

**SANIBEL CITY COUNCIL REGULAR MEETING
JANUARY 15, 2008**

Mayor Denham called the meeting to order at 9:01 a. m.

Mayor Denham gave the Invocation and led the Pledge of Allegiance.

Members present: Mayor Denham, Vice Mayor Johnston, Councilman Jennings, Councilman Pappas and Councilman Ruane.

Public Comments

Karen Storijohann spoke to the weigh station.

Herb Rubin spoke to florescent bulbs could not be disposed of in the land fill. He further spoke to not finding anything in City information and requested that the City use the bulbs.

Ed Seibert spoke to the January ballot question on tax reform.

Mike Valiquette thanked Council for the fertilizer DVD.

Council Comments

Councilman Jennings spoke to the Sanibel School winning the Blue Ribbon Award and suggested a proclamation be brought forward at the February 5th Council meeting. He also reminded residents of early voting and a reception for the resident of FGCU at Sanibel Harbor Resort.

Vice Mayor Johnston commended SCCF on the Everglades Coalition Conference held at South Seas Resort January 9th through January 13, 2008

Planning Commission Report

Dr. Phillip Marks gave the following report:

- Introduced 2 new members
- Election Chairman and Vice Chairman
- Resolution adopted for carry-out seating
- 2 items carried for the next Commission meeting

First Reading of an ordinance and scheduling of public hearing.

ORDINANCE 08-001 AMENDING ORDINANCE 07-014 ESTABLISHING MEMBERSHIP FEES FOR THE CITY OF SANIBEL RECREATION CENTER; PROVIDING FOR THE ESTABLISHMENT OF CITY EMPLOYERS CORPORATE WELLNESS MEMBERSHIP VOUCHER(S); PROVIDING FOR THE ESTABLISHMENT OF RENTAL RATES FOR SANIBEL BASED NON-PROFIT ORGANIZATIONS AND OTHER VARIOUS RENTAL RATES FOR RECREATION CENTER FACILITIES; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Ordinance 08-001.

City Council schedule the second reading and public hearing for Tuesday, February 05, 2008 at 9:15 a. m.

CONSENT AGENDA:

Council pulled Consent Agenda items (a) and (f) for discussion.

- a. **RESOLUTION 08-001 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-022 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$80,000 of recreation center membership fees, to transfer \$20,000 from the General Fund Reserve for Contingency line and to transfer \$125,000 from the General Fund Reserve for Recreation Center line to: 1) fund as needed part-time positions to extend the hours at the recreation center through March 31, 2008, as voted by City Council at its meeting on December 18, 2007 and 2) to fund expenses associated with the opening of the recreation center. There is a new revenue of \$80,000 appropriated by this amendment. This amendment increases the FY08 budget by \$225,000)

Ms. Zimomra read the title of Resolution 08-001.

Discussion ensued regarding the one-time expenses for the dedication.

Ms. Zimomra asked that the item be amended \$9,400 from the contingency and receive 16 applications to the After School Program. She stated that Council decided to keep a waiting list and the monies would allow 2 part-time employees until June 6th.

Public Comment:

Jim Labelle spoke to a membership with a YMCA up north and membership fees were very low.

Council explained that the program was in review and would come back to Council in the future after the March 31st date.

Vice Mayor Johnston made a motion, seconded by Councilman Ruane, to adopt Resolution 08-001 including the amendment request by the City Manager to take \$9,400 from the contingency to fund 2 part-time employees until June 06, 2008.

The motion carried.

Ms. Zimomra read the titles of Resolutions 08-005 and 08-006.

- b. **RESOLUTION 08-005 APPROVING BUDGET MENDMENT/TRANSFER NO. 2008-024 PROVIDING AN EFFECTIVE DATE** (to move \$26,651 from the General Fund reserve for contingency line to the Legal Department to cover a wage and benefit adjustment for the city attorney per Council action on 12/04/07. The General Fund reserve for contingency is reduced to \$170,882)
- c. **RESOLUTION 08-006 APPROVING BUDGET MENDMENT/TRANSFER NO. 2008-025 PROVIDING AN EFFECTIVE DATE** (to reduce budgeted interest earnings in the General Fund by \$100,000 to reflect: 1) the forfeiture of November interest from the Local Government Investment Pool (LGIP). November interest was forfeiture by all LGIP depositors to the new Fund B portion of the pool, to partially offset potential losses to the LGIP; and 2) the expectation of future, lower interest rates. Since there is sufficient actual beginning fund balance (unaudited) to offset the \$100,000 reduction in interest revenue, there is no change in the total sources of funds budgeted in the General Fund)

Mayor Denman made a motion, seconded by Councilman Ruane, to adopt Resolutions 08-005 and 08-006.

The motion carried.

f. **Request from the Horizon Council for \$2,500 for the September, 2008 Industry Appreciation Luncheon as budgeted in the approved FY 2007-08 budget**

Vice Mayor Johnston spoke to importance of this event, Lee County Board of Commissioners were discontinuing their sponsorship for this program due to the new tax reform, and the need for staff to bring back a policy on sponsorship.

Discussion ensued regarding the type of event, the funds were for a table at the luncheon, Lee County discontinuing sponsorship, and the need to continue Sanibel's sponsorship.

Vice Mayor Johnston made a motion, seconded by Mayor Denham to approve the request and direct staff to bring back a policy regarding sponsorships.

The motion carried.

d. **Approve Playmore Recreational Products & Services to furnish and install the Community Park playground for \$94,607.57 based upon the City of Jacksonville bid (funding available in Fund 372 in the adopted FY 2007/08 budget)**

e. **Approve Playmore Recreational Products & Services to furnish and install the shade structure for Community Park for \$35,011.63 based upon the City of Jacksonville bid (funding available in Fund 372 in the adopted FY 2007/08 budget)**

Vice Mayor Johnston made a motion, seconded by Councilman Ruane, to approve the above-mentioned items.

The motion carried.

PUBLIC HEARING

Public hearing to consider the City of Sanibel's Purchase of Sanibel Bayous Sewage Treatment Plant and Collection System, such Public Hearing pursuant to the requirements of Section 180.301, Florida Statutes. In the event the Council finds it appropriate to purchase such facilities, the Council will consider, **RESOLUTION 08-003 DETERMINING IT TO BE APPROPRIATE AND IN THE PUBLIC INTEREST FOR THE CITY OF SANIBEL TO PURCHASE THE SANIBEL BAYOUS SEWAGE TREATMENT PLANT AND COLLECTION SYSTEM; AND PROVIDING AN EFFECTIVE DATE.**

In the event the Council finds it appropriate to purchase the above facilities, the Council will also consider, **RESOLUTION 08-004 APPROVING "AGREEMENT TO PURCHASE WASTEWATER SYSTEM AND REAL PROPERTY" WHICH PROVIDES FOR THE PROCEDURES AND TERMS FOR THE PURCHASE OF THE SANIBEL BAYOUS SEWAGE TREATMENT PLANT AND COLLECTION SYSTEM, AND INCLUDES THE ATTACHED AND INCORPORATED "AGREEMENT TO CLARIFY RESIDENTIAL USES AND DENSITY, ESTABLISH RIGHTS AND OBLIGATIONS, AND RESTRICT COMMERCIAL PARCEL USE TO RESIDENTIAL" WHICH CLARIFIES AND APPROVES CERTAIN RIGHTS AND OBLIGATIONS RELATING TO PERMITTED USES AND**

RESIDENTIAL DENSITY ON SUCH REAL PROPERTY AND ADJACENT REAL PROPERTY; AND PROVIDING AN EFFECTIVE DATE.

Said Agreement(s) providing, in part, for the purchase of the Sewer Plant and Collection System, dismantling of the Plant, purchase of a portion of the Plant property for \$175,002 for environmental restoration, lease of a portion of the Plant property to operate the system until City connection is finalized, and an Agreement clarifying certain usage and density rights and obligations on a portion of the Plant property and adjacent property.

Ms. Zimomra read the titles of Resolutions 08-003 and 08-004.

Mayor Denham explained the process. He also introduced John Iglehart, Director of Florida Department of Environmental Protection.

Ms. Zimomra spoke to the following:

- Sanibel Bayous Inc., owns the package plant
- Consistent with the Sanibel Plan for centralized sewers
- Acquired existing private package plants
- Closed Sea Oats and Gulf Pines
- 80,000 gallon per day plant
- Include 2 lift station
- 3rd lift station at Blind Pass
- Grant from SFWMD
- Number of deficiencies
- 33 manholes with defects
- 4,900 feet need televising
- Additional assessment by RJN
- Owner completed a number of repairs
- Staff reviewed repairs for compliance

Mr. Cuyler spoke to the following:

- Statue 180.301 requirement of a municipality to hold public hearing
- City has experience in running a utility in terms of financially and operationally
- 1st resolution makes the statement that the purchase is in the public's best interest
- City Attorney memo summarizing experience and financial capacity
- Attachment "B" - area map
- Purchase Sanibel Bayous package plant and collection system for the purchase price of \$1.00

Gates Castle, Public Works Director spoke to the following:

- Showed a map of the area in question
- Explained that Bowman's Beach Road and San-Cap Road were the major intersections
- Pointed out Wulfert Road
- Explained that the Sanibel Bayous sub-division was on the north and south side of San-Cap Road, with the bulk on the south side
- Herons Landing 1 and 2 southwestern portion of purchase area
- Blind Pass Condominiums located on Bowman Beach Road not included in purchase

- Dealing with Blind Pass Condominiums as a customer where they maintain their on system
- Two lift stations; 1) serves heron's Landing; 2) serves entire system

Mr. Cuyler continued his explanation as follows:

- Includes Sanibel Bayous and Heron's Landing 1 and 2,
- Blind Pass Condominiums a separate lift station
- Plant site total 4.77 acres adjacent to San-Cap and Sanibel Bayous Roads
- Does not include the commercial property
- City will purchase 2.91 acres of the 4.77 total acreage for \$175,002
- 2.91 acreage would be restored for environmentally sensitive land
- Remaining 1.86 acres would be retained by Sanibel Bayous owner
- Close approximately in 45 days
- City must lease the retained parcel in fee ownership by the owner because the plant and part of the pond lie on that piece of property
- Remaining pond lies on the property being purchased in order to operate the plant to hook-up customers
- Plant would be dismantled when all customers were hooked-up
- Lease for the term of 1 year and for a payment of 1
- Operate plant from March to May/June
- Hook-up customers
- City would dismantle the plant May/June
- Clean, treat and fill pond by July
- Commitment to fill pond
- Owner contributing \$20,000 for fill for the portion of the pond he would retain
- City required to repair and upgrade the existing system
- Recitals indicate a difference of opinion of appropriate density of plant site property
- Owner maintains the plant site was used to calculate density in Herons Landing and adjoining sub-divisions
- No authorization from owner to use acreage to determine density
- Owner claims that there were 2 units of density
- City acknowledges that there was 2.7 units on acreage
- Commercial parcel has a density of 3.3 units (1.5 acres with 2.2 units per acres)
- 3.3 units (1.5 acres) and add to 2.7 units on the retained acreage adding commercial parcel with a total of 6 units
- City acknowledges there are 6 units
- Developer agree to abandoned the commercial use
- Maintain sales office for 60 months and consents to rezoning to residential
- New development would be residential
- Have due diligence period

Discussion ensued regarding the history of centralized sewers, in the last 6 months Lee County Regional Planning Council recommended no new package treatment plants for a barrier island, in documents there was a reference to \$6,500 being paid to DEP and Mr. Cuyler stated that was the responsibility of the owner, finalizing due diligence that was an amount of the repair of the sewer system in the amount of \$145,000, and Mr. Cuyler stated that was correct and was exclusive of the fill and exclusive of the dismantling of the plant, Mr. Cuyler stated that the actual cost of the collection system would give the City an out to be accepted or waived, on balance sheet owner has a number of obligations, Mr. Cuyler stated that was a correct assessment and the assets and the collection system were being purchased not the corporation, does staff understand during the due diligence any future environmental costs, Mr. Cuyler stated that 95% was completed by staff, but there was one issue of the pond itself regarding covenants and assurances required in the contract by owner/developer that

they did not engage in polluting anything, he said the plant and pond would be removed and Mr. Castle, as well as outside consultants had completed an extensive review of any leakage and cost to repair, has there been an noxious substance stored at the facility that may have leached in to the ground, Mr. Cuyler answered that there was a 30-day due diligence left in the contract and our staff would do a Phase I environmental assessment, City had leverage to allow 6 residential units to be developed in the future, Mr. Cuyler answered yes and further stated that the developer wanted to put residential housing units, will the land the City receives be able to be used without having a referendum, Mr. Cuyler answered it depends on the funds used and the intent expressed was to reclaim and restore to Environmentally Sensitive Lands (Mangrove Estuary), \$175,000 for the land portion out of the Environmental Fund of \$1,000,000, was insurance extended to lift stations or only the plant, Mr. Cuyler stated it included everything that could be insured, agreement reads 8 units, Mr. Cuyler stated that this provision was that the developer releases the claims of the units the developer has and speaks to the 6 units later in the documents, the projected cost was \$533,000 and only a part of the funds (\$295,000 was being past to users), Mr. Cuyler stated that a special assessment was for a special benefit and not unusual for the situation involving more costs than can be special attributed to the those people paying, so an analysis would be done to calculate the cost that give the special benefit, he stated the land would not be part of the assessment, and the assessment hearings would begin as early as February 19 and would be a Non-Ad Valorem process, and assessment districts would be allowed to pay up front or over a period of 20 years.

Public Comment:

Herb Rubin spoke in favor of the purchase.

Paul Smart spoke to the inequitable fees associated with the purchase to users

Mr. Cuyler stated that the public hearing process would allow further comment.

Erick Lindblad, SCCF Executive Director spoke to his agreement of the purchase of the Sanibel Bayous Package Plant.

Discussion ensued regarding during the course of discussion of beach closures, staff and Council did not point a finger at Sanibel Bayous, and any package plant had the potential the cause water quality problems.

Vice Mayor Johnston made a motion, seconded by Mayor Denham to adopt Resolution 08-003.

Mr. Cuyler noted that the purchase was in the public's best interest.

The motion carried.

Vice Mayor Johnston made a motion, seconded by Mayor Denham to approve the purchase of Sanibel Bayous Package Plant and adopt Resolution 08-004.

Mr. Cuyler spoke to the contract was the lease and agreement of land use matters and Council's approval authorizes the execution of documents. He further stated that the City Manager and Mayor would be authorized to execute the documents.

Discussion ensued regarding no dissent by anyone to the purchase of the package plant, and density increase, and Mr. Cuyler stated that there was no grant of density, but an acknowledgment of density on the parcel in accordance with at least part of the developers argument that density exist (2.7 units), and a reasonable solution, Mr. Cuyler stated that whenever that was a situation of a claim for 8 units, the owner would look for all 8 units in court, and City Council decides what is fair with 6 units total on both parcels, concern of

homeowners that a 7-11 would be put on the commercial parcel, Ms. Zimomra stated the Planning Department would say that staff could make a case for the smaller amount, but the question was is this settlement a reasonable amount.

The motion carried.

Mr. Cuyler stated that whenever there was a situation where someone claims there was 8 units versus 6 units, staff agreed to what was fair and the total units were 6 units.

Ms. Zimomra stated that to be consistent with other documents in the body of the Resolution, it should read "Sanibel Bayous Utility Plant and Collection System".

The motion carried.

RESOLUTION 08-007 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-026 PROVIDING AN EFFECTIVE DATE (to 1) transfer \$175,002 from the General Fund Reserve to environmental initiatives line to the Fund 462 Phase 5 sewer expansion to fund: a) the purchase of Sanibel Bayous Utility Corporation for \$1, b) land acquisition for \$175,000 and c) a \$1 one-year lease-back of a 1.86 acre retained acreage site for use during plant decommissioning and site restoration; and 2) to appropriate a \$20,000 contribution from Wulfert Properties LLC, per the purchase contract. There is \$20,000 of new revenue appropriated by this amendment. This amendment increases the FY08 budget by \$195,002) Ms. Zimomra read the title of Resolution 08-007. Amended to Sanibel Bayous

Mayor Denham made a motion, seconded by Vice Mayor Johnston, to adopt Resolution 08-007.

Public Comment

John Iglehart, DEP stated that with the passage of the resolution he would forward to the DEP attorneys a request to suspend the current enforcement action on the facility and partner with the City to move forward on the project.

The motion carried.

Council recessed at 10:26 a. m.

Council reconvened at 10:39 a. m.

OLD BUSINESS

Water Quality Issues

Reports from City Council members

Attendance at the Caloosahatchee River Watershed Protection Plan meeting Thursday December 20, 2007

Mayor Denham reported the following:

- Which projects to fund as part of the Northern Everglades Project
- 300 projects to reviewing 100 projects
- Working with Jim Beaver, Regional Planning Council

Discussion ensued regarding discussion at the Everglades Coalition Conference that Lee County had decided the projects, Lee County projects submitted with all other projects, and review would be completed.

Dr. Loflin stated that the projects would be reviewed with additional details and available at the next meeting. He further stated that it would be February/March before projects would be ranked according to the detailed criteria.

Attendance at the January 11, 2008 Fertilizer Consumer Task Force meeting in Tallahassee

Mayor's letter of Tuesday, January 09, 2008 to Governor Crist regarding Fertilizer Task Force

Mayor Denham reported the following:

- Final meeting of Task Force
- Agreed to one type of fertilizer to be sold throughout the state
- Low level nitrogen and zero level phosphorus
- Model ordinance for the state
- Minimum ordinance – no black out period, no reasonable safe distance between a body of water
- Any municipal could opt to have a more aggressive ordinance if impaired water could be proven
- Representative Nelson stated that he would try to have a pre-emption of the ordinance

Discussion ensued regarding Representative Nelson from Apopka, water from Apopka polluting water into the Kissimmee basin, the need to have a proactive campaign, where should letter go to, letters should be sent to Governor Crist, and property owners should send a letter to all senators and representatives.

Public Comment

Barbara Cooley spoke to COTI writing a letter, as well as preparing an action alert.

Attendance at the Everglades Coalition Conference January 10th through 13, 2008

Councilman Jennings spoke to the attendance of high ranking elected officials and the central theme of guarded optimism.

Vice Mayor Johnston spoke to the unity of stakeholders that would make a difference and progress in water quality.

Staff Reports

RESOLUTION 08-002 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-023 PROVIDING AN EFFECTIVE DATE (to transfer \$192,272 from the General Fund Reserve for Environmental Initiatives line to Algae Research Fund for the City of Sanibel's one quarter contribution to the \$769,083 total cost of an algae study. Equal contributions will be made by the Lee County Tourist Development Council (TDC), Lee County and the West Coast Inland Navigation District (WCIND) and the City of Sanibel. There are no new or additional funds appropriated by this amendment. This amendment increases the FY08 budget by \$192,272)

Ms. Zimomra read the title of Resolution 08-002. She explained that this budget amendment for a study to identify to specific source of nutrients that cause red drift algae in Lee County. She further explained that the City was the lead agency and directed over the next 24 months. She stated that the City obtained \$192,000 from TDC, \$140,000 from WCIND with an additional amount of \$192,000 and the researcher would be FGCU and sub-contractor being SCCF.

Mayor Denham made a motion, seconded by Councilman Ruane, to adopt Resolution 08-002

The motion carried

RESOLUTION 08-008 AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT(S) IMPLEMENTING THE RED DRIFT ALGAE RESEARCH PROJECT, A JOINT PROJECT WITH LEE COUNTY, THE LEE COUNTY

TOURIST DEVELOPMENT COUNCIL AND THE WEST COAST INLAND NAVIGATION DISTRICT; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Resolution 08-008

Mayor Denham made a motion, seconded by Councilman Ruane, to adopt Resolution 08-008.

The motion carried

Recreation Issues

Activity Levels

Ms. Zimomra spoke to the following:

- Seeing numbers in the 350 to 400 per going through the turn style
- Number 1 activity was the weight room
- Pool use increased with extended hours

Revenue Summary

- B. I. G. Arts renting space for classes (Pre-school dance, teenage hip-hop and adult belly dance)
- Total revenue exceed \$116,000
- 8 \$1,000 lifetime members
- 2 sessions for volunteer orientation
- Mailed out extended hours postcard to property owners

Extended hours notification

Ms. Zimomra stated that a postcard regarding extended hours had gone to property owners for Sanibel and Captiva.

Staffing for the After School Program

Discussed earlier.

Ms. Zimomra stated that in speaking with Fort Myers Beach and reviewed City Council calendars and February 13th or 20th were the two dates available.

Discussion ensued regarding February 13 being the better day and scheduling the meeting in the afternoon.

Mayor Denham made a motion, seconded by Councilman Ruane, to hold a joint City Council/Fort Myers Beach Meeting, Wednesday, February 13, 2008 at 1:00 p.m.

The motion carried. Councilman Jennings was out of the room.

Ms. Zimomra stated that Lee County Days was scheduled for March 12 & 13th. She also brought to Council Lee County Legislative priorities.

Discussion ensued regarding Council supporting #1 strongly oppose any pre-emption for fertilizer and request Lee County support Sanibel's Healthy Beach request, strengthen the home rule priority, one size does not fit all, and supporting the legislative agenda.

Ms. Zimomra stated that the Florida League of Cities would be March 26th.

Discussion ensued regarding Council's need to do anything further with the State Investment Pool, and following the investment pool closely.

CITY MANAGER

Informational Items

Status of Distribution of the Fertilizer Brochure and DVD

Acceptance of the Annual (2007) Status Report on the 2005 Floodplain Management Plan

Report on City Hall native vegetation tours

Code Enforcement Activity Report for December, 2007

Development Permit Activity Report for December, 2007 and FY 07-08 1st Quarter

Building Department Permits and Inspections Monthly Report

Building Department Monthly Revenue Accumulative as of December 31, 2007

Building Code Enforcement Evaluation Report

Irrigation Restrictions

South Florida Water Management District Regulations effective Monday, January 15, 2008 and Background material

Information in the agenda packet.

Financial Quarterly Report

Discussion ensued regarding staff doing all that could be done, and reviewing investments.

Fire Danger

Status of the Interlocal Agreement with the Lee County School Board and Sanibel Plan Amendment on school concurrency required by state statutes

Ms. Zimomra stated staff was following this item.

Lee County Sanibel Causeway Variable Pricing Project update and appointment of Project Manager

For informational purposes.

Revised Scope of Work for the Alternative Transportation in Parks and Public Lands grant project

Discussion ensued regarding using electric vehicles, and Vice Mayor sending comments to the steering committee and providing models for alternatives.

Update on FEMA approved Flood Insurance Rate Maps and final 30-day public comment and review period

Informational purposes.

Proposed dates for Joint City Council/Ft. Myers Beach Commissioner meeting

Discussed previously.

Sanibel Historical Museum & Village, Inc., Profit and Loss Statement for October through December, 2007

Informational purposes.

Important Events

**Southwest Florida League of Cities meeting Thursday, January 17, 2008 –
Veranda 11:30 am**

Lee County Days – March 12th and 13th

Florida League of Cities – March 26th

Ms. Zimomra provided the information earlier.

CITY ATTORNEY'S REPORT

Mr. Cuyler spoke to the Sanibel Bayous discussion earlier in the meeting did not address assessments and advertisements for the assessment process would be upcoming.

COUNCIL MEMBERS' REPORT LISTEN 1135

Councilman Pappas spoke to his disbelief that a fertilizer ordinance would be adopted to risk state assets. He further spoke to a letter from Chateau Su Mer clarifying their position on the Mims house. He also spoke to the need to change the code that when a portion of a project requires a long-form the whole project should require a long form

Councilman Pappas made a motion, seconded by Mayor Denham, directing the Planning staff to initiate a review and legislation for submission the planning commission for an ordinance relating to the issue that if a portion of a development permit being subject to long-form making the entire subject applicable to the long-form.

The motion carried.

Mr. Cuyler stated that any application already in process would be handled as was presently designated in the code.

PUBLIC COMMENT

Karen Storijohann spoke to when upgrading package plant water should be treated to the tursery treatment level. She further spoke to a fish kill.

Mayor Denham stated that the Regional Planning Council did adopt a resolution including and DEP agreed to not approve any applications that did not meet the above-mentioned level.

There being no further business the meeting was adjourned at 11:48 a. m.

Respectfully submitted by,

Pamela Smith, CMC
City Clerk