on Health and Establish Base-line data to evaluate health impacts to water quality; to conduct Trend Analysis and Develop and Operate a System to Monitor Health Impacts of Water Quality**

Councilman Brown spoke to the individuals involved, and possible research from findings.

Holly Downing gave the following report:

- Packet of information includes virus versus bacteria biology
- Packet of information from MD's involved in the work group

Discussion ensued regarding someone developing a rash from going in the water, gathering medical information, person in charge of CDC would come and speak with Council, director of Water Toxin Program would also come, the need for a better coordinated effort, careful not to make statements without information, information must be documented and substantiated, and staff putting together a draft RFQ.

Ms. Zimomra stated that the packet information would be changed and put together at the request of the work group and an invitation of the above-mentioned person to a subsequent Council meeting.

Discussion ensued regarding experts speaking with Council, completing literature research that would be important to make policy decisions, and need to sort out which kind of experts needed.

**Discussion of opening another front on Everglades restoration and the Caloosahatchee River- elimination of sugar subsidies**

Councilman Rothman spoke to the need for a policy on sugar subsidies, U. S. government destroying the Everglades, 2007 would be discussion on the farm bill, the need for more information, he suggested asking Diamond and Beveridge to research and prepare a white paper, Mr. Cuyler stated that getting information on the bill, how to address the issue and to whom to address would not be very expensive, would be information back to Council for use and if it would be cost effective to proceed.

Discussion ensued regarding a benefit to the City for any report of the sugar subsidy bill, status of the status of the sugar subsidy, limited resources, but a very important issue, and ask Beveridge and Diamond what could be done as it relates to the sugar subsidy bill, City Attorney to get a copy of the current legislation, and ask the DC attorneys if during their research was there any information about sugar.

Public Comment:

Christy Anders spoke to if Council decided to take on sugar it would include sugar beets and corn.

**Setting a date and time for the City Council to conduct its transmittal hearing (required by Section 163, Florida Statutes) on the EAR-based Amendment to the Sanibel Plan in order to transmit the proposed Plan Amendment to the Florida Department of Community Affairs for comments, objections and recommendations**

Ms. Zimomra stated that this information was a timeline regarding the EAR and discussion would bring forward amendments.

Bob Duffy spoke to the following:

- Changes made from the EAR resolution adopted by Council in 2005
- Staff would provide a companion report to detail the changes and rely back to the report submitted to the state

Discussion ensued regarding the Planning Commission changing what Council supported being submitted to the state, option to approve the precious plan sent to the state, the need for 1 or 2 dedicated meeting for EAR discussion, Mr. Duffy stated there were other elements of the plan that were state mandated to include language for the new state mandates and highlight those sections, Mr. Duffy spoke to changes made as for instance due to the changes in the Emergency Management Plan, Mr. Cuyler stated that Mr. Duffy's recommendation to color code items would help Council, citizens should be able to get a copy of the new document at a reasonable price, City policy with per page charge, Ms. Zimomra answered that Councilman Rothman wanted to exempt that costs and allow citizens to pay \$2.00 per copy, \$2.00 for the first 20 copies, Ms. Zimomra spoke to city resolution set the per page charge at \$.15 per page and available on the website, and Council agreed.

## **COMMITTEES, BOARDS COMMISSIONS**

### **The 2006 Annual Report of the Permitting Process Review Subcommittee of the Planning Commission**

No one in the audience to make the report.

#### **Vegetation Committee status report regarding fertilizer use recommendations**

Phyllis Gresham, Chairperson of the Vegetation Committee. She read the charge that was given by Council.

Discussion ensued regarding the Vegetation was an advisory committee to Council, next step being an ordinance, and Vegetation Committee recommendations.

#### **Status of draft state legislation for phosphorus regulation**

Holly Downing spoke to the following:

- Florida Department of Agriculture and Consumer Services (FDAC) taking the lead to develop turf fertilizer for urban use
- FDAC responsible for labels affixed to bags of fertilizer
- FDAC regulating distribution and sales of fertilizer
- Under new rule would deal with nitrogen and phosphate fertilizer beginning with turf fertilizers
- First component would be a low or no phosphate fertilizer
- The only exception would be a starter lawn, soil testing would be done and found deficient in phosphorus there would be exceptions
- Rate for phosphorus .25 pounds per 1,000 square feet and the maximum of 1 pound per year
- Nitrogen recommendation would follow the standard in the Florida yards and neighborhoods program
- Nitrogen rates would be variable depending on the slow release nitrogen
- .5 pound of nitrogen per 1,000 square feet if less than 30% slow released was used, and if more than that was used then 1 pound of nitrogen per 1,000 square feet
- Adoption of rule would be in mid-2007

Phyllis Gresham stated that the phosphorus fertilization rules would be enacted by the Department of Agriculture and Consumer Sciences.

Discussion ensued regarding the rule being in line with Council's best practice, the need for a draft ordinance.

Mr. Cuyler stated that Council could direct him to work with the Natural Resources Department.

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to direct the City Attorney to work with Natural Resources to develop a fertilizer ordinance and work with the vegetation committee as a consultant.

Ms. Gresham spoke to the importance of working with other entities such as SCCF, provide public information with best management practices, and look at people applying for occupational licenses.

The motion carried unanimously.

Council thanked the Vegetation Committee for their input.

Ms. Zimomra brought to Council's attention to upcoming important dates as follows:

November 07	City Council meeting
November 10	City Hall Closed for Veterans Day
November 11	Veterans Day Celebration City Hall Flag pole Councilman Jennings attending Cape Coral Veterans Say Parade
November 12	40 <sup>th</sup> Anniversary of Sanibel Library
November 15 to 17	League of Cities Legislative Conference
November 17	Award Banquet – League of Cities Ms. Smith Finalist for City Clerk of Year Award
November 17	Student Government Day – requested a change of date

Discussion ensued regarding Council attending the League of Cities meeting.

November 16	Council agreed to hold the Shared Use Path Open House
November 20	SCA – Shared Use Path Open House
November 20	Visit from Colonel Grosskruger

Discussion ensued regarding calling a Special Council meeting on November 20, Ms. Zimomra spoke to booking the Shared Use Path several times and moving the date; She further explained the reason for the Shared Use Path Open House and that it was initially scheduled for October, why does Council need to be at the open house, not the presentation of the final plan, consultants would show the results of the study, Council agreed to leave the Shared Use Path on November 16<sup>th</sup>.

## **CITY MANAGER'S REPORT**

### **Informational items:**

#### **Quarterly Financial Report**

Ms. Zimomra noted this was in the agenda packet.

#### **Attendance to the League of Cities Legislative Conference November 16 and 17, 2006**

As stated above.

#### **Annual progress report of 2005 Community Floodplain Management Plan**

Ms. Zimomra noted this information was in the agenda packet.

#### **Current recruitment Incentives by Charlotte County**

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

#### **Announcement on City Clerk of the Year finalist**

Ms. Zimomra announced that Ms. Pamela Smith was a finalist for the Florida League of Cities City Clerk of the Year.

#### **Sanibel General Employee's Pension Fund Investment Performance Report**

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

**Upcoming attendance at the December 19, 2006 City Council meeting by Legislative Appointee Gary Aubuchon**

Ms. Zimomra stated that Mr. Aubuchon would be attending Council's December 19 meeting.

**CITY ATTORNEY'S REPORT**

Mr. Cuyler noted that he would prepare a letter to be sent to the Lee County Supervisor of Elections regarding Council's decision to repeal the mail ballot election of December 19.

**COUNCILMEMBERS' REPORT**

None.

There being no further business the meeting adjourned at 6:15 p. m.

Respectfully submitted by,

Pamela Smith, CMC  
City Clerk