

## **SANIBEL CITY COUNCIL REGULAR MEETING DECEMBER 18, 2007**

Council held a meet and greet for Representative Aubuchon at 8:30 a. m. in MacKenzie Hall.

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

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

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

### **PRESENTATION(S)**

Representative Gary Aubuchon, District 74 spoke to the following:

- January 29 tax reform amendment
  - Needed 60% to pass
  - Will be portable with the purchase of a new home
  - Cap on non-homesteaded property of 10% and does not apply to the school tax
  - Provide another \$25,000 of exemption, required to pay taxes on 2<sup>nd</sup> \$25,000
  - No taxes on third \$25,000 – does not apply to schools
  - Business owners \$25,000 exemption on tangible items
  - \$100 million appropriated for the Northern Everglades Project federally
- Fertilizer Task Force under the Department of Agriculture with a report in January – with a possible state-wide fertilizer amendment
- Sponsoring the City's request for a Healthy Beach Program – requirement that DEP notify governments and require DEP to find the source of bacteria
- Working with Representative Trudi Williams to enter the bill request on Healthy Beaches as a committee bill
- Revenue diminishing – Revenue sources for the state; 1) sales tax; 2) documentary tax; and 3) Florida lottery

Discussion ensued regarding sales tax exemptions, Rep. Aubuchon stated that exemptions given to enhance something, review all sales tax exemptions, review sales tax for internet purchases, Representative Aubuchon stated that with the tax reform would come budget justification, Lee County Days in March, 2008, problems with SBA and the need to give guidance, and Representative Aubuchon stated that the SBA was under the preview of Alex Sink, Chief Financial Officer.

#### **Public Comment**

Dick Walsh asked if a home was sold what was the time limit to take advantage of the tax exemption, and Representative Aubuchon stated the amendment would be retroactive to November, 2007 and residents would have two years to transfer.

#### **Public Comments**

Hazel Schuller spoke to the Planning Department not able to enforcement the beach paraphernalia section of the code and an article in the National Geographic Magazine, December, 2007

Ric Base, Executive Director Sanibel-Captiva Chamber of Commerce thanked Council and staff for their help during the luminary. He also spoke to the renovations of the Chamber restrooms. He advised that a ribbon cutting Wednesday, December 19 at 9:00 a. m.

Ann Yarnel spoke to a mobile advertising truck and was there an ordinance.

Mr. Cuyler stated there was an ordinance regulating the mobile advertising and the advertiser had been notified. He further stated that this instance would be submitted to Code Enforcement for review.

Herb Rubin spoke to how good the City looks. He spoke to a solar heating panel and reimbursement from the federal government.

Jason Lamonta spoke to the possibility that a dog park would be on the Causeway. He reported there would be no dog park, just allowing leashed dogs. He further requested consideration of a dog park on island.

Dick Walsh spoke to an article in the Island Sun regarding the Periwinkle Way West District Plan. He further spoke to the need to keep within the Sanibel Plan during any discussion of the Periwinkle Way West District Plan.

Ed Seibert spoke to a previous resolution to reduce the Planning Commission from 7 to 5 members, which was denied.

### **Council Comments**

Councilman Jennings spoke to the Recreation Center. He also wished everyone Happy Holidays.

Councilman Pappas spoke to the Luc Century bowls from the Sanctuary and thanked the Sanctuary.

Mayor Denham spoke to Hazel Schuller's comments.

Mr. Cuyler stated the following:

- Adopted a regulation regulating the proper placement of beach furniture
- Prior City Attorney dealt with the issue of precluding the issue of pre-placing beach equipment and ruled it was not enforceable
- If chairs were put out after hours and/or too early in the morning Code Enforcement would issue a violation notice
- Ms. Schuller finds it offensive for chairs to be out with no one using them

Discussion ensued regarding the City adhering to the Land Development Code, and Mr. Cuyler answered yes.

Mayor Denham also spoke to the recent water restrictions and that the City should adhere to, and that the City of Sarasota publishing the names of violators.

Discussion ensued regarding it useful to review what the City of Sarasota was doing, and directed staff to bring information back to Council at the January 15 meeting.

Commissioner Mike Billheimer gave a report of the December 11, 2007 Planning Commission meeting as follows:

- Continuation regarding a development application of pool elevation, which was continued for more information
- Variance request and permit application for replacement of a dock on Clam Bayou – continued for application modification
- Proposed ordinance for outdoor seating for carry-out restaurants for less than 12 seats and be allowed to use the short form for 7 to 12 seats and long form for more than 12 seats

**CONSENT AGENDA:**

- d. **RESOLUTION 07-159 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-019 AND PROVIDING AN EFFECTIVE DATE** (to appropriate in FY 2008 the roll-forward of \$298,639 beginning fund balance and to recognize \$140,115 of State Revolving Loan debt proceeds currently on deposit in the Phase #B Sewer Expansion Fund. These revenues are being appropriated for the completion of the project in the amount of \$438,754 detailed as follows: 1) Re-encumber the \$76,602 balance of Purchase Order #700043; 2) \$168,288 for change order #4 approved by City Council on 10/17/07; and 3) \$193,864 for change order #5 approved by City Council on 12/4/07. There are no new or additional funds appropriated by this amendment. This amendment increases the FY 2008 budget by \$438,754)
- e. **RESOLUTION 07-160 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-020 AND PROVIDING AN EFFECTIVE DATE** (to roll forward from FY07 \$65,722 encumbered for the Phase 2 balance of the Periwinkle Way West District Plan on PO# 700276 for Wallace Roberts and Todd LLC and \$36,500 encumbered for the Sanibel Plan-Economic Analysis Update on PO# 700274 for Real Estate Research Consultants. There are no new or additional funds appropriated by this amendment)
- f. **RESOLUTION 07-161 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-021 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$16,000 of new impact fee funding from the Lee County Board of County Commissioners to support the construction of Community Park. This amendment increase the FY08 revenue and expense by \$16,000)

Ms. Zimomra read the titles of Resolutions 07-159, 07-160 and 07-161

Vice Mayor Johnston made a motion, seconded by Councilman Ruane, to adopt Resolutions 07-159, 07-160 and 07-161.

The motion carried

- a. **Approval of Minutes – December 04, 2007 Regular Meeting, November 20, 2007 Regular Meeting, and November 06, 2007 Regular Meeting**
- b. **Acceptance of a Tourism Development Council (TDC) grant in the amount of \$128,000 for ADA Renovations – Gulfside Park and Tarpon Beach Access restrooms and authorize the City Manager to execute same**
- c. **Acceptance of a Tourism Development Council (TDC) grant in the amount of \$11,000 for Dune Walkover Replacement and authorize the City Manager to execute same**
- g. **Award 3-year sludge hauling contract to Karle Enviro-Organic Recycling, Inc., to haul, dewater and dispose of wastewater sludge and authorize the City Manager to execute same**

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

Mayor Denham spoke to his concern of water quality with the hauling contract and staff assured Council this was not an issue.

Ms. Zimomra stated the sludge would be carried to a land fill off-island. She further spoke that staff was participating with Lee County for an alternative way of disposal.

The motion carried.

Council recessed at 9:57 a. m.

Council reconvened at 10:06 a. m.

Bob Duffy spoke to the following:

- Received a report with an overview of the project since Council authorization.
- Partnership awarded \$700,000
- Draft contract and scope of work in the agenda packet
- Seek approval to proceed with the scope
- Staff and Council reviewed for comments

### **PRESENTATION(S)**

#### **Presentation of the Sanibel Alternative Transportation in Parks and Public Lands Program Project Scope of Work by Nathan Caldwell, U.S. Fish and Wildlife Service Trails, Byways, and Transportation Enhancements Coordinator, Lee Tran and Carter and Burgess. Inc. (15 minutes)**

Carmen Monroy, Lee Tran and Patrick Martin, Interim Refuge Manager spoke to the principle objectives of the study and introduced Nathan Caldwell, USFWS.

#### **Approval of the Draft Professional Services Agreement and Scope of Works associated with the Sanibel Alternative Transportation in Parks and Public Lands Project, pursuant to Section 4.D of the Interlocal Agreement between the City of Sanibel, Lee Tran and USFWS**

Mr. Caldwell spoke to the following:

- Objective of the planning project which was to relieve congestion on public land, improve safety, reduce pollution, and improve resource protection
- Approve the first stage of planning for the refuge to help find a way to address the issues in the refuge, the City and Lee County

Discussion ensued regarding former Transportation Committee reviewed transportation problems on Periwinkle Way and the refuge, and finding a way to alleviate transportation problems, and Council trying to reflect island issues to preserve the island.

Carmen Monroy spoke to goals adopted by the governmental involved in the project:

- No conserve the natural, historical and cultural resources
- Reduce congestion and pollution
- Improve visitor mobility and accessibility
- Enhance the visitor experience
- Ensure access to all including persons with disabilities through alternative transportation

Mr. Caldwell spoke to national implications and the future of the program as follows:

- No particular alternative in mind
- Examine all possible alternatives for public review
- Proposals would be examined at the national level

- Local governments make all decisions and as long as within policy would be agreed upon at the national level
- Important to the refuge on a national/local level providing an example of partnerships
- To engage more managers in the process in other areas
- Shows the importance of transportation planning element as national refuges need to account for
- Request for Councils approval of scope of services

Discussion ensued regarding change of language, comments received that the Steering Committees, Patrick Martin, Steve Myers, Lee Tran and Robert Duffy making recommendations, assured that amendments would be made to the agreement, and understands from the onset that there was a collaborative effort, Carmen answered that there was a need to have participation and the language would be incorporated, Carmen stated that there was no scope , models of how to accommodate the program, the need for public understanding to have a survey, Sanibel a unique community, can contract be approved and not signed until language was inserted in the contract and designate staff to sign-off, Council designated the Vice Mayor to work with the language, the need for a non-polluting form of transportation, should include the volunteers of the refuge as a focus group, Mr. Caldwell spoke to non-motorized transportation being encouraged.

#### Public Comment

David Baxter spoke to understanding concerns.

Allyn Silberman spoke to Sanibel Bike Club ready to assist in the study.

Vice Mayor Johnston made a motion, seconded by Mayor Denham, to commend the Fish and Wildlife Service for their work, to commend the collaboration of the refuge and Lee Tran in working with the City and to approve the Carter Burgess scope of services with the language suggested being incorporated in the scope of services and if the language was not included the approval would be rescinded

Mayor asked for Council authorization that the Vice Mayor work with staff for additional language to the draft agreement.

Council agreed.

The motion carried.

## **OLD BUSINESS**

### **Water Quality Issues**

#### **Reports from City Council members Attendance of the Tuesday, December 04, 2007 Lee County Board of Commissioner meeting regarding fertilizer**

Mayor Denham gave the following report:

- Meeting in Apopka Monday, December 17<sup>th</sup>
- Non-pre-emption for local communities
- Each community could adopt a more stringent ordinance
- One formula for fertilizer sold in Florida with a zero phosphorus and nitrogen
- Continue to amend the existing ordinance and dropping the part of no fertilizer during summer months
- Vote carried on the first vote for no fertilizer use during the summer and was voted on a second time and failed
- Will be attending the January meeting January 11<sup>th</sup> in Tallahassee

#### **Meeting with Lee County staff regarding Captiva sewers**

Mayor Denham gave the following report:

- Potential pollution for package plants on Captiva

- Willingness to work together – Sanibel, Lee County and Captiva

Ms. Zimomra stated that Captiva Community Association would work on a grant.

### **Attendance at the December 4<sup>th</sup> Lee County Board of Commissioners' meeting regarding the public hearing on fertilizer**

Mayor Denham gave the following report:

- Staff recommendations not accepted by Lee County
- Sent back to staff for stricter language
- February hearing

Public Comment

None

### **Progress report on Sanibel Bayous Package Plant acquisition**

Mr. Cuyler, City Attorney gave the following report:

- Final stages for engineering
- Public hearing January 15<sup>th</sup> to consider acquisition of the Sanibel Bayous Package Plant
- Final stages of financial information

### **Staff Reports**

#### **Fertilizer ordinance implementation update**

#### **First two courses taught to contractor**

Ms. Zimomra stated that the mailing would go out in January, 2008.

Dr. Loflin, Natural Resources

- Implementation phase of the fertilizer ordinance

Holly Downing spoke to the following:

- Two classes offered for Vegetation Competency Card including fertilizer education
- Classes being offered to those that hold a competency card to receive fertilizer education

Discussion ensued regarding an approved license on the island issued, by the Department of Agriculture and Community Affairs, state license for pesticide applicators, no state license for fertilizer applicators, Council asked staff to check on a possible fertilizer license issued by the Department of Agriculture, Dr. Loflin spoke to a voluntary training program offered for best management practices, but not currently required, a way to enforce the fertilizer requirements, Dr. Loflin spoke to working with Code Enforcement to develop a program on enforcement regulations, focus on training, offering classes to advise of the change in the City ordinance, must have a record of nitrogen applications on person applying fertilizer, public education would help people to recognize that a license was needed to apply fertilizer, Ms. Downing spoke to material including what residents received, a PowerPoint presentation, finalizing the table-top display to use on the island, displays at local retailers and City facilities, and ordinances adds different controls for applying fertilizer.

### **Review of Water Initiatives**

#### **City of Sanibel**

Dr. Loflin spoke to the following:

- Top 4 accomplishments; 1) Work on Lake Okeechobee schedule – first step in recognizing the 2) fertilizer educational program; 3) Convincing counties and local communities better control of

- storm-water run-off and sewer package plants – noticed a change in the attitude of elected officials, SFWMD and ACOE; 4) known to elected officials
- o Future – moving forward with the C-43, upcoming watershed funds for Calooshatchee were spent wisely, Everglades Restoration Project, address the spillage of sewer treatment problems

Discussion ensued regarding to accomplish in the future, a good list of approve project for the Northern Everglades Projects, and substantial progress in natural conversion of sewage sources, a commitment of the filter marsh, and the next meeting December 20th.

### **Sanibel Captiva Conservation Foundation**

Erick Lindblad and Rae Ann Wessell spoke to the key issues and next time next year.

- o Biology of seagrass and using seagrass as an indicator of environmental health
- o Regional and local impact concerns
- o Would like to participate in the possible sewerage of Captiva
- o 4 sensors in the water, Blind Pass, Red Fish pass, Morehaven and the 41 bridges
- o Next sensor would be located in the Gulf of Mexico

Mr. Lindblad passed a graph on nitrate and salinity levels at the 41 bridges. He spoke to as times continues patterns of impacts will reveal themselves to share with regulatory institutions.

Rae Ann Wessel spoke to the following:

- o Accomplishments seen was the raised awareness of the issues,
- o loss of storage in the watershed
- o water quality
- o need for managing the timing for releases compatible to natural resources
- o look beyond the local capacity
- o discussion occurring with respect for additional storage in the floodplain north of Sanibel
- o the need for an alternate discharge
- o MOD waters decomp discussion
- o C-43 discussion
- o Nitrogen treatment area purchased 12 miles from reservoir site
- o How money being allocated with budget cuts – limited resources
- o Success in the elimination of back pumping

Possible next year accomplishments:

- o More natural and land acquisition
- o Commitment to MOD waters
- o Flow way south
- o Discussion regarding releases if the drought continues

Mike Valiquette, PUURE and Dan Wexler, PURRE Public Relations spoke to the following:

- o Past success of a paper titled “Solution of Pollution handed to Colonel Grosskruger
- o Vested interest in water quality
- o Working with State and local levels
- o Convinced SFWMD to stop practice of back pumping of Lake Okeechobee
- o Working with SFWMD to stop back flow process of Lake Okeechobee
- o 2,000 emails from PURRE to governor to appoint Charles Dauray to SFWMD Board of Directors
- o PURRE sits on Lee County Total Maximum Daily Load Non-Governmental Parties – discussion of TMDL’s
- o Working with the City, SCCF, Department of Health and Department of Environmental Protection to continue monitoring and test waters for contaminates
- o Located a continuous direct sewer spill violation in Roosevelt Channel on Captiva

- Working with DEP to stop and prosecute violators
- Roosevelt Channel spill coming from a newly constructed house dumping sewer directly in to the channel
- Support the City and Lee County fertilizer ordinances
- Efforts for a fertilizer campaign in Tallahassee
- Participated in a conference call with the Sierra Club
- Established a 501c4 with the existing 501c3 to increase lobbying efforts
- Aggressive campaign for the new Lake Okeechobee release schedule
- Working closely with federal officials
- Contact with NOAA and officials in Cape Cod
- Working to expand coalition at State and Federal levels

Discussion ensued regarding PURRE's wish list; 1) the Aburka Program, the reauthorization and funds, 2) WRDA program funded and Florida moved to the top of the list; 3) Statewide fertilizer ordinance, Council asked Mr. Wexler's to explain the lobbying focus:

Mr. Wexler spoke to the following:

- Working on the Abarka Program regarding different kinds of algae
- Working on the causes of Red Drift Algae
- Working on C-43
- Educating appointed and elected officials

## **Recreation Issues**

### **Membership Sales Update**

#### **Staff recommendation for temporary Adjustment of Hours**

Ms. Zimomra spoke to the following:

Revenues streams:

- Membership
- Rentals
- Sponsorship

Most used facilities

- Weight Room
- Lap Swimming
- Leisure Pool

Discussion ensued regarding fund the .94 employee and the cost associated, option (a) opening the Recreation Center earlier (6 a.m. to 10:00 a.m.), fund a 3-month trial and re-evaluate, 3-month cost \$80,000 from membership fees and \$20,000 from contingency, certain past representations were made, should not limit membership or usage, what hours would maximize membership, Ms. Phillips spoke to comments to open earlier, use of lap pool earlier and later lap pool hours, did Parks and Recreation Committee making commitments to help, Ms. Zimomra stated that the committee indicated a willingness to help with sponsorship, copied Council with issues of the skate park, Council decided that the center would be opened as it was in the past, the perception of the public.

Vice Mayor Johnston made a motion, seconded by Councilman Jennings, to use the collected membership revenue plus \$20,000 from contingency to expand the recreation center hours through March 31, to include opening at 6 t o 10 including the lap pool, operating the lap pool until 8:00 p. m., opening the lap pool at Saturday and Sunday from on a trial basis, as well as encouraging sponsors.

Public Committee

Armand Ball spoke to the Parks and Recreation Committee continues to deal with the Recreation Center and the need to implement earlier hours.

Discussion ensued regarding more membership and public response, not enough information in 10 days to extend hours, and the need to promote the hour expansion.

Dr. Harries spoke to the need to increase the lap pool hours. He suggested canvassing the user for a solution.

Barbara Cooley spoke to being a long distance swimmer and the morning hours were preferred hours.

Allyn Silberman spoke to staffing being inadequate.

The motion carried.

### **Joint Meeting with Town of Fort Myers Beach, January, 2008**

Ms. Zimomra stated that the Acting City Manager indicated that February would be the earliest date for a meeting.

### **COMMITTEES BOARDS COMMISSION**

#### **Resignation from Paul Reynolds as a member of the Wildlife Committee**

Council accepted Mr. Reynolds resignation by consensus.

### **CITY MANAGER**

#### **Informational Items**

#### **Status of State Board of Administration (SBA) Fund**

Ms. Zimomra spoke to the following:

Council elected to speak with the Finance Director individually.

#### **Report on City Hall native vegetation tours**

Ms. Zimomra spoke to the following:

- Opened for tours to the public
- Number of attendees

#### **Code Enforcement Activity Report for November, 2007**

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

#### **Development Permit Activity Report for October, 2007**

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

#### **Building Department Permits and Inspections Monthly Report**

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

#### **Building Department Monthly Revenue Accumulative as of November 30, 2007**

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

#### **Community Housing Resources (CHR) Quarterly Financial Statement**

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

## **Causeway Traffic Count – October, 2007**

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

Mr. Cuyler spoke to continuing this item until 15<sup>th</sup>.

### **AT APPROXIMATELY 1:00 P. M., CITY COUNCIL WILL RECESS AND CONDUCT AN ATTORNEY-CLIENT SESSION DURING A WORKING LUNCH, AS MORE FULLY DESCRIBED BELOW:**

**1:00 P. M.** The City Attorney desires advice and consultation with the City Council pursuant to Section 286.011 (8), Florida Statutes, regarding the Mediation Settlement Agreement reached in the lawsuit filed in the United States District Court, Middle District of Florida, Fort Myers Division, entitled: ADRIEN ROTHSCHILD and JORDAN FAIRMAN, Plaintiffs, vs. KENNETH E. PFALZER, Individually and THE CITY OF SANIBEL, DAVID GOMBERG and FRANCINE GOMBERG, Defendants; Case No. 2:06-cv-446-FtM-29DNF

The Attorney-Client Session shall not be open to the public. The Attorney-Client Session shall be held on Tuesday, December 18, 2007 at 1:00 P. M. 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:

**Mick Denham, Mayor**  
**Carla Johnston, Vice Mayor**  
**Jim Jennings, Councilman**  
**Peter Pappas, Councilman**  
**Kevin Ruane, Councilmember**  
**Judie Zimomra, City Manager**  
**Kenneth B. Cuyler, City Attorney**  
**Michelle Hordinski, Court Reporter, or other representative of Fort Myers Court Reporting**

**Upon return to open session City Council will consider a mediation settlement agreement in the case of ADRIEN ROTHSCHILD and JORDAN FAIRMAN, Plaintiffs, vs. KENNETH E. PFALZER, Individually and THE CITY OF SANIBEL, DAVID GOMBERG and FRANCINE GOMBERG, Defendants; Case No. 2:06-cv-446-FtM-29DNF and, if approved, authorize the Mayor to execute same**  
Mr. Cuyler explained the reason no Attorney-Client Session was held earlier in the meeting.

#### **CITY ATTORNEY'S REPORT**

None.

#### **COUNCIL MEMBERS' REPORT**

None.

## **PUBLIC COMMENT**

Claudia Burns asked if a complete agenda be available for the afternoon session.

Hazel Schuller asked if there would be an Attorney-Client session.

Mr. Cuyler noted his announcement was to continue the Attorney-Client session until January 15<sup>th</sup>.

Karen Storijschmann wishes Council a happy holiday. She spoke to the completion of the West Gulf paving job. She asked Council to reconsider the weight station.

Councilman Pappas asked Ms. Zimomra about the bike path report. He further spoke to his conversation with the City Manager and Dr. Loflin and their reservations of using upland area (Community Park), which had large quantities of water after rain for a dog park. He also stated that fencing was never accepted on the island due to the need to allow free flowing areas for animals. He stated he supported the dog park and would like to discuss the issue later.

Ms. Zimomra stated the report would come back to Council in the first quarter of 2008.

Mayor Denham announced the 2:00 p.m. Joint Meeting between City Council and the Planning Commission.

There being no further business the meeting adjourned at 12:40 p. m.

Respectfully submitted by,

Pamela Smith, CMC  
City Clerk