

## **SANIBEL CITY COUNCIL MEETING JULY 19, 2005**

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

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

### **Invocation and Pledge of Allegiance:**

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

### **Public Comments:**

Richard Strong spoke to Councilman Brown stopping a neighbor from building an elevated pool and that anyone on Sanibel had the right to build according to the Code. He also asked that Councilman Brown recuse himself from any further debate on the matter of elevated pools.

Hazel Schuller requested that City Council asked the City Manager to prepare a City policy for renaming public streets owned by the City.

Steve Greenstein, Executive Director of the Sanibel Captiva Chamber of Commerce, spoke to traffic counts showing the number of daily visitors had dramatically decreased and thus hurting businesses on the Island. He offered the Chamber's support to City Council, as they analyze the results of the business initiative survey sent to all occupational license holders, in their effort to make the small business initiative a high priority for this year's administration.

Ms. Zimomra stated that the results of the survey were being input and the results would be shared with City Council during their next regular meeting.

Attorney Cuyler stated that in regard to the request that Councilman Brown recuse himself from voting on the elevated pool issue, his opinion was that Councilman Brown did not need to recuse himself.

### **Council Comments:**

Councilman Rothman reported that the Director of the Charlotte Harbor National Estuary program, Lisa Beaver, visited Sanibel and was amazed at how bare the beaches were since the Australian Pines were gone. He also spoke high water at Clam Bayou, water being over the dock at Bowman's Beach and water getting into houses in the area.

Ms. Zimomra reported that one of the executive sessions would be to discuss current eminent domain procedures regarding acquisition of the property necessary to proceed with the project to handle the water.

Vice Mayor Denham reported that after asking visitors to the Island what they think of the Island after Hurricane Charley, they don't see much difference and people who have not been on the Island are not sure anything should be done with Periwinkle Way vegetation.

Ms. Zimomra stated that the Periwinkle Corridor Restoration Project would be discussed during Budget discussions and during an August City Council meeting.

Councilman Jennings reported that Connie Mack was helping with the study for Clam Bayou.

### **Planning Commission Report:**

Commissioner Veenschoten gave the following report:

- Planning Commission Resolution 05-09 was unanimously approved for St. Michael's and All Angels Episcopal Church addition of ~1800 square foot

- An Ordinance to establish the height of elevated pools resulted in a tie vote and would be forwarded to City Council along with recommendations from the Planning Commission

Discussion ensued regarding the last time a variance request was submitted to the Planning Commission, and that the Planning Commission should rely heavily on Section 86-43 of the Land Development Code.

Mr. Cuyler, City Attorney explained that on a petition a tie vote was a denial, but he would verify the Code of what a tie vote means for a City initiated ordinance.

Councilman Brown asked that it be entered into the record that he was given legal permission to speak at the Planning Commission meeting.

Vice Mayor Denham advised that he removed himself from the July 12, 2005 Planning Commission Meeting during the elevated pool discussion.

Mr. Cuyler advised that it was a good practice to remove oneself from the room.

**First Reading:**

**ORDINANCE 05-013 ORDINANCE PERTAINING TO CHAPTER 90 OF THE SANIBEL CODE ENTITLED “FEES”, ARTICLES I, II, III AND IV, AMENDING THE PERMIT, DEVELOPMENT REVIEW AND ADMINISTRATIVE FEES SET FORTH THEREIN; AMENDING THE SCHEDULE OF FEES FOR APPLICATIONS FOR PERMITS OR APPROVALS REQUIRED BY THE LAND DEVELOPMENT CODE; AND PROVIDING AN EFFECTIVE DATE.**

Ms. Zimomra read the title of Ordinance 05-013.

Council set the second reading and public hearing for August 16, 2005 at 9:15 a. m.

**ORDINANCE 05-014 ORDINANCE PERTAINING TO CHAPTER 14 OF THE SANIBEL CODE ENTITLED “BUILDING AND BUILDING REGULATIONS”; AMENDING ARTICLE IV, PERMITS, SECTION 14-191, FEE SCHEDULE, AND ARTICLE V, STANDARDS, SECTION 14-212, VALUE OF PROJECT OR WORK; AMENDING THE BUILDING PERMIT AND BUILDING REGULATION RELATED FEES SET FORTH THEREIN; AND PROVIDING AN EFFECTIVE DATE.**

Ms. Zimomra read the title of Ordinance 05-014.

Council set the second reading and public hearing for August 16, 2005 at 9:30 a. m.

**Second Reading and Public Hearing:**

**ORDINANCE 05-011 RELATING TO ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES (“EPAMD”); SETTING FORTH DEFINITIONS; SETTING FORTH FINDINGS; DETERMINING THAT EXCEPT IN ACCORDANCE WITH THE USE, OPERATIONAL AND LOCATIONAL CRITERIA SET FORTH IN THIS ORDINANCE, THE USE AND OPERATION OF EPAMD’S ARE UNSAFE ON THE STREETS, ROADS, SHARED USE PATHS AND SIDEWALKS WITHIN THE CITY OF SANIBEL; SETTING FORTH USE, OPERATIONAL AND LOCATIONAL CRITERIA FOR THE USE AND OPERATION OF EPAMD’S; PROVIDING FOR CONFLICT AND**

**SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

Ms. Zimomra read the title of Ordinance 05-011.

Mr. Cuyler explained the criteria for Segway use on Sanibel and stated that the Ordinance did not affect the Segway Tours that were previously approved by the Planning Commission.

**Public Comment**

Dr. Kaplan, Beth Gillis, Herb Rubin, Mary Cutair, Hazel Schuller, Ed Sieber, Henry Glissman, Steve Maxwell, Gayle Ponce, Dr. Ponce, and David Bath spoke against the use of Segways on Sanibel.

Billy Kirkland, local Segway dealer spoke in favor of using Segways on Sanibel and offered to assist the City to ensure safe usage of Segways.

Richard Strong, Dennis Hendricks and Doty Briskey spoke in favor of Segways.

Mr. Jack Samler, Chairman Planning Commission reported that the Planning Commission decision to approve Segways Tours was for 18-month trial period, and was done so the use of Segways could be evaluated to ascertain whether they were safe.

City Council recessed at 10:53 a. m.

Council reconvened at 11:04 a. m.

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to approve the Ordinance with a stipulation that the tours could not take place on Periwinkle Way other than from Billy's Rental at 1509 Periwinkle Way West to Dixie Beach Road.

The motion carried by a 4 to 1 vote with Councilman Jennings dissenting.

Mayor Johnston made a motion, seconded by Vice Mayor Denham, to amend Ordinance 05-011 by prohibiting Billy's Segway Tours that originate from 1509 Periwinkle Way from using Periwinkle Way from Dixie Beach to Tarpon Bay (Bailey's).

The motion carried by a vote of 4 to 1 with Councilman Rothman dissenting.

Councilman Brown made a motion, seconded by Councilman Jennings, to table discussion.

The motion failed by a vote of 3 to 2 with Mayor Johnston, Vice Mayor Denham and Councilman Rothman dissenting.

Mr. Cuyler stated that if the Ordinance was tabled, anyone could use Segways on the Shared Use Paths.

Discussion ensued regarding the amendment to prohibiting Billy's Segway Tours that originate from 1509 Periwinkle Way from using Periwinkle Way from Dixie Beach to Tarpon Bay (Bailey's) 18 months enough time for a safety study, Mr. Kirkland should not be the one conducting the study, safety on the Shared Use Paths should be considered, segways should not be allowed on the most densely populated paths, handicapped persons should be allowed to use segways on Shared Use Paths, and motorized vehicles should not be allowed on the Shared Use Paths.

**ORDINANCE 05-012 GRANTING TO LEE COUNTY ELECTRIC COOPERATIVE, INC., (LCEC) ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR QUARTERLY PAYMENTS TO THE CITY OF SANIBEL, FLORIDA; PROVIDING FOR INCORPORATION,**

**CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

Ms. Zimomra read the title of Ordinance 05-012.

Louis Walton, representative of Lee County Electric Cooperative (LCEC) requested a continuance.

Council approved this request by a unanimous voice vote.

**CONSENT AGENDA:**

Mayor Johnston requested that item (g) of the Consent Agenda be pulled for discussion, Councilman Brown requested that item (h) of the Consent Agenda be pulled for discussion, and Councilman Jennings requested that item (k) of the Consent Agenda be pulled for discussion.

- a. **RESOLUTION 05-102 APPROVING A LEASE AGREEMENT FOR THE GULFSIDE CITY PARK CARETAKER'S COTTAGE WITH THOMAS F. BAUER; AND PROVIDING AN EFFECTIVE DATE.**

Ms. Zimomra read the title of Resolution 05-102.

Councilman Jennings made a motion, seconded by Vice Mayor Denham, to adopt Resolution 05-102.

The motion carried unanimously.

Ms. Zimomra read the titles of Resolutions 05-103, 05-104, 05-105, 05-107 and 05-108.

Vice Mayor Denham made a motion, seconded by Councilman Jennings, to adopt Resolutions 05-103, 05-104, 05-105, 05-107 and 05-108.

- b. **RESOLUTION 05-103 APPROVING A LEASE AGREEMENT FOR THE 2897 ISLAND INN ROAD PROPERTY WITH LANCE A. LUNA; AND PROVIDING AN EFFECTIVE DATE**
- c. **RESOLUTION 05-104 APPROVING A LEASE AGREEMENT FOR THE EAST LIGHTHOUSE CARETAKER'S COTTAGE WITH DENNIS L. ROBERTS; AND PROVIDING AN EFFECTIVE DATE**
- d. **RESOLUTION 05-105 APPROVING A LEASE AGREEMENT FOR THE WEST LIGHTHOUSE CARETAKER'S COTTAGE WITH RANDY WRIGHT; AND PROVIDING AN EFFECTIVE DATE**
- e. **RESOLUTION 05-107 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2005-038 AND PROVIDING AN EFFECTIVE DATE** (accepting grant in the amount of \$10,000 from Lee Anne Tauck Foundation (L. A. T.) for the restoration of the Old Schoolhouse located at the Historical Village at 950 Dunlop Road)
- f. **RESOLUTION 05-108 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2005-039 AND PROVIDING AN EFFECTIVE DATE.** (to appropriate available funds from the salaries line-item of the Beach parking Fund (available due to parks being closed for several months after Hurricane Charley) to purchase land for the Police Marine Patrol Boat Dock located at unassigned 801 Sextant Drive)

The motion carried unanimously.

- i. **RESOLUTION 05-110 ACCEPTING A BILL OF SALE AND AFFIDAVIT OF NO LIEN FOR WASTEWATER FACILITIES, FROM BUTTERKNIFE PROPERTY OWNERS ASSOCIATION, INC., AUTHORIZING THE CITY MANAGER TO RECORD SAME IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 05-110.

Councilman Jennings made a motion, seconded by Councilman Brown, to adopt Resolution 05-110.

The motion carried unanimously.

- j. **RESOLUTION 05-111 ACCEPTING TWO PERPETUAL UTILITY EASEMENTS FROM BUTTERKNIFE PROPERTY OWNERS ASSOC. INC.; AUTHORIZING THE CITY MANAGER TO RECORD SAME IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 05-111.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 05-111.

The motion carried unanimously.

- l. **RESOLUTION 05-112 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2005-041 AND PROVIDING AN EFFECTIVE DATE** (to move \$332,000 from the General Fund Reserve for the Recreation Center Project to the Capital Project Fund established to account for the project costs in order to fund the Council action taken June 21<sup>st</sup> for \$310,000 authorizing the architect to proceed with construction drawings for the new facility; and to account for the sale of fill from the Sewer Phase 3b Expansion Project to the Recreation Center Capital Project in the amount of \$22,000 pursuant to May 17, 2005 Council action)

Ms. Zimomra read the title of Resolution 05-112.

Councilman Brown made a motion, seconded by Councilman Jennings, to adopt Resolution 05-112.

The motion carried unanimously.

- m. **Award contract for City Hall exterior painting to Dave King and Associates in the amount of \$40,825.00**
- n. **Award contract for City Hall renovations to comply with Americans with Disabilities Act requirements to International Contracting Group, LLC,. In the amount of \$37,419 and authorize the City Manager to execute the contract. (funded by a grant from CDBG in the amount of \$35,348 and balance from Public Works portion of the Capital Improvement budget)**
- o. **Reject bids received for the 2005 street resurfacing project and direct staff to rebid project with reduced scope**

Councilman Brown made a motion, seconded by Councilman Jennings, to adopt Consent Agenda items (m), (n) and (o).

The motion carried unanimously.

- g. **RESOLUTION 05-113 AUTHORIZING THE PURCHASE OF A PARCEL OF REAL PROPERTY LOCATED AT 0 SEXTANT DRIVE, SANIBEL, FLORIDA, FOR THE PURPOSE OF CONSTRUCTING A BOAT DOCK AND LIFT FOR DOCKAGE AND STORAGE OF THE CITY OF SANIBEL POLICE BOAT (AND RELATED WATER SAFETY EQUIPMENT) ON SAID PARCEL; PROVIDING THAT THE PURCHASE OF SAID PROPERTY SERVES AN APPROPRIATE AND PROPER PUBLIC PURPOSE; AUTHORIZING THE EXECUTION OF A PURCHASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the title of Resolution 05-113.

Discussion ensued regarding the memorandum from the Planning Department made specific inconsistencies in the Land Development Code (LDC), requested the Planning Commission reviewing the boat dock as it might protrude in to the canal, affect property owners of Sextant Drive and abide by the Dark Skies ordinance, and noted that the Planning Department had reviewed the plans and had findings the boat dock would be in compliance of the LDC.

Councilman Brown made a motion, seconded by Vice Mayor Denham, to adopt Resolution 05-113.

Ms. Zimomra stated that boat dock would only be constructed within all the elements of City Code and if anything were found during or before construction the project would come back to Council.

Public Comment:

Jim Strothers, Marine Advisory Committee Chairman spoke to the work the committee had accomplished in pursuing the land for the boat dock and recommended enhanced buffering from the residential community.

Discussion ensued regarding any previous applications for a boat dock on the same piece of land, there had not been any applications, this boat dock was for the public good as allowed within the code, Planning Department support the project and the property was an adequate location.

Mr. Cuyler stated that the City had not allowed nor would the City allow a residential owner to have a private dock in the same area. He further stated that the City acquired the property for the placement of a dock for the benefit of the community concluding that was the distinction.

The motion carried unanimously.

- h. **RESOLUTION 05-109 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2005-040 AND PROVIDING AN EFFECTIVE DATE.** (to allocate \$11,865 from the General Fund Reserve for Contingencies to the Natural Resources Department in order to provide funding for the first of three installment payments to the Sanibel Captiva Conservation Foundation for an Alligator Study. This amount represents 1/3 of the total study cost of \$35,595)

Ms. Zimomra read the title of Resolution 05-109.

Discussion ensued regarding the study should also involve educating the public.

Councilman Brown made a motion, seconded by Councilman Jennings, to adopt and amend Resolution 05-109 to state that the allocation was approved for one year for one-third the amount of the study costs for that year, not to exceed \$11,865, the contract would be renegotiated yearly after receiving a status report, and that the scope would include educating the public.

The motion carried unanimously.

Council recessed at 12:25 p.m.

Council reconvened at 2:00 p. m.

k. **Approval of an agreement with the Florida Fish and Wildlife Conservation Commission for a grant in the amount of \$200,000 for replanting of Bowman's Beach and authorize the City Manager to execute the agreement.**

Discussion ensued regarding this agreement being a good example of governments working together.

Councilman Jennings made a motion, seconded by Vice Mayor Denham, to approve the agreement with the Florida Fish and Wildlife Conservation Commission for a grant in the amount of \$200,000 for replanting of Bowman's Beach and authorize the City manager to execute the agreement.

Discussion ensued regarding Ding Darling not allowing the use of adulticides within the refuge and Ms. Zimomra stated that she would check with the refuge staff.

The motion carried unanimously.

**OLD BUSINESS:**

**Proposal from noise consultant Bernard Kinney for further noise abatement alternatives at the Donax Sanitary Sewer Treatment Facility, 940 Donax Street:**

Ms. Zimomra stated that noise levels at the Donax Sanitary Sewer Treatment Facility were within legal limits.

Mr. Kinney, of Bernard Kinney Associates gave a brief presentation showing the results of studies of Phase I, Phase II and Phase III, and distributed a copy of the presentation to City Council. Mr. Kenney stated that the noise level met Sanibel's code. He also stated that to date \$601,615 had been spent on noise.

Discussion ensued regarding monies spent on odor being \$400,000 to total the cost at \$1,005,115 dollars, Camp, Dresser McKee (CDM) modifying the piping (cost already encumbered), should be completed by October and then it could be tested, build two walls around the sludge thickened building which would cost a total of \$135,000 for 2 buildings (not encumbered), walls would be between 17 to 22 feet, cost of \$1,000,000 on the generator building, not spending any additional money on noise abatement, Council asked what the noise level was outside Health Park, Mr. Kenney stated the noise was probably higher than outside the sewer plant, and Mr. Kenney stated he would measure the noise at Health Park and report this in October.

Public Comment:

Herb Rubin explained how decibels were measured.

**Presentation by staff of major points for proposed build back ordinance:**

Mr. Pfalzer stated that the Planning Department prepared suggested revisions to the current "Buildback Policy" to attempt to incorporate the direction provided by Council. He called Council's attention to the suggested revisions as they were presented in a table that states the current "buildback policy." Mr. Pfalzer reviewed the revisions the chart dated July 12, 2005.

Discussion ensued regarding how to differentiate between devastation and substantial devastation, and would it be a single family dwelling fire (devastation) compared to hurricane damage (substantial devastation), Mr. Pfalzer answered one could include whether the devastation was Island wide or specific to a few, different between buildback and redevelopment, buildback was building back within the same footprint, 1974 Coastal Construction Control Line (CCCL), 1991 CCCL and the regulations that apply to the Bay as well as the Gulf, state implements the CCCL program, if a structure was built seaward of the CCCL state. Department of Environmental Protection (DEP) had to give approval, when Sanibel Plan was developed so structures could not be built seaward of the CCCL, in the late 1980's the State of Florida decided for Lee County and particularly Sanibel that it would be most effective for this program if that line moved further inland and in most cases it moved toward Gulf Drive, City observed this happening and a decision was made that the 1974 line would remain the demarcating line of the Sanibel Plan for the Gulf Beach Zone separating it from the Gulf Beach Ridge where residential development was permitted, after 1991 people on Sanibel building seaward of the State line had to get a permit from the State; nobody built from 1974 to 1991 because the City was not going to approve any construction, but when the State moved the line further back Sanibel said we could not ask people to give up all their Gulf front property, the 1974 line was still recognized by the City to designate the Preservation from the Residential District, the 1991 line was used by the State administratively so the Planning Department coordinated the issuance of permits in that area by making sure the DEP had issued a permit before the Planning Department issued any permits, should owners should be able to build back to conform with flood regulations when this would require the building to exceed the height of 45', the only reason to raise the height of a building was to meet insurance regulations, the City should look at ways to keep the insurance rating low and to make flood insurance available to residents of the Island, Council felt strongly that no one should lose their unit, and not allow short-term rentals outside the Resort District, and considered during the redevelopment study.

Mr. Cuyler explained that a summary of the referendum was that if Council passed an ordinance that increased height there was a requirement to receive voter approval on a broad scale not an individual scale unless people would lose their unit or flood regulations changed the height currently allowed. He stated that there would be existing units, which if raised due to flood elevations requirements would not fall into the criteria.

Mr. Pfalzer stated that there was already a relief mechanism in the code for 45 feet. He cited the most recent case as being the development of Sedgemoor on Tarpon Bay Road where the CCCL requirement was met that required the lowest floor to be 18 feet above sea level instead of the 12 feet requirement. He explained that the City by code allowed the 45 feet and 6 feet above that footage on the top making the height of the building at 51 feet. He also explained that the same rule would be applied to any three-story building below flood elevation, but there was no relief in the current code for buildings already at 4-stories.

Mr. Cuyler stated that the State was stricter due to the State line being farther from the Gulf, the State reviews and approves applications to construct seaward of the 1991 line, and the City does not approve applications for structures to be built seaward of our CCCL.

Discussion ensued regarding increased height, not the intention of the City forefathers to allow anything above 4-stories, height could be waived, build back in the Gulf Beach Zone at the current density, should not change the rule that would not allow the continuance of resort housing rental if a dwelling was destroyed, look at resort housing during the redevelopment study, could rebuild only what was allowed under the current density map, Council agreed that dwellings could build back up to the existing footprint forward of the CCCL as allowed in the current code, see any build back behind the CCCL, if a building was moved back the plans would be redevelopment, maintain use of dwelling during build back, multi-family use in a single dwelling area and Council consensus was to allow the use, Council consensus was also to allow build back of commercial establishments outside the commercial zone, replace build back with reconstruct as was the current definition and a definition of a disaster.

Mr. Cuyler stated that it was not crystal clear that even though a dwelling could be built back in the current footprint does not mean that the structure could be built back with the same density, but could be read in to the current code.

Discussion ensued regarding the focus of build back was for single-family dwellings, and an inconsistency with multi-family dwellings.

Public Comment:

Karen Storjohann spoke to the Bert Harris Act and recommended that every modification be evaluated by using the Bert Harris Act.

Hazel Schuller, Steve Maxwell, Mary Cutair, Herb Rubin, Gloria Hannah and Mike Valiquette spoke to buildback.

Sonja Smith, representing C.A.S.I. spoke regarding the condominium associations.

### **Discussion regarding the Environmental Handbook:**

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to approve the handbook and send for publication.

Public Comment:

Hazel Schuller spoke to the incompleteness of the handbook.

Gloria Hannan spoke to the development of the handbook and noted that the LDC sections were noted in the text.

Berdenna Thompson spoke to changing the name of the handbook, and repetitions.

Discussion ensued regarding weak areas in the handbook, and should deal with vegetation only.

The motion carried 3 to 2, with Councilman Brown and Councilman Jennings dissenting.

Discussion ensued regarding the rest of the agenda discussion and the executive session.

### **Status report from City Attorney on obtaining easement necessary for the construction of the Shared Use Path parallel to Periwinkle Way behind the Sanibel Steakhouse to Bank of the Islands**

Mr. Cuyler stated that Council discussed in the past an alternative shared use path behind the commercial units from approximately Sanibel Steakhouse west to Casa Ybel and the following had been completed:

- Easements identified
- Council approved the taking of easements through eminent domain if necessary
- Property descriptions were identified
- Florida statute required a pre-litigation notice (formal notice of intent) before filing suit to each property owner with an offer of settlement in terms of the appraisal
- Mailings were completed
- Hurricane Charley hit and the proceedings were put on hold
- Appraisals would need updated
- Funds remain in the budget.

Discussion ensued regarding funds in the budget, eminent domain not being actively pursued, cost of land acquisition, cost of construction, money should be spent on improving the shared use paths, \$8,000 spent thus far, and cost approximately \$3,000 to \$5,000 to update appraisals.

Public Comment:

Hazel Schuller spoke to including the Shared Use Master Plan into the LDC.

A citizen spoke to potential liability of the Shared Use Path location in front of businesses from Sanibel Steakhouse west to Casa Ybel.

Discussion ensued regarding the Sanibel Bike Club promoting bike safety, Bike Club requesting updating the Shared Use Master Plan and putting \$25,000 toward the study,

Council agreed by consensus to direct staff to bring back a background report and expend approximately \$3,000 to \$5,000 to have the land re-appraised.

**Accept Solid Waste proposal submitted by Waste Services of Florida, Inc., and Waste Pro of Florida, Inc., and Accept recommended staff ranking and direct City Manager to negotiate a solid waste franchise contract with top ranked firm, Waste Pro of Florida, Inc.**

Ms. Zimomra explained that at Council direction was to contact the County regarding the proposal.

Mr. Gates Castle recommended that Council accept the top ranking of West Pro of Florida, Inc., as the top ranked firm and Waste Services of Florida, Inc., coming in second. He also asked Council to authorize the City Manager to negotiate a contract.

Vice Mayor Denham made a motion, seconded by Councilman Rothman, to accept the staff recommendation to award the contract to Waste Pro of Florida, Inc., and authorize the City Manager to negotiate a contract.

Discussion ensued regarding recycling for condominiums, and Mr. Gates Castle answered that Council would make that decision.

Public Comment:

Sonia Smith spoke to serious problems with waste collection.

Waste Pro spoke to having staff in place for routing issues and customer complaints for the first several weeks.

The motion carried unanimously.

Mr. Cuyler requested that

**NEW BUSINESS:**

**Presentation by Hartman Consulting and Design for the annual update of the Sewer Financial Feasibility Study:**

Ms. Zimomra noted that Council had been briefing in the last 24 hours. She explained that there was a 3% indexing included in the proposal, but the rate increase was not necessary. She stated that with the 3% indexing in 2008 and 2009 there would be a 13% increase project with nothing built in for capital improvement for noise, but that could be done if Council so chooses.

Discussion ensued regarding enough funds in case of emergencies, Ms. Zimomra answered that Council created a reserve fund for utilities and the 3% includes another installation into that fund.

Tara Hollis gave a brief presentation:

- Update project cost
- Review proposed operating and maintenance program
- Review different repayment sources for the State Revolving Loan Fund (SRF)
- Repayment of re-use advances to the General Fund from 1999/2000 to construct the deep well and the transmission line to the deep well
- Need of long term rates
- Project costs increase \$4 million since 2004 with delays in construction, inflation cost, bringing supplied over the Causeway

- 2006 budget decreased to approximately \$200,000 due to reduced personnel costs
- Capital Improvement Program in place and spending \$3 million for the next 5 years
- Option for noise abatement in the amount of \$3 million
- Total costs spent for new sewers equal \$48.7 million dollars (repayment by special assessments transmission charges, connection fees, ad valorem taxes)
- Ad valorem taxes set aside \$20.4 million by referendum in 1997 (42%) remaining 8% from operating revenues
- Re-use advances – paid from City pooled cash – repayment by sewer system operating revenues and fees from re-use program
- 3% increase adequate to fund all operating and maintenance expenditures as well as funds for the reserve fund
- \$600,000 for Capital Improvements
- Identified 2009 with a 10% to 13% increase in rates

Discussion ensued regarding increase in rates, 5% to 5.5% each year not to have a large increase in 2009, Enterprise Fund was a stand-alone fund, an increase of 5% instead of 3% would be an additional \$.78 per month per customer, if more money was included for noise abatement would be a 7% increase and \$1.39 per month per customer, and Council by consensus decided to approve the 3% increase in rates.

Public Comment:

Hazel Schuller spoke to the eminent domain of land for the Shared Use Path on Periwinkle Way at Sanibel Steakhouse west to Casa Ybel. She passed out a news article of development of land in Pigeon Forge, Tennessee.

Council decided to discuss the following:

**Discussion regarding “Shared Use Path Master Plan” and hiring a consultant to do a study to acquire grants and funding:**

Councilman Jennings suggested acquire funding, having a standardized plan in place and set goals.

Patty Sousa, Bike Club gave a brief history of events:

- Club approached by residents and Council to raise funds
- Last several months decided to raise money
- Need paths widened
- Would like to enhance the current Share Use Master Plan
- Need the minimum standard of 10 to 12 foot wide paths
- Offering a pledge of \$25,000 to hire a consultant to study the Share Use Master Plan and would like for the City to place an additional \$75,000 in the proposed budget for a total of \$100,000
- Consultant would look at current plan and path system

Discussion ensued regarding club would start working on a fund raising campaign if approved by Council with \$75,000 put in the proposed budget, study would be controlled and completed by the City, nominate Brenda Tate as a member of the Lee County Pedestrian Coordinating Committee, only a full-time City official could be a member of the committee, and Bike Club would like to be involved in process.

Councilman Brown made a motion, seconded by Councilman Jennings, to have a resolution at the next Council meeting, thanking the Sanibel Bike Club, match the difference for the study up to \$75,000 to be spent over the next 2 years.

Council agreed by consensus.

Council decided to have the Executive Session as follows:

Mr. Cuyler explained that he had requested the following Attorney/Client Session, which was a non-public session.

Mayor Johnston stated the following and lasting approximately 45 minutes:

**The City Attorney desires advice and consultation with the City Scheduled Council pursuant to Section 286.011 (8), Florida Statutes, regarding Meeting City of Sanibel v. Lillian E. Marvas; Estate of Hartwell G. Marvas; Lee County; and Lee County Tax Collector, Case #05-CA-2979. The Attorney-Client Session shall not be open to the public. The Attorney-Client Session shall be held on Tuesday, July 19, 2005 as soon as the scheduled meeting has completed business and upon temporary adjournment of the regular City Council meeting that day, such meeting and the Attorney-Client Session to be held at MacKenzie Hall, 800 Dunlop Road, Sanibel, Florida. In attendance at the Attorney-Client Session shall be only the following persons:**

**Mayor Carla Johnston  
Vice Mayor Mick Denham  
Councilman Steve Brown  
Councilman Jim Jennings  
Councilman Tom Rothman  
Sanibel City Manager Judie Zimomra  
Sanibel City Attorney Ken Cuyler**

Council went into the Client/Attorney Session at 6:03 p.m.

Council reconvened into Open Session at 6:40 p.m.

Mr. Cuyler stated the Attorney/Client Session was concluded.

Mr. Cuyler stated that the case listed above relates to the acquisition of property to construct a culvert between Clam Bayou and Dinkins Bayou, which was part of the circulation system project including Blind Pass. He explained he had received information from the property owner's attorney that the owners would be willing to settle the case for \$236,000, which was more than the offering of \$118,000, but would include the property owners costs and attorneys fees. He further explained that the reason the settlement offer was brought to Council for a decision was because the culvert was the only way to open the circulation system and relieve current flooding in Clam Bayou. If Council approves the settle the attorney for the property owner would be contacted with the settlement offer for the sum of \$236,000. He also explained that there were environmental concerns including several mangrove die-offs in recent years due to the height of the water and duration of water. He advised Council that there was an Order of Taking Hearing scheduled for August 24<sup>th</sup> and if settle presently it would save about one-third the amount of time to get mobilized to begin the project.

Vice Mayor Denham made a motion, seconded by Councilman Jennings, to authorize Mr. Cuyler to begin negotiations at \$236,000.

Discussion ensued regarding contacting the contractor and offer a premium to begin immediately, were there any guarantees that the culvert would work, Ms. Zimomra answered that the proof would be in the operation of the system, and Mr. Cuyler answered that there was a high degree of probability to drain Clam Bayou.

He motion carried unanimously.

Council decided to go into the next Executive Session.

Mr. Cuyler announced the following:

**EXECUTIVE SESSION RELATING TO UNION NEGOTIATIONS.** In attendance shall be only the following persons:

**Sanibel City Council**  
**Sanibel City Manager Judie Zimomra**  
**Sanibel City Attorney Kenneth Cuyler**  
**Jim Isom, Director of Administrative Services**  
**Wayne Helsby, Labor Counsel (Allen, Norton & Blue) (Not Available)**  
**Renee Lynch, Finance Director (Not Available)**

Council convened in to the Executive Session at 6:48 p.m.

Council reconvened in to Open Session at 7:16 p. m.

**City Council Procedures**  
**Role of Council Discussion**  
**Restriction of Council Comments**  
**Role of Mayor**  
**Role of Council**

Discussion ensued regarding team-work during Council meeting, not being cut-off with conversations between Council members, Council members need the opportunity to understand what each other were saying, no time limit for Council discussions, rather have longer meetings than cut off discussion, learning curve for new Council members, ceremonial Mayor with strong City Manager, consideration of time specific topics try discuss on time, number one priority for Council was Council discussion and public discussion, any way to shorten the agenda, Lee County Board of Commissioners only allow public comment at the beginning of their meeting, and Lee County Board of Commissioners always have a Monday public work sessions for discussion before the Tuesday meetings.

**Distribution of “Working Budget” to City Council:**

The working budget was passed out to Council.

**CITY MANAGER'S REPORT:**

**Informational items:**

**Hurricane Recovery Update:**

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

**City Council Budget Workshop July 26, 2005:**

Ms. Zimomra reminded Council of the upcoming Budget Workshop on Tuesday, July 26, 2005 at 9:00 p.m.

Discussion ensued regarding work sessions, additional meetings derived from Council goals, and items for the consent agenda.

**Lee County Days March 27 thru March 29, 2006:**

Ms. Zimomra called Council’s attention to the packet information and asked if there was any Councilmembers that wanted to attend.

Discussion ensued regarding Council attendance with Councilman Jennings requesting to attend Lee Days in March, 2006.

**Notification of sufficiency from the Department of Community Affairs (DCA) regarding the Sanibel Evaluation Appraisal Report (EAR):**

Ms. Zimomra called Council's attention to the packet information regarding DCA notifying staff the of the EAR sufficiency.

**Augment Planning staff with a part-time Planner for 6 months:**

Ms. Zimomra stated that for the next 6 months the Planning Department would be augmented for the next 6-months.

**Draft letter to Sheriff Mike Scott regarding Causeway traffic as requested by Council:**

Council approved the draft letter to Sheriff Mike Scott requesting more patrol on the Causeway.

**Notification of FRDAP grant Awards in the amount of \$200,000 for the Community Park and \$200,000 for Bowman's Beach improvements:**

Ms. Zimomra noted that Dr. Loflin had been awarded a grant in the amount of \$200,000 from FRDAP for Bowman's' Beach improvements.

**CITY ATTORNEY'S REPORT.**

None.

**COUNCILMEMBERS' REPORT.**

None.

**PUBLIC COMMENT.**

None.

There being no further business the meeting was adjourned at 7:37 a. m.

Respectfully submitted by,

Susan Beck  
Recording Secretary