

**SANIBEL CITY COUNCIL REGULAR MEETING
DECEMBER 19, 2006**

City Council held a greet and meet for Representative Gary Aubuchon.

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

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

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

PRESENTATION(S):

State Representative Gary Aubuchon for District 74

Representative Aubuchon spoke to the following:

- Water Quality issue in the forefront and seems to be obtaining traction
- Meaningful reforms in the next few years
- Insurance crisis gripping the state and the house spent 3 days of discussion
- Special January session regarding insurance

Discussion ensued regarding Councilman Jennings and Representative Aubuchon working on the Horizon Council together, Council attention toward water releases and the direction of those releases, pollution from the Kissimmee basin, the need to focus on the Kissimmee River, water storage on property should be equal to the undeveloped property as the developed property, Representative Aubuchon spoke to working regionally, alternative fuel exploration, Representative Aubuchon spoke to economic impact, and reviewing Florida's energy policy with a new committee.

Public Comment:

Larkin Hammond spoke to a letter from her insurance that if she were not homesteaded the insurance would be dropped.

Representative Aubuchon answered that there was a concern of homeowners insurance being dropped regardless of the homestead exemption and the House would be meeting for discussion in special session.

Proclamation endorsing the Florida League of Cities proclamation to expedite action to be taken to resolve the Florida insurance crisis

Councilman Jennings read a portion of the proclamation and presented it to Representative Aubuchon.

Mayor Johnston spoke to J. B. Novelli being named the Businesswomen of the Year.

Public Comments:

Hazel Schuller spoke to the Sanibel Plan the Resort Housing District not included in the Commercial Zoning.

Herb Rubin spoke to trying to persuade residents to run for Council and the major objection was the inordinate amount of work. He suggested Council consider reimbursement for Councilmembers as an incentive.

Larkin Hammond spoke to noise problems on her street. She further spoke to segways needing to be kept in commercial areas only and signs regarding cleaning up after your dog should be at all beach accesses.

Patty Sprankle spoke to the need for Council salaries. She further spoke to a 1975 Sports Illustrated 7-page article on Sanibel.

Bernie Lubetkin agreed Council should be paid.

Billy Kirkland spoke to the segway discussion scheduled for January 2nd and asked it be delayed to January 16, 2007.

Ed Seiber spoke to bike only signs being on the Shared Use Paths and should be removed. He agreed that Council should be paid.

Council Comments:

Councilman Rothman wished everyone Merry Christmas and Happy New Year.

Councilman Jennings spoke there being approximately 2,000 votes turned in Friday, December 15th. He further spoke to some ballots being thrown out and did not match the election signature card. He also wished everyone Merry Christmas and a Happy New Year.

Mayor Johnston thanked Bob Duffy, Planning Director for his hard work. She also spoke to the Lee County Transit Authority.

- Transit Authority created by 2008
- Sanibel had put forward a transit Authority policy
- She announced she would be the Chairperson of the Metropolitan Planning Organization (MPO)
- She also spoke to the need of an agreement between J. N. Ding Darling, Sanibel and Lee Tran
- Park and go pick-up at Winn Dixie Summerlin Square

Vice Mayor Denham wished everyone a Merry Christmas and Happy New Year.

Councilman Brown spoke to the passing of Dee Faulk and Jim Courtney, congratulated Mayor Johnston on her new Chairpersonship of MPO, congratulated Councilman Jennings being elected the Vice President of the Southwest Florida League of Cities, and running for City Council.

Planning Commission Report:

Dr. Phillip Marks gave the following report of the December 12, 2006 Planning Commission meeting.

- Scheduled quasi-judicial for a major subdivision and continued to January 23, 2007
- December 20th orientation for new Planning Commissioners

2006 Annual Report of the Below Market Rate Housing Review subcommittee of the Planning Commission

Dr. Marks offered the following report.

- Community Housing and Resources, Inc. should continue on its present course and keep the Planning Commission apprised of future activities
- The City should continue to waive permit fees and assist in obtaining waivers of impact fees for future Below Market Rate Housing Developments
- As part of the Evaluation and Appraisal Report-based Amendment to the Housing Element of the Sanibel Plan, the target for the number of units in the BMRH Program, should be reconsidered and increased. The Board of Community Housing and Resources suggests using a 3% of residential households as a realistic program target. This target, are 3%, envisions a total of 104 BMRH units at “build-out”.

2006 Annual Report of the Land Development Code Review Subcommittee of the Planning Commission

Mr. Johns Veenschoten offered the following report.

- The need to review Chapter 98 Historic Preservation and assess the overall effectiveness of the Program and its procedures
- As part of the City's efforts to retain compatibility in residential neighborhoods, side yard setbacks for single family dwellings should be increased for development on large (wide) lots, including development that combines lots for a single family dwelling
- As the City anticipates higher Base Flood Elevations resulting from a new FEMA Flood Insurance Rate Map, the City should re-evaluate height limits for residential development (both single family and multi-family) and consider minor adjustments that compensate for the higher lowest floors of buildings. The method for measuring the height of single family dwellings should also be re-evaluate to ascertain if another method can be devised that will encourage the use of sloped roofs
- The 2004-2005 Evaluation and Appraisal Report of the Sanibel Plan states that "a small number of single family dwellings, estimated at less than 100 units, are located on lots that are now 'un-buildable' if vacant". There is a need to address this situation and to determine if any adjustments are appropriate to the "existing parcels provisions" of the Land Development Code, which would allow the redevelopment of these residential uses

Discussion ensued regarding reviewing historic building implementation.

Ken Pfalzer spoke to the following:

- Reviewing the height limitation for corresponding adjustments when implementing the new FEMA Flood regulation for single-family and multiple family dwellings
- Review increasing the side yard set backs for single-family for 2 lots that were combined
- Review build back regulation of homes destroyed could be built back in the existing foot print because there were some homes on lots once destroyed could not be built back

Discussion ensued regarding if side yard set back would be part of the redevelopment, and planning department looking for Council direction.

Ms. Zimomra stated that an item could be a topic for the joint meeting between Council and the Planning Commission.

Mr. Cuyler spoke to the need for Council guidance on EAR advertisement. He further spoke to the advertisement for the EAR for January 02 Council meeting, and the need to advertise Article 3.3.2 Protection of Natural and Environmental Economic and Scenic Resources. He also spoke to a recommendation from the Planning Director that Article 3.3.2 be heard January 16, 2007.

Council decided to advertise the delayed December 5th EAR discussion as mentioned above for January 16th.

SECOND READING AND PUBLIC HEARING

ORDINANCE 06-019 AMENDING CHAPTER 18 - BUSINESSES, ARTICLE II. REGULATORY LICENSES GENERALLY, ARTICLE III. ALARM BUSINESS, ARTICLE IV. VEHICLES FOR HIRE, AND CHAPTER 62 - TAXATION, ARTICLE II. LOCAL OCCUPATIONAL LICENSE TAXES, TO RENAME SUCH ARTICLE "LOCAL BUSINESS TAXES" AS REQUIRED BY SECTION 205.053, FLORIDA STATUTES; TO PROVIDE THAT THE CITY WILL ISSUE "BUSINESS TAX RECEIPTS" RATHER THAN "OCCUPATIONAL LICENSES"

**AS REQUIRED BY STATUTE; PROVIDING FOR CODIFICATION;
PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN
EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 06-019.

Mr. Cuyler stated that the legislature had determined that occupational license should be changed to Business Tax Receipts

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to adopt Ordinance 06-019.

Public Comment:

Hazel Schuller spoke to the change.

The motion carried unanimously.

FIRST READING AND FIRST PUBLIC HEARING

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

TO ADD A NEW SECTION 126-1024 MAXIMUM SIZE FOR A RETAIL COMMERCIAL BUILDING; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1025 MAXIMUM STREET FRONTAGE FOR A COMMERCIAL UNIT; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1026 MAXIMUM SIZE FOR A RETAIL COMMERCIAL UNIT; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1027 ARCHITECTURAL STANDARDS TO ESTABLISH ARCHITECTURAL STANDARDS FOR COMMERCIAL LAND USES; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE XIV SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5 COMMERCIAL USES GENERALLY, TO ADD A NEW SECTION 126-1028 SITE PLANNING STANDARDS TO ESTABLISH SITE PLANNING STANDARDS FOR COMMERCIAL LAND USES; BY AMENDING CHAPTER 126 ZONING, ARTICLE XV OFF-STREET PARKING AND LOADING, DIVISION 2 OFF-STREET PARKING, SUBDIVISION III NONRESIDENTIAL USES, SECTION 126-1361 REQUIRED PARKING SPACES, TO EXEMPT THE DIVISION AND REESTABLISHMENT OF COMMERCIAL UNITS THAT HAD PREVIOUSLY BEEN COMBINED FROM COMPLYING WITH THE REQUIREMENTS OF THIS SECTION; AND BY AMENDING CHAPTER 126 ZONING, ARTICLE IV CONDITIONAL USES, TO ADD A NEW SECTION 126-102 FORMULA RETAIL STORES IN THE NEIGHBORHOOD COMMERCIAL DISTRICT THAT ESTABLISHES CONDITIONAL USE STANDARDS FOR FORMULA RETAIL STORES; AND TO ADD A NEW SECTION 126-103 RESIDENTIAL DEVELOPMENTS IN THE NEIGHBORHOOD COMMERCIAL DISTRICT OR MIXED-USE COMMERCIAL AND RESIDENTIAL DEVELOPMENTS IN THE NEIGHBORHOOD COMMERCIAL DISTRICT THAT HAVE A TOTAL FLOOR AREA FOR THE RESIDENTIAL USES THAT EXCEEDS THE TOTAL FLOOR AREA FOR COMMERCIAL USES; AND TO ADD A NEW SECTION 126-104 VARIETY OR DEPARTMENT STORES AND COMMERCIAL RETAIL STORES WITH MORE THAN 2000SF OF COMMERCIAL FLOOR AREA THAT ESTABLISHES CONDITIONAL USE STANDARDS FOR THIS USE; AND BY AMENDING CHAPTER 78 GENERAL PROVISIONS, SECTION 78-1 RULES OF CONSTRUCTION AND DEFINITIONS, TO ADD A DEFINITION FOR DELICATESSEN STORE, FOOD MARKET, FORMULA RETAIL STORE, GROCERY STORE AND MIXED-USE COMMERCIAL AND RESIDENTIAL DEVELOPMENT; AND BY AMENDING CHAPTER 78 GENERAL PROVISIONS, SECTION 78-9 ACTIVITIES CONSTITUTING DEVELOPMENT, TO AMEND THE DESCRIPTION OF ACTIVITIES THAT INVOLVE DEVELOPMENT; AND BY AMENDING CHAPTER 82 ADMINISTRATION, ARTICLE IV DEVELOPMENT PERMITS, DIVISION 2 PROCEDURE, SUBDIVISION II SHORT FORM, SECTION 82-401 APPLICATION, TO MAKE

SHORT FORM APPLICATIONS AVAILABLE FOR COMMERCIAL BUILDINGS NOT EXCEEDING 2000SF OR FLOOR AREA AND ADDITIONS, NOT EXCEEDING 2000SF OF FLOOR AREA, TO COMMERCIAL BUILDINGS; AND PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

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

Mr. Cuyler spoke to due to the nature of the ordinance there would be 2 full public hearings.

Ken Pfalzer spoke to the following:

- Provided Council with the Commercial Zoning map establishing the 4 districts
- No new lands being proposed for commercial designation
- Some outlying areas currently in the general commercial district was a proposal that they be identified for neighborhood commercial district
- Formular retail uses addressed in discussions
- Currently zoning-in-progress had a prohibition for formular retail
- Proposed ordinance would allow formular retail uses in the general town center and limited commercial district
- Would require a conditional use permit in the neighborhood district
- One limitation would be commercial unit and size
- Zoning-in-progress put a limit of 2,000 square feet on a retail unit for combining existing units and revised to include development or redevelopment of commercial units
- Proposed ordinance would limit the size of commercial retail unit to 2,000 square feet as a permitted use
- Conditional use for retail space over 2,000 square feet
- Certain exemptions such as; hardware, grocery, etc.
- Conditional use standards to exceed 2,000 square feet of retail space prohibit formular retail
- Formular retail use would place a cap of 2,000 square feet for formular retail use in any commercial district
- Zoning-in-progress did not address a maximum building size, but the proposed ordinance did limit the size of a commercial building to 6,000 square feet
- Length of commercial limited to linear frontage on the street of a commercial unit along the street 250 feet of right-of-way limited to 50 linear feet
- Limits the linear frontage to 80 linear feet of road right-of-way for a major road and require that any unit exceeding 50 linear feet need to have planning commission approval
- Last revision was to clarify when the architectural standards would come in to play
- Any new buildings, redevelopment of an existing building, or substantial modifications would trigger the application of architectural standards
- Zoning-in-progress prohibited new residential dwelling units in the outlying general commercial district in the areas proposed to be neighborhood districts
- Neighborhood districts did not prohibited, but the change would be a conditional use
- Conditional use standards would apply with any mixed commercial residential where there was more residential floor area than commercial
- Proposed regulations include a statement of purpose for commercial districts in general and for commercial districts themselves
- Variety stores would become a conditional use because by definition it would exceed 2,000 square feet with exceptions as mentioned above
- Maximum floor ratio no change, but direction from Council was to remove anything from the code that would be a dis-incentive to the small business owner
- Reduction in commercial floor for smaller parcels was deemed to be an area of dis-incentive for small business

- Regardless of commercial size or road frontage would be allowed the full commercial floor area in district for which it was located
- 10% of floor space in the general district; 12% in the town centers
- No change in the side yard set back and a minor increase in the side yard set back by 5 additional feet for each 100 additional feet on width of a commercial parcel
- Prohibited uses remain the same
- Town center limited district boundaries not changing
- Apparel, apparel accessory stores, children/infant wear stores, gift shops and jewelry stores were prohibited in the town center limited
- Zoning-in-progress prohibition uses outside the town center limited, but the proposed ordinance does not carry that prohibition
- Site planning standards that would apply for major redevelopment or development of vacant parcels in terms of egress and ingress, lines of site, compatibility, and cross access
- Allow a business owner to re-establish a business combined regardless of the parking standards – another small business initiative
- Provide a definition of delicatessen, food market and grocery store to identify what uses were exempted from the limitations on commercial unit size for 2,000 square feet for retail uses
- Today the code requires when adding a business in an existing space constituting development
- Change in definition would also trigger that eliminating a business in existing commercial space would also be reviewed as development as require a development permit
- Minor change long-form permit for adding commercial space was triggered at 1,500 square feet currently and the proposal would change to 2,000 square feet commercial space
- Neighborhood commercial district new concept and the areas proposed for neighborhood commercial were already commercially zoned, but re-catergorized to neighborhood commercial district

Discussion ensued regarding 19 proposals in the summary, first 6 proposals (formular retail commercial unit size, maximum size of a commercial building, length of a commercial unit, architectural standards, and residential use), first 6 difference of opinion, review the first six, the need for a time limit of discussion, and could Council limit comments from the public or Councilmembers.

Mr. Cuyler answered that Council determined their time and in terms of public comment there was an established time for public comment per speaker. He further stated that once public comment was in Council would have a better opportunity to gage the discussion.

Public Comment:

Bill Glenn the need of an executive summary of pros and cons.

Hazel Schuller spoke to including the Resort Housing District in the commercial zoning, commercial use on the beach and scenic preservation on the beach.

Judy Minchie spoke to combining of parking areas.

Larry Thompson spoke to owning the Lazy Flamingo and his concern of changing his business to neighborhood commercial and if changed there could never be a rezoning of residential. His concern was that if his property was zoned neighborhood commercial and destroyed that zoning would not allow him to use the property to the fullest extent.

Mr. Pfalzer stated that in the commercial neighborhood district did not prohibit residential uses.

Beverly Grady, Attorney spoke to:

- Side set back increase of 10 feet
- What triggers site plan standards and architectural standards
- Site standards changes instituted and numerical number

- Redevelopment not interior changes, but tearing down and rebuilding
- New development, redevelopment and new development
- 10% of new commercial and redevelopment
- If one had space in front would City permit additional parking in front
- Reducing the number of units require a development permit
- Improve architectural standard trigger long-form application
- Apply for short-form and trigger

Barbara Cooley spoke to Planning Commission having interest of commercial planning

Mr. Cuyler stated that the Planning Commission had considered the issue and it was up to Council for a decision.

Barbara Shimmerberg spoke to a rookery on Sanibel Bayou Road occupied by thousands of birds and the commercial site occupied by Caldwell Banker using Sanibel Bayou Road and increased usage of property would impact the rookery.

Steve Maxwell spoke to part 8 and 9 dealing with the inventory of commercial land uses street address listing and the commercial district zoning districts research and resources was a great piece and help overlay and provide answers. He further spoke to transitional zoning, commercial that could be rezoned to residential and should be addressed.

Joann Novelli spoke to ownership of a piece of property at Lindgren and Periwinkle Way and that corner being absent from the proposal.

Discussion ensued regarding the Planning Staff put the proposal together to deal with only certain segments, Mr. Pfalzer stated that no lands currently not zoned commercial would be zoned commercial and very few non-conforming commercial uses in the City and a brief lists was as follows:

- Ms. Novelli's building
- Caldwell Banker building on the north side of Periwinkle Way
- John Gee real estate office on West Gulf Drive
- Rivera Restaurant

Discussion ensued regarding a discrepancy between where Council intended the ordinance to go and the final ordinance from the Planning Commission, commercial properties about other zoning uses and pay attention to each zone, proposal does not deal with the safety aspect of parking, language in a few spaces vague, mixed use should be addressed well, Mr. Pfalzer spoke to any commercial district could be mixed with residential use, but there was a formular to reduce the amount of commercial space for the added residential use, and due to the concern in the neighborhood districts the residential units up to the density could be built up to 1250 square feet with no reduction in the amount of commercial space and meant to provide an incentive for the loss of perceived value.

Jerry Stern spoke to limiting properties if rezoned and not allowing the full use.

Mr. Cuyler stated that procedurally Council should close the public hearing and staff's recommendation was to have the next public hearing no earlier than January 16, 2007.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to close the public hearing and set the next public hearing.

The motion carried unanimously.

RESOLUTION 06-203 ELECTING TO CONDUCT A PUBLIC HEARING PRIOR TO 5:00 P.M. REGARDING A PROPOSED ORDINANCE THAT AMENDS THE

COMMERCIAL LAND USE REGULATIONS IN THE SANIBEL LAND DEVELOPMENT CODE

Ms. Zimomra read the title of Resolution 06-203.

Councilman Rothman made a motion, seconded by Councilman Brown, to adopt resolution 06-203 and set the second reading public hearing for January 16, 2007 at 9:15 a. m.

The motion carried unanimously.

**FIRST READING AND PUBLIC HEARING LISTEN 1146
ORDINANCE 06-023 AMENDING THE SANIBEL CODE, PART II, SUBPART B
LAND DEVELOPMENT CODE BY AMENDING CHAPTER 78 GENERAL
PROVISIONS, SECTION 78-1 RULES OF CONSTRUCTION AND
DEFINITIONS, TO ADD A DEFINITION FOR BEACH CLUB; AMENDING
CHAPTER 126 ZONING, ARTICLE II CONDITIONAL USE PERMITS,
SECTION 126-35 RECREATION FACILITIES, TO CLARIFY THAT BEACH
CLUBS ARE NOT PERMITTED RECREATION FACILITIES AND TO UPDATE
THE CONDITIONS FOR RECREATION FACILITIES; PROVIDING FOR
CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND
PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 06-023.

Mr. Pfalzer spoke to the following:

- Conditional use requirements for recreational facilities and not permitted as the code was written
- Beach clubs nor a permitted recreational use under the conditional use requirements
- Providing a definition of beach club

Public Comment:

Hazel Schuller asked which resort requested the proposal and it would appear that the proposal would ordinance grandfathering.

Ms. Zimomra stated that this was in response to developers up and down the coast purchasing buildings and converting them in to beach clubs, and Council’s efforts to get in front of those type of conversions.

Mr. Cuyler spoke to this ordinance not including beach furniture. He stated that Sundial was not defined as a beach club. He further stated that in other areas there would be a building that would facilitate usage by people coming on island and using the building to come to the beach.

Discussion ensued regarding if a fee were charged to use the beach by a business that would be in violation of the proposed ordinance.

Vice Mayor Denham made a motion, seconded by Councilman Brown, to close the public hearing.

The motion carried unanimously.

RESOLUTION 06-204 ELECTING TO CONDUCT A PUBLIC HEARING PRIOR TO 5:00 P.M. REGARDING A PROPOSED ORDINANCE THAT AMENDS THE SANIBEL LAND DEVELOPMENT CODE TO CLARIFY THAT BEACH CLUBS ARE NOT PERMITTED RECREATION FACILITIES

Ms. Zimomra read the title of Resolution 06-204.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to hold the second reading public hearing for January 02, 2007 at 9:15 a. m.

Councilman Brown asked if Council would hear the B. I. G. Arts discussion.

Council decided to hear the above-mentioned on January 02, 2007 at 9:30 a. m.

Council recessed at 12:00 p. m.

Council reconvened at 1:18 p. m.

**SECOND READING AND PUBLIC HEARING
ORDINANCE 06-021 ESTABLISHING A PROCEDURE FOR REMOVAL OF AUSTRALIAN PINES AND OTHER TREES DETERMINED BY THE CITY MANAGER TO BE A THREAT AND NUISANCE TO CITY PUBLIC INFRASTRUCTURE; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REMOVAL OF ANY AUSTRALIAN PINE OR OTHER TREE DETERMINED BY THE CITY MANAGER TO BE A THREAT AND NUISANCE TO CITY PUBLIC INFRASTRUCTURE; PROVIDING A PROCEDURE FOR DETERMINATION THAT AN AUSTRALIAN PINE OR OTHER TREE IS A THREAT AND NUISANCE TO CITY PUBLIC INFRASTRUCTURE; PROVIDING FOR APPEAL; PROVIDING THAT SUCH PROCEDURE SHALL BE EXCLUSIVE WITH RESPECT TO REMOVAL OF AUSTRALIAN PINES FROM PRIVATE PROPERTY PROVIDED, HOWEVER, THAT CURRENTLY EXISTING ORDINANCES SHALL NOT BE AFFECTED; PROVIDING FOR CODIFICATION; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 06-021.

Discussion ensued regarding page 2 definition of City public infrastructure and infrastructure was LCEC, water to fight fire and public safety, sewer and communications systems would follow in importance, the need to include those pieces of infrastructure such as electrical, water and communications infrastructure.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to amend Ordinance 06-021 to include power, and water distribution, and communication infrastructure

Discussion ensued regarding the topping of trees off power lines, Ms. Zimomra stated that LCEC were aggressive in removing trees from the power lines, and Mr. Cuyler stated that LCEC might be able to claim trees not in their 50-foot right-of-way could cause problems for the electrical lines during a storm.

The motion carried unanimously.

Discussion ensued regarding LCEC stay within the electrical easement, LCEC does not remove or maintain any trees outside their easement, Mr. Cuyler stated that if the motion passes he would suggest other additions to have the burden on those entities that control the infrastructure, do not want to create a liability to the City to pay for another entities infrastructure, institute a program of topping every 2 years, establish program removing seedlings, keep the same language in the Sanibel Plan, add top pines if the pines would jeopardize infrastructure, residents could have existing pines on their property, pines protected on private property, seedlings might be treated the way Brazilian pepper, could plant no new pines, ordinance vague as to the decision of going on private property, Mr. Cuyler stated it does address pines or any other tree that constitute a threat as defined in the proposed ordinance, doesn't provide for the City to go on private property except under those circumstances where the party refuses to remove the Australian pines, and

would give a mechanism where a tree was determined to be a threat, appeal mechanism for removal in a certain number of days, and puts the private property owner in a position of being on the defense.

Vice Mayor Denham passed out the following to Council that read as follows:

The ordinance establishes the rights of private property owners to retain Australian pines that were currently on their property and at the same time recognize the need for the City to proactively protect the City public infrastructure from damage that may be caused by falling Australian pines and other trees.

The intent of this ordinance was to allow the City to evaluate and take action to protect, utility and communication infrastructure and road access from potential damage from falling trees in the event of a catastrophic incident such as a hurricane or windstorm.

Providing a procedure for evaluating and then removal of Australian Pines and other trees determined by the City Manager to be a threat to public safety and a threat to city public infrastructure; providing for a procedure for determining that an Australian Pine or other tree is a threat to city infrastructure; providing for appeal providing that currently existing ordinances shall not be affected; providing for codification; providing severability; and providing an effective date.

Discussion ensued regarding delete the word “remove”, define “threat” or delete the word “threat”, from an environmental point of view there was a problem with Australian pines, Mr. Cuyler stated that any tree outside and granting an acknowledgement that staff would not go on private property, except anything that would affect health, safety and welfare.

Public Comment:

Tom Ehlers spoke to agreement that Council affirmed the rights of private property owners having Australian Pines. He further stated that the ordinance must incorporate the right to exist on private property, and limit staff from going on private property with the exception of health, safety and welfare to remove a tree.

Bernie Lubetkin spoke to a process when the ordinance was adopted to remove trees; Mr. Cuyler stated that there was an appeal process within the ordinance.

Discussion ensued regarding if any Australian Pine agreement would be voided if ordinance adopted, Mr. Cuyler stated that there was a condition of the subdivision was to remove the Australian Pines,

Judy Minchie spoke to the City’s ability to limit height on the island of houses; what about limiting tree height.

Larry Schopp spoke to trees on private property affecting undeveloped land. He further spoke to the last subdivision required the removal of Australian Pines.

Phyllis Gresham spoke to the recommendations of the Vegetation subcommittee. She also spoke to a memo the committee received from the City Manager.

Steve Maxwell spoke to his agreement with the ordinance.

Mike Valiquette spoke to pines not being native.

Sally English spoke to keeping pines.

Claudia Burns spoke to keeping the pines.

Paul Andrews spoke in favor of removing the pines.

Claudia Burns spoke a second time on the exemption of removing non-native species and should be retained in the Sanibel Plan.

Vice Mayor Denham made a motion, seconded by Councilman Jennings, to direct the City Attorney to amend Ordinance 06-021 and bring back to Council.

The motion carried unanimously.

ORDINANCE 06-020 CALLING AN ELECTION TO SUBMIT TO THE SANIBEL ELECTORATE AN AMENDMENT TO THE SANIBEL CHARTER; PROPOSING AN AMENDMENT TO ARTICLE III, "LEGISLATIVE", SECTION 3.17 ENTITLED "CITY-AUTHORIZED MAJOR CHANGES TO HIGHWAY 867 (CAUSEWAY BLVD., PERIWINKLE WAY, PALM RIDGE ROAD AND SANIBEL-CAPTIVA ROAD)" IN ORDER TO CLARIFY THAT THE "NEW VEHICULAR TRAVEL LANES" REFERRED TO IN SECTION 3.17 (B), WHICH REQUIRE A SEPARATE VOTE OF CITY ELECTORS, REFERS TO ADDITIONAL VEHICULAR TRAVEL LANES AND IS NOT MEANT TO INCLUDE THE RELOCATION OR REDESIGN OF EXISTING TRAVEL LANES TO NEW AREAS WITHIN EXISTING OR ACQUIRED CITY RIGHT-OF-WAY; PRESCRIBING THE FORM OF THE BALLOT AND GENERALLY SETTING FORTH THE PROCEDURES FOR SAID ELECTION; PROVIDING AN EFFECTIVE DATE FOR THE ORDINANCE; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING FOR AN EFFECTIVE DATE OF THE PROPOSED AMENDMENT UPON VOTER APPROVAL

Ms. Zimomra read the title of Ordinance 06-020.

Councilman Brown made a motion, seconded by Councilman Jennings, to adopt Ordinance 06-020.

Mr. Cuyler explained the following:

- Existing charter provision adopted 2005 and speaks to major changes to Periwinkle Way would require of the electorate
- Provision applies to new vehicular travel lanes
- Authors of amendment did not intend for new vehicular travel lane to be interrupted as the same lane in a new location
- Voter approval that would clarify that new vehicular lanes mean additional vehicular lanes
- Scheduled for the March general election

The motion carried unanimously.

CONSENT AGENDA:

Mr. Cuyler asked that item (i) be pulled from the Consent Agenda. Council also pulled item (b).

Ms. Zimomra read the titles of Resolutions 06-195, 06-198, 06-199, 06-200, 06-201 and 06-202.

- a. **RESOLUTION 06-195 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-036 AND PROVIDING AN EFFECTIVE** (to transfer \$25,000 appropriated in Fund 300 for a ball park mower and fencing to the Ball Park Maintenance Fund 173. The \$25,000 equipment purchase will be shared in an

equal 1/3 allocation between the City, Lee County and the School Board for \$8,333 each; This amendment reduces the General Fund Expenditures by \$16,666)

c. **RESOLUTION 06-198 SUPPORTING THE LEE COUNTY PUBLIC WORKS DEPARTMENT SUBMITTAL OF THREE (3) GRANT APPLICATIONS TO FLORIDA DEPARTMENT OF PROTECTION(DEP) FOR 1) AN INNOVATION RECYCLING GRANT; 2) A BIOENERGY DEVELOPMENT GRANT PROJECT; and 3) A RENEWABLE ENERGY GRANT COMMERCIALIZATION PROJECT; AND PROVIDING AN EFFECTIVE DATE**

d. **RESOLUTION 06-199 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-038 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$60,000 grant from the Lee County Tourism Development Council (TDC) for project #401897 for Fiscal year 2006/07 for dune walkover replacement. This grant award will replace money budgeted in the General Fund as support for the Capital Projects Fund and reduce the General Fund expenditures by \$60,000)

e. **RESOLUTION 06-200 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-039 AND PROVIDING AN EFFECTIVE DATE** (to appropriate a \$30,000 grant from Lee County Tourism Development Council (TDC) for project #401898 for Fiscal Year 2006/07 for water quality monitoring. This grant award will replace money budgeted in the General Fund as support for the Capital Projects Fund and reduce the General Fund expenditures by \$20,000)

f. **RESOLUTION 06-201 APPROVING BUDGET AMENDMENT/TRANSFER NO 2007-040 AND PROVIDING AN EFFECTIVE DATE** (to move \$13,544 from Reserve for Contingencies to the Police Department for the purchase of Livescan Fingerprint System to conform to the Florida Department of law Enforcement requirement that all applicants for certified law enforcement to submit fingerprint electronically beginning January 15, 2007 and that all current certified officers be re-fingerprinted electronically by January 01, 2007)

g. **RESOLUTION 06-202 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-041 AND PROVIDING AN EFFECTIVE DATE** (to reduce the estimated beginning fund balance rolled-forward in the adopted budget by \$1,192,598 due to Recreation Center General Contractor completing more of the project in the prior fiscal year than was anticipated. The budget amendment also appropriates the \$106,000 estimated interest earnings on the bond proceeds and reallocate the expenditure appropriations into the line-item according to the original project cost estimates to better manage project expenditures)

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolutions 06-195, 06-198, 06-199, 06-200, 06-201 and 06-202.

The motion carried unanimously.

h. **Approval of minutes – August 01, 2006 Regular Meeting, August 15, 2006 Regular Meeting, August 29, 2006 Emergency Meeting**

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to adopt the above-mentioned minutes.

The motion carried unanimously

- b. **RESOLUTION 06-196 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2007-037 AND PROVIDING AN EFFECTIVE** (to appropriate grants from the Lee County Tourist Development Council (TDC) for various projects for Fiscal Year 2006/07, including \$495,000 for Sanibel Facility/Beach Maintenance, \$25,000 for Sanibel Beach Erosion Monitoring, \$80,000 for ADA renovations to the Gulfside Park and Tarpon Bay Beach restrooms and \$300,000 for Sanibel Fishing Pier Protection)

Councilman Rothman asked what was involved within this resolution.

Ms. Zimomra stated this budget amendment was to replace the eroded sand from underneath the fishing pier during Hurricane Wilma.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-196.

The motion carried unanimously.

- i. **Approval of an agreement between that City of Sanibel and Lee County Supervisor of Elections**

Mr. Cuyler explained the following:

- Supervisor requiring all municipalities to enter in to an agreement to hold elections
- Indemnity provision that provided the City would indemnify the Supervisor of Elections for any errors, omissions or negligence she had
- Occasional indemnify in the past, but not for someone's own negligence
- Discussed with attorney and a number of alternatives as well as insurance alternatives
- Supervisor an additional insured
-

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

The motion carried unanimously.

OLD BUSINESS

Planning Department Update

Council acknowledged the information was in the agenda packet.

Water Quality Issues

Staff Reports

Beach Status

Dr. Loflin spoke to the following:

- Have algae coming in from off shore and varies greatly
- Sampling indicates no red tide and the positive samples off Boca Grande Pass
- No reports of dead fish
- Water testing
- Lee County dive team finding evidence of red drift algae off shore
- Performing carbon testing

Councilman Brown made a motion, seconded by Councilman Rothman, to invite Dr. LaPointe to come to a Council meeting.

The motion carried unanimously.

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to pay for a doctoral student from North Carolina to come for study if approved by the Medical Committee staff had the authority to proceed.

The motion carried unanimously.

Current Beach conditions

Report from Natural Resources Department

Corps of Engineers Lake Okeechobee new Tentatively Selected Plan (TSP) for Water Regulation

Meeting Reports

Dr. Loflin spoke to the following:

- Water Release Schedule approved (1B-T3) alternative modeled by the project development team
- Best for the Caloosahatchee River
- Revising the SCIS (Environmental Impact Statement
- June, 2007 final notice of acceptance
- Less inclined to make any changes due to the extension of public comment
- Water come for the summer the Lake would be kept at a lower level
- Funds to purchase forward pumps
- Need a representative to provide input at the week-to-week meeting

Discussion ensued regarding the greatest change that the water measurement would be at the Franklin Locke (S-77), holding water in Lake Okeechobee is there were continued base flow, and measurement take place at S-80 on the east side of Lake Okeechobee.

Request from B. I. G. Arts Board of Directors, 900 Dunlop Road to clarify the rental policy for their facility leased from the City of Sanibel

Council decided to delay until January 02, 2006 at 9:30 a. m.

Ms. Zimomra stated that the American Planning Association officially announced that the Sanibel Plan was selected to receive the 2007 National Planning Landmark Award with a formal presentation in Philadelphia later in the year.

Revised request for Proposals for Professional Services (RFP) – Periwinkle Way, Palm Ridge and Tarpon bay Road Commercial District Plan

Council delayed discussion until January 02, 2006 Council meeting.

Public Hearing regarding Evaluation Appraisal Report (EAR) plan amendments

Article 3, Part 3.3 Human Support Systems and Part 3.5 Capital Improvements

Discussion ensued regarding

- Page 99 grammatical changes
- page 101 4th line from the bottom after the word “fund” add “and maintain”
- page 105 add a few sentences on water conservation
- Page 108 at the bottom change “who” to “whom”
- page 110 define Shared Use Path, add a synopsis of the City’s policy statement on transit
- page 110 in the middle of the page under Australian pines – they were destroyed or remove by Hurricane Charley

- Page 113 any improvements to the Causeway, Lindgren and Periwinkle Way intersection should link the cost when toll revenues are received
- Page 113 eliminate 1st 5 lines ending with City
- Page 113 next paragraph delete “can obtain a greater benefit by operational providing 2 lanes, should also facilitate
- Add the intersection of Periwinkle, Causeway and Lindgren has been identified as an area of focus. However the full range of multi-modal transportation options and technology options have not been completed reviewed; they must be all be re-evaluates once the Causeway bridges are operational 2 lanes
- Page 114
- Cross can obtain to lanes and add also facilitate 2 lanes
- Page 118 add a synopsis of the City’s policy statement on transit
- Page 118

Public Comment:

Wayne Ponader spoke to page 113 1st paragraph second sentence replace “1988” with “2002: and the correct percentage

- Page 115 identify the roadways

Discussion ensued regarding of previous versions of the Sanibel Plan identified roads and no roadways would be widened.

- Page 116 cross reference with page 113
- Page 117 “posses” – misspelled
- Page 123 important that the Causeway bridges elevated out of storm surge
- Page 125 waste water treatment element speak to general waste water, storm water, fertilizer, impact on Lake Okeechobee be instituted
- Page 138 add polluted water going in to the Caloosahatchee and the SFWMD policy on water quality

Public Comment:

Bernie Lubetkin spoke to adding the bridge deck should be out of

Herb Rubin spoke to the scour zone rather than

- Page 148 reference to the Parks Master Plan and should be a reference to the existence to the master plan
- Page 149 turned grants back for Roadside City Park and no plans or budget for the Roadside City Park

Hazel Schuller spoke to EAR excluding standards established for recreation facilities. And need to follow through with the beach management plan commercial uses for beach accessory

- Page 150 6th and 7th paragraph refer to the Sanibel Plan of 1960
- Add the word “maintain” after “fund”

Herb Rubin spoke to line 3 level of service and need to be hyphens

- Page 150 and add 2 more sentences on carrying capacity;
- Page 150 3rd paragraph add maintain after the words to fund and”
- Page 151 develop plans for Gulfside City Park
- Page 151 item 1 adding the word “maintaining”

Ms. Zimomra stated that any items would come before Council before there was bidding and approval. She further stated it was not currently funded.

Hazel Schuller spoke to noting the recreational experience did not speak to ecozoning and the need for cross referencing recreation being conservation and passive.

- Page 152 add the commercial resort recreational uses prohibited from the gulf beach zone
- Page 152 Item 10 Causeway Island only place that people could gather

Dick Walsh spoke to corrections.

- Page 153 Standards Recreational Facilities minor typo making word plural;
- Page 158 under City Administration and add a sentence about the City relating to the County EOC
- Page 159 Plan for electric utilities whether or not people could use renewable electricity and add a comment that renewable solar, wind and other energy sources are available
- Page 159 Number 1 where electrical lines should be underground and Council decided not to put them under ground for reliable reasons
- Page 160 underground lines
- Page 160 City shall support and encourage health care facilities as the need arises
- Page 160 add
- Page 186 2nd paragraph when funds become available from toll revenues
- Page 186 paragraph be made consistent with comments earlier
- Page 186 Speak to revenue lost
- Page 186 local gas option tax must be preserved

John Harries spoke to page 160 number 6 add “where possible to make these system least seen”

- Page 191 Causeway revenue
- Page 192 add after restoration “from what?”

Council decided to discuss the following:

**COMMITTEES BOARDS COMMISSION
RESOLUTION 06-190 ESTABLISHING A WATER QUALITY MEDICAL
ADVISORY COMMITTEE; SETTING FORTH THE PURPOSE AND
OBJECTIVES OF SUCH COMMITTEE; APPOINTING THREE (3) SANIBEL
RESIDENTS TO SERVE ON SUCH COMMITTEE; AND PROVIDING AN
EFFECTIVE DATE**

Ms Zimomra read the title of Resolution 06-190.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 06-190.

Mr. Cuyler stated that there was no legal requirement of resigning if appointed to another committee, but was done historically.

Public Comment:

Dick Walsh asked who the members were.

Discussion ensued regarding Dr. Harries being the Chairman.

The motion carried unanimously.

**RESOLUTION 06-197 APPOINTING MEMBERS TO THE SANIBEL
PLANNING COMMISSION; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 06-197.

Mr. Cuyler explained that there would be 3 appointments, 2 for the expired terms and 1 appointment to fill John Veenschoten's remaining term.

Discussion ensued regarding the way the votes would be cast, majority of votes from Councilmembers, Council decide that someone would need to get at least 3 votes, possibility of interviewing at a Council meeting by the entire Council, if a person gets 3 votes and another receives 4 votes who gets the higher position, and Mr. Cuyler stated that if a person receives 3 votes they would automatically be appointed.

Councilman Brown made a motion, seconded by Vice Mayor Denham, 1st ballot anyone receiving 3 votes receive a seat, 2nd ballot drop persons that do not receive a vote and the person that receives less than 3

The motion carried unanimously.

Council recessed at 4:29 p. m.

Council reconvened at 4:35 p.m.

Mr. Cuyler read the votes as follows:

Les Forney 3 votes
Mike Valiquette 3 votes

David Berger 2 votes
Karen Storijschmann 2 votes
Michael Armstrong 2 votes

Tom Kreckel 1 vote
Alan Silberman 1 vote

Donovan 0 votes
Hamby 0 votes

Mr. Cuyler passed out another ballot and read the following votes cast:

Berger 2
Kreckel 1
Storijschmann 2

Mr. Cuyler passed out a third ballot and read the following votes cast:

Berger 3
Kreckel 0
Storijschmann 0

Vice Mayor Denham made motion, second by Councilman Brown, to adopt Resolution 06-197 adding Dr. David Berger taking John Veenschoten's remaining term, Les Forney and Michael Valiquette as the new 3-year terms.

Request for appointment to the Wildlife Committee from Claire Mallon

Vice Mayor Denham made a motion, seconded by Councilman Jennings, to appoint Claire Mallon to the Wildlife Committee.

The motion carried unanimously.

CITY MANAGER

Informational Items

Acknowledgement of the City's 2006 Community Rating System (CRS) Recertification

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

Request to extend assignment to Public Affairs Consultant

Design employment recruitment material

Design new resident welcome packet

Ms. Zimomra spoke to Council regarding the loss of employees and the difficulty retaining or hiring qualified employees.

Ms. Zimomra also spoke to designing an employee packet.

Councilman Rothman made a motion, Vice Mayor Denham seconded, to allow the Public Affairs Consultant to design the above-mentioned request.

The motion carried unanimously.

Additional requirements by FEMA for staff training

Ms. Zimomra spoke to Council about the required FEMA training.

Causeway Update

Ms. Zimomra spoke to the most recent e-mails shared with Council.

Offer from Lee County Department of Transportation (DOT) to brief Council on current bridge costs and financial impact

Ms. Zimomra stated that as part of the discussion Mr. Wingard had offered to come before Council for discussion.

Discussion ensued regarding no need for further explanation, hiring an independent auditor, legal recourse, Mr. Cuyler stated not based on the moving of the 2nd lien, because it was a financial projection, he would like to speak with Mr. Wingard to get the facts in writing or verbal, Council would like a written explanation why 2010 was given for renewing the revenue flow from Causeway tolls.

Florida League of Cities Federal Action Strike Team in Washington, D. C., February 6 and 7, 2007

No one attending.

CITY ATTORNEY'S REPORT

None.

COUNCILMEMBERS' REPORT

Councilman Brown's attendance to the 7th National Conference on Science, Policy and the Environment February 1 and 2, 2007 in Washington, D. C.

Council agreed Councilman Brown should attend the conference.

PUBLIC COMMENT

None.

There being no further business the meeting was adjourned at 5:00 p. m.

Respectfully submitted by,

Pamela Smith, CMC
City Clerk