

**SANIBEL CITY COUNCIL MEETING
JUNE 15, 2004**

Mayor Harrity called the meeting to Order at 9:00 a.m.

Mayor Harrity gave the Invocation and led in the Pledge of Allegiance.

Members present: Mayor Harrity, Vice Mayor Walsh, Councilman Brown,
Councilman Jennings and Councilmember Workman.

PRESENTATIONS

RESOLUTION 04-062 OF THE CITY OF SANIBEL EXPRESSING THEIR SINCERE CONDOLENCES TO THE FAMILY OF ROBERT E. DYSART, A RETIRED POLICE OFFICER WITH THE CITY, ON HIS PASSING; AND PROVIDING FOR AN EFFECTIVE DATE. M

Ms. Zimomra read the title of Resolution 04-062.

Mayor Harrity read and presented Resolution 04-062 to Major Michael Murray to present to Mr. Dysart's widow.

Councilman Brown made a recommendation to move the Proclamation recognizing Sanibel Marina's Florida Clean Marina Award until Mr. Ireland arrived.

Council agreed by consensus.

Roger Blind, General Manager, Island Water Association (IWA) regarding Water Conservation.

Roger Blind, General Manager, Island Water Association (IWA) gave a presentation regarding water usage at the water plant with the following background:

- Maximum treatment plant capacity is 5.2 million gallons per day.
- Maximum pumping capacity with all back-up pumps is around 10,000 gallons per minute.
- Demand is extremely variable

Mr. Blind gave examples of water demand and highest residential users. He stated that the plant was getting close to both pumping and treatment capacity during peak demand periods and IWA may need to expand treatment, storage and/or distribution facilities, which would result in a water rate increase for all members. He further stated that IWA took water conservation very seriously and has an extensive Conservation Policy with the following major provisions:

- Tiered water rate structure makes high water consumption expensive.

- Connection charges for larger meters significantly higher than for smaller ones. Larger meters can pass more water and hence have more adverse effects on the capacity of the treatment and distribution systems.
- Maximum water consumption rates for new construction, limited to fair share of IWA facilities' capacity, based on connection fees.

Council asked if a usage record could be provided to the Sanibel Police to identify those residents with excessive water usage. Mr. Blind stated that their records show only total water usage.

Vice-Mayor Walsh made a motion, seconded by Councilmember Workman, to direct staff to prepare an appropriate ordinance including enforcement provisions and setting forth at a minimum the requirements set forth by the South Florida Water Management District.

Discussion ensued regarding what Ordinance the City already had in place, other municipalities' water restriction ordinances, abusers of the system, developing a reward system, developing an education program, Captiva water usage and police intervention.

Mr. Cuyler stated that Council should go ahead and put an Ordinance on the books to be consistent with other Municipalities.

Discussion ensued regarding as to who would pay for enforcement of water restrictions, IWA with no plans to pay for enforcement, water education first and punitive measures put in place for those that abuse the system.

The motion failed with Councilman Brown, Mayor Harry and Councilman Jennings voting in opposition, and Vice Mayor Walsh and Councilmember Workman voting in favor of the motion.

Proclamation recognizing Myton Ireland, Owner and Sanibel Marina for receiving the Florida Clean Marina Award from the State of Florida Department of Environmental Protection.

Mayor Harry presented and read the Proclamation to Mr. Ireland recognizing Myton Ireland, Owner of Sanibel Marina, for receiving the Florida Clean Marina Award from the State of Florida Department of Environmental Protection.

Council congratulated Mr. Ireland and his involvement with the community.

Public Comment:

Hazel Schuller stated her concern with new EAR and LDC property rights agendas regarding buildback ordinance, balancing private property rights and private use, beach clutter

Jay Scott stated that the City of Sanibel needed to develop a law protecting Sanibel residents from construction and spoke on damage his home sustained during construction on an adjacent property recently.

Discussion ensued regarding what recourse he had taken, Mr. Scott stated his homeowner's insurance policy had sent an Engineer to assess the damages, if the City could help with the process, Mr. Cuyler stating the City had sound ordinances but nothing specifically to address this type of situation and if the Contract Licensing Ordinance had been in effect, then the City might have had some leverage.

Ed Seiber spoke regarding regulations versus no regulations.

Louise Johnson requested that Periwinkle Pines be removed from the Consent Agenda for discussion purposes and she felt that vegetation on the island is important and that controlled burns are foolish and that a buffer should exist between firebreaks and the shared use paths.

Don Schwartz spoke regarding noise on the Island.

Arthur Kramer spoke regarding Mr. Scott's home damage and regarding verbiage in an Ordinance pertaining to repeal.

Jack Samler gave a recap of public comment issues

COUNCIL COMMENTS:

Councilmember Workman asked for a legal opinion on how to recall the Mayor and that she objects to not being allowed to speak during Council discussions and the Mayor's bulldozer approach.

Mr. Cuyler stated that he would provide a written memo on the process as he would have to refer to the Charter and that it would have to be done by referendum.

Mr. Jennings spoke regarding Roberts Rules of Orders and mean spirited discussions. He also to the passing of former President Regan on June 5, 2004 and asked that we have a moment of silence for 40 seconds.

Vice-Mayor Walsh voiced his disappointment with the Mayor and that Council should consider adopting a change in policy that would say no one could cut off debate or call a questions until such time as public comment and council comments have been taken and direct staff to prepare a revision or amendment to Rules of Procedures. He also spoke to the Supreme Court's ruling on the pledge of allegiance and controlled burns, solutions and discussion with Ding Darling.

Mr. Brown spoke regarding Bob Davison, a member of the audience, a funeral he recently attended. He also spoke to not being against water conservation, but wanted the issue researched before an Ordinance was considered.

Ms. Workman clarified that the vote taken regarding water conservation was against it coming back as an Ordinance.

Discussion ensued regarding a possible water conservation ordinance and discussing it at the Goals Workshop.

Mayor Harrity spoke regarding leadership responsibilities and streamlining meetings and that he by no means is trying to eliminate public comment.

Council recessed for a break at 10:18 a.m.

Council reconvened from break at 10:29 a.m.

Councilman Brown thanked staff for the binders that agenda packet are placed in.

Mr. Samler gave the Planning Commission Report.

Public hearings on the EAR – 2 topics discussed; Beach Management & Build-back
Dr. Loflin, SCCF, Ding Darling expressed concerns about beach use and no sharing with nature on several areas of the island.

Buildback Ordinance – Association of Realtors are working on proposed Ordinance.
Commended Chair Carla Johnston on her bi-weekly news columns in the local paper.

Second Reading and Public Hearing of ORDINANCE 04-008 PROPOSING AN AMENDMENT TO ARTICLE III, “LEGISLATIVE”, SECTION 3.16, “PLANNING COMMISSION”, OF THE SANIBEL CITY CHARTER (AS CODIFIED); PROVIDING FOR THE PURPOSE OF THE PLANNING COMMISSION; PROVIDING THAT THE PLANNING COMMISSION SHALL CONSIST OF SEVEN (7) UNSALARIED RESIDENTS OF THE CITY APPOINTED BY MAJORITY VOTE OF THE COUNCIL; PROVIDING THAT PLANNING COMMISSIONERS SHALL BE APPOINTED TO THREE-YEAR TERMS ON A STAGGERED BASIS; PROVIDING THAT A PLANNING COMMISSIONER MAY BE REMOVED BY THE CITY COUNCIL ONLY FOR INCAPACITY TO SERVE (REPEATED ABSENCES OR A MEDICAL CONDITION INTERFERING WITH PERFORMANCE OF DUTIES), OR FOR CAUSE, AND IN THE LATTER CASE ONLY AFTER A PUBLIC HEARING, WITH NOTICE POSTED IN ISLAND NEWSPAPERS; ESTABLISHING AN ELECTION DATE PURSUANT TO SECTION 7.01(A) OF THE SANIBEL CITY CHARTER (AS CODIFIED) FOR THE ELECTORATE TO VOTE UPON THE PROPOSED AMENDMENT TO THE SANIBEL CITY CHARTER; PROVIDING FOR THE CONDUCT OF THE ELECTION BY THE LEE COUNTY SUPERVISOR OF ELECTIONS; PROVIDING BALLOT LANGUAGE; PROVIDING FOR NOTICE OF ELECTION AND CANVASSING OF RESULTS; PROVIDING FOR ELECTION AND EFFECTIVE DATE OF AMENDMENTS UPON REFERENDUM APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

Mrs. Zimomra read the title of Ordinance 04-008.

Vice-Mayor Walsh explained that he had proposed Ordinance 04-008 due to a minority of Council previously proposed to reduce the number of Planning Commission members, as well as recommending individual Councilmembers appoint individual members of the

Planning Commission thereby politicizing the Commission. He further stated that the Planning Commission as presently constituted has served very well and the Ordinance is designed to eliminate the politicization of the Planning Commission.

Vice Mayor Walsh made a motion, seconded by Councilmember Workman, to adopt Ordinance 04-008.

Discussion ensued regarding how a Planning Commissioner is presently removed from the Commission, Mr. Cuyler explained stated that in his opinion all advisory boards including the Planning Commission serves at the pleasure of the City Council and that if City Council appoints by Resolution than that resolution could be amended at any time to remove a member of any committee, emails received at a Councilmembers' personal email address at home and that if the emails contain City business then those emails are a matter of public record, Councilman Brown received e-mails at home regarding the authors of Ordinance 04-008 because he was told it was a group of seven and that those seven were from COTI, those that worked on Ordinance 04-008 were Vice Mayor Walsh, Tom Gilhooley and John Liljequist and that the City Attorney reviewed it, how items were presented and come before Council, signatures required for a referendum, a letter to the editor from the President of COTI, Build-back requirements, COTI, special interests groups, the current Planning Commission and terms, removal of a Planning Commissioner under current legislation and accomplishments of the Planning Commission to date and the referendum.

Councilman Brown made a motion, seconded by Councilman Jennings, to table Ordinance 04-008 item indefinitely

Discussion ensued regarding a motion to table took precedence over any previous motion, the Mayor is trying to cut-off public comment, understanding parliamentary procedure, if all necessary signatures for referendum were gathered and the answer was no.

The motion passed three to two, with Vice Mayor Walsh and Councilmember Workman voting in opposition, and Mayor Harry, Councilman Brown and Councilman Jennings voting in favor of the motion.

ORDINANCE 04-009 ORDINANCE PROPOSING AN AMENDMENT TO ARTICLE III, "LEGISLATIVE", TO ADD A NEW SECTION 3.10.4 TO THE SANIBEL CITY CHARTER (AS CODIFIED) TO BE ENTITLED "ORDINANCES INCREASING PERMITTED HEIGHT OF BUILDING(S)"; PROVIDING THAT ACTIONS TO INCREASE THE PERMITTED HEIGHT OF A BUILDING OR BUILDINGS AS ESTABLISHED IN THE SANIBEL PLAN AS OF MAY 4, 2004, MAY BE TAKEN BY THE CITY ONLY BY ORDINANCE APPROVED BY A MAJORITY OF THE ELECTORS AT THE NEXT GENERAL ELECTION OR A SPECIAL ELECTION CALLED FOR SUCH PURPOSE; PROVIDING AN EXCEPTION FOR TELECOMMUNICATION DEVICES OR FACILITIES; PROVIDING AN EXCEPTION FOR A ONE-STORY INCREASE IN HEIGHT IN THE EVENT OF DISASTER RECONSTRUCTION IN THE EVENT SUCH

INCREASED HEIGHT IS NECESSARY TO COMPLY WITH APPLICABLE FLOOD REGULATIONS AND WITHOUT SUCH ADDITIONAL HEIGHT THE OWNER WOULD LOSE A DWELLING UNIT; ESTABLISHING AN ELECTION DATE PURSUANT TO SECTION 7.01(A) OF THE SANIBEL CITY CHARTER (AS CODIFIED) FOR THE ELECTORATE TO VOTE UPON THE PROPOSED AMENDMENT TO THE SANIBEL CITY CHARTER; PROVIDING FOR THE CONDUCT OF THE ELECTION BY THE LEE COUNTY SUPERVISOR OF ELECTIONS; PROVIDING BALLOT LANGUAGE; PROVIDING FOR NOTICE OF ELECTION AND CANVASSING OF RESULTS; PROVIDING FOR ELECTION AND EFFECTIVE DATE OF AMENDMENTS UPON REFERENDUM APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

Ms. Zimomra read the title of Ordinance 04-009.

Discussion ensued in light of the previous motion to table, or open up to Council comments and then proceed with second reading and public hearing, existing Build-back code, what effects the referendum would have versus current ordinance, regulations on building heights and density, tabling the ordinance, amending the ordinance or voting on the ordinance, non-conforming structures, flood regulations, and residency requirements for Council in the event of a disaster.

Bruce Rogers, Planning Director stated that the reason that the proposed Ordinances had not gone to Planning Commission was because Council had not referred them to the Planning Commission.

Discussion continued regarding public comment, the vegetation ordinance taking 13 years to be adopted and Council taking time to review Ordinance 04-009.

PUBLIC COMMENT

Jack Samler stated that the Planning Commission acts at the will of City Council and that the Planning Commission had not addressed these Ordinances because they have not been directed to do so.

Ed Seiber spoke regarding referendum and the newest appointed member of the Planning Commission.

Bob Whitters spoke in favor of referring these Ordinances to the Planning Commission.

Steve Maxwell stated that the Ordinances should go through the process and referred to the Planning Commission for consideration and he would also like to see a referendum on the Recreation Center and whether the recreation center should be rehabilitated and cut the cost in half.

Louis Johnson spoke to the referendum and actual wording of the ordinances, the Planning Staff and Commission should look at ordinances.

Discussion ensued regarding public hearings and public comment.

Jack Samler spoke to Council a second time and stated that the Council had the authority to remand these issues to the Planning Commission for discussion and public hearing.

Discussion ensued regarding referring the 5 Ordinances to the Planning Commission for review as a subject and not as a referendum, ordinance not providing for an automatic increase of one floor, but that if Council decides to increase for one floor they can do so and it does not have to be submitted for a referendum and left and the discretion of the Council, he further stated that this is not being railroaded through and that all the group of seven want is that this should be submitted to the voters, and that he has no problems with these issues going to Planning Commission and that if enough petition signatures are gathered it will be on the March ballot.

Mr. Kramer spoke regarding the newest member appointed Planning Commissioner and his concern for the future of Sanibel.

Mr. Brown made a motion, seconded by Councilman Jennings, to table Ordinance 04-009 to a time indefinite.

The motion passed 3-2 with Vice-Mayor Walsh and Councilmember Workman in opposition, and Mayor Harrity, Councilman Brown and Councilman Jennings voting in favor.

Council recessed at 12:09 p.m.

Council reconvened at 12:21 p.m.

Mayor Harrity noted the following persons would be in attendance at the Client/Attorney Session:

Marty Harrity
Dick Walsh
Steve Brown
Jim Jennings
Judy Workman
Kenneth B. Cuyler
Judie Zimomra
Tammy Hall, Fort Myers Court Reporting.

Council convened to the Attorney/Client Session at 12:25 p.m.

Council reconvened in to open session at 1:34 p.m.

Council agreed by consensus to discuss the following:

Historical Preservation Committee:

Recommendation from the Historical Preservation Committee to pursue proposal from the Old Schoolhouse Theater Foundation to acquire the “Old Schoolhouse” for addition to the Historical Village.

Mr. Sam Bailey, on behalf of the Sanibel Historical Preservation Committee stated that the committee made the recommendation to go forth with negotiations to move the Old Schoolhouse Theater to the Historical Village.

Ms. Zimomra stated that there was not a dollar amount budgeted for acquisition and the closing date would be in August.

Mayor Harrity made a motion, seconded by Councilmember Workman, to recommend that staff pursue negotiations on the Old School House.

Discussion ensued regarding funding of this project.

Public Comment:

Mr. Bailey stated that the Historical Committee has over the years accumulated funds that should cover the moving & restoration of the building, the hammerheads are already getting volunteers together for restoral and he has already spoken with Flint & Doyle regarding the relocation of the building.

Discussion ensued regarding whether any work could be done at the current Schoolhouse location so that just the building would be moved and not additional structures, possible legislation may be needed further into the negotiations due to the building designated as a historical landmark in its current footprint.

The motion passed unanimously.

CAUSEWAY ISSUES:

Staff report regarding the Lee County Causeway Reconstruction and Replacement Progress Meeting May 25, 2004.

Mr. Isom reported the following:

- County provided updated Environmental Assessment
- US Coast Guard permits for all spans by end of this month
- Span B Construction awarded to Boh Brothers, anticipate beginning by the end of June
- Span C contract before County Commissioners this morning (June 15)
- No schedule for Span A construction
- Partnering meeting for July 7 & 8 (City Manager was invited)
- Gates Castle, Bruce Rogers and Jim Isom would be attending

Discussion ensued regarding permits on Spans B & C and whether the Coast Guard has issued them, Mr. Cuyler to contact Mr. Shapley to inquire on Span A and the rehabilitation of Span A.

CONSENT AGENDA

Council Item (a) until the July 20, Council meeting.

- a. Approval of minutes for January 06, 2004 Regular Meeting, January 20, 2004 Regular Meeting, February 03, 2004 Regular Meeting, February 17, 2004 Regular Meeting, March 03, 2004 Regular Meeting, April 30 2004 Joint Council/Planning Commission Meeting and May 19, 2004 Special Meeting.

Council pulled the following Consent Agenda items (b), (c), (d), (e), (f), (g) and (h).

- i. **Award 2004 Street Resurfacing contract to Ajax Paving, Inc. in the amount of \$175,858.05, approval of Change Order No. 1 reducing the contract by \$25,097.05 and authorize the City Manager to execute the contract and change order.**

Vice-Mayor Walsh made a motion, seconded by Councilman Brown, to approve the contract.

Public Comment:

None.

The motion passed by consensus.

- b. **RESOLUTION 04-051 APPROVING A LEASE AGREEMENT FOR THE WEST LIGHTHOUSE CARETAKER'S COTTAGE WITH RANDAL D. WRIGHT; AND PROVIDING AN EFFECTIVE DATE.**
- c. **RESOLUTION 04-052 APPROVING A LEASE AGREEMENT FOR THE EAST LIGHTHOUSE CARETAKER'S COTTAGE WITH DENNIS L. ROBERTS; AND PROVIDING AN EFFECTIVE DATE.**
- d. **RESOLUTION 04-058 APPROVING A LEASE AGREEMENT FOR THE GULFSIDE CITY PARK CARETAKER'S COTTAGE WITH THOMAS F. BAUER; AND PROVIDING AN EFFECTIVE DATE.**
- e. **RESOLUTION 04-059 APPROVING A LEASE AGREEMENT FOR THE 2897 ISLAND INN ROAD PROPERTY WITH LANCE A. LUNA; AND PROVIDING AN EFFECTIVE DATE**

Ms. Zimomra read the titles for Resolutions 04-051, 04-052, 04-058, 04-059 into the record.

Vice-Mayor Walsh made a motion, seconded by Councilman Brown, to adopt Resolutions 04-051, 04-052, 04-058 and 04-059.

Public Comment:

None.

The motion passed unanimously.

f. Approval of removal of Australian Pine tree obstructing the sight distance at 1036 Periwinkle Way (Lazy Flamingo/Dairy Queen).

Councilmember Workman made a motion, seconded by Councilman Brown, to approve the removal of the Australian Pine.

Gates Castle stated that this Australian Pine did not interfere with the 15-foot sight distance established by the 2002 Florida Green Book.

Public Comment:

None.

Discussion ensued regarding concern over the canopy of trees on Periwinkle being chopped down and history of accidents at this location, the number of trees estimated to be removed along Periwinkle based on the current regulations, and Mr. Castle estimated there were 12 trees, under planting programs and re-establishment of vegetation once trees have been removed.

The motion passed unanimously.

g. Approval of removal of 2 Australian Pine trees obstructing the sight distance at 1560 Periwinkle Way (VIP Realty).

Councilmember Workman made a motion, seconded by Councilman Brown to approve the removal of 2 Australian Pine trees obstructing the sight distance at 1560 Periwinkle Way.

Discussion ensued regarding the dangerous intersection.

The motion passed unanimously.

h. RESOLUTION 04-061 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2004-030; AND PROVIDING AN EFFECTIVE DATE.

Ms. Zimomra read the title of Resolution 04-061.

Vice-Mayor Walsh made a motion, seconded by Mayor Harrity, to adopt Resolution 04-061.

The motion passed unanimously.

**COMMITTEES, BOARDS AND COMMISSIONS
Recommendation from the Parks and Recreation Committee for Policy and Procedures for naming City parks.**

Mr. Armand Ball addressed Council regarding the Committees' recommendation.

Discussion ensued regarding park names be generic and honor people who make contributions for the proximate cost of an element or area of a park, parks should not be named after a living individual, park name shouldn't be there in perpetuity, sending the committees recommendation to staff for development of a policy, possibly having a lottery for naming rights, the two City ball fields that are named after private individuals and stepping stones around the flagpole.

Councilman Brown made a motion, seconded by Mayor Harrity, to accept the Parks and Recreation Committee recommendation, but send it back to staff for further review.

Public Comment:

Steve Maxwell agreed that this policy should be sent back for fine-tuning.

Mr. Ball asked for clarification on naming of parks for living or deceased.

Council agreed either is fine.

The motion passed unanimously.

RESOLUTION 04-060 CHANGING GLORIA HANNAN TO ADJUNCT MEMBER, KATHY BOONE FROM SCCF ADJUNCT MEMBER TO CITIZEN ADJUNCT MEMBER AND ADDING BETH DEGRAUWE AS SCCF ADJUNCT REPRESENTATIVE TO THE VEGETATION COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

Ms. Zimomra read the title of Resolution 04-060.

Vice-Mayor Walsh explained his proposal was due to the Vegetation Committee having trouble coming up with a quorum.

Vice-Mayor Walsh made a motion, seconded by Council Brown, to adopt Resolution 04-060.

Discussion ensued regarding the vegetation test being translated into Spanish and staff waiting to complete translation until vegetation ordinance was approved.

Public Comment:

None.

The motion passed unanimously.

Historical Preservation Committee:

Resignation from Mr. Harry Bertossa:

Discussion ensued regarding the resignation of Mr. Harry Bertossa from the Historical Committee.

Council agreed by consensus to table this item until the next meeting.

NEW BUSINESS:

Discussion regarding the City providing liability insurance for the Independence Day Parade:

Discussion ensued regarding whether the City should acquire liability insurance if it is at a better rate than what the parade committee could receive, Ms. Zimomra stated that if the City is the sole sponsor of an event, then the City could buy a one-day rider for the event but that if the City were a co-sponsor, the City would have to purchase an entirely new policy.

Council agreed by consensus to have staff investigate this option for next year's Independence Day Festivities and Parade.

Discussion ensued regarding approval of Housing & Urban Development (HUD) Urban County "Cooperative Agreement" Addressing County Development Block Grant (CDBG) and other Grant Matters Between Lee County and City of Sanibel.

Mr. Cuyler gave historic information on previous years' cooperative agreement and new provisions in the current agreement.

Councilman Brown made a motion, seconded by Mayor Harrity, to approve the County Development Block Grant.

Discussion ensued regarding Section 12 and the paragraph following the execution portion of the contract and the City applying for their own grants.

Public Comment:

None.

The motion passed unanimously.

CITY MANAGER'S REPORT

Ms. Zimomra requested that Council prepare their goals for tomorrow's goals workshop.

Discussion regarding the final draft of July 15th Referendum letter to citizens.

Vice-Mayor Walsh suggested a revision to the third paragraph, last line should say "at a date subsequent." Council agreed to have staff make changes and bring the revised letter for signature to tomorrow's workshop.

City sponsorship in Lee County's Sheriff's Office Combined Law Enforcement Against Narcotics Task Force (C. L. E. A. N.)

Ms. Zimomra informed Council of the City's sponsorship in Lee County's Sheriff's Office Combined Law Enforcement Against Narcotics Task Force (C. L. E. A. N.)

Discussion ensued regarding project narrative, which did not list the City of Sanibel. The City Manager stated she would make certain that the City was listed in the project narrative.

Distribution of “The Florida Municipal Officials’ Manual” and “ Sunshine Manual.”

Ms. Zimomra gave Council “The Florida Municipal Officials’ Manual” and “ Sunshine Manual.”

Update regarding Lee County Healthcare Consortium.

Ms. Zimomra gave an update regarding Lee County Healthcare Consortium between the County and the School Board and that the City was investigating. She stated that the County was getting ready to hire a consultant and the City’s participation level was prorated for 114 employees and that the dollar amount would be below Council approval requirement and does not require Council action.

Update regarding Phase 2 of the Kittleson and Associates, Inc. study concepts for the improvements of Causeway Boulevard/Periwinkle Way intersection for a not-to-exceed fee of \$11,100.

Ms. Zimomra gave an update regarding Phase 2 of the Kittleson and Associates, Inc. study concepts for the improvements of Causeway Boulevard/Periwinkle Way intersection for a not-to-exceed fee of \$11,100 and that staff has proceeded with this item.

Request to remove 2 Australian Pines located at 1045 Periwinkle Way (Anchor Inn).

Ms. Zimomra stated that the City has received a request to remove 2 Australian Pines located at 1045 Periwinkle Way (Anchor Inn) and that public works is currently investigating whether there is a site obstruction at this location.

Status of Recreation Facility design.

Ms. Zimomra gave a status of Recreation Facility design. She explained that staff had released a Request for Quote and the Quotes were not back yet and advertising for a Construction Manager was currently underway. She further stated staff had mailed a neighborhood advisory for suspicious behavior to 320 homes in West Gulf Drive of which would be published in the Island newspapers. She also gave an update on this year’s Independence Day Community Picnic regarding new activities planned for this year.

CITY ATTORNEY'S REPORT.

Anthony J. Gargano, P. A. for Code Enforcement Hearing Services contract.

Vice-Mayor Walsh made a motion, seconded by Councilmember Workman, to approve the Code Enforcement Hearing Services Contract with Anthony J. Gargano, P. A.

Public Comment:

None.

The motion passed unanimously.

Update on the case of The Sanctuary at Wulfert Point Community Association, Inc., a Florida Not-For-Profit corporation vs. The City of Sanibel, a municipal corporation of the State of Florida, and Verizon Wireless Personal

Communications, L.P., Case No. 02-10455 CA-WCM, and request for direction from City Council.

Mr. Cuyler gave an update on the case of The Sanctuary at Wulfert Point Community Association, Inc., a Florida Not-For-Profit corporation vs. The City of Sanibel, a municipal corporation of the State of Florida, and Verizon Wireless Personal Communications, L.P., Case No. 02-10455 CA-WCM, and requested direction from City Council. Mr. Cuyler advised he had filed a motion to keep in the appeal and Council needed to sanction the appeal filed by Mr. Cuyler or withdraw from the appeal. If Council withdraws from the appeal, Wulfert Point would not be a telecommunications site for a tower because that order will become final unless Verizons wio their part of the appeal.

Vice-Mayor Walsh made motion, seconded by Councilmember Workman, to approve the action taken by Mr. Cuyler and authorize him to continue to participate in the case.

Discussion ensued regarding additional sites, cell phone coverage on the island, participating in the appeal, current cell phone sites on the island, LCEC site for a tower, previous telecommunications hearings and the Sanctuary not raising objections while the telecommunications ordinance was being drafted.

PUBLIC COMMENT:

Steve Maxwell suggested that the City work as diligently as possible to work with LCEC or with another acceptable site for a tower to be constructed at their site.

A citizen spoke regarding the two sites that the judge recommended and go ahead and use the LCEC site, which was one of those two.

John LaGorce spoke on behalf on Dick Turney and Marc Giattini, Sanibel Shores, Sanibel Bayous, Herons Landing 1 & 2 and Dinkins Bayou; He stated that all agree that there was a for service and the 1996 Federal Telecommunication act does not mandate that Sanibel had to provide coverage beyond its incorporated limits. He further stated that the City declared the site on San-Cap Road at the LCEC site, which permits 120” mono pole would permit the necessary coverage. He explained that it is a matter of public record that the City and Verizon lost the lawsuit brought by The Sanctuary and that an appeal of this decision does not guarantee either side a victory and it is unlikely that the decision will be overturned. He further explained that under the Telecommunications Act, the City had an obligation to provide access for wireless service.

Mr. Cuyler stated that LCEC had never indicated to the City that if staff requested use of the tower, they would do it.

Vice-Mayor Walsh made a motion, seconded by Councilmember Workman, that the City Attorney’s action be approved and that the City Attorney be authorized to proceed and piggy back with Verizon.

The motion failed by a 2-3 vote with Mayor Harrity, Councilman Brown and Councilman Jennings in opposition, and Vice Mayor Walsh and Councilmember Workman voting in favor of the motion.

Update and request for direction regarding Zoning in Progress, and Staff review and processing of applications for conversion of small commercial units into one or more larger commercial units in certain areas of the City, and commercial uses within such units.

Mr. Cuyler gave an update and requested direction regarding Zoning in Progress. He spoke to Staff review and processing of applications for conversion of small commercial units into one or more larger commercial units in certain areas of the City, and commercial uses within such units. He stated that the Sanibel Center would be vacant within the next 30-45 days and that leases with current tenants have or will expire within that time.

Michael Ciccarone, Counsel for Sanibel Center Corporation and owner Tim Anglin, spoke to City Council regarding an application for development permit 04-2326, which was ready to be issued, but for the fact that Council in contemplating new legislation, which may be in conflict with the application. He stated that his client had been pursuing this permit for 2 years and spent had \$250,000 in pursuing it and that the earlier application, permit # 03-1876 was approved by the City and that it would be inequitable for Council to deny their pending application for a development permit.

Discussion ensued regarding current tenants at the Sanibel Center and that they were not allowed to renew their lease, the services provided by the current tenants and importance for their services, whether tenants were evicted, current market value per square foot, proposed new business for that location which would be a single use store and that it would be an upscale name-brand store which 50% of it's customers would be local residents and parking requirements for the new business.

Mr. Bruce Rogers, Planning Director gave the following report:

- City issued development permit 03-1876, on August 15, 2003 and the permit authorized interior remodeling at the Sanibel Center for a single commercial unit
- Ordinance states that construction must commence within 60 days of issuance of a development permit or the permit would expire
- On May 20, 2004, Gus & Sue Landell met with the Planning Department and were advised about Council discussion on zoning in progress and that it could affect what they wanted to do with interior remodeling
- On May 28, 2004 the property owner came in again and met with a Planner and filed their application.
- There was no application pending at the time Council discussed zoning in progress.

Mr. Cuyler stated that in terms of equitable estoppels, the Court would look at the equities involved, and what had the property owner done that might have preceded the

zoning in progress. He further stated the court would look at equities, but cautioned that with the Sanibel Center, the lessees were not there anymore and that although the court would look at the equity in general, the owner no longer had tenants in his building and there was a significant loss. Mr. Cuyler also stated that he could not encourage Council to deny this permit.

Discussion ensued regarding previous estoppels cases in the State of Florida, discussion regarding denial based upon being a non-conforming structure, 50% rule for remodeling, eminent domain and exterior façade changes and new business use.

Councilmember Workman made a motion to consider this as an application under the zoning in progress procedure and will have to await the outcome of those regulations before any permit issues.

Vice-Mayor Walsh asked to amend Councilmember Workman's motion to say that if the owners proceed, they would proceed at their own peril.

Discussion ensued regarding neighborhood services.

Motion failed for lack of second.

COUNCILMEMBERS' REPORT.

Councilman Brown read a message into the record from a telephone call from Jon Liljoquist that Jon initiated the Ordinance and Vice Mayor Walsh completed the ordinance.

Councilman Brown stated that since he previously voted in opposition to the early motion he would like to recommended that staff work with Roger Blind to come up with ideas for water education and possible legislation.

Discussion ensued regarding City staff working with IWA and bring back to Council.

Vice-Mayor Walsh requested a status report on pending litigation with Larry Bator.

Mr. Cuyler stated that all zoning matters were completely disposed of; the false arrest claim was expected to be ruled on, in the City's favor.

Discussion ensued regarding Raintree Place and Mr. Cuyler advised that oral arguments were scheduled for next month on the Gomberg Variance and that the motion to dismiss was denied.

Mr. Cuyler advised that the litigation on Properties in Paradise is that the Federal Matter has been disposed of and that one insurance claim has been filed but that the City should be dismissed from that suit.

Discussion ensued regarding enforcement of the 28-Day Rental Policy.

Councilman Jennings stated his concern at how many homes could be lost if a major storm struck Sanibel and requested a listing of how many homes were non-conforming structures.

Discussion ensued regarding the build-back ordinances.

PUBLIC COMMENT.

Barbara Cooley spoke as a member of the board of Save Our Bay, and regarding an email she received from Capt. Shapley of the US Coast Guard.

There being no further business to discuss, Council adjourned at 4:36 p.m.

Respectfully submitted,

Crystal Mansell
Executive Asst. to the City Manager