



# City of Sanibel

800 Dunlop Road  
Sanibel, FL 33957

## Meeting Minutes - Final City Council

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Tuesday, December 7, 2021

9:00 AM

City Hall

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### 1. CALL TO ORDER

The meeting convened at 9 a.m.

### 2. INVOCATION AND PLEDGE OF ALLEGIANCE (Councilman Miller)

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

### 3. ROLL CALL

**Present:** 5 - Mayor Holly Smith, Vice Mayor Richard Johnson, Councilman Scott Crater, Councilman John Henshaw, and Councilman Mike Miller

### 4. RECESS TO CONVENE OUTDOORS (SOCIALY DISTANCED) FOR PRESENTATION OF PROCLAMATIONS

Mayor Smith introduced City Manager Dana Souza and spoke to the achievements of the former City Manager. The meeting recessed to go outside for the reading and presentation of the proclamations.

- a. Proclamation Recognizing Judith Zimomra on her retirement and 20 years of outstanding leadership as City Manager to the City of Sanibel
- b. Proclamation Recognizing Sanibel Captiva Conservation Foundation (SCCF) for Essential Land Conservation

The meeting recessed at 9:03 a.m.

While recessed, Mayor Smith and Council read the proclamation that was presented to Ms. Zimomra at the December 4, 2021 celebration. Ms. Zimomra spoke her appreciation to the Council, City Staff, and citizenry for their support during her tenure as City Manager.

Mayor Smith and Council presented Ryan Orgera, CEO of Sanibel Captiva Conservation Foundation (SCCF) with a proclamation regarding their steps for essential land conservation. Mr. Orgera thanked the Council, spoke about the land conservation initiatives, and introduced incoming CEO James Evans.

The meeting reconvened at 9:17 a.m.

## 5. PLANNING COMMISSION REPORT (Commissioner Nichols)

Commissioner Nichols gave a brief report regarding the November 23 meeting being cancelled.

At the November 9 meeting there were five public hearings:

- Public hearing for consideration of a request for a conditional use permit to allow vehicle rental and leasing land use in the General Commercial District located at 975 Rabbit Road, Suite 6 and Suite 1-1A. The application was approved by a vote of 5-0 with Commissioner Kirchner excused and Commissioner DeBruce recused.
- Public hearing for consideration of a request for a waiver for commercial vegetation buffers and landscaping located at 975 Rabbit Road. The application was approved by a vote of 5-0 with Commissioner Kirchner excused and Commissioner DeBruce recused.
- Public hearing for consideration of a request for a conditional use permit to allow food market use in Palm Ridge Place Unit 9 located at 2330 Palm Ridge Road. The application was approved by a vote of 6-0 with Commissioner Kirchner excused.
- Public hearing for consideration of a request for a waiver for commercial vegetation buffers and landscaping located at 2330 Palm Ridge Road. The application was approved by a vote of 6-0 with Commissioner Kirchner excused.
- Public hearing for consideration of a request for a conditional use permit to allow for the expansion of an existing retail business (Beach Daisy) by combining adjacent commercial retail units that will result in more than 2,000 square feet of commercial retail floor area located at 2075 Periwinkle Way. The recommendation for approval is being forwarded to City Council by a vote of 6-0 with Commissioner Kirchner excused.
- Continued discussion on Content Neutral Sign Regulations. The recommendation for adoption of a draft ordinance is being forwarded to City Council by a vote of 6-0 with Commissioner Kirchner excused.

The next Planning Commission meeting is scheduled for December 14, 2021.

## 6. PUBLIC COMMENTS FOR NON-AGENDA ITEMS

Public Comment:

- Judith Zimomra
- Jerry Muench

- Roy Gibson

## 7. COUNCIL COMMENTS

Councilman Miller welcomed City Manager Souza to his first City Council meeting, thanked and congratulated Ms. Zimomra on her new ventures, as well as thanked Mr. Henshaw for his organization of the celebration event for Ms. Zimomra. He gave a brief report of the holiday efforts of FISH (Friends In Service Here). He offered his congratulations to James Evans on becoming the new Chief Executive Officer for the Sanibel Captiva Conservation Foundation (SCCF) and Mr. Orgera on his new venture. Mr. Miller stated he would be asking to add iguana population issues to the January 2022 agenda.

Councilman Henshaw further welcomed Mr. Souza as City Manager. He spoke to remembrances for the anniversary of Pearl Harbor. Additionally, he spoke to the meeting regarding the Sanibel School updates. He concluded by speaking to making a donation to the Judith Zimomra Employee Dependent Scholarship Fund.

Councilman Crater spoke his appreciation for Ms. Zimomra and her speech at the December 4 event. He further concurred with the need to discuss the iguana population issue at a future meeting.

Vice Mayor Johnson spoke to remembrance of Pearl Harbor, thanked Ms. Zimomra for her service, congratulated Mr. Orgera for his new position as well as Mr. Evans for becoming the new Chief Executive Officer of SCCF. He further spoke to the ribbon cutting event at the Historical Museum and Village. In conclusion, he welcomed Mr. Souza to the City.

Mayor Smith concurred with all the accolades of Council and thanked Ms. Zimomra for her service, support, and leadership. She thanked Mr. Orgera for his service to SCCF and wished him luck on his new position. She further congratulated Mr. Evans on becoming the new Chief Executive Officer. She additionally thanked Alicia Tighe (Mr. Orgera's wife) for her service with FISH and as a member of the City of Sanibel Recreation Financial Assistance Committee. She also spoke to the successful Veteran's Day Ceremony held at City Hall. Mayor Smith stated her appreciation for Mr. Henshaw's organization of the celebration for Ms. Zimomra. Finally, she spoke to Luminary which was on Friday, December 3, 2021.

## 8. 9:10 - SECOND READING AND PUBLIC HEARING

- a. **ORDINANCE 21-011 AMENDING THE SANIBEL CODE OF ORDINANCES, CHAPTER 30, ENVIRONMENT, ARTICLE II. LITTER, SECTION 30-39 - UNLAWFUL DUMPING INTO WATER STORAGE AREAS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

City Manager Dana Souza read into record the title of Ordinance 21-001.

Discussion ensued regarding a public comment suggesting the change to verbiage from "water storage" to "water body." Director of Community Services, Keith Williams spoke to the language previously existing and that it had not been changed as it is more encompassing.

**Councilman Miller moved, seconded by Councilman Dr. Crater, to adopt Ordinance 21-011. The motion carried.**

## 9. CONSENT AGENDA

Councilman Dr. Crater requested to pull item A for discussion.

- a. Adoption of Minutes - September 27, 2021, Final Budget Hearing; September 29, 2021, Special Meeting; September 30, 2021, Special Meeting; October 5, 2021 Regular Meeting; October 27, 2021, Workshop

Discussion ensued regarding the September 30, 2021 minutes, top of page 2, beginning at "Councilman Crater spoke to receiving a memo..."

Councilman Crater asked to strike the first two sentences, and amend to read as, "Councilman Crater received a memo from Mr. Baenziger containing multiple interviews of references for Mr. Williams. Mr. Baenziger had not recommended Mr. Williams as a finalist. Councilman Crater felt as though the reference comments for Mr. Williams were mostly positive and therefore Councilman Crater supported Mr. Williams being considered as a finalist." Attorney Agnew spoke to the need for a motion to accept the changes.

**Councilman Dr. Crater moved, seconded by Mayor Smith, to adopt all sets of minutes with the September 30, 2021 minutes amended as stated. The motion carried.**

- b. **RESOLUTION 21-086 DESIGNATING THE CITY MANAGER, FINANCE DIRECTOR, ADMINISTRATIVE SERVICES DIRECTOR AND COMMUNITY SERVICES DIRECTOR TO ACT ON BEHALF OF THE CITY OF SANIBEL TO EXECUTE INVESTMENT AND BANK ACCOUNT SIGNATURE CARDS, BANKING RESOLUTION AND CERTIFICATE OF INCUMBENCY AND RELATED DEPOSIT ACCOUNT DOCUMENTATION; AND PROVIDING AN EFFECTIVE DATE**

City Manager Souza read into record the title of Resolution 21-086.

**Vice Mayor Johnson moved, seconded by Councilman Miller, to adopt Resolution 21-086. The motion carried.**

- c. Adoption of the Fiscal Year 2022 City Council Goals
- d. Approval of a 5-year Memorandum of Understanding for the 2022 Annual Operating Plan between

the City, Sanibel Captiva Conservation Foundation, Sanibel Fire Rescue District and J.N. "Ding" Darling National Wildlife Refuge for conducting prescribed fire operations and responding to wildfires and authorize the City Manager to execute same

Approval of non-resolution consent agenda items c and d.

**Councilman Henshaw moved, seconded by Councilman Miller, to approve non-resolution consent agenda items c and d. The motion carried.**

## 10. OLD BUSINESS

### a. COVID-19 Update

#### i. Legal Summary of Special Session Legislation (John Agnew)

City Attorney Agnew gave a brief legislative update speaking to:

- House Bill 1B - prohibits mandates of vaccinations by private employers, prohibits vaccination requirement for public employers hiring new employees, sunseting June 1, 2023
- House Bill 3B - pertains to public records relating to complaints to HB1B, sunseting Oct 2, 2023
- House Bill 5B - Florida State to create State level OSHA (Occupational Safety and Health Administration), effective November 18, 2021
- House Bill 7B - regarding vaccinations during emergency situations, removed the authority of state health officer to mandate vaccinations

Discussion ensued regarding the City being compliant with current standards and legislation. Council thanked Attorney Agnew for the update and requested copies of the written summary. Councilman Crater noted how the politics involved in public health policy is killing people, and that pregnant people are supposed to get vaccinated due to being at a higher risk of death if infected.

#### ii. Discussion and Direction to Staff Regarding Masks

City Manager Souza entered into record an updated memorandum speaking to mask usage. He requested Council authorization allowing the City Manager to lift the mask mandate if the transmission and positivity rates are below the CDC level of 50 cases per 100,000 people and below 5% positivity rate and requesting to authorize the City Manager to reinstate mask mandate if rates rise above those levels.

Discussion ensued regarding the levels at time of the last meeting and following, the numbers fluctuating and currently being higher, and in support of the City Manager making the decision based on CDC data. Councilman Crater inquired whether the policy would be for all or just vaccinated. Vice Mayor Johnson spoke to the confusion relating to the lack and delay of data from the State level. Mayor Smith noted speaking with Michael Nacheff of Lee Health regarding the current levels, new variants and moving forward with caution. Councilman Crater spoke to using the

number of hospitalizations as a guide. Councilman Henshaw spoke to wanting to evaluate at each meeting the need and extent of following CDC guidelines.

**Councilman Crater moved, seconded by Councilman Miller to accept the City Managers recommendation amending it to say that unvaccinated employees would continue to wear masks while indoors at City Hall. The motion was withdrawn.**

Public Comment:

- Michael Raab

**Councilman Crater moved, seconded by Councilman Henshaw to discontinue the current mask mandate for the interior of City owned buildings if the transmission rate drops below 50 cases per 100,000 population over a 7-day period in Lee County as reported by the CDC and the positivity rate exceeds 5% over a 7-day period. Conversely, reestablishing the mask mandate for the interior of City owned buildings if the transmission rate reached 50 cases per 100,000 population over a 7-day period in Lee County as reported by the CDC and the positivity rate exceeds 5% over a 7-day period. The motion carried.**

Discussion ensued regarding mask usage in City Facilities and that employees with their own offices can unmask when alone. Additionally, unvaccinated employees should wear masks at all times.

City Attorney Agnew confirmed that this motion is within the Council's authority.

Public Comment:

- Michael Raab

- Alison Ward

**Councilman Crater moved seconded by Councilman Miller, moved that unvaccinated employees, not in individual offices, continue to wear masks in interior spaces. The motion carried.**

Discussion ensued regarding mask usage at the Recreation Center. Mr. Souza spoke to concerns specific to the Recreation Center. Recreation Director Trish Phillips confirmed that the air filtration system update to MERV13 ventilation level had been completed. She requested removal of specific zones and suggested designating time slots for making masks optional during work outs while in the weight room.

Discussion ensued regarding changes to mask rules for the weight room. Councilman Miller inquired if unmasked afternoons would still utilize the reservation system and if occupancy limits would change. Director Phillips spoke to the advantages of increasing the occupancy from 8-12 and adding 4 additional spots. Councilman Henshaw inquired as to the increased use in the afternoon. City Manager Souza spoke to needing a benchmark such as "low or moderate" for allowing use of reservations, which would give staff more flexibility to open up to more users. Councilman Miller asked for more clarity regarding moderate category of virus transmission and positivity rate to which City Manager Souza clarified a high risk level would limit weight room to 8 people and masks would be required, moderate risk level would then increase limit to 12 with masks in AM not in PM, and low risk level denoting masks could be removed for both AM or PM.

Councilman Henshaw spoke to the separate set of guidelines for city employees versus public use of Recreation Center. He further spoke to his preference of using the benchmark of moderate to lift all mask mandates for general public, and raising maximum requirements to 12. Councilman Johnson gave his congratulations on upgrading the full recreation facility to MERV13. He also spoke to the new variant not being as severe, that hospitalizations are being monitored and included in decision making. Discussion shifted toward occupancy rates, proximity of users, and possibly identifying machines that could be blocked off. City Manager Souza spoke to the different needs of the users regarding space use.

Discussion returned to masks, specifically; masks in the morning, no masks in the afternoon, increasing numbers from 8 to 12 in weight room, to revisit the issue in a month, and to authorize City Manager to manage level changes with City employees. City Manager offered additional clarity. Councilman Crater spoke to signage that should clarify that unvaccinated persons wear masks at all times. Vice Mayor Johnson inquired as to feasibility of the proposed changes, to which Director Phillips confirmed.

Public Comment:

- Michael Raab
- Chet Sadler

**Councilman Henshaw moved, seconded by Vice Mayor Johnson, using moderate to substantial levels as benchmark levels, authorize City Manager to designate based on CDC level, allowing 12 users per session, with masks required in the morning session and optional in the afternoon session at substantial risk level, and allowing 12 users per session, with masks optional during each session, add signs for unvaccinated to wear masks, and remove zones. The motion carried.**

iii. Discussion and Direction to Staff Regarding Outdoor Displays of Merchandise

Finance Director Chaipel gave a brief background for the allowance for outdoor displays of merchandise. He noted that the code does not allow for it but that current COVID standards do. Discussion ensued regarding there no longer being a state of emergency so the current Code needs to be followed. City Attorney Agnew concurred that the COVID state of emergency no longer exists so the exemption should be cancelled.

**Vice Mayor Johnson moved, seconded by Mayor Smith to close loop hole that has been discovered and follow the current code relating to outdoor displays of merchandise. The motion carried.**

iv. Discussion and Direction to Staff Regarding Policy for Review and Approval of Special Event Permits

Discussion ensued regarding specifying April 15th or April 30 as opposed to Easter.

**Councilman Miller moved, seconded by Vice Mayor Johnson to accept the City Manager's**

recommendations as stated in the staff memorandum, amending references of Easter to April 30th. The motion carried.

The meeting recessed at 11:26 a.m. and reconvened at 11:36 a.m.

**b. Water Quality Issues**

**i. Reports from Director Milbrandt**

Natural Resources Director Holly Milbrandt spoke to the written report included in the packet highlighting the report being updated weekly. She noted that we are continuing to see recession in Lake Okeechobee, that red tide concentration is improving, and blue-green algae is decreasing across Lake Okeechobee and in the Caloosahatchee.

Director Milbrandt gave updates about Lake Okeechobee System Operating Manual (LOSOM) and spoke to anticipated results of the selected alternative. Mayor Smith inquired as to S-79 and S-77. Director Milbrandt spoke to Sanibel requests to the Corps to specific sites for measurements, specifically how different flows measurements could compromise communication. Councilman Miller thanks to the Department of Natural Resources, City Staff, and Mayor Smith for efforts relating to LOSOM. Vice Mayor Johnson also spoke to his appreciation. Director Milbrandt concluded her report.

- ii. Letter to Colonel James Booth, U.S. Army Corps of Engineers, regarding Lake Okeechobee System Operating Manual (LOSOM) Iteration 3 Optimized Runs from Mayor Holly D. Smith, dated November 5, 2021

Mayor Smith spoke to the letter sent to Colonel James Booth.

**iii. C44 Ribbon Cutting (Mayor Smith)**

Mayor Smith gave a brief report regarding attending the C44 ribbon cutting event. Ms. Smith spoke to Wesley Brooks being named as Chief Resilience Officer and requested a letter of congratulations be sent.

Discussion ensued regarding how attending events and meeting new representatives creates a united front.

**v. Update on Heron's Landing Agreement**

Councilman Henshaw gave a brief report on City Attorney Agnew's communications with the key contacts for the residents, and that a contract is still in the works. He reported that he is still trying to schedule a meeting with the nine residents and come to an agreement. He reiterated that he is hopeful to be able to bring something forward to Council at February meeting.



**c. Legislative Priorities - Advocacy 101 (Mayor Smith)**

Mayor Smith spoke about her conversation with Angela Dempsey and Dan Delisi, legislative lobbyists in Tallahassee. She noted that we are in a holding pattern as session is in recess.

- i. Letter to Senator Ray Rodrigues regarding the legislative priorities and requests for state funding of two local projects from Mayor Holly D. Smith, dated November 4, 2021
- ii. Letter to Representative Adam Botana regarding the legislative priorities and requests for state funding of two local projects from Mayor Holly D. Smith, dated November 4, 2021

Mayor Smith spoke to the letters enclosing the legislative priorities sent to Senator Rodrigues and Representative Botana.

**d. Facilities Update**

- i. Discussion and Direction to Staff Regarding the Police Department Modernization

City Manager Dana Souza spoke to the memorandum included in the agenda packet. He noted that the recommended action identified the preferred option for the Police Modernization Project is new construction adjacent to City Hall. He also spoke to directing staff to proceed with design for Option #2 for the Police Modernization Project utilizing the \$403,825 of available funding.

Finance Director Steve Chaipel spoke to needing approximately 4 months to release the funds for the project. He noted that a simple bank loan should be sufficient, requesting at the January meeting that a reimbursement resolution to set up the process for the fund options be considered by Council. City Manager Souza spoke to process and timing, pending Council approval.

Discussion ensued regarding the Police Department continuing services from the existing location until construction is complete and what additional funds would be needed to complete design.

**Councilman Miller moved, seconded by Mayor Smith, directing staff to proceed with design for preferred option number two for the Police Modernization Project utilizing the \$403,825 of available funding. The motion carried.**

- ii. Recreation Facilities/Center4Life Update

City Manager Dana Souza spoke to receiving proposals from three firms in response to the Request For Proposals. The committee is verifying references for the proposals. He spoke to exploring a system wide integration of several facilities and space programming within each facility.

He noted that work is in progress to schedule workshop early in the new year

regarding the Center 4 Life, and the need for agreement with Island Seniors.

Mayor Smith spoke to the greater goals, the general approach, and inquired as to the specifics of the workshop. City Manager Souza responded, and discussion ensued regarding goals which include agreement with Island Seniors and the Recreation Master Plan and how that fits into the strategic plan. City Manager Souza spoke to his desire to have a retreat for Council to develop the goals and plan, including facilitation for strategic plan discussion, and review of an overall plan that would feed into the projects. He further spoke to direction for moving forward with design, concurrently with master plan project. Councilman Henshaw spoke to previous discussions about a workshop to further discussion and consultant services being provided at Recreation Center, and his preference to wait until the consultant report is available before holding the workshop to have more information. Vice Mayor Johnson noted that discussion has been in the works for years and has been delayed due to COVID, and inquired as to what could be done on parallel paths while waiting for the plan from the consultant. Discussion ensued regarding process to move forward.

Public Comment:

- Darla Letourneau

- e. Continued Discussion and Direction to Staff Regarding a Draft **AN ORDINANCE AMENDING THE SANIBEL CODE OF ORDINANCES RELATED TO SEAWALLS AND OTHER METHODS OF SHORELINE STABILIZATION; CHAPTER 78 - GENERAL PROVISIONS, AMENDING SECTION 78-1. - RULES OF CONSTRUCTION AND DEFINITIONS; CHAPTER 126 - ZONING, ARTICLE IV. - CONDITIONAL USE, AMENDING SECTION 126-99 - EROSION CONTROL STRUCTURES; CHAPTER 126 - ZONING, ARTICLE IV. - CONDITIONAL USE, AMENDING SECTION 126-101. - SEAWALLS AS ACCESSORY STRUCTURES; CHAPTER 126 - ZONING, ARTICLE IV. - CONDITIONAL USE, AMENDING TO ADD SECTION 126-106. - SEAWALL AS ACCESSORY STRUCTURE PLACED WATERWARD OF EXISTING SEAWALL; CHAPTER 126 - ZONING, ARTICLE V. - NONCONFORMANCES, DIVISION 2. - USES, AMENDING SECTION 126-152. - (NONCONFORMING USES) EXCEPTIONS AND PROHIBITIONS; CHAPTER 126 - ZONING, ARTICLE V. - NONCONFORMANCES, DIVISION 3. - STRUCTURES, AMENDING SECTION 126-172. - (NONCONFORMING STRUCTURES) IMPROVEMENT, RECONSTRUCTION OR RELOCATION PROHIBITED, EXCEPTIONS; CHAPTER 126 - ZONING, ARTICLE V. - NONCONFORMANCES, DIVISION 5. - STANDARDS FOR BUILDING-BACK (RECONSTRUCTION) OF STRUCTURES SUBSTANTIALLY DAMAGED BY A NATURAL DISASTER, AMENDING SECTION 126-212. - NONCONFORMING STRUCTURES; CHAPTER 126 - ZONING, ARTICLE XIV. - SUPPLEMENTARY STRUCTURES, SUBDIVISION II. - ACCESSORY MARINE STRUCTURES, AMENDING SECTION 126-875. - WATERWARD EXTENSION; CHAPTER 126 - ZONING, ARTICLE XIV. - SUPPLEMENTARY STRUCTURES, SUBDIVISION II. - ACCESSORY MARINE**

**STRUCTURES, AMENDING SECTION 126-885. - MATERIALS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

City Manager Dana Souza introduced the topic noting Planner Kim Ruiz would lead the discussion. Ms. Ruiz spoke to the executive summary included in the agenda packet noting that seawalls are not required anywhere on the island and there are a few locations where they require conditional use permits.

Ms. Ruiz spoke to public comments received from Karen Storjohann, Brent Stokes of Stokes Marine, and the Sanibel Captiva Conservation Foundation (SCCF).

Planner, Kim Ruiz spoke regarding the Commissions concerns for micro-plastics and their creation from the use of vinyl as a material to replace a seawall. SCCF and Staff did literature research relating to micro-plastics and best management practices, concluding that there were no findings directly related to the topic. Staff further discussed material types noting pros and cons to each, concluding there was no substantive information prohibiting the use of the materials. She further spoke to discussions relating to extending seawalls water ward of the existing seawalls, noting the multitude of opinions, and depending on different circumstances, the discrepancies that would need to be determined through the conditional use permit process, also determining when variances are or are not available. Discussion ensued regarding what topics were covered from the prospective of the Commission and inquired of the conversations had.

City Attorney Agnew spoke to only Council having the authority to pass an ordinance and making final interpretation, Council can not only reject or accept but can make any adjustments or changes between now and the second reading. Ms. Ruiz confirmed the discussions had by the Commission were thorough and robust enough to include homeowners, seawall contractors, and design engineers. Council requested response to Stokes Marine recommendations. In response to the email from Brent Stokes, Ms. Ruiz spoke to size of cap limits, elevation of where it is placed, that the 10 weep-holes installed should be at or above the mean high water line, as well as any other items of a technical nature. She spoke to points 12-17 (attached in the report) that these be minimum standards, point 19 in that a professional engineer should be required to certify plans and certify that it was constructed to at least the minimum standards. Ms. Ruiz spoke to point 20, noting that environmental enhancement for a storm-water detention area would not count toward the developed area. Mayor Smith inquired as to the consistency with the code relating to canal lots and properties not on canals which Ms. Ruiz spoke to the inconsistency being a function of environmental benefits.

Discussion ensued regarding seaward extensions causing an addition to a property, with Councilman Henshaw noting an assessment to collect funds to purchase the

wetlands. Ms. Ruiz spoke to 10 square feet of additional property, costs associated, Taxing district and how this has not been discussed on the Commission level. Councilman Miller spoke to a general approach for needed land by the city via easement, which was to ensure the easement included conditions. Discussion continued regarding how we are losing seaward canal area due to the vinyl being placed outside of an existing seawall, and how funds the to acquire wetlands for undevelopable properties.

City Attorney Agnew spoke to the possibly of the fund to acquire undevelopable properties, attractiveness being that it is less expensive than processing as an individual homeowner. Councilman Henshaw inquired as to how to compensate and convert to conservation land, City Attorney confirmed. Mayor Smith inquired if this language would be included in the draft today or if it required a referendum. Attorney Agnew spoke to needing to research further and looking into mitigation banks for such situations. Councilman Miller inquired regarding the issue of property acquisition vs. easement, as acquisition relates to development rights. Ms. Ruiz spoke to why the city requires a survey for properties associated across, down and next to waterways to evaluate future needs for all involved. Noting the importance in protecting the rights on both sides of any canal, perhaps by using a clarifying statement "at any time or in the future." if the property were to be sold or change hands in the future. City Attorney Agnew spoke to the current interpretation to be the first in time to construct, to which Councilman Miller inquired if this could be implemented today. Attorney Agnew spoke to doing the math and figuring out the unintended hardship for the affected parties.

Councilman Miller inquired as to paragraph 20(c.) on page 8, which exempts certain ground cover by 50 percent limit on developed area. Mr. Miller inquired about the consistency of the language and its application to the 12 inches between the new and existing seawall, and whether it would count toward the developed area even if the seawall is within their property boundaries. Ms. Ruiz stated the fill would be considered exempt as it would be outside the development limits. Discussion ensued regarding properties placing fill between the new and existing within property boundaries and rather or not that would be considered developed area.

Councilman Miller inquired as to paragraph 7 page 17, which addresses that adequate concrete be used in part of the structure, if this specific language needs to change. Ms. Ruiz noted that replacing reinforced steel would be within a concrete seawall as part of a standard design. Ms. Ruiz noted that a clarification might be needed.

Councilman Miller inquired regarding repairs and reconstruction on 6 paragraph 5, which refers to repairs and reconstruction, as not a permitted use. He inquired why this is in 26.101 when it should be in 126.152 dealing with non-conformances. Ms.

Ruiz stated it was a function of cross reference. Discussion ensued regarding a scrivener's error on page 12, 126.172a. and page 10, paragraph 1. He complemented Ms. Ruiz, Planning Supervisor Chandler, and Director Williams as well as the Planning Commission having left no stone unturned.

Vice Mayor Johnson inquired of Natural Resources Director Milbrandt if she was supportive of the draft legislation. She stated yes, and thanked Dana Dettmar for her efforts in coming to this step.

Mayor Smith spoke to consistency regarding the impact of our waterways. Looking at storm water retention areas for any new development permits, she asked how this concept is applied. Ms. Ruiz noted a 5-foot walkway access should allow for additional space for maneuvering boating supplies and spoke to the struggle of enhancing environments while balancing development. Mayor Smith inquired as to double dipping prospect for both the detention and 10-foot buffer. Ms. Ruiz spoke to the value to the design and does not see detentions as open bodies of water, noting impact of the ground water that must go somewhere. Ms. Ruiz further spoke to unique ecological zones, excluded from developed area, but included in Sanibel plan and code as a specific situation and included it for understanding.

City Attorney Agnew stated that enough substantive changes exist to bring back for January for further discussion. Councilman Henshaw inquired regarding projects or applications that being held up because of this situation, to which Ms. Ruiz stated no. Attorney Agnew further spoke to the 3-month delay for changes to take effect, and the consequences associated. City Attorney Agnew noted that there does exist a potential 8 plus months wait to replace a seawall, and that some Stokes Marine customers are not applying until legislation had been decided on.

Public Comment:

- Carrie Schuman
- Brent Stokes
- Hans Wilson

The meeting recessed at 2:29 p.m. and reconvened at 2:42 p.m.

**f. Sanibel Causeway Discussion and Traffic Count Update**

Vice Mayor Johnson spoke to seeing a decline in the toll revenue which are funds used for maintenance of the roadways. Additionally, there has been a decline in the gas tax collection. Council concurred with authorizing Vice Mayor Johnson to work to meet with Commissioner Ruane.

**i. Fiscal Year 2021 Lee County Surplus Toll Receipts**

Finance Director Chaipel noted that with significant traffic increases. With regard to 21% of net tolls, he noted similar income levels on par with 2019. He further spoke to the declining gas tax collection, and the connection to Lee County.

Councilman Henshaw inquired as to specifics on the gas tax, and the probability that Lee County will maintain formula resulting in a reduction. Director Chaipel spoke to the original formula vs. standardization across local municipalities. Vice Mayor Johnson spoke to working with Director Chaipel and City Manager Souza in preparation to meeting with County Commissioners.

Further discussion ensued regarding how to accommodate for electric cars reducing the gas tax revenue, how to reduce the impacts, and the involvement of Lee County Dept. of Transportation and Florida Dept. of Transportation. Councilman Crater inquired about the surplus report, that the FY2020 revenue shows deficit, why? Director Chaipel stated he would check the calculation on the form. Councilman Crater also inquired as to how the expenses for the Causeway are much higher. Director Williams spoke to the design of the causeway and the FDOT standards for design, noting that standards were revised during construction of the bridge which made it non-compliant which resulted in an increase in inspections.

Director Chaipel spoke to getting updated reports for the April meeting.

## 11. NEW BUSINESS

- a. Discussion Regarding Compensation for Steve Chaipel, Finance Director, for his service as Interim City Manager from September 29, 2021 through November 15, 2021

City Manager Souza spoke to Director Chaipel's competent service as Acting and Interim City Manager.

Mayor Smith thanked Jocelyn Upchurch for serving as acting Finance Director.

**Councilman Henshaw moved, seconded by Vice Mayor Johnson, to accept the City Manager's proposal to provide Director Chaipel a bonus of \$4,700. The motion carried.**

- a. Stormwater System Discussion (Councilman Miller)
  - i. Workshop

Councilman Miller spoke to the request for discussion on various topics including; summary of current storm water distribution system, summary of proposed Tradewinds' Drainage Improvement Plan, and how concerns for sea level rise should influence future changes in storm water distribution.

City Manager Souza spoke to recommending a workshop, will work with Director Williams, and work to schedule.

**b. Discussion and Direction to Staff Regarding Enhanced Bike Path and Beach Police Patrols**

Police Chief William Dalton spoke to current statistics for police bike patrol. He spoke to increasing coverage on both the beach and the shared use path. He further spoke to taking a more formalized approach this year as directed by Council and noted that he will work with Human Resources to create a formal job description for Community Service Aide. Finance Director Chaipel spoke to five of these positions having been included in the FY22 budget.

Public Comment:

- Barry Roth

**c. Discussion and Direction to Staff Regarding Potential Conservation Land Acquisitions**

City Attorney Agnew spoke to the purpose for the discussion and gave a brief report of the background. Mr. Agnew spoke to the need to maintain and protect environmentally sensitive lands and Sanibel Captiva Conservation Foundation (SCCF) and the City purchasing such lands in the past.

City Attorney Agnew then spoke to a variance request that was to come before the Planning Commission resulting in the finding that the property was pristine wetlands and essentially not a build-able lot. The applicant was a prospective purchaser of the property who withdrew the application and subsequently withdrew from purchasing the property. The topic has come before the City Council to determine if there is potential for purchase of the environmentally sensitive land, secondly, if there were direction to staff to research other properties on the island in similar circumstances.

Discussion ensued regarding having a minimum of two appraisals, ensuring the appraisers are aware of the sensitivities of the island. Paying fair market value of the use, which is potentially not a build-able lot, as it will not have definitive documentation of build-ability without public hearing at Planning Commission. Mayor Smith noted that she is interested in researching the possibility of public/private partnership for acquisition of properties in the future.

Further discussion ensued regarding having a formalized discussion relating to budget process or strategic planning to create a program and set up revenue sources. City Manager Souza inquired if there was Council consensus for including this topic in the strategic plan agenda, to which Council confirmed. Attorney Agnew spoke to preliminary work that has already been completed, which could be summarized for Council at the January meeting for review.

Public Comment:

- Wendy McMullen

Attorney Agnew spoke to no administrative actions having been taken, that the City has made no determinations, and that the application would need to be heard by the Planning Commission for any action to be taken. Discussion ensued regarding there being four contiguous lots in similar circumstances, and that the lots border a neighborhood on one side and conservation land on the other.

## **12. CITY MANAGER**

### **a. Informational Items**

#### **i. Status Report on the Donax Rehabilitation Project**

Council inquired as to what was the 2% of the project that was incomplete. City Manager Souza advised that Director Williams would report at the January meeting.

## **13. CITY ATTORNEY'S REPORT**

No further report.

## **14. COUNCIL MEMBER'S REPORT**

- a.** Attendance at the Florida League of Mayors (FLM) Workshop on November 3, 2021 (Mayor Smith)
- b.** Attendance at the Florida League of Cities (FLC) Legislative Conference, November 3-5, 2021 (Mayor Smith, Vice Mayor Johnson, Councilman Miller)
- c.** Attendance at the United Way Kick Off Breakfast on November 3, 2021 (Mayor Smith)
- d.** Virtual Attendance in the Florida Resilient Coastlines Program November Coastal Resilience Forum on November 3, 2021 (Vice Mayor Johnson)
- e.** Attendance at the Vegetation Committee Meeting on November 4, 2021 (Councilman Dr. Crater)
- f.** Attendance at the Horizon Council Sports Tourism Committee Meeting on November 8, 2021 (Mayor Smith)
- g.** Virtual Attendance in the Florida League of Cities (FLC) Legislative Priorities Part 1 Webinar on November 8, 2021 (Mayor Smith, Vice Mayor Johnson)
- h.** Attendance at the Planning Commission Meeting on November 9, 2021 (Councilman Miller, Mayor Smith)
- i.** Attendance at the J.N. "Ding" Darling National Refuge Advocacy Committee Meeting on November 9, 2021 (Councilman Henshaw)
- j.** Attendance at the Visitor and Convention Bureau (VCB) Tourism Outlook Annual Meeting on



November 9, 2021 (Mayor Smith, Vice Mayor Johnson)

- k.** Attendance at the Lee County Tourist Development Council (TDC) Meeting on November 10, 2021 (Mayor Smith, Vice Mayor Johnson)
- l.** Attendance at the General Employee Pension Board Meeting on November 10, 2021 (Vice Mayor Johnson)
- m.** Attendance at the Sanibel Captiva Chamber Luncheon on November 10, 2021 (Mayor Smith, Vice Mayor Johnson)
- n.** Attendance at the Municipal Police Officers Retirement Trust Board Meeting on November 10, 2021 (Vice Mayor Johnson)
- o.** Attendance at the Tiger Bay Luncheon on November 10, 2021 (Councilman Henshaw)
- p.** Attendance at the Real Estate Investment Society (REIS) Evening Under the Stars on November 10, 2021 (Mayor Smith)
- q.** Attendance at the Veterans Day Ceremony on November 11, 2021 (Mayor Smith, Vice Mayor Johnson, Councilman Henshaw)
- r.** Attendance the Southwest Florida League of Cities (SWFLC) Luncheon on November 12, 2021 (Mayor Smith, Vice Mayor Johnson)
- s.** Attendance the Horizon Council Nominating Committee Meeting on November 15, 2021 (Mayor Smith)
- t.** Virtual Attendance in the Lake Okeechobee System Operating Manual (LOSOM) Project Delivery Team (PDT) meeting on November 16, 2021 (Mayor Smith)
- u.** Attendance at the Boy Scouts of America Pack & Troop 1740 Meeting on November 16, 2021 (Vice Mayor Johnson)
- v.** Virtual Attendance in the Sanibel Colloquium “The Sanibel Report - 45 Years Later” Panel Discussion on November 17, 2021 (Mayor Smith)
- w.** Attendance at the Chamber of Southwest Florida City and County Managers Share Insights Event on November 18, 2021 (Mayor Smith)
- x.** Attendance at the Horizon Council Meeting on November 19, 2021 (Mayor Smith)
- y.** Attendance at the Metropolitan Planning Organization Board Meeting on November 19, 2021 (Vice Mayor Johnson)
- z.** Attendance at the Southwest Florida League of Cities (SWFLC) Executive Committee Meeting on December 2, 2021 (Mayor Smith)

- aa.** Attendance at the Historical Preservation Committee Meeting on December 2, 2021 (Vice Mayor Johnson)
- ab.** Attendance at the Vegetation Committee Meeting on December 2, 2021 (Councilman Dr. Crater)
- ac.** Attendance at the Florida Municipal Investment Trust Fund Board Meeting on December 3, 2021 (Vice Mayor Johnson)
- ad.** Attendance at the Recreation Financial Assistance Committee Meeting on December 6, 2021 (Councilman Miller)

Mayor Smith spoke to corrections to the Council reports which were submitted to the City Clerk.

Mayor Smith spoke to the Planning Commission having two terms coming up for expiration and accepting applications for appointment.

Councilman Henshaw inquired as to the status of the Tradewinds project to which Mr. Souza spoke to the schedule being updated. City Manager Souza noted that he has met with Susan Rueberry and that he is working to expedite the review process, noting that a 9 month process from bid to completion will ensue.

Council further inquired as to the status of the permitting software (EnerGov) implementation. City Manager Souza spoke to several meetings with staff that have occurred, noting training issues, staff shortages, and lack of use. City Manager Souza spoke to his concern for mission critical loss of current point person for the program.

Mayor Smith spoke to Donax Plant Phase 4B being behind schedule and looking forward to notice to Council. Vice Mayor Johnson inquired as to a ribbon cutting ceremony for when the Plant is complete.

Vice Mayor Johnson spoke to speaking at the Boy Scout meeting and his appreciation for the organization and the local Pack and Troop.

## **15. PUBLIC COMMENT**

There were no public comments from the audience.

## **16. ADJOURNMENT**

There being no further business the meeting adjourned at 4:05 p.m.