

MINUTES FOR JUNE 8, 2004
MEETING OF THE PLANNING COMMISSION
THE COUNCIL CHAMBER (MACKENZIE HALL)
800 DUNLOP ROAD, SANIBEL, FLORIDA

Chair Carla Johnston called the meeting to order at 9:05A.M. In addition to the Chair, the following Commission Members were present. Vice Chair Samler, Commissioner Marie Gargano, Commissioner Michael Valiquette and Commissioner John Veenschoten. Judy Workman, Councilwoman, was present as City Council liaison. Staff present: Assistant Planning Director Ken Pfalzer and Recording Secretary Susan Beck; Police Chief Bill Tomlinson, and Natural Resources Director Rob Loflin. Commissioner John Dillon and Commissioner Ellis Robinson were excused from the meeting. There were approximately 35 members of the public in attendance.

ITEM #2: The meeting began with the Pledge of Allegiance.

ITEM #3: Approval of the May 25, 2004 meeting minutes.

MOTION: Commissioner Veenschoten moved to approve the minutes as submitted. Commissioner Gargano seconded the motion. The motion carried by a unanimous voice vote.

ITEM #4: Public comments on items not appearing on the agenda.

Bob Laswell, Sanibel resident, said that after reading the May 25, 2004 minutes he did not believe that hurricane safety was discussed; the only thing in regard to public safety was feeding Ms. Gargano's pet peeve which is not in the purview of the Commissioner. Mr. Laswell further stated that two relevant issues were almost totally ignored, (1) the sewage treatment plant and (2) the water plant. Mr. Laswell suggested that appropriate officials be contacted to give a succinct report on how vulnerable these plants are to salt water and how they will be put back into operation after a hurricane. Chair Johnston stated that the July 27, 2004 EAR discussion will address Water Supply, Wastewater Treatment, Solid Waste and Storm Drainage. Mr. Pfalzer said that the safety element would be discussed in many of the EAR discussions but the May 25, 2004 meeting was focused on Hurricane Safety. Commissioner Gargano said she is a member of the Planning Commission and also President of "Save Our Bay" (SOB) and that she is very careful not to use this forum in any way to promote or create any conflict between the two bodies or to promote SOB or bridge issues and that what was said about her is completely untrue.

Vice Chair Samler stated that the public should be aware that the Summerlin corridor is limited access with service roads and common accesses for a number of properties along Summerlin Road and that during the early '80's rather than go through the long and expensive eminent domain process many property owners negotiated access to the roadway. This was the only way Lee County could obtain the property necessary for Summerlin Road.

Commissioner Johnston reported that after Planning Commission minutes are approved they will be put on the City's web site.

ITEM #5. Discussion of the Preparation of the Evaluation and Appraisal Report of the Sanibel Plan (EAR) – Section 3.2.1 Coastal Zone Protection (focusing on Beach Management, Non-Conforming Densities and Redevelopment in Coastal Zone Areas) and Section 3.6.2 Land Use (focusing on redevelopment in the Resort Housing Sector and Condominiums).

Chair Johnston asked the public to confine their comments to five minutes.

Chair Johnston asked Mr. Pfalzer if he had any opening remarks. Mr. Pfalzer said he would like to hold his remarks until after the Public had spoken. Mr. Pfalzer said the preliminary listing of major issues for the Evaluation and Appraisal Report as approved by City Council is a big part of what is going to be discussed today, (1) stresses on the carrying capacity of natural systems and (2) the build back issue focusing primarily on addressing nonconforming densities.

Louise Johnson, Sanibel resident, said during the past season the red algae had a bad effect on tourism and on occupancy of resorts. Ms. Johnson said there should be a more active interest by the City regarding what is causing red tide and red algae and the amount of debris on the beaches. Ms. Johnson said it was not just unsightly but also created a very bad odor.

Eric Lindblad, Sanibel-Captiva Conservation Foundation (SCCF), said that in 1995 the City reviewed the beach management plan and 21 points have been incorporated into the Sanibel Plan. Mr. Lindblad said he has reviewed this and believes no further changes need to be made. Mr. Lindblad said the beach area on Sanibel is going to be the most difficult to manage for wildlife; animal's and birds that nest on beaches have no other place to nest and to remember that Invertebrates live in the algae providing food for shore birds, wading birds and crabs. Mr. Lindblad asked the Planning Commission not to grant any greater intensity on the beaches.

Commissioner Veenschoten asked Mr. Lindblad if he knew the carrying capacity of the beaches. Mr. Lindblad said, "No", to do this is very complicated but is doable but has not been done, however, he believes we have exceeded the capacity and any increase in activity on the beach is detrimental to wildlife. Mr. Lindblad said that, in the future, it would be necessary to limit entry to beaches, especially during nesting season. Mr. Lindblad said that Dr. Loflin did a lot of work to enhance the dune system on the Island and to eliminate beach accesses to increase and protect the dunes. Commissioner Veenschoten said that the Planning Commission is greatly concerned about the beaches and it is important that SCCF and J. N. "Ding" Darling National Wildlife Refuge work with the Planning Commission to preserve the beaches.

Chair Johnston asked Mr. Lindblad what he suggests the City should do to move forward to conduct a carrying capacity study and what can be done in the interim to address this issue. Mr. Lindblad said that the City, SCCF and Ding Darling could cooperate on a capacity study and the first thing to do is establish parameters to use for benchmarks. Mr. Lindblad said the SCCF laboratory has started this work.

Commissioner Gargano suggested that the Tourist Development Council (TDC) could participate in this study because they are trying to market the beaches as environmental attractions. Mr. Lindblad said a carrying capacity study would be a good use for the TDC.

Commissioner Valiquette asked Mr. Lindblad if the use of trolleys or buses to transport people to Sanibel beaches is a concern. Mr. Lindblad replied that this does have the potential to increase beach use. Commissioner Valiquette said the Commissioners should make sure that solving a traffic problem doesn't create an increase of people on the beaches.

Steve Brown, Sanibel resident, said it is easy to get into a mode of not cleaning up the beach – the beaches should be kept as natural as possible but also have to accommodate visitors and the Planning Commission should give City Council balanced recommendations, recommendations that look at both sides. Mr. Brown further stated that during the battle regarding the Causeway a mean letter was sent saying buses will go to Sanibel and park at every beach access and unload and people will be on the beaches all day. Mr. Brown said this is a very delicate situation and encouraged the Planning Commission to look at all aspects. Chair Johnston asked Mr. Brown if he had any suggestions. Mr. Brown replied (1) holding meetings like this meeting, (2) hold a joint meeting between the City Council and the Planning Commission, (3) meet with the Chamber of Commerce, Realtors and representatives of Homeowners Associations and (4) maybe a study is needed. Mr. Brown said that someone from the Chamber of Commerce should be in attendance at this meeting. Chair Johnston said they were invited. Mr. Brown encouraged the Planning Commission not to go down one road but to look at both sides.

Vice Chair Samler agreed that it is disappointing the Chamber of Commerce is not represented. Vice Chair Samler suggested that a rack line be left for the birds but said 80% of a 3-foot pile could be removed. Vice Chair Samler also stated that, if trolley service is encouraged, he believes it will just make room for more cars and he would not support providing parking spaces for large vehicles. Vice Chair Samler said that private property owners are starting to see public parking on their property. Police Chief Tomlinson said the Police Department had not received any complaints but encouraged property owners to report any unauthorized vehicles being parked on their property.

Rob Loflin, Natural Resources Director, said this year the red algae was an extraordinary event and many changes have been made to this area because of stormwater run off. Dr. Loflin said that the quality of the water coming from the Caloosahatchee isn't bad but the volume and the volume of nutrients that is being carried into local waters is more than ever before. Dr. Loflin said they are working on this issue and the South Florida Water Management District and Army Corps of Engineers have a plan to substantially reduce the need for flows down the Caloosahatchee and the dumping of the lake water. Dr. Loflin said he believes the plan will work, however, it could take a long time. Dr. Loflin said that in the Sanibel Plan there is a basic policy regarding beach cleanup that states when there is one dead fish per foot of beach triggers beach cleanup; cleanup has only been necessary once. Dr. Loflin said that a carrying capacity study can be handled in-house, Lighthouse Beach, Bowman's Beach, Tarpon Bay, Casa Ybel Resort and Sundial have already reached capacity, and other beaches are getting there. Dr. Loflin said that access to the beach is key and parking should be limited to help control beach access; Sanibel should look at banning buses and large groups of people. Dr.

Loflin said that he is working with Ft. Myers Beach, Bonita Beach and the TDC on studies regarding red algae.

Rob Jess, J. N. "Ding" Darling National Wildlife Refuge, said it is very important to protect beaches because they are the most critical wildlife habitat. Mr. Jess said the question is how to balance people on the beach and the habitat for wildlife and he has been actively seeking funds from Congress (\$4-6MM) to finance (1) what is the effect of human impact and (2) to determine the carrying capacity of the beaches and the Island as a whole.

Commissioner Gargano said that in Dr. James C. Nicholas report dated July 1997 he states that traffic coming to Sanibel is increasing at the rate of 9.3%/year. The report says, "The use of Sanibel's natural and human-made systems cannot go on doubling every eight years and have Sanibel remain an economically attractive and environmentally vital place."

Vice Chair Samler said that during the past two years traffic count is down.

Rob Jess said that he noticed Lee County in general continues not to draw a line in the sand and say enough is enough. We continue to chip away at environmental lands. It is easy to take a stand on large issues but the small increases in use of land have to be stopped. Chair Johnston said that what concerns her is that seven years ago it was recognized that Periwinkle reached capacity and nothing has been done. Mr. Jess said that the refuge developed a standard food pyramid for the environment to help people understand that if we lose beaches Lee County will lose tourist dollars.

Armond Ball, Sanibel resident, said that we would never be able to satisfy tourists that our beaches are not East Coast beaches. Mr. Ball said that many people ask him questions when he is driving along the beach and we need to educate tourists so they are aware of what a natural beach is. Mr. Ball asked if SCCF, the Wildlife Refuge, and the City could station people on the beaches who could answer questions from visitors.

Judy Workman, Sanibel resident and Councilperson, said that the City Attorney advised the City Council that these meetings are noticed City Council meetings as well as Planning Commission meetings and that the Council people should not get into a debate with each other. Ms. Workman said (1) Council had discussions regarding the EAR, (2) they have given some direction to the Planning Commission and (3) it is appropriate for the Council to wait for the Planning Commission recommendations and not direct the process. Ms. Workman said regarding removal of debris from the beaches, both wildlife and human needs should be considered. Ms. Workman also stated that we have a very good policy regarding beach cleanup and that the way to solve the debris concern is to find the cause and then solve the problem.

Hazel Schuller, Sanibel Resident, distributed several pieces of literature to the Planning Commission and said she wanted to make five (5) points. Ms. Schuller said she wondered why Sanibel has recreation as a development. Ms. Schuller's five point are:

1. Is recreation appropriate to the Gulf Beach Zone land development?
2. Why are resorts more privileged for beach amenities than residents and day trip visitors?

3. Why is the beach the only ecozone that has recreation and conservation development?
4. Why should we develop the resort beaches for recreational land?
5. Work on defining what recreation is in relation to development.

Sonja Smith, CASI, said that several years ago Sanibel and Ft. Myers Beach met and were hopeful that Bunch Beach would be developed by Lee County. Ms. Smith further stated that perhaps a solution would be to get together with Ft. Myers Beach and go to the Tourist Development Council (TDC) to see what can be done with Bunch Beach to make it more of an attraction.

Louise Johnson, Sanibel resident, said there is a noticeable lack of birds on the beach and she believes this is because dogs are running loose or are on 50' leashes. Ms. Johnson said there should be a law that forbids dogs to be on the beach. Steve Brown, Sanibel resident, said he disagreed with Ms. Johnson that perhaps children should be prohibited from the beach because he sees children chasing the birds.

Chester Sadler, Sanibel resident, said we should face the fact that beaches will have to be closed. In Colorado they had to close the mountains and on Sanibel the need is to close areas of the water and beaches. Chair Johnston said we should find what agencies in other areas have done to preserve natural environments.

The Planning Commission took a break from 10:15 A.M. to 10:28 A.M.

Chair Johnston said that the next topic for discussion is Land Use regarding the resort-housing sector and condominiums and asked Mr. Pfalzer if he wanted to open the discussion.

Mr. Pfalzer said one of the State requirements is to look at strategies to address nonconforming densities relating to build back whether it is due to catastrophes or normal development activities. Mr. Pfalzer said this is an opportunity, under the Sanibel Plan, to make a definitive statement of how we want to address the issue; the State does not require any particular approach to this, they want us to evaluate the safety concerns of the use and activities on the beaches with the private property rights of individuals who own the property. Mr. Pfalzer further stated that this will give us a chance to identify the policy that we want and also as we look at the land use element and the plan for development intensity some items may carryover from the initial Plan that indicate there is a basis to increase density, i.e., (1) the Below Market Rate Housing Program and (2) the possibility of using resident property in lieu of commercial development.

Steve Brown, Sanibel resident, said we should know the facts before reaching a decision. Mr. Brown said there are over 500 condo units ahead of the Coastal Construction Control Line (CCCL). Mr. Brown said the Atrium has 12 units, Island Beach has 24, Pointe Santo has 36, Sanibel Moorings has 20, and there is one that has over 100 units ahead of the CCCL so this is not going to be an easy thing to deal with. Mr. Brown distributed a document titled "Condominium Units Forward of the 1974 Sanibel CCL Line and asked that this be entered into the record – this information is as follows:

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Condominium Units Forward of the 1974 Sanibel CCL Line

Atrium @ 2929 West Gulf Dr.

-12 units – 103, 203, 303, 104, 204, 304, 105, 205, 305, 106, 206, 306

Coquina Beach @ 623 Nerita St.

- 8 units – 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H

Island Beach Club @ 2265 West Gulf Dr.

- 24 units – D210, D310, PH1D, D220, D320, PH2D, D230, D330, Ph3D, D240, D340, PH4D, D250, D350, PH5D, D260, D360, PH6D, C230, C330, PH2C, E240, E340, PH4E

Kings Crown @ 2721 West Gulf Dr.

- 9 units – 101, 201, 301, 102, 202, 302, 103, 203, 303

Lighthouse Point

- 52 Units -

Loggerhead Cay @ 979 East Gulf Dr.

- 26 units – 501, 502, 503, 503, 511, 512, 513, 514, 521, 522, 523, 101, 102, 103, 104, 111, 112, 113, 114, 121, 122, 123, 131, 132, 133, 132

Mariner Points @ 760 Sextant Dr.

- 100 units -

Nutmeg @ 2777 West Gulf Dr.

- 27 units

100, 101, 200, 201, 300, 301, 102, 202, 302, 113, 114, 213, 214, 313, 314, 112, 212, 312, 111, 211, 311, 110, 210, 310, 103, 203, 303

Ocean's Reach @ 2230 Camino Del Mar

All 63 units

Pointe Santo @ 2445 West Gulf Dr.

- 36 units – E4, E5, E6, E7, E24, E25, E26, E27, E34, E35, E36, E37, E44, E45, E46, E47, A4, A5, A6, A7, A24, A25, A26, A27, A34, A35, A36, A37, A44, A45, A46, A47, A3, A23, A33, A43

Sandalfoot @ 671 East Gulf Dr.

- 24 units – 1A1, 1A2, 1A3, 1B1, 1B2, 1B3, 1C1, 1C2, 1C3, 1D1, 1D2, 1D3, 5A1, 5A2, 5A3, 5B1, 5B2, 5B3, 5C1, 5C2, 5C3, 5D1, 5D2, 5D3

Sandy Bend @ 3057 West Gulf Dr.

- 8 units – 1, 2, 3, 4, 5, 6, 7, 8

Sanibel Moorings @ 845 East Gulf Dr.

- 20 units – 1111, 1112, 1141, 1142, 1121, 1122, 1131, 1132, 711, 712, 721, 722, 511, 512, 521, 522, 111, 112, 121, 122

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Sanibel Siesta @ 1246 Fulgur St.

- 14 units – 501, 502, 503, 504, 505, 506, 601, 602, 603, 604, 605, 606, 607, 608

Sanibel Surfside @ 610 Donax St.

- 21 units – 111, 112, 113, 114, 115, 116, 117, 121, 122, 123, 124, 125, 126, 127, 131, 132, 133, 134, 135, 136, 137

Sundial West @ 1501 Middle Gulf Dr.

- 52 units – E101, E201, E301, E401, E104, E204, E304, E404, E108, E208, E308, E408, E110, E210, E310, E410, K102, K202, K302, K402, K103, K203, K304, K403, K105, K205, K305, K405, K108, K208, K308, K408, A101, A201, A301, A401, A203, A303, A403, A205, A305, A405, A206, A306, A406, A208, A308, A408, A110, A210, A310, A410

Sunset South @ 1341 Middle Gulf Dr.

- 8 units – 5A, 5B, 5C, 5D, 15A, 15B, 15C, 15D

Tiqua Cay @ 483 – 481 East Gulf Dr.

All 4 units

Villa Sanibel @ 2321 West Gulf Dr.

- 8 units – 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H

White Caps Cottages @ 2907 West Gulf Dr.

- 2 units – 7, 8

Interval; Motels

Surf Rider	555 East Gulf Drive
Song of the Sea	863 East Gulf Drive
Sanibel Inn	937 East Gulf Drive
Caribe	2669 West Gulf Drive
Shalimar	2823 West Gulf Drive
Waterside Inn	3033 West Gulf Drive
Island Inn	3111 West Gulf Drive
Best Western	3287 West Gulf Drive
Beachview Cottages	3325 West Gulf Drive
West Wind Inn	3345 West Gulf Drive
Cohen's Cottages	1081 Shell Basket Ln.

Claudia Burns, Sanibel resident, said she lives in a nonconforming unit and that the condominium board is addressing the issue of what happens if the buildings in front of the setback line are more than 50% destroyed. Ms. Burns said she realizes that when you build on a barrier island you take your chances; no one can take Mother Nature to court so there needs to be a balance.

Ed Liberator, Sanibel resident, said that if the condominium he owns is destroyed he would like to be able to have it rebuilt where it is. Mr. Liberator asked if the City could have regulations

that protect or grandfather older buildings so they could be rebuilt on the same site so owners don't lose their property.

Dave Schuldenfrei, President of the Sanibel-Captiva Association of Realtors, said the Association of Realtors, with the assistance of Bob Pritt and David DePew, is preparing a working draft of an emergency build back ordinance that may be completed by the end of the week and then will be presented to City Council. Mr. Schuldenfrei said there are close to \$2 billion worth of nonconforming structures on Sanibel and the owners should not lose their life savings or retirement because of a disaster. Mr. Schuldenfrei said he believes there is a compromise and wants to work with the City to put a plan in place. No one is looking for increased density; they only want to preserve what is already here.

Chair Johnston asked Mr. Schuldenfrei to explain their process once the document is finished and also asked if he will be open for comments. Mr. Schuldenfrei said the Planning Commission and Planning Department will get a copy and comments will be welcomed.

Commissioner Veenschoten congratulated the realtors for working on this. Vice Chair Samler said that no ordinance could be put in place without going before the Planning Department, the Planning Commission and City Council.

Karen Storjohann, Sanibel resident, said if the City does not have a plot-by-plot analysis of nonconforming structures, perhaps the Realtors do and they might share this with the City. Ms. Storjohann said it would also be interesting to know what properties are owned by the same people that owned the property when the City incorporated. Ms. Storjohann said if you bought after the City's incorporation you knew you were not going to be able to build back the way it is and this should have been taken into consideration when you purchased the property. Ms. Storjohann said (1) we are under federal insurance as a barrier island, (2) there is great concern in Congress about the continuous rebuilding of destroyed homes on barrier islands, and (3) they are looking for ways not to subsidize rebuilding destroyed homes.

Chair Johnston asked Mr. Pfalzer to comment on what kind of records the Planning Department maintains. Mr. Pfalzer said there is no database that contains a record of all the properties but at a moment's notice the position of a particular property can be obtained. There are a lot of available sources including the Property Appraiser's office. Mr. Pfalzer further stated that in terms of the City's participation in the Federal program for flood insurance, data has been compiled that identifies structures seaward of the control line, structures that do not meet flood regulations and approximately 50% of the housing stock does not meet flood regulations.

Vice Chair Samler said he and Mr. Schuldenfrei looked at aerial photographs and overlays of the 1974 Coastal Construction setback line and it is not an exact science; individual properties would need to have an as-built survey to be accurate. Vice Chair Samler said that even though the overlay was not entirely accurate they identified the 400 or 500 condominiums units that sit forward of the coastal construction setback line and this represents \$400-500MM but the other units on the Island that are nonconforming (the \$2 billion figure is approximately one-half of the tax base).

Hazel Schuller, Sanibel resident, asked where in the Sanibel Plan you could find the requirements for height. Mr. Pfalzer said the Plan states the Policy and it says the limitation is three (3) stories above flood elevation, however, height restrictions are very specific by zone in the Land Development Code.

Alex Werner, Sanibel resident, said it is nice to know that the realtors have done their homework. Mr. Werner said the question is, if you give relief the way the realtors are asking for, what is to prevent someone from saying if you gave relief to go up four (4) stories can I go up five (5) or six (6) floors.

Vice Chair Samler said when you go to court and ask for more you need to have a basis to ask for more and if the Plan was in place and unchallenged prior to the disaster and giving relief only in case of disaster then that is the defense of the Sanibel Plan and the Land Development Code. If there was no Plan in place the property owners could go to court and ask specifically for what you are concerned about and the decision would be a 50/50 coin toss. Vice Chair Samler said we want the build back as close to the existing footprint as possible or better which would place it further away from the beach. This might require variances but it is better than what Sanibel could get from the court because the court will defend private property rights. Chair Johnston said she was confused because Vice Chair Samler said the protection is only relief in the event of a disaster and not build back in terms of modernization. Vice Chair Samler said this is only true for disaster built back but this does not only effect condominiums forward of the setback line, this also effects almost every commercial property on Periwinkle Way and hundreds of single-family homes could be impacted. Single-family homes are a little different because there is one owner on one plat of land and you could rebuild according to the current Code. Build back requirements for multi-family homes as the Code reads today can only be done by variances and this means court cases.

Dave Schuldenfrei, Sanibel resident, said that the realtors do not want an increase in density. The City has safeguards in place and the only thing being requested is that property owners be able to replace what already exists or to improve what is there because Sanibel is great the way it is.

Chair Johnston asked if the proposed ordinance addresses only relief from disaster or if it includes voluntary redevelopment. Mr. Schuldenfrei said the ordinance only addresses build back because of disaster. Chair Johnston asked if it is known how many condominiums units would have to be built above the existing height limits. Mr. Schuldenfrei said he didn't know but it would be easy to find out.

Mike Robb, Sanibel resident, said when you rebuild and raise the building on pilings you use less covered land and asked if the buildings could be enlarged to cover more ground. Vice Chair Samler said this is addressed in the Ordinance, there would be no increase in the number of units and no increase in the size of any of the units, porches or walkways. It would provide for a reduction in developed area should some of the parking be moved under the building and, therefore, would be a benefit to the Island as a whole.

Claudia Burns, Sanibel resident, asked if the coastal setback line is a matter of Federal or local legislation. Chair Johnston said it is not local it is a State setback. Vice Chair Samler

said the State permits any municipality or county with the 1974 CCCL to breach the line. Mr. Pfalzer said the 1974 line has disappeared for purposes of the State of Florida and in 1991 the State moved the line further inland. In 1976 the City said this would be the setback line and residential use is not permitted. When the line moved back the City said this would create an amount of nonconformity that could be beyond the City's ability to handle so the area between the 1974 and 1991 CCCL is treated differently today than it was in 1976. Mr. Pfalzer further stated that the State has always allowed building seaward of the line provided you get the appropriate State permits. Ms. Burns said it would be possible to rebuild in the same place. Mr. Pfalzer said that was true but it could depend on where the land is after a disaster. Ms. Burns said there is a tiki hut at her condominium in front of the current setback line and they have been told they cannot replace 50% or more of this structure so she was under the impression that you couldn't replace 50% of anything in front of that line and she is surprised to hear that you can if you get the proper State permits. Mr. Pfalzer said the City is more restrictive than the State and the State will probably support the City's position regarding build back. Ms. Burns asked if there could be negotiations between condominium boards and resort owners in terms of what could be rebuilt and where. Chair Johnston said this would depend on what ordinances are in effect. Mr. Pfalzer said in the current Code the build back provisions, because of other circumstances, do not allow you to build back but there is a procedure to seek relief through City Council. Mr. Pfalzer said there has to be a procedure to grant relief.

Sonja Smith, CASI, said that when a new Ordinance is approved it should be made clear whether the Wally Cane rule or the new ordinance is the governing document.

Commissioner Valiquette asked Mr. Pfalzer if he knew how the Florida State Statutes relate to build back regarding property owner rights both physical and financial. Commissioner Valiquette also asked if there is an ordinance that governs what is required to be in the Sanibel Plan. Mr. Pfalzer read "The City has the need to evaluate whether any past reduction in land use density impairs the property rights of current resident when redevelopment occurs including but not limited to redevelopment following a natural disaster. There is a need to identify strategies to address redevelopment that balance property rights with public safety considerations." Commissioner Valiquette said he wants the public to understand that the State sets guidelines for the City in preparation of the EAR. Chair Johnston said the Planning Commission must look at the issue but how the issue is solved needs to be discussed. Mr. Pfalzer said the single-family sector of the community is also affected; there are properties on Sanibel that have single-family dwellings and if the properties are vacant, they would not be entitled to a dwelling unit, they would be unbuildable lots.

Ed Liberator, Sanibel resident, asked if there are any public safety issues that are greater than the property rights of the owners. Mr. Pfalzer said safety issues are a foremost consideration in land use planning particularly in an environment like Sanibel. Mr. Pfalzer also said that the current regulations would have to be evaluated to make sure they are reflecting property owners' rights.

Commissioner Gargano said she would like to have the City Attorney write a legal opinion regarding the statement on Page 10 of the handout that states – "There is currently a need to evaluate whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs, including but not limited to, redevelopment following a

natural disaster. There is a need to identify strategies to address redevelopment that balance property rights with public safety consideration.” Commissioner Gargano said she read the Bert Harris Act and this sentence would give the public the impression that if several years ago something was done to impact density the owner would have redress today and the Bert Harris Act says you can only go back 180 days to appeal. Commissioner Gargano said she will not be present at the June 22, 2004 meeting and asked to be excused.

Vice Chair Samler said that the Planning Commission recommended to City Council in October 2003 that they address build back and the time to plan for a disaster is today before a disaster happens. Vice Chair Samler also said that insurance does not pay for condominium build back.

Chair Johnston said the idea to have a build back plan is important but it is important to be extremely careful that it is worded properly and also to make sure the wording is written in a way the will not provide relief to existing conditions that could be interpreted as a blanket relief that might allow a total change in the character of the Island. Chair Johnston said that a land use attorney has advised that it is a good idea to allow for site-specific variances to provide for property rights and relieve difficulties, but not to open the entire Island to something that might greatly change the character of the Island. Chair Johnston thanked the public for attending and participating in the discussion.

Mr. Pfalzer said the advisory team who is guiding the Board of Realtors in the composition of the Ordinance can give a good analysis of whether the proposed Ordinance is consistent with the Sanibel Plan as it is written today or if the Sanibel Plan needs to be adjusted so that the proposed Ordinance is consistent with the Sanibel Plan.

ITEM #6. Consideration of the 2004 Capital Improvement Review Committee Annual Report

Chair Samler presented the annual report and stated there are no recommendations.

MOTION: Commissioner Veenschoten moved to approve the report as submitted. Commissioner Gargano seconded the motion. The motion carried unanimously by a roll call vote.

ITEM #7. Report from Commissioner Liaison to City Council.

The June 1, 2004 City Council meeting was cancelled, therefore, no report.

ITEM #8. Reports from Director of Planning or staff.

Mr. Pfalzer reported that at 9:15 A.M. on June 22, 2004 a quasi-judicial hearing is schedule for the Planning Commission meeting and this hearing should be balanced with timing for the EAR discussion.

ITEM #9. Report from Commission Members.

Commissioner Veenschoten congratulated Chair Johnston for the excellent newspaper articles she has written prior to each EAR discussion and for the manner in which she conducts the EAR discussions. Vice Chair Samler and Commissioner Gargano agreed. Commissioner Gargano requested the Planning Staff to get a copy of the Walter Klages report, specific to Sanibel, and distribute this report to the Planning Commissioners.

ITEM #10. Report from Commission Chair.

Chair Johnston asked that the description for the July 13, 2004 EAR discussion be revised to include "Recap of Previously Reviewed Elements of the Plan".

ITEM #11. Open discussion among Planning Commissioners regarding Commission Functions and Goals and the methods and procedures for achieving them.

There was no discussion.

ADJOURNMENT: There being no further Planning Commission business, Commissioner Valiquette moved to adjourn the meeting; Vice Chair Samler seconded the motion. Chair Johnston adjourned the meeting at 11:47 A.M.

Respectfully submitted,

Bruce A. Rogers
Planning Director